Morrow

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dunlop Construction Products, Inc.--Request for Reconsideration
File: B-234905.2

Date: May 16, 1989

DIGEST

1. Request for reconsideration is denied where the requester fails to show that the dismissal of its protest was based on any error of fact or law or information not previously considered.

2. United States-Canada Free-Trade Agreement does not provide jurisdictional basis for the General Accounting Office (GAO) to consider protest by Canadian firm that is not an interested party under the Competition in Contracting Act of 1984 and GAO's Bid Protest Regulations.

DECISION

Dunlop Construction Products, Inc., requests that we reconsider our April 7, 1989, dismissal of its protest against the contracting officer determining that its roofing materials did not comply with the Buy American Act under contract No. N62470-85-C-5321, which was let by the Department of the Navy for construction on the Seal Team Operations Facilities at the Naval Amphibious Base, Little Creek, Virginia Beach, Virginia. We deny the request.

The Navy awarded the contract to R.E. Lee & Son, Inc., the prime contractor, on June 30, 1988. Dunlop, a Canadian manufacturer of single-ply roofing membrane, is a supplier to a subcontractor supplying materials to a subcontractor in privity with the prime contractor. We dismissed the protest because our Office will only decide a protest filed by an interested party, which our Bid Protest Regulations defines as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract." See 4 C.F.R. § 21.0(a) (1988) and 31 U.S.C. § 3551(2) (Supp. IV 1986). A prospective subcontractor or supplier, not being selected by or for the government, as in Dunlop's case, does not have the requisite interest to maintain a protest under our Regulations. See 4 C.F.R. § 21.3(m)(10).

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In the initial protest, Dunlop argued that the United States-Canada Free-Trade Agreement between the United States and Canada, which is implemented by the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, 102 Stat. 1851 (1988), exempted Canadian manufactured products from the requirements of the Buy American Act. In requesting reconsideration of the dismissal, Dunlop argues that the Free-Trade Agreement requires each country to establish and maintain a reviewing authority for deciding bid challenges by potential suppliers of eligible goods and that our Office is the appropriate forum to review its protest.

Although Dunlop contends that the Free-Trade Agreement grants standing to file a protest to any potential supplier, our jurisdiction to review protests is derived from the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556, and our implementing Bid Protest Regulations in 4 C.F.R. §§ 21.0 to -12, not the Free-Trade Agreement, and there is no basis to conclude that our jurisdiction was modified by this Agreement. See United States-Canada Free-Trade Agreement Implementation Act of 1988, § 102(a), supra. Moreover, the Canadian government, which specifically established the Procurement Review Board to review protests based upon the Free-Trade Agreement, has defined, consistent with our Regulations, a "potential supplier" to be an actual or prospective bidder whose direct economic interests would be affected by the award or the failure to award a particular contract. See Procurement Review Board Operating Guidelines, reprinted in 51 Federal Contract Reporter 622 (1989). Therefore, we again find that Dunlop is not an interested party.

Since Dunlop has not presented any evidence which shows that our dismissal was based on any error of fact or law or information not previously considered, which is the standard upon which we grant reconsideration, there is no basis for reconsidering our dismissal. See 4 C.F.R. § 21.12(a); Hi-Tech Communications, Inc.--Request for Reconsideration, B-233664.2, Dec. 21, 1988, 88-2 CPD ¶ 616.

The request for reconsideration is denied.

James F. Hinchman
General Counsel