



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Marine Industries, Ltd.--Reconsideration

File: B-225722.4

Date: August 3, 1987

DIGEST

Bid Protest Regulations do not permit a firm to protest an issue and later, after the protest has been denied, to bring forth further legal arguments and analyses to support its position that could have been raised earlier.

DECISION

Marine Industries, Ltd. (MIL), a Canadian shipyard, requests reconsideration of our dismissal of its protest in Marine Industries, Ltd., B-225722.3, July 10, 1987, 87-2 C.P.D. ¶ ___, concerning a domestic shipyard restriction in invitation for bids (IFB) No. DACW61-87-B-0014. The solicitation, issued by the United States Army Corps of Engineers, is for the construction of a service barge. We deny the request for reconsideration.

MIL's current request is the fourth time the firm has asked us to review the restriction, which prevented MIL from competing for the award. We denied MIL's initial protest of the restriction in Marine Industries, Ltd., B-225722, May 21, 1987, 87-1 C.P.D. ¶ 532. MIL then requested reconsideration, raising additional arguments in support of its position that use of the restriction was improper. We denied the request for reconsideration because we found that the additional arguments on the issue could have been, but were not, raised during the original protest. Marine Industries, Ltd.--Reconsideration, B-225722.2, June 24, 87-1 C.P.D. ¶ ____.

Later, MIL filed a second protest, this time based on substantially the same additional arguments that it had urged in its reconsideration request. MIL contended that consideration of the arguments was appropriate notwithstanding our denial of MIL's reconsideration request because the issue concerned alleged improprieties apparent on the face of the solicitation, and the protest was filed before bid opening, as required by our Bid Protest Regulations,

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4 C.F.R. § 21.2(a)(1) (1987). We dismissed the second protest, however, essentially for the same reason we denied the firm's request for reconsideration, namely, it presented legal arguments that MIL could have raised in its initial protest. Marine Industries, Ltd., B-225722.3, July 10, 1987, 87-2 C.P.D. ¶ _____. We noted in this respect that the Corps of Engineers had issued several amendments after MIL's initial protest granting extensions of the bid opening date so we could resolve first MIL's protest, and then MIL's reconsideration request, before bid opening.

In its current reconsideration request, MIL characterizes its additional arguments as new issues, and urges that our decisions with respect to raising new issues after an initial protest is filed are inconsistent. Specifically, MIL argues that our decision in Military Base Management, Inc., B-224128, Nov. 26, 1986, 86-2 C.P.D. ¶ 616 (barring the raising of protest arguments in a piecemeal fashion), conflicts with the following decisions: Areawide Services, Inc., B-225253, Feb. 9, 1987, 87-1 C.P.D. ¶ 138; Chesapeake and Potomac Telephone Co., B-224228, et al., 87-1 C.P.D. ¶ 120; and Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 C.P.D. ¶ 230 (which point out that protesters properly may raise timely new issues during the course of a protest).

The cited decisions are not inconsistent. Basically, they indicate that we will consider new issues if they are timely raised during a protest, but that we will not consider piecemeal arguments regarding an existing issue. As such, they do not permit a firm to raise an issue and then, after bid opening has been delayed while our Office considers the matter, to bring forth further legal arguments or analyses in support of its position that the firm had neglected to raise or that only occurred to it later.

The additional arguments MIL presented that we would not consider did not constitute separate timely issues, but instead were legal arguments in support of the single issue MIL had protested initially, that is, that the solicitation improperly was restricted to domestic shipyards. We therefore properly did not consider them, and we deny MIL's request for reconsideration. 4 C.F.R. § 21.12.

for *Samuel E. Fero*
Harry R. Van Cleve
General Counsel