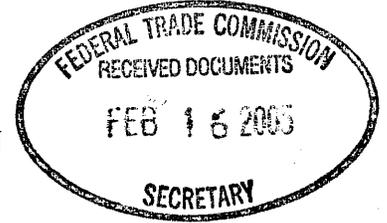


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
)
)
CHICAGO BRIDGE & IRON COMPANY, N.V.,) **Public**
a foreign corporation,)
)
)
CHICAGO BRIDGE & IRON COMPANY,) Docket No. 9300
a corporation, and)
)
)
PITT-DES MOINES, INC.,)
a corporation.)
)

To: Commission

**COMPLAINT COUNSEL'S RESPONSE TO
RESPONDENTS' SUPPLEMENT TO PETITION TO RECONSIDER**

Respondents' supplement to their petition to reconsider demonstrates why cases must be decided based on the evidence presented at trial and not on the basis of shifting hearsay accounts of the latest news a party believes may be useful to its cause. Respondents apparently view as an invitation, rather than a warning, Complaint counsel's observation that "[i]f respondents' petition is sufficient to reopen the record . . . it will be time to reopen the record again" every time a project is awarded. Complaint Counsel's Opposition to Respondents' Petition to Reconsider at 3 ("CCO").

Respondents filed their petition to reconsider on February 1, 2005, and Complaint counsel filed a timely opposition to the petition on February 11. Now, on February 14, respondents file a "supplement" to their petition to present information that respondents concede

CB&I learned on February 4, 2005.¹ The updated declaration submitted by respondents as an attachment to, and basis for, their “supplement” is identical to the declaration attached to respondents’ petition for reconsideration save for the final paragraph wherein Mr. Blum now asserts that he has somehow “learned that the LNG tank subcontract for the Sabine Pass project has been awarded to MHI/Matrix.” Declaration of Ronald E. Blum ¶ 9, February 11, 2005. Mr. Blum states neither how he “learned” that the LNG tank subcontract has been awarded for the Sabine Pass project nor whether this is a new development or simply a repeat of the news previously reported by respondents that Cheniere had selected the tank subcontractor for the project. *See* Respondents’ Petition at 10.

Nothing in respondents’ supplement provides a basis for reconsideration by the Commission of its decision in this matter or for reopening the record. Indeed, the declaration attached to respondents’ supplement reaffirms that CB&I conditioned provision of technical services for Cheniere’s Sabine Pass and Corpus Christi projects on “commitment from Cheniere to negotiate exclusively with CB&I for the full engineering, construction, and procurement for each project” even though “CB&I understood” that forcing Cheniere to turn to someone else for engineering services would mean that someone other than CB&I “would have a preferred position with respect to obtaining the award of the EPC contract” for the two projects. Blum Declaration ¶ 4, February 11, 2005.

For the foregoing reasons, Complaint counsel request that respondents’ petition for

¹ The Commission may, in its discretion, accept respondents’ supplement to the arguments presented by respondents on February 1. Rule 3.55 makes no provision for filing of a reply with respect to a petition to reconsider. 16 C.F.R. § 3.55. Rule 3.22(c) provides that a “moving party shall have no right to reply, except as permitted by the . . . Commission.” 16 C.F.R. § 3.22(c). In the event the Commission grants respondents leave to file their supplement, Complaint counsel request that the Commission grant Complaint counsel leave to submit this response thereto.

reconsideration be denied.

DATED: February 16, 2005.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rhett R. Krulla". The signature is written in black ink and is positioned above a horizontal line.

Rhett R. Krulla
Elizabeth A. Piotrowski
Steven Wilensky
Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

CERTIFICATE OF SERVICE

I hereby certify that I today caused:

One original and twelve copies of Complaint Counsel's Response to Respondents' Supplement to Petition to Reconsider, to be served by hand delivery and one copy to be served by electronic mail upon:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

One copy to be served by hand delivery upon:

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Counsel for Respondents



Rhett R. Krulla
Commission Counsel

DATED: February 16, 2005