

**DECISION**



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

**FILE: B-207028**

**DATE: December 14, 1982**

**MATTER OF: Ex-Cell Fiber Supply, Inc.**

**DIGEST:**

Recovery under the Equal Access to Justice Act of attorney's fees and costs incurred in pursuing a bid protest at GAO is not allowed because GAO is not subject to the Administrative Procedure Act (APA) and in order to recover under Equal Access to Justice Act claimant must have prevailed in an adversary adjudication under the APA.

Ex-Cell Fiber Supply, Inc. requests that the Government Printing Office (GPO) or our Office reimburse it for attorney's fees and costs incurred in pursuing a bid protest filed with our Office. Ex-Cell filed its protest on April 8, 1982, contending that GPO improperly determined that it was nonresponsible and refused to award it a contract under GPO Waste Paper Sale No. 32. GPO subsequently reversed its determination of nonresponsibility and awarded the contract to Ex-Cell. Ex-Cell then withdrew its protest. Ex-Cell contends that under section 203(a)(1) of the Equal Access to Justice Act, 5 U.S.C. § 504 (Supp. IV 1980), it is entitled to reimbursement of the costs incurred in pursuing the protest.

The Act authorizes the award of attorney's fees and other costs to certain parties who prevail against the United States in adversary adjudications conducted by Federal agencies. Eligible prevailing parties are entitled to awards of fees and expenses, unless the presiding officer or judge finds that the position of the United States was substantially justified or that special circumstances make an award unjust. Eligible parties include sole owners of an unincorporated business, or partnerships, corporations, associations, or organizations with a net worth of no more than \$5 million and which employ no more than 500 persons.

The Act defines an adversary adjudication as a proceeding under the Administrative Procedure Act (APA), 5 U.S.C. § 554 (1976 and Supp. IV (1980)), in which the position of the United States is represented by counsel or otherwise. Our bid protest proceedings, however, are not held under or governed by the APA since that law does not apply to the legislative branch, of which our Office is a part. See 5 U.S.C. § 551(1)(A). Moreover, in rendering bid protest decisions, our Office is not engaging in an adjudication as contemplated by the APA. See Dorman Electric Supply Co., Inc., B-196924, May 20, 1980, 80-1 CPD 347; compare 4 C.F.R. Part 21 (1982) with 5 U.S.C. §§ 554-557.

Accordingly, there is no authority under the Equal Access to Justice Act to allow recovery of attorney's fees and costs incurred in pursuing a bid protest before this Office. The claim is denied.

*for* Milton J. Fowler  
Comptroller General  
of the United States