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DECISION

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

FILE: B-195550.2 DATE: March 23, 1981

MATTER OF: Marine Engineers Beneficial Association; Seafarers International Union--Request for Reconsideration

DIGEST:

Prior decision holding unions' interests were too remote for unions to be considered interested parties under GAO Bid Protest Procedures, based on fact that potential bidders constitute intermediate parties with greater interest in substance of protest, is affirmed where unions have not demonstrated error of fact or law.

The Marine Engineers Beneficial Association, District 2 (MEBA) and the Seafarers International Union (SIU) request reconsideration of our decision, Marine Engineers Beneficial Association; Seafarers International Union, B-195550, December 5, 1980, 60 Comp. Gen. ___, 80-2 CPD 418, in which we determined that MEBA and SIU are not interested parties under our Bid Protest Procedures, 4 C.F.R. § 20.1(a) (1980). The substance of the unions' protest concerned the decision of the Department of the Navy, Military Sealift Command (MSC), to exercise an option under contract No. N0033-75-C-T006 with Marine Transport Lines (MTL) to allow for the continued operation of nine oil tankers.

We held in our prior decision that the interests of MEBA and SIU were too remote for the unions to be considered interested parties within the meaning of our Procedures, and consequently we dismissed their protest. We based the decision principally on our conclusion that there are "intermediate parties of greater interest" for purposes of challenging the Navy's decision to exercise the option, namely, the

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firms which the unions allege would have responded if a competition was held; the unions' interest was held to be too remote to confer interested party status on the unions.

In their request for reconsideration, MEBA and SIU focus on only one substantive issue in the protest, their contention that the Service Contract Act of 1965, 41 U.S.C. §§ 351 et seq. (1976) (SCA), applies to the subject contract. The unions contend that our prior decision is erroneous in concluding that there are parties with a greater interest than the unions in advancing this argument. MEBA and SIU assert that the intermediate parties identified in our decision -- potential bidders -- in fact have no incentive to pursue the SCA issue because it is not in their economic self-interest to do so.

The unions argue that it is not to the tanker operators' benefit to raise the SCA issue essentially because application of the SCA would increase the cost of performance under these types of contracts, and because the operators will not act to assist labor unions with which they have an adversarial relationship in the collective bargaining process.

It is not true that it would not be advantageous to potential bidders to raise the SCA issue in the bid protest context. The unions themselves allege that if the SCA were to apply to the contract at issue, MSC would have decided to conduct a competition for a new contract rather than exercise the option in MTL's contract. Thus, application of the SCA is the only way for other tanker operators to be afforded the opportunity to compete for a contract here; the unions derive their interest in potential employment for their members from the potential competition, not in their own right.

Thus, the tanker operators and the unions both have an incentive to assert the SCA issue as a means of opening the contract to competition; their shared interests on this point are of different degrees, however. As we stated in our initial decision, the potential bidders are intermediate parties of greater interest for purposes of raising this

protest. In the absence of any indication of interest by potential bidders in raising the SCA issue, any derivative interest the unions have in potential employment for their members is too attenuated to elevate the unions to interested party status.

In their request for reconsideration, MEBA and SIU appear to assert another interest independent of the interest in a competition which they share with the tanker operators. The unions characterize their interest in the SCA issue as "enforcement of the Act, a labor standards statute, in all of its ramifications, for the benefit of the seamen serving aboard the Sealift class tankers and as private attorneys general in pursuing the uniform application of that Act and the procurement." However, enforcement of the SCA is within the jurisdiction of the Department of Labor, not our Office. See District 2, Marine Engineers Beneficial Assoc. v. Military Sealift Command, Department of the Navy, No. 79-1173, slip. op. at 6 (D.D.C. July 25, 1980), appeal docketed (D.C. Cir. September 24, 1980). In any event, general interest in the enforcement of a statute is not sufficient by itself to confer interested party status. See Kenneth R. Bland, Consultant, B-184852, October 17, 1975, 75-2 CPD 242.

We conclude that MEBA and SIU have not advanced any additional facts or legal arguments which show that our earlier decision is erroneous. See 4 C.F.R. § 20.9(a). Accordingly, our prior decision is affirmed.

The unions have requested a conference in connection with the request for reconsideration. Our Bid Protest Procedures do not provide for conferences in this situation. We believe a conference should be granted in connection with a request for reconsideration only where the matter cannot be resolved without one. In our judgment, this is not such a case. See Porta Power Pak, Inc.--Reconsideration, B-196218.2, July 17, 1980, 80-2 CPD 38.

Milton J. Socolar

Acting Comptroller General
of the United States