

Gilhooly



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: American Fiber Optics Corp.--Reconsideration
File: B-238235.4
Date: January 9, 1991

Pierre L. LaBarge, Jr. for the protester.
Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Prior decision denying claim for proposal preparation costs is affirmed since a decision on the merits of a protest by the General Accounting Office is an essential condition to a declaration that the protester is entitled to the award of costs and no decision was rendered.

DECISION

American Fiber Optics Corp. requests that we reconsider our decision, American Fiber Optics Corp.--Claim for Costs, B-238235.3, Aug. 28, 1990, 90-2 CPD ¶ 160, in which we denied its claim for proposal preparation costs incurred in responding to solicitation No. N00406-89-R-0504, issued by the Department of the Navy for installation and furnishing of communications cables.

We affirm our prior decision.

American filed an agency-level protest that resulted in the agency's termination of the protested contract. American, having prevailed in its agency-level protest, sought its proposal preparation costs from our Office.

We denied American's claim for costs because American never filed a protest with our Office, and a decision by our Office on the merits of a protest is an essential condition to a declaration that the protester is entitled to the award of costs. Moody Bros./Troika Int'l Inc./C.G. Willis, Inc.--Recon., B-237278.4, Apr. 23, 1990, 90-1 CPD ¶ 408.

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In its request for reconsideration, American states that it tried to file a protest with our Office on Friday, December 8, 1989, but was precluded from doing so because our Office was closed due to snow. American asks that we consider this information and review our decision denying its claim.

Correspondence submitted by American indicates that under our Bid Protest Regulations American could have timely protested to our Office within 10 working days of December 8, the date when it was apprised of an award to a higher bidder. 4 C.F.R. § 21.2(a)(2) (1990). Therefore, the fact that American was unable to file its protest with our Office on December 8 did not prevent it from timely filing its protest with our Office thereafter. However, American chose to protest to the Navy by letter dated December 8, and never filed a protest with our Office. As explained in our prior decision, since there was no decision by our Office on the merits of American's protest, we have no basis for awarding costs to American. Id.

We affirm our prior decision.

for Andrew T. Pozany
James F. Hinchman
General Counsel