DECISION

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

FILE: B-202766.2, B-203351.2 DATE: February 14, 1983

MATTER OF: McQuiston Associates--Request for Reconsideration of Claim for Proposal Preparation Costs

DIGEST:

1. GAO decision dismissing claim for proposal preparation costs and denying claim for costs of pursuing protest does not prejudice proceedings before board of contract appeals or a court because the board proceeding and what GAO considered involve matters unrelated to the claim in court.

2. Expenses incurred in pursuing bid protests with GAO are not compensable under Equal Access to Justice Act.

McQuiston Associates requests that we reconsider our decision, McQuiston Associates - Claim for Proposal Preparation Costs, B-202766; B-203351, August 12, 1982, 82-2 CPD 127, in which we dismissed that firm's claim for proposal preparation costs in connection with request for proposals (RFP) Nos. DAAH01-80-R-1299 and DAAH01-81-R-0481 issued by the U.S. Army Missile Command, Redstone Arsenal, Alabama. We dismissed the claim because McQuiston had not timely protested the allegedly improper agency action on which the claim was based. We also held that McQuiston's costs of pursuing earlier bid protests were not compensable.

McQuiston now contends that we should not have issued our decision at all because at the time it initially filed its claim for proposal preparation costs with our Office it had also filed concurrent actions in a United States District Court (McQuiston v. Marsh, No. CV 81-3572-WMB, C.D. Cal.) and the Armed Services Board of Contract Appeals (ASBCA) (Appeal of McQuiston Associates, ASBCA

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No. 24676). McQuiston states that it did not expect us to issue a decision and now requests that we "withdraw" it so that its claims before the court and the Board wil not be prejudiced. We decline to do so.

Our general policy is not to decide matters which are pending before or have been decided by a court of competent jurisdiction, unless the court requests or otherwise expresses interest in receiving our decision. See, e.g., 4 C.F.R. § 21.10 (1982); Ben R. Shippen d/b/a Assurance Company, B-196349, November 9, 1979, 79-2 CPD 349, affirmed on reconsideration, August 12, 1981, 81-1 CPD 125. Had McQuiston or any other party informed us of a court suit involving the same matter before us, in the absence of an expression of judicial interest we would have dismissed the matter in accordance with this general policy.

The only court suit involving McQuiston of which we are aware, however, did not involve the subject matter of our decision of August 12. Rather, it involved McQuiston's request for injunctive relief in connection with its pending protests concerning the cancellation of RFP -1299 and the issuance of RFP -0481. Although the court expressed interest in our decision after denying McQuiston's request for a temporary restraining order, we dismissed the protests as moot when the Army canceled RFP -0481 after determining it no longer needed the items involved. The court then dismissed McQuiston's suit without prejudice.

Subsequently, McQuiston filed a claim here for its proposal preparation expenses and the costs of pursuing its protests. While that claim was under review, McQuiston requested the court to award it costs and fees incurred in bringing the court action. McQuiston did not advise us of that request to the court, which the court subsequently denied on the ground that McQuiston was not a prevailing party in the lawsuit and therefore was not entitled to the requested award. McQuiston has appealed that decision to the Court of Appeals for the Ninth Circuit (No. 82-5692).

In short, what McQuiston did was to file two different claims. One claim, filed with us, was for the costs of preparing its proposals and pursuing protests with this Office. The other, filed with the court, was for the costs involved in bringing the court action. While in some cases protests and litigation costs may overlap, in this case the record does not indicate that McQuiston's filing with the court encompassed elements of the claim filed here.

In any event, we fail to see any basis for McQuiston's concern of prejudice to its court and board actions. We dismissed the claim for proposal preparation costs solely on timeliness grounds, not on the merits, and denied the claim for the costs involved in protesting here; the only matter before the Court of Appeals is the propriety of the district judge's holding that McQuiston was not the prevailing party in the court action. There simply is no connection between our dismissal and holding and what the court has to consider. Similarly, there is no relation between our decision and the board case. In the ASBCA case, McQuiston has asked the board for damages allegedly suffered due to actions taken by the Army concerning a contract (No. DAAH07-79-C-0179) previously awarded to McQuiston. This contract dispute obviously has nothing to do with the claims dealt with in our decision and therefore our decision could not possibly prejudice McQuiston's case before the ASBCA.

One final matter. McQuiston argues that our denial of its clam for costs for pursuing its bid protests was legally erroneous because such costs are now permitted under the Equal Access to Justice Act, 5 U.S.C. § 504 (Supp. IV 1980). That Act, however, does not apply to bid protests before this Office. Ex-Cell Fiber Supply, Inc., B-207028, December 14, 1982, 62 Comp. Gen. ____, 82-2 CPD 529.

We affirm our decision.

for Milton J. Socolar
Comptroller General
of the United States