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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-198295 **DATE:** August 13, 1980

MATTER OF: Mark A. Carroll & Son, Inc.

DIGEST:

1. Dispute concerning contract termination for default and reprocurement is matter of contract administration which is for resolution by contracting agency, not GAO.

2. Reprocurement contract may not be awarded to defaulted contractor at price greater than terminated contract since award would be tantamount to modification of existing contract without consideration.

3. Bid preparation costs will not be allowed where rejection of low bid was not arbitrary or capricious.

The Veterans Administration Medical Center, Manchester, New Hampshire, solicited for the renovation of ward 18 in building No. 1 at the hospital. The solicitation is a reprocurement for projects 78-003 and 78-004 that had been awarded to Mark A. Carroll & Son, Inc. (Carroll), in October 1978. Carroll's contract was terminated for default on September 21, 1979.

On resolicitation, Carroll submitted two bids. The first bid was based on six drawings which were in Carroll's defaulted contract. The second bid was based on these six drawings plus drawing No. 7, a clarification drawing. Only Carroll's bid based on six drawings was low; however, the bid price was higher than its defaulted contract price. The contracting officer determined that Carroll's low bid was nonresponsive because it was based on six drawings instead of seven. Carroll protested this decision to the contracting agency. The protest was denied, and a contract was awarded to another firm.

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In addition to determining that Carroll was not entitled to award because its bid was nonresponsive, the Veterans Administration (VA) also cites PRB Uniforms, Inc., 56 Comp. Gen. 976 (1977), 77-2 CPD 213, for the proposition that a reprocurement contract may not be awarded to the defaulted contractor at a price higher than the terminated contract price because this would be tantamount to modification of the defaulted contract without consideration. Therefore, no award could be made to Carroll based on its low bid because Carroll's reprocurement price was higher than its defaulted contract price.

Carroll protests as follows:

1. The improper default of its contract should be rescinded and the contract should be reinstated at an increased price.

2. The PRB case is distinguishable because this is not a proper reprocurement of the defaulted contract as the clarification drawing increased the amount of work to be performed by 50 to 75 percent. Alternatively, Carroll's low bid was responsive because the drawing was never incorporated into the bid package by an amendment.

3. The contract should be awarded to Carroll or Carroll should receive bid preparation costs.

Regarding Carroll's contention that the termination of its contract was improper, we have consistently held that the propriety of a termination for default is a matter for resolution by the contracting parties and not for consideration by GAO. Dun-Well Janitorial Co., Inc., B-183145, February 25, 1975, 75-1 CPD 114; Bromfield Corporation, B-188591, April 6, 1977, 77-1 CPD 240; B.W.I. Plastics & Chemicals Corporation, B-189164, June 15, 1977, 77-1 CPD 433. Also, the matter of Carroll's termination is now pending before the VA Board of Contract Appeals; therefore, we will not consider it. B.W.I. Plastics & Chemicals Corporation, supra.

Moreover, we decline to consider Carroll's argument as to the propriety of the reprocurement insofar as it relates to the similarity of the work under the defaulted contract and the levying of excess reprocurement costs since these

matters constitute a dispute as to a matter of fact, which is for resolution by the VA Board of Contract Appeals. Dun-Well Janitorial Co., Inc., supra; Hemet Valley Flying Service, Inc., 57 Comp. Gen. 703 (1978), 78-2 CPD 117; Skip Kirchdorfer, Inc., B-192843, February 15, 1979, 79-1 CPD 111.

We agree with the VA that the rule in PRB Uniforms, Inc., supra, barred the award of the contract based on Carroll's low bid, since the bid price was higher than the defaulted contract price. Carroll's bid based on seven drawings was not considered because it was not low.

Since Carroll's low bid was properly rejected under the PRB case, we need not decide whether it was properly rejected because it was based on only six drawings. However, we note that while the clarification drawing was not included in the IFB by amendment, as would have been advisable, the VA reports that it was furnished to all bidders and it did not increase or alter the work under the defaulted contract.

Finally, Carroll is not entitled to bid preparation costs since the rejection of its low bid was not arbitrary or capricious. Harco Inc.-Claim for Legal Fees and Bid Preparation Costs, B-189045, January 26, 1979, 79-1 CPD 55.

The protest and claim are denied.

Milton J. Socolar

For the Comptroller General
of the United States