



Decision

Matter of: JEQ & Company, LLC--Reconsideration

File: B-415338.8

Date: May 9, 2019

Jacob Queern, JEQ & Company, LLC, for the requester.
Adam J. Heer, Esq., Defense Logistics Agency, for the agency.
Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

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 that warrants reversal or modification of the decision.

DECISION

JEQ & Company, LLC (JEQ), of Virginia Beach, Virginia, asks that we reconsider our decision in JEQ & Co., LLC, B-415338.2 et al., Feb. 12, 2019 (unpublished decision). In that decision we dismissed JEQ's protest regarding a wide range of complaints concerning actions by the Defense Logistics Agency (DLA), including a challenge to the award of a purchase order under solicitation No. SPE7M2-17-T-4444.

We deny the request for reconsideration.

BACKGROUND

On September 25, 2017, JEQ filed an agency-level protest with DLA by email, challenging the award of a purchase order under solicitation No. SPE7M2-17-T-4444. JEQ & Co., LLC, supra at 1-2; Protest, exh. 6, at 1.¹ In submitting its agency-level

¹ Exhibit 6 is a 36-page document consisting of JEQ's agency-level protest; our Office's October 23, 2017 letter; and a screenshot of a docket search from our website. Citations to this document are to the electronic pagination.

protest to DLA, JEQ also copied our Office and the Small Business Administration (SBA) on the same email. Protest, exh. 6, at 1. In response, our Office sent a letter to JEQ on October 23, 2017, referenced as file number B-415338.1, acknowledging receipt of the informational copy of JEQ's agency-level protest with DLA. Our letter to JEQ, however, did not consider JEQ's email to DLA to be a protest to our Office. Instead, our letter referred JEQ to section 21.2(a)(3) of our Bid Protest Regulations (4 C.F.R. Part 21) and explained that any subsequent protest to our Office must be filed within 10 calendar days of actual or constructive knowledge of initial adverse action by the agency on the protest that was filed with DLA. Id. This letter also advised JEQ of the requirements for a submission to be regarded as a protest to GAO, which included, among other things, being "addressed to the General Counsel, Government Accountability Office," and requesting "a ruling by the Comptroller General."² Id. In the more than a year and a half since October 2017, our Office has not received any further information on this agency-level protest.

On February 4, 2019, JEQ filed with our Office the protest docketed as B-415338.2.³ See generally Protest. In its protest, despite recognizing and providing a copy of the October 23, 2017 letter from GAO, JEQ asserted that it was not until February 4, 2019 that it "gained actual or constructive notice of initial adverse agency action," which JEQ describes as our Office's failure to "process" JEQ's protest challenging the award of a purchase order under solicitation No. SPE7M2 17-T-4444. Compare Protest at 1 with Protest, exh. 6 at 33. To establish timeliness, JEQ provided a copy of a screenshot from our website dated February 4, 2019, showing that there were no bid protests filed with our Office that had been assigned file number B-415338.⁴ Protest, exh. 6 at 35-36. That said, the protest also acknowledged it might be viewed as untimely, and requested that our Office consider it under the significant issue or good cause exceptions to our timeliness rules. See 4 C.F.R. § 21.2(c).

² As JEQ was advised, under our regulations, simply referring to "GAO" in the body of its agency-level protest does not satisfy the requirements to be considered a protest with our Office. Protest, exh. 6, at 33.

³ During the development of its protest, JEQ made numerous submissions that JEQ identified as "supplemental protests" that it labelled as B-415338.3 through B-415338.7. However, these self-labelled "supplemental protests" were allegations concerning different solicitations, where the facts and processes surrounding the protests were not related to the protest that had been initially filed and would have required the payment of separate filing fees for each protest filed in Electronic Bid Protest Docketing System (EPDS), which JEQ did not do. JEQ & Co., LLC, supra, at 3 n.4; EPDS Instructions at 2, 4. As a result, JEQ's request for reconsideration was initially docketed as B-415338.3. However, to avoid confusion with JEQ's submissions that it labeled as "supplemental protests" B-415338.3 through B-415338.7, the request for reconsideration was re-docketed as B-415338.8.

⁴ We note that the screenshot of our website clearly states that the "Search the Docket" function relied on by the requester provides "status information about bid protest cases filed in the last 12 months." Protest, exh. 6, at 35.

On February 12, 2019, we dismissed JEQ's protest as untimely. See generally JEQ & Co., LLC, supra. In this dismissal, we explained that where a protest has been timely filed first with a contracting activity, any subsequent protest to our Office, to be considered timely, generally must be filed within 10 calendar days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3). Our decision also explained that a protester may wait only a reasonable length of time for an agency to take action before filing its protest with our Office. Id. at 2 (citing Advanced Seal Tech., Inc., B-242236, Mar. 7, 1991, 91-1 CPD ¶ 257 at 3). Here, where JEQ filed its agency-level protest with DLA in September 2017, we do not consider reasonable, JEQ's decision to wait more than a year and a half to pursue its protest with our Office. Also, while our decision recognized the importance of the matter to JEQ, we declined to consider JEQ's protest under the significant issue or good cause exceptions because JEQ's allegations did not present issues of widespread interest or importance to the procurement community. Id. (citing University of Maryland, B-416682, Oct. 24, 2018, 2018 CPD ¶ 366). Finally, our decision recognized that while JEQ complained of a broad range of improper actions by DLA or the SBA, affecting numerous solicitations, all of those complaints were either untimely, academic, or not properly before our Office. Id. at 1-3. On February 21, JEQ requested reconsideration of the dismissal of its protest.

DECISION

In its request for reconsideration, JEQ contends that our decision dismissing its protest failed to consider "the vast majority of its arguments," and did not address the fact that our Office did not issue a decision in B-415338.1.⁵ Req. for Recon. at 8.

Under our Bid Protest Regulations, to obtain reconsideration, a requesting party either must demonstrate that our prior decision contains errors of fact or law, or present new information not previously considered that would warrant reversal or modification of our earlier decision. 4 C.F.R. § 21.14(a); Blue Horse Corp.--Recon., B-413929.2, B-413929.4, May 16, 2017, 2017 CPD ¶ 149 at 4. Repetition of arguments previously made, or disagreement with our prior decision, do not provide a basis for our Office to reconsider the earlier decision. Blue Horse Corp.--Recon., supra. We have explained that information not previously considered means information that was not available when the initial protest was filed. SageCare, Inc., AeroSage, LLC, B-414168.4 et al.,

⁵ A significant portion of JEQ's request largely repeats statements and arguments that the requester raised in its protest or, alternatively, does not specify what information was not previously considered in our decision. See generally Req. for Recon. For example, JEQ simply lists "failing to consider," as a reason for its request for reconsideration, without actually identifying what information our Office failed to consider. Req. for Recon. at 8. JEQ's request for reconsideration without specifying any information not previously considered reflects only the requester's disagreement with our decision. This fails to meet our standard for reconsideration. See Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

July 13, 2017, 2017 CPD ¶ 224 at 2. Further, a party's assertion of new arguments or presentation of information that could have been, but was not presented during the initial protest, fails to satisfy the standard for granting reconsideration. Walker Dev. & Trading Grp.--Recon., B-411246.2, Sept. 14, 2015, 2015 CPD ¶ 284 at 2, 5.

With respect to JEQ's complaint that our decision failed to consider "the vast majority of the arguments" raised in its protest, 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 further 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.⁶ Id. Accordingly, JEQ's dissatisfaction with our decision, alone, does not satisfy our standard for reconsideration.

Similarly, JEQ's contention that our decision failed to consider the fact that our Office did not issue a decision with a docket number of B-415338.1 is essentially an allegation that has no basis in fact. As previously discussed, the protest filed by JEQ with our Office on February 4, 2019, was docketed as B-415338.2. See Protest at 1. The letter our Office sent to JEQ on October 23, 2017 was internally referenced as file number B-415338.1, consistent with our practice when acknowledging receipt of informational copies of agency-level protests, before the implementation of the Electronic Bid Protest Docketing System. Protest, exh. 6, at 33. Because no protest had ever been docketed with the number B-415338.1, our Office could not have issued a decision with that docket number. Accordingly, JEQ's argument has failed to show that our decision was based on any legal or factual error or information not previously considered. See Precise Mgmt., LLC--Recon., B-410912.2, June 30, 2015, 2015 CPD ¶ 193 at 4-5 (denying request for reconsideration for failing to state a legal or factual basis for reconsideration).

Finally, JEQ now asserts in its request for reconsideration that its protest was timely under the significant issue exception to our timeliness rules because B-415338.1 was never considered and the "entire procurement community [including] DLA, SBA, [and] GAO [have] played a role in failing [to] process the protest." Req. for Recon. at 8. Our Regulations do not permit a piecemeal presentation of evidence, information, or analysis, since a piecemeal presentation could disrupt the procurement process

⁶ Nonetheless, as discussed above, our decision recognized that while JEQ complained of a broad range of improper actions by DLA or the SBA affecting numerous solicitations in addition to solicitation No. SPE7M2-17-T-4444, those complaints were either untimely, academic, or not properly before our Office. JEQ & Co., LLC, supra at 1-3.

indefinitely; accordingly where a party raises, in its reconsideration request, an argument that it could have raised, but did not, at the time of the protest, the argument does not provide a basis for reconsideration. H H & K Builders, Inc.—Req. for Recon., B-238095.2, May 8, 1990, 90-1 CPD ¶ 458 at 2. JEQ did not raise this argument in its protest. Compare Protest at 3-4 (raising concerns regarding DLA’s failure to refer to SBA HUBZone status process and evaluation challenges with regard to HUBZone set-aside awards) with Req. for Recon. at 8 (raising concerns with regard GAO’s alleged failure to “process” its protest). Therefore, these newly raised arguments provide no basis for reconsideration of the dismissal decision.

In sum, the requester has identified no error in law or fact in our dismissal, where the allegations either failed to state a valid basis of protest, or were untimely raised, or both.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel