

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

PL 1

26393

FILE: B-209458.6**DATE:** September 30, 1983**MATTER OF:** The R.H. Pines Corporation--
Reconsideration**DIGEST:**

Request for reconsideration is dismissed where issues raised are before a court of competent jurisdiction and the court, which expressed an interest in a decision by GAO, has not indicated any interest in having GAO reconsider the decision.

The R.H. Pines Corporation (Pines) requests reconsideration of our decision in The R.H. Pines Corporation, Northwest Pipe & Casing Co.; G. Shiposh Engineering Works, Ltd., B-209458; B-209458.2; B-209458.3, September 2, 1983, 83-2 CPD. Pines had protested any award by the Defense Construction Supply Center of the Defense Logistics Agency (DLA) to G. Shiposh Engineering Works, Ltd. (Shiposh), under invitation for bids (IFB) No. DLA700-82-B-2029. Shiposh had protested DLA's failure to award it the contract.

Our decision was rendered in response to an expression of interest from the United States Claims Court in Washington, D.C., in connection with Civil Action No. 516-83C brought by Shiposh. We found no legal impediment to the Department of Defense (DOD), now reconsidering its determination not to waive the Balance of Payments Program (BoPP) evaluation factor for Shiposh. We found the waiver had been denied due to a misperception concerning the advice of the United States Trade Representative (USTR) to DOD which, when clarified on the bid protest record, indicated the USTR did not intend to suggest that waiver was precluded at the time the waiver decision was made. We also denied Pines' allegation that Shiposh's bid was nonresponsive.

Pines asserts that DOD did not misunderstand the USTR advice and properly denied the BoPP waiver. Pines suggests that there are documents in Shiposh's filing with the court which support its view which we may not have considered. Pines requests that we seek further DOD and USTR statements concerning their communications to clarify this matter.

Pines continues to argue that Shiposh is ineligible for award of this contract under the Trade Agreements Act of

026806

1979, 19 U.S.C. § 2501, et seq. (1976), as implemented by the USTR. Pines also asserts that DLA improperly may grant a waiver of the BoPP evaluation factor under the IFB without satisfying an alleged requirement that DLA consult with the Secretary of Defense before approving a waiver.

Shiposh's action in the Claims Court asks for declaratory and injunctive relief which would result in award of a contract to Shiposh under this IFB. The issues raised by Pines in its letter to our Office concern the same or integrally related issues of Shiposh's eligibility for award which is the subject of the court action.

It is our policy not to decide matters where, as here, the material issues are before a court of competent jurisdiction. However, if the court expresses an interest in a decision by our Office, we will then consider the matter on the merits. See 4 C.F.R. § 21.10 (1983). Here, the court did express an interest in having a decision by our Office. GAO did consider Pines' protest, although not a party to the court action since the court requested we consider the Pines and Shiposh protests involving the IFB. Pines now requests that we reconsider the decision. However, since the decision was issued in response to the court's request and the court has not indicated any interest in our reconsidering the prior decision, we will take no further action on the merits of this matter. P. Francini & Co., Inc.--
Reconsideration, B-208547.2, February 1, 1983, 83-1 CPD 111. We further note that it is irrelevant that Pines may not be a party to the litigation. Sea-Land Service, Inc., B-208690.2, February 10, 1983, 83-1 CPD 148.

We dismiss Pines' request for reconsideration.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel