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DECISION



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

82-1 cpd 288

FILE: B-205978

DATE: March 26, 1982

MATTER OF: Aero Products Research, Inc.

DIGEST:

Protest of defaulted contractor that its exclusion from the reprocurement was contrary to the Government's duty to mitigate damages resulting from the default will not be considered by GAO since whether Government met duty to mitigate is a matter for resolution under the Disputes clause of the defaulted contract.

Aero Products Research, Inc. protests the award of a contract to Allegheny Plastics, Inc. under invitation for bids No. DAAA09-81-B-2399 issued by the U.S. Army Materiel Development and Readiness Command to procure indirect fire plotting boards. Aero asserts that because the award was made for Aero's account under the reprocurement clause of two defaulted contracts, it should have been given an opportunity to mitigate its damages by bidding on the reprocurement. Aero also asserts, in support of its protest, that the Army had previously agreed to solicit Aero when procuring items of this type. Aero requests that Allegheny's contract be terminated and that the reprocurement quantities be ordered from Aero.

We have considered protests of defaulted contractors in connection with their complaints that statutory and regulatory provisions applicable to a reprocurement were not followed. See, e.g., PRB Uniforms, Inc., 56 Comp. Gen. 976 (1977), 77-2 CPD 213. We do not, however, consider complaints that the reprocurement action was inconsistent with the Government's duty to mitigate damages resulting from the default. Whether that duty

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was met is for administrative or judicial determination under the Disputes clause of the defaulted contract rather than under the Bid Protest Procedures of this Office. See Kaufman De Dell Printing, Inc., B-186158, April 8, 1976, 76-1 CPD 239; PRB Uniforms, Inc., supra. Here it is clear that the essence of Aero's protest is that the exclusion of Aero from the reprocurement was inconsistent with any Government "effort to mitigate the damages of the Default action." Consequently, we will not consider the protest.

Aero has requested a conference on this matter. Under the circumstances, however, we do not think a conference would serve any useful purpose, and the request is denied.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel