



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Marine Industries, Ltd.--Reconsideration
File: B-225722.2
Date: June 24, 1987

DIGEST

Request for reconsideration is denied when based on arguments that could have been, but were not, raised by protester in course of original protest.

DECISION

Marine Industries, Ltd. (MIL), requests reconsideration of our decision in Marine Industries, Ltd., B-225722, May 21, 1987, 87-1 C.P.D. ¶ ____, in which we denied MIL's protest of a domestic shipyard restriction in invitation for bids No. DACW61-87-B-0014, issued by the United States Army Corps of Engineers for construction of a service barge. We deny the request.

MIL, a Canadian shipyard, initially contended that the Corps lacked authority to impose the domestic shipyard restriction of 10 U.S.C. § 7309 (Supp. III 1985), because the requirement for such a restriction does not apply to the type of vessel in question. Later, in its comments on the agency report and in an additional submission requested by our Office, MIL argued that the restriction generally has been waived for Canadian shipyards under 10 U.S.C. § 7309(b). That provision reads:

"The President may authorize exceptions to the prohibition in subsection (a) [requiring domestic construction of military vessels] when he determines that it is in the national security interest of the United States to do so. . . ."

We rejected MIL's initial argument, and we also found MIL had not established that the restriction has been waived for the Corps of Engineers. In requesting reconsideration, MIL challenges our finding that the restriction as it applies to the Corps has not been waived.

MIL premised its waiver contention on the following argument, made in its comments on the Corps' protest report:

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". . . The President, via various executive orders, has delegated much of this authority to determine the national security interest to agency heads. [Executive Order No.] 12260, entitled 'Agreement on Government Procurement,' bestows such power on the Secretary of Defense on matters of military procurement. . . ."

From this premise, MIL argued that the Department of Defense had granted the waiver by international agreement with Canada and by Secretarial determination and regulation.

We examined Executive Order No. 12,260, which was issued under the authority of the Trade Agreements Act of 1979, 19 U.S.C. § 2501 et seq. (1982), and we found that while it did delegate certain authority to the Secretary of Defense to waive certain trade prohibitions and restrictions, the delegation expressly excluded the Corps of Engineers. Consequently, we rejected MIL's contention that the requirement had been waived for the Corps' contracts.

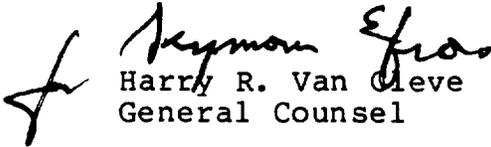
MIL contends that we erred in concluding that MIL had not established the existence of a waiver. MIL now argues that its waiver argument did not rest entirely on the existence of a Presidential waiver under 10 U.S.C. § 7309(b) and on Executive Order No. 12,260. MIL contends that the Trade Agreements Act of 1979 provides yet another means of waiving the restriction because, according to the statute, the President (1) can waive the application of any law regarding government procurement, 19 U.S.C. § 2511, and (2) can authorize the Secretary of Defense to waive prohibitions "for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense," 19 U.S.C. § 2512(b)(3).

Our Bid Protest Regulations require that a request for reconsideration contain a detailed statement of the factual and legal grounds for the request, specifying any errors of law or information not previously considered. 4 C.F.R. § 21.12(a) (1986). Our Regulations do not permit a piecemeal presentation of evidence, information, or analyses, and where a party raises in its reconsideration request an argument that it could have, but did not, raise at the time of the protest, the argument does not provide a basis for reconsideration. Joseph L. De Clerk and Associates, Inc.--Reconsideration, B-221723.2, Feb. 26, 1986, 86-1 C.P.D. ¶ 200.

In addition to the above-quoted comment on the agency report, MIL argued, in the further submission requested by our Office, that the Department of Defense had granted

Canada, through regulations and international agreements, "the waiver identified under 10 U.S.C. § 7309(b)." In our view, it is clear that MIL was still relying on that statutory provision and on the Presidential delegation of authority to the Secretary of Defense under Executive Order No. 12,260 as the foundation of its argument. MIL did not argue that the waiver was not required because the Corps of Engineers, as part of a military department, was subject to other Department of Defense regulations waiving United States procurement restrictions for Canadian firms, or that either the President or the Secretary of Defense had waived the domestic shipyard restriction using separate authority under Title 19 of the United States Code. These arguments therefore cannot now constitute a basis for reconsideration.

The request for reconsideration is denied.


Harry R. Van Cleve
General Counsel