

DECISION

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

Mulvey
120190

FILE: B-205960.2

DATE: December 27, 1982

MATTER OF: Cherokee Leathergoods, Inc.

DIGEST:

The Equal Access to Justice Act does not authorize recovery of attorney's fees and costs incurred by a protester in pursuing a bid protest at GAO.

Cherokee Leathergoods, Inc. requests that it be reimbursed for attorney's fees and costs it incurred pursuing a protest which we sustained in Cherokee Leathergoods, Inc., B-205960, August 13, 1982, 82-2 CPD 129. In that decision, we held that the United States Secret Service should have rejected a bid accompanied by a bid sample which did not meet the advertised specifications, and that the agency should have made bid samples available for public inspection at bid opening. Cherokee contends that under section 201 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 successfully 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 adjudication conducted by Federal agencies. 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 are not governed by the APA since that law does not apply to legislative branch agencies such as our Office. 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.

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. See Ex-Cell Fiber Supply, Inc., B-207028, December 14, 1982, 82-2 CPD _____. The claim is denied.

Milton J. Fowler
for Comptroller General
of the United States