



## Decision

**Matter of:** Desktop Alert, Inc.--Reconsideration

**File:** B-417170.2

**Date:** April 8, 2019

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participated in the preparation of the decision.

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### DIGEST

Request for reconsideration of prior decision dismissing protest for failure to state a valid basis of protest is denied where the requesting party has not shown that our decision contains errors of fact or law that would warrant reversal or modification of the decision, and repeats previously-made arguments our Office considered and rejected.

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### DECISION

Desktop Alert, Inc. of Chatham, New Jersey, requests reconsideration of our decision, Desktop Alert, Inc., B-417170, Jan. 24, 2019, 2019 CPD ¶ 29, in which we dismissed its protest of actions taken by the Department of the Army in planning and obtaining an emergency alert system for use at multiple Army installations.

We deny the request for reconsideration.

In its protest, because no procurement had been contemplated and no solicitation had been issued, Desktop Alert generally challenged the actions of the Army in planning and obtaining an emergency alert system to use at multiple Army installations. Desktop Alert, Inc., *supra* at 1. Specifically, Desktop Alert questioned past and present Army acquisitions and non-acquisition actions, without identifying a specific procurement. Id. at 1-2. The protester also argued that the Army failed to conduct a competition under Office of Management and Budget Circular No. A-76 to determine whether to use an in-house solution versus a private sector contract to meet its need for an emergency alert system. Id. at 2. Lastly, Desktop Alert complained that the Army violated statutory preferences applicable to commercial item acquisitions. Id. at 2-3.

In our decision, we dismissed the first allegation for failing to state a valid basis of protest because the allegation did not identify a specific procurement. Id. at 3. We dismissed the second protest ground because it challenged executive branch policy decisions that our Office does not review. Id. at 2. Finally, we dismissed the third protest ground because the statutory preferences for acquiring commercial items do not apply to needs that are met in-house in lieu of using a procurement. Id. at 2-3.

Desktop Alert now presents information not previously considered and primarily contends that our decision to dismiss the protest was based on legal and factual errors. We disagree.

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 and disagreement with our decision do not meet this standard. Epsilon Sys. Solutions, Inc.--Recon., B-414410.3, Sept. 20, 2017, 2017 CPD ¶ 292 at 3.

Here, Desktop Alert argues that we improperly dismissed the protest because the Army's decision to create the electronic notification system in-house was unlawful. See Request for Recon. at 2-3. Desktop Alert's request for reconsideration essentially expresses little more than disagreement with our decision and repeats the protester's previous arguments, which provides no basis for reversing or modifying the decision.

In seeking reconsideration, Desktop Alert now asserts that a United States Court of Federal Claims (COFC) decision, FCN, Inc. v. United States, 115 Fed. Cl. 335 (Fed. Cl. 2014), establishes that the government cannot license software for free as government furnished equipment, and therefore, the government cannot create the electronic notification system in-house. Request for Recon. at 1-2. Desktop Alert also alleges that our Office erred in dismissing the protest--as both untimely and for failing to identify a specific procurement as the basis of its protest--because the Army's plan to create the electronic notification system in-house was not publicly disclosed. Id. at 2. Finally, Desktop Alert alleges that the Army is illegally hosting its electronic notification system at the Defense Information Systems Agency (DISA). Id. at 2-3. For the reasons that follow, we find that none of these arguments provide a viable basis to warrant reconsideration of our prior decision.

Desktop Alert's request does not allege an error of law in our protest decision, but, rather, identifies a "recent decision" from the COFC in support of its challenge to the Army's in-house performance of the electronic notification system requirement. Request for Recon. at 1. Although available at the time, Desktop Alert did not rely on

the 2014 COFC decision when it filed its protest.<sup>1</sup> Our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. CapRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490, B-402490.2, et al., May 11, 2010, 2010 CPD ¶ 124 at 24; University Research Co., LLC, B-294358.8 et al., Apr. 6, 2006, 2006 CPD ¶ 66 at 16. Our Office will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. Alfa Consult S.A., B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 3. To the extent that the protester now presents additional information or arguments relating to this protest, there is no evidence that the information could not have been timely presented during our consideration of the initial protest. Accordingly, that information does not provide a basis for reconsideration.<sup>2</sup> Burrell Maier--Recon., B-232086.2, B-232087.2, Dec. 9, 1988, 88-2 CPD ¶ 576 at 3.

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<sup>1</sup> Even if Desktop Alert had relied upon the COFC's FCN, Inc. decision in its protest, such reliance would have been misplaced. Traditionally, our Office has given careful consideration to decisions of the COFC but, as we have stated, we are not bound by them. See, e.g., Kingdomware Techs.--Recon., B-407232.2, Dec. 13, 2012, 2012 CPD ¶ 351 at 3. More importantly, and as noted below, the decision simply does not support the protester's position.

<sup>2</sup> In any event, the COFC decision cited by the protester is inapposite to the case at hand. The FCN, Inc. decision involved a protest challenging the Air National Guard's (ANG) award of a contract for an electronic notification system, similar to the one challenged here. FCN, Inc., 115 Fed. Cl. at 335. There, the Court found the agency's evaluation record did not demonstrate that the ANG had sufficient and complete information regarding the awardee's proposed use of government furnished software licenses (and telephony-based communications system) because the agency was unable to explain the ownership and transferability of the licenses and systems. Id. at 366-68. The Court also found that the agency's evaluation ignored Federal Acquisition Regulation (FAR) part 45, which requires agencies to "[e]liminate to the maximum practical extent any competitive advantage a prospective contractor may have by using Government property." FAR § 45.103(a); see FCN, Inc., supra, at 369. Desktop Alert claims that FCN, Inc. stands for the proposition that "the government has no legal right to license software for free," and therefore, the agency cannot meet its needs in-house. Request for Recon. at 2. The protester's reliance on FCN, Inc. is misplaced, as the circumstances here--in which there is no procurement--are distinguishable from those in the FCN, Inc. protest, in which the court found the agency's procurement award was arbitrary and capricious. Moreover, in the decision, the court specifically found: "FAR [p]art 45, however, was not meant to limit the use of government property by contractors, but rather to regulate it. . . ." FCN, Inc., supra, at 369. This expressly refutes the protester's understanding of the case; hence, FCN, Inc. does not support the protester's proposition.

Desktop Alert also attempts to revive its challenge to the agency's decision to meet its needs in-house by stating our decision was unreasonable. Request for Recon. at 2. We addressed these arguments in our prior decision. The protester's repetition of its arguments and disagreement with our conclusions do not satisfy our standard for reconsideration. Epsilon Sys. Solutions, Inc.--Recon., supra.

Lastly, Desktop Alert asserts that the Army is illegally hosting its electronic notification system at DISA because the agency program does not have DISA certification. Request for Recon. at 2-3. This is not an allegation of error; rather, the protester presents new information not previously submitted for consideration but available at the time the protest was filed. Failure to make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum--to produce fair and equitable decisions based on consideration of all parties' arguments on a fully developed record--and cannot justify reconsideration of our prior decision. The Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546 at 4. The protester's failure to submit all information available during the initial protest does not justify reconsideration of our prior decision.

In sum, Desktop Alert's request for reconsideration amounts to nothing more than disagreement with our decision and repetition of arguments previously made, which does not meet our standard for reversing or modifying our prior decision.

The request for reconsideration is denied.

Thomas H. Armstrong  
General Counsel