



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** PathLab, P.A.  
**File:** B-236766; B-236887  
**Date:** October 4, 1989

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### DIGEST

1. Protests are academic where agency acted reasonably in issuing corrective amendments satisfying protester's objections to ambiguous and restrictive solicitations.
2. Protester is not entitled to bid protest costs where there are no decisions on the merits.

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### DECISION

PathLab, P.A., protests two solicitations<sup>1/</sup> issued by the Department of Veterans Affairs for laboratory services because they both contained restrictive licensing requirements and because one contained an ambiguity relating to the place of contract performance. Although PathLab has subsequently indicated that shortly after its protests were filed the agency issued corrective amendments satisfying its concerns, it nonetheless claims that it is entitled to its protest costs.

We dismiss the protests and deny the claims for costs.

Since the protester has indicated that the corrective amendments satisfied its concerns, its protests concerning the allegedly defective solicitations are academic and will not be considered on the merits. Rosemount Analytical, Inc., B-235740, Sep. 26, 1989, 89-2 CPD ¶ \_\_\_\_\_. With respect to PathLab's claims for its protest costs, we note that our authority to award such costs is predicated on a determination by this Office that an agency has acted

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<sup>1/</sup> Request for proposals No. 515-5-90; invitation for bids No. 516-010-90.

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contrary to statute or regulation. 31 U.S.C. § 3554(c)(1) (Supp. IV 1986). Thus, a decision on the merits is an essential condition to a determination that the protester is entitled to the award of costs; in light of our conclusion here that the protests are academic, there is no need for a decision on the merits of either, and we therefore have no basis for awarding protest costs to PathLab. Teknion, Inc.--Claim for Protest Costs, 67 Comp. Gen. 607 (1988), 88-2 CPD ¶ 213.

PathLab nonetheless argues that, because its protest resulted in amendments which allegedly enhanced competition, it is entitled to its costs. As support for this proposition, the protester refers to a number of earlier decisions where we awarded costs. However, unlike the situation here, each of those cases involved a determination by this Office that a contracting agency had acted contrary to law or regulation, and resulted in a decision on the merits and a recommendation for corrective action--thereby providing a legal basis to award costs. As indicated above, no such basis exists here. Rosemount Analytical, Inc., B-235740, supra.

The protests are dismissed and the claims for costs are denied.



Ronald Berger  
Associate General Counsel