28878

**DECISION**

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

**FILE:** B-212873.2 **DATE:** July 23, 1984

**MATTER OF:** Mercer Electronics Company--Request for Reconsideration

**DIGEST:**

1. There is no requirement that a protester restate each protest allegation in every submission to this Office; however, after the initial protest letter, the protester offered no further argument nor evidence in support of its initial protest allegation. It is our position that this protest allegation was abandoned. Nonetheless, since the protester claims in its request for reconsideration that it was not its intention to abandon this allegation, we will consider this issue on the merits.

2. Although products imported from Korea are exempt from import duty under Trade Act of 1974, which applies in all marketplaces, bid based upon furnishing Korean product to the United States was properly rejected since Korea is neither a designated nor qualifying country under Trade Agreements Act of 1979, which prohibits purchases by the government from other than designated or qualifying countries.

Mercer Electronics Company (Mercer) requests reconsideration of our decision in Mercer Electronics Company, B-212873, February 9, 1984, 84-1 CPD 161. In that decision, we determined that Mercer had abandoned its initial protest basis and that its second basis for protest was untimely filed. Therefore, the protest was dismissed. Mercer contends that the initial protest basis was not abandoned and the second argument was timely filed.

Our decision is affirmed.

In its initial protest letter to this Office, Mercer contended that under the Trade Act of 1974, 19 U.S.C. § 2101, et seq. (1982), the rejection of its bid was improper. In subsequent letters to this Office, Mercer argued that its bid should not have been rejected because,

029515

contrary to the agency's position, the national interest exception to the Trade Agreements Act of 1979, 19 U.S.C. § 2511(b)(2), was applicable and allowed acceptance of the bid. In these letters, Mercer did not mention its argument under the Trade Act of 1974. We therefore concluded that Mercer had abandoned this basis for protest. Mercer contends that the initial protest basis was not abandoned and requests that we reconsider and decide the issue on the merits.

There is no requirement that a protester restate each protest allegation in every submission to this Office; however, after Mercer's initial protest letter on August 26, the protester offered no further argument nor evidence in support of its initial protest allegation. It was, and still is, our position that this protest allegation was abandoned. Nonetheless, since the protester claims that it was not its intention to abandon this allegation, we will consider this issue on the merits.

Invitation for bids (IFB) No. DLA900-83-B-1509, issued by the Defense Logistics Agency (DLA), was for multimeters, a type of electronics test equipment. The IFB informed bidders that the procurement of this item was subject to the Trade Agreements Act of 1979, supra. The act is implemented in the Defense Department by Defense Acquisition Regulation, § 6-1600, which prohibits the purchase of foreign end products, subject to a national interest exception, which are from neither designated countries, under 19 U.S.C. § 2511(b), nor qualifying countries--such as NATO countries with which the Department of Defense has reciprocal defense procurement agreements.

Mercer submitted the low bid, offering to supply a multimeter produced in Korea. In its bid, Mercer certified its multimeter as a qualifying country end product although Korea is neither a designated country nor a qualifying country. When DLA officials discovered Mercer's erroneous designation of its multimeters, the contracting officer determined that award to Mercer was prohibited. DLA officials informed Mercer of the rejection of its bid, citing the applicable regulations, solicitation provisions and the Trade Agreements Act of 1979, supra.

Mercer contends that the rejection of its bid was improper because "Korea is specifically listed as a country

qualified under the General System of Preferences" under the Trade Act of 1974, 19 U.S.C. § 2101, et seq. (1982).

There is no legal merit to Mercer's position. The Generalized System of Preferences in the Trade Act of 1974 is unrelated to the procurement in question and provides no reason to overturn the rejection of Mercer's bid. That act does not directly relate to or impose conditions on the purchase of supplies by the United States. In fact, the purpose of the act was to give the products of certain foreign countries, such as Korea, an advantage in all marketplaces, government, private sector or general commerce, over the products of other more developed countries. See Easco Tools, Inc., B-202152, June 12, 1981, 81-1 CPD 480. This is accomplished under the Generalized System of Preferences, which provides for the duty-free entry into the United States of products from any "beneficiary developing country." 19 U.S.C. §§ 2461, 2462.

Although Mercer offered products from Korea and that country is listed under the Generalized System of Preferences of the Trade Act of 1974, this does not affect the reason for DLA's rejection of Mercer's bid--Korea is neither a designated country nor a qualifying country under the Trade Agreements Act of 1979, supra, and award is prohibited by that statute.

Mercer also contends, contrary to our February 9 decision, that its second basis of protest was timely filed and also should be considered on the merits. Mercer's second basis for protest was that DLA should have granted Mercer a waiver under the national interest exception to the Trade Agreements Act of 1979, 19 U.S.C. § 2511(b)(2). Mercer contends that it raised this argument in its initial protest letter to this Office.

We do not agree. Mercer's initial basis for protest was that its bid should not have been rejected because Korea is listed as a qualified country under the Generalized System of Preferences of the Trade Act of 1974, supra. The second basis for protest--that DLA should have granted Mercer a waiver under the national interest exception of the Trade Agreements Act of 1979--should have been recognized, at the latest, by Mercer when it received DLA's report of August 19, 1983, advising of DLA's position that the later

act prohibited an award. This argument was not raised until October 25, 1983, substantially more than 10 days after it should have been known. Therefore, it was untimely and not for consideration. 4 C.F.R. § 21.2(b) (1983). Furthermore, the IFB informed bidders that the Trade Agreements Act of 1979, supra, applied to this procurement and Mercer should have known from reading the invitation and the act that a waiver was necessary. Award was made on August 19. When Mercer finally made known its need of a waiver on October 25 it was far too late for this Office to take effective corrective action, if such action was called for. Mercer has not advanced any additional facts or legal arguments which show that our earlier decision on this issue was erroneous. See 4 C.F.R. § 21.9(a) (1983).

Accordingly, our decision is affirmed.

for Milton J. Socolar
Comptroller General
of the United States