



Decision

Matter of: SageCare, Inc.--Reconsideration

File: B-418292.8

Date: June 23, 2020

David M. Snyder, SageCare, Inc., for the protester.
May Sena, Esq., and Matthew Vasquez, Esq., Defense Logistics Agency, for the agency.
Stephanie B. Magnell, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing a protest as untimely is denied, where the requester does not show that our prior decision contains errors of fact or law.

DECISION

SageCare, Inc., a service-disabled veteran-owned small business of Tampa, Florida, asks that we reconsider our decision in *SageCare, Inc.*, B-418292.3, B-418292.4, Mar. 12, 2020 (unpublished decision), where we dismissed as untimely the firm's protest challenging the terms of request for proposals (RFP) No. SPE605-20-R-0200, issued by the Defense Logistics Agency (DLA) for various types of fuel to be delivered to Department of Defense and federal civilian agency customers. The protester also challenged other aspects of the agency's conduct of the procurement.

We deny the request for reconsideration because it fails to establish any material factual or legal errors with respect to the underlying decision dismissing the requester's protest.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out the factual and legal grounds upon which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.14(a). The repetition of arguments made during our consideration of the original protest or disagreement with our decision does not meet this standard. *SageCare, Inc.; AeroSage, LLC--Recon.*, B-414168.4 *et al.*, July 13, 2017, 2017 CPD ¶ 224 at 2; *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

Timeliness

The protester previously challenged the terms of the solicitation and now asks that we reconsider our dismissal of the protest as untimely. Req. for Recon. at 3-4. The deadline for final proposal submissions was November 19, 2019. Agency Report, B-418292.1, Tab 6, RFP at 1.¹ Sagecare filed its protest on December 23. Protest, B-418292.3. As noted in our decision, to be timely, challenges to the terms of a solicitation must be filed prior to the time set for receipt of proposals. *SageCare Inc.*, *supra* at 4-5 (citing 4 C.F.R. § 21.2(a)(1)). Our Office therefore dismissed the challenges to the solicitation as untimely as they were not raised prior to the closing date for proposal submissions. *Id.*

SageCare disputes our conclusion that its protest was untimely. Req. for Recon. at 3. Specifically, the protester states that its “written objections” to the solicitation “were included in the five page offer exception and objection letter submitted on November 18, 2019 with the offers . . . before the initial deadline for receipt of offers on November 19, 2019.” *Id.* However, the protester does not show that it filed a protest with the agency or our Office prior to the submission deadline. Indeed, the only evidence the protester cites that is dated prior to the proposal submission deadline is a letter from AeroSage LLC² to the agency stating that “[t]his letter accompanies our offer” Protest, B-418292.3, attach. 2, AeroSage Proposal at 104. Our prior decisions provide that “[t]o be regarded as a protest, a written statement need not state explicitly that it is in fact a protest, but must convey the intent to protest by an expression of dissatisfaction and a request for corrective action.” *Federal Marketing Office--Recon.*, B-249097, B-249097.3, Jan. 5, 1993, 93-1 CPD ¶ 4 at 2. Not only was the letter here not submitted by the protester, but is styled as general “exceptions and objections” to the solicitation and does not clearly demonstrate an intent to file a protest of the terms of the solicitation. Protest, B-418292.3, attach. 2, AeroSage Proposal at 104. Accordingly, SageCare’s disagreement with our dismissal of protest as untimely does not warrant reconsideration. *Precise Mgmt., LLC--Recon.*, B-410912.2, June 30, 2015, 2015 CPD ¶ 193 at 3.

Other Protest Issues

Next, the protester argues that GAO failed to conclude that the agency improperly overrode the automatic stay placed on the procurement under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(c)(1). Req. for Recon. at 4. As stated in our decision, “[t]he sufficiency of the agency’s justification for [overriding] the stay is not a

¹ As noted in the prior decision, AeroSage, LLC, a separate company that has common ownership with SageCare, filed an earlier protest of this procurement, which our Office docketed as B-418292.1. The agency filed an agency report in response to the AeroSage protest, and we referred to documents produced in that report at various places in the SageCare decision.

² The document does not include SageCare’s name and appears to be the proposal submitted by AeroSage.

matter for GAO's consideration. See 4 C.F.R. § 21.6 (stating that GAO does not administer the requirements to withhold award or suspend contract performance under CICA)." *SageCare Inc.*, *supra* at 5-6. The protester does not explain why this conclusion was in error and thus provides no basis to reconsider our decision.

In addition, SageCare asserts that our decision failed to consider that the solicitation was a commercial item acquisition, which the protester contends prevented the agency from requesting that offerors include certain documents in their proposals. Req. for Recon. at 2-3. This challenge to our decision lacks a factual basis. The decision states that the RFP was issued "as a combined synopsis/solicitation under the commercial item provisions of Federal Acquisition Regulation (FAR) subpart 12.6." *SageCare Inc.*, *supra* at 1. To the extent that the solicitation required such documents, and the protester intended to challenge that requirement, it was required to file a protest prior to the deadline for receipt of proposals. 4 C.F.R. § 21.2(a)(1). Our decision dismissed the protest as untimely, and the protester does not explain why this was in error. In sum, SageCare's request for reconsideration fails to demonstrate that our prior decision contains any errors of law or information not previously considered. *Wolverton Property Mgmt., LLC--Recon.*, B-415295.4, June 6, 2018, 2018 CPD ¶ 205 at 4.

With respect to SageCare's complaint that our decision failed to discuss many of its protest grounds, while our Office reviews all issues raised by protesters, our decisions may not necessarily address with specificity every issue raised; this practice is consistent with the statutory mandate that our bid protest forum provide for "the inexpensive and expeditious resolution of protests." *Alphaport Inc.--Recon.*, B-414086.3, May 23, 2017, 2017 CPD ¶ 154 at 5 (citing *Research Analysis & Maint., Inc.--Recon.*, B-409024.2, May 12, 2014, 2014 CPD ¶ 151 at 6; 31 U.S.C. § 3554(a)(1)). In keeping with our statutory mandate, our Office does not issue decisions in response to reconsideration requests to address a requester's dissatisfaction that a decision does not address each of its protest issues. *Id.* Accordingly, SageCare's dissatisfaction with our decision, alone, does not satisfy our standard for reconsideration. *JEQ & Co., LLC--Recon.*, B-415338.8, May 9, 2019, 2019 CPD ¶ 175 at 3.

The request for reconsideration is denied.³

Thomas H. Armstrong
General Counsel

³ SageCare also claims that the alleged errors in fact and law in our decision dismissing its protest were "intentional." Req. for Recon at 1. Government officials are presumed to act in good faith, and a protester's contention that such officials are motivated by bias or bad faith must be supported by convincing proof. *BTAS, Inc.; Innovative Techs., Inc.*, B-415810.4 *et al.*, Oct. 3, 2018, 2018 CPD ¶ 346 at 10 n.11. Here, while SageCare disagrees with our decision, the protester does not describe or submit any evidence of wrongdoing. Unsubstantiated allegations do not meet our standard for demonstrating bad faith or bias by our Office. *Gulf Civilization Gen. Trading & Contracting Co.--Recon.*, B-416140.3, Nov. 20, 2019, 2019 CPD ¶ 391 at 8.