



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Fischer and Porter Company  
File: B-227941.3  
Date: April 1, 1988

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### DIGEST

Where legislation passed subsequent to a General Accounting Office decision sustaining a protest has the effect of rendering moot the recommendation for corrective action--reinstating the protester as the low responsible bidder for Office of Management and Budget Circular (A-76) cost comparison purposes--the protester is entitled to award of costs of pursuing the protest, including reasonable attorneys' fees, but not bid preparation costs.

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### DECISION

Fischer and Porter Company (F&P) requests that we modify our decision in Fischer and Porter Co., B-227941.2, Nov. 25, 1987, 87-2 CPD ¶ 518, to allow reimbursement for the costs of pursuing the protest, including attorneys' fees and bid and proposal preparation costs, pursuant to 4 C.F.R. § 21.6(d) and (e) (1987).

We sustained F&P's protest in our original decision, Fischer and Porter Co., B-227941, Oct. 28, 1987, 87-2 CPD ¶ 410, and recommended that the United States Army Corps of Engineers reinstate F&P as the low responsible offeror for the purposes of the Office of Management and Budget Circular No. A-76 cost comparison, because we had found F&P to have been improperly determined to be nonresponsible. We denied F&P's claim for costs in B-227941.2, supra, because the relief granted F&P--the opportunity to secure contract award upon a successful A-76 cost comparison--was a sufficient remedy within the intent of our regulations.

F&P contends that because there is no longer any opportunity to obtain the contract award because of legislation passed subsequent to our decision, it is entitled to the award of costs.

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The Continuing Resolution for Fiscal Year 1988, Pub. L. 100-202, § 8128, Dec. 22, 1987, 101 Stat 1329, eliminated funding for continuing the cost comparison study through the following language:

"None of the funds available for programs administered by the Assistant Secretary of the Army for Civil Works in this or any other Act hereafter are available to continue, initiate, review, complete, or approve A-76 studies on contracting out for any reservoir area in the State of Mississippi administered by the Corps of Engineers unless specified in appropriation bills."

As a consequence, the solicitation has been canceled and our recommendation for corrective action has become moot.

Accordingly, since F&P no longer has an opportunity to obtain the award, the firm is entitled to recover its bid protest costs, including reasonable attorneys' fees. 4 C.F.R. § 21.6 (d)(1). However, the award of bid and proposal preparation costs is not appropriate. We have allowed such costs when a bidder has been deprived of a contract it should have received. See The Departments of the Army and the Air Force, National Guard Bureau--Reconsideration, B-224838.2, June 1, 1987, 66 Comp. Gen. \_\_\_\_, 87-1 CPD ¶ 547. Here, in light of the legislation that was enacted prior to completion of the cost comparison study, we cannot conclude that F&P was improperly denied a contract to which it was entitled.

The protester should file its claim directly with the Corps of Engineers. If the parties are unable to reach an agreement within a reasonable time, this Office will determine the amount. 4 C.F.R. § 21.6(f).

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