



Decision

Matter of: AeroSage LLC--Reconsideration

File: B-414314.3

Date: July 24, 2017

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DIGEST

Request for reconsideration of prior decision is denied where the requesting party has not shown that our decision contains either errors of fact or law or information not previously considered, and where the requestor's disagreement with the scope of the procuring agency's document release during the course of the protest does not meet our standard for reversal or modification of the prior decision.

DECISION

AeroSage LLC requests that our Office reconsider our decision, AeroSage LLC, B-414314, B-414314.2, May 5, 2017, 2017 CPD ¶ 137, in which we denied the protest of the terms of request for quotations (RFQ) No. SPE600-17-P-2175, issued by the Defense Logistics Agency (DLA) on behalf of the Department of Veterans Affairs (VA) for diesel fuel for the Veterans Administration Medical Center (VAMC) in Milwaukee, Wisconsin.

We deny the request for reconsideration.

BACKGROUND

In our prior decision, we denied AeroSage's protest of DLA's decision not to set aside the procurement for service-disabled veteran-owned small businesses (SDVOSBs). AeroSage LLC, *supra*. We found, based on our review of the record and the circumstances of the procurement, that the contracting officer reasonably focused her market research on prospective fuel vendors to Wisconsin given the urgency of the requirement, and that she reasonably concluded that DLA did not have a reasonable expectation of receiving quotations from two or more SDVOSBs capable of performing

the requirement at a fair and reasonable price.¹ Id. at 4-6. We also found reasonable the contracting officer's conclusion that DLA could not expect adequate price competition, because the only prospective SDVOSB vendors identified in her market research (AeroSage and SageCare) were owned by the same individual and their common ownership did not meet the set-aside requirements of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (the VA Act), 38 U.S.C. § 8127. Id. at 6-7.

AeroSage requests that we reconsider the decision because, according to AeroSage, it was based on legal and factual errors. Req. for Recon. at 1. AeroSage contends, among other things, that we failed to consider the VA Act and the VA's small business regulations; that DLA made false statements and acted in bad faith; and that AeroSage was denied documents necessary to support its protest allegations. Id. at 1-2.

DISCUSSION

Under our Bid Protest Regulations, to obtain reconsideration of a decision, 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).

AeroSage has not met this standard. As an initial matter, we recognize that our prior decision did not specifically discuss all of the protester's arguments. However, as stated in the decision, we considered all of AeroSage's arguments and concluded, based on our review of the record, that none furnished a basis on which to sustain the protest. AeroSage, LLC, supra, at 7 n.4. As is our practice, the decision addressed AeroSage's principal protest grounds, which is consistent with the statutory mandate that our bid protest forum provide for "the inexpensive and expeditious resolution of protests." See Competition in Contracting Act of 1984, 31 U.S.C. § 3554(a)(1); Ahtna Facility Servs., Inc.--Recon., B-404913.3, Oct. 6, 2011, 2012 CPD ¶ 270 at 3. Thus, to the extent that AeroSage believes that our decision is flawed because it did not specifically address each and every one of the protester's arguments, this would not warrant reversing or modifying the decision.

Contrary to AeroSage's assertion, our decision specifically addressed the requirements of the VA Act and the relevant regulations, which were fundamental to resolving the protest. AeroSage LLC, supra, at 4 ("AeroSage's allegations concern requirements under the [the VA Act]. 38 U.S.C. § 8127. Specifically, the VA Act, together with VA's implementing regulations, require VA to set aside acquisitions for SDVOSBs whenever it is determined that there is a reasonable expectation that offers will be received from at least two SDVOSBs and that award can be made at a fair and reasonable price."); at 5 (discussing the Veterans Administration Acquisition Regulation (VAAR));

¹ The details of the procurement are set forth in our prior decision and need not be repeated here.

at 6-7 (discussing the two prongs of the VA Act's Rule of Two). Our Office also solicited--and agreed with--the views of VA and the Small Business Administration (SBA), which commented on the merits of the protest based on the applicable laws and regulations. Id. Therefore, this aspect of the request for reconsideration does not specify any information not previously considered and only reflects the protester's disagreement with our decision, which fails to meet our standard for reversing or modifying it. See Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

Moreover, the request for reconsideration largely repeats many of the protester's earlier arguments. Aerosage asserts, once again, that: (1) the contracting officer's market research was improperly documented; (2) DLA failed to follow the proper small business preference priority; (3) "VA Final Rule 76 FR 3017-3023 was not considered";² (4) the agency made false representations and acted in bad faith; and (5) "[m]ethods other than set aside should have been used if this was truly an emergency acquisition[.]" Compare Req. for Recon. at 1-2 with Protest at 3; Response to Req. for Dismissal at 1-2; Comments at 5 and Supp. Comments at 1, 3, 5. AeroSage's repetition of arguments that it made during our consideration of its protest also falls short of our standard for reversing or modifying our earlier decision. See Veda, Inc.--Recon., supra.

Finally, AeroSage contends that it was denied documents needed to pursue its protest allegations. See Req. for Recon. at 2. Prior to submitting its agency report in response to the protest, DLA, as required by our Bid Protest Regulations, responded to AeroSage's document requests. See DLA Response to Doc. Req. at 1-2; 4 C.F.R. § 21.3(c); Protest at 4 (doc. request). DLA agreed to provide documents that it deemed relevant to the protest grounds and identified which requested documents did not exist; however, at issue here, DLA declined to release, or partially redacted, some documents and information. For example, the agency agreed to identify the small business category of the vendors to whom DLA provided the solicitation,³ but declined to identify the vendors by name, as requested by AeroSage, because DLA considered that information source selection sensitive and protected from disclosure absent a protective

² The protester's citation to "VA Final Rule 76 FR 3017-3023" refers to the VA's final rule, as published in the Federal Register, implementing provisions of the VA Act by amending sections 74.1, 74.3(d), and 74.4(c)(1) of part 74 (Veterans Small Business Regulations) of title 38 of the Code of Federal Regulations. 76 Fed. Reg. 3017-3023 (Jan. 19, 2011). Neither Aerosage's request for reconsideration nor its various protest pleadings explain how DLA allegedly violated sections 74.1, 74.3(d), or 74.4(c)(1) of the regulations. In fact, none of Aerosage's submissions even cite to any of these provisions. Req. for Recon. at 1; Comments at 1-2; Supp. Comments at 3; see generally Protest; Response to Req. for Dismissal; Response to SBA's & VA's Comments; 2nd Supp. Comments.

³ Although AeroSage protested the terms of the solicitation after award, we found the protest timely for the reasons discussed in our decision. AeroSage LLC, supra, at 3-4.

order.⁴ DLA Response to Doc. Req. at 1. DLA also declined to release documents regarding its small business contracting goals, because the agency believed such information was not relevant to the protest. Id. at 2. AeroSage filed objections to the scope of DLA's proposed document release, which our Office resolved consistent with our regulations.⁵ See 4 C.F.R. § 21.3(h). We also reviewed the non-public documents, such as the abstract of quotations, in camera, as provided by our regulations. See Agency Report, Tab 5, Abstract of Quotations (unredacted version); 4 C.F.R. § 21.4(b).

Generally, a protester's disagreement with decisions regarding document release during the course of a protest is not, by itself, a ground for reconsideration of a GAO decision on the merits. Mine Safety Appliances Co.--Recon., B-242379.4, Apr. 24, 1992, 92-1 CPD ¶ 389 at 4. Since the issues involved in document disputes usually do not relate directly to claimed errors of law or fact in the prior decision, or information not previously considered, the standard for reconsideration set out in our regulations does not include such disputes.⁶ Id. Thus, Aerosage's complaint that it was denied certain documents to pursue its protest does not meet our standard for reversal or modification of our earlier decision. See id.; CDA Inv. Techs., Inc.--Recon., B-272093.3, Mar. 11, 1997, 97-1 CPD ¶ 103 at 7 n.6 ("The fact that the record did not contain any documents supporting [the protester's] allegations does not mean that the firm was in any way denied an opportunity to request relevant documents, or to inquire further, as it in fact did here, as to the existence of any specific document . . ."); HLJ Mgmt. Grp., Inc.--Recon., B-225843.5, Mar. 6, 1989, 89-1 CPD ¶ 237 at 5 (denying request for reconsideration where our Office, after reviewing the protester's document request and the agency's

⁴ AeroSage was not represented, here or in its original protest, by counsel who could obtain access to non-public information pursuant to the terms of a protective order, such as the abstract of vendor quotations received by DLA (which AeroSage also requested, see Obj. to Doc. Prod. at 1). Our decision, however, was based on our review of the entire record, including the non-public information.

⁵ For example, our Office agreed with DLA that it need not provide 4 years of documentation regarding its SDVOSB set-asides and sole-sourced procurements, as requested by the protester; but we agreed with AeroSage that information regarding whether this particular requirement (fuel for the Milwaukee VAMC) was previously sole-sourced or set aside for small businesses, was relevant to the protest and that DLA should provide such information. See Obj. to Doc. Prod.; GAO Email to Parties, Feb. 23, 2017, Resol. of Doc. Disp., at 1-2.

⁶ We note, for the record, that--while AeroSage now complains that it was denied its requests for information on DLA's achievement of its SDVOSB contracting goals and that it was "even [denied the] names of the other offerors"--AeroSage previously acknowledged (in its objection to the agency's proposed document release) that "DLA should redact the source sensitive names of non-protested offerors" and that information regarding DLA's achievement of its small business contracting goals is "reported regularly and is readily available." Compare Req. for Recon. at 1-2 with Obj. to Doc. Prod. at 1, 3.

response, independently concluded, in accordance with our regulations, that the agency was responsive to the request for relevant documents); Metron Corp.--Recon., B-227014.2, Sept. 25, 1987, 87-2 CPD ¶ 299 at 3-4 (“[O]ur bid protest decisions must be based on the full factual and evidentiary record regardless of the fact that [protected] documents are withheld from a protester.”).

In sum, AeroSage’s request for reconsideration amounts to nothing more than disagreement with our previous decision, which does not meet our standard for reversing or modifying that decision.

The request for reconsideration is denied.

Susan A. Poling
General Counsel