



Decision

Matter of: SageCare, Inc.--Reconsideration

File: B-417238.5

Date: May 15, 2019

David M. Snyder, SageCare, Inc., for the protester.
Matthew Vasquez, Esq., Defense Logistics Agency, for the agency.
Young S. Lee, Esq., and Peter H. Tran, 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small business of Tampa, Florida, asks that we reconsider our decision in SageCare, Inc., B-417238.4, Feb. 14, 2019, (unpublished decision), where we dismissed its protest challenging the award of a contract to Tayrona Oil, Inc., a small business, of West Palm Beach, Florida, under request for quotation (RFQ) No. SPE605-19-Q-0272, issued by the Defense Logistics Agency (DLA) for biodiesel fuel. In its protest, SageCare argued that the agency unreasonably withdrew a previously issued notice of corrective action and improperly failed to evaluate SageCare's lower priced quotation.

We deny the request.

BACKGROUND

DLA issued the RFQ on January 4, 2019, for 6,000 gallons of biofuel. RFQ at 1. On January 10, the agency notified Mr. David Snyder, the president of SageCare, and also president of the firm AeroSage, LLC, that the resulting delivery order would be issued to Tayrona. Email from Agency to AeroSage, Jan. 8, 2019 (10:30 a.m.). On January 8, AeroSage filed a protest challenging that order. AeroSage Protest (B-417238.1). On January 10, SageCare attempted to file a supplemental protest to the (B-417238.1) protest that was filed by AeroSage. SageCare Filing (Jan. 10, 2019) at 1-3. On January 16, our Office notified Mr. Snyder, via e-mail, of the following: "Neither EPDS

[the Electronic Protest Docketing System], nor our Bid Protest Regulations contemplate the filing of a supplemental protest by a firm other than the firm that filed the initial protest.” Email from GAO to Mr. Snyder, Jan. 16, 2019 (1:39 p.m.) at 1. We also explained that if SageCare did not notify our Office of its intent to file a separate protest by close of business on January 16, that its protest would be removed from our system.¹ Id.

On January 23, DLA notified our Office that it intended to take corrective action in response to AeroSage’s (B-417238.1) protest. Corrective Action Notice at 1. AeroSage objected to the agency’s notice of corrective action that same day. AeroSage Response at 1-7. On February 1, the agency withdrew its notice of corrective action. Corrective Action Notice Withdrawal at 1. SageCare separately filed the protest that is the subject of this request for reconsideration on February 8. SageCare Protest (B-417238.4). Our Office dismissed SageCare’s (B-417238.4) protest as untimely on February 14, because it was filed more than 10 calendar days after SageCare knew the basis for its protest. SageCare, Inc., supra at 1. This request to reconsider our dismissal of February 14 followed.

DISCUSSION

In its request for reconsideration, SageCare raises various challenges. For example, SageCare argues that our decision should be reconsidered because it contains errors of law and fact. In this regard, SageCare asserts:

[T]he facts which were articulated in the protest grounds were not considered since at the time of [the] timely supplemental (See B-417238.1 Protest Docket 34, B-417238.2) protest . . . SageCare had a likely chance of being the awardee, as an intervenor, if the AeroSage protest failed.

SageCare Request for Recon. at 2. Additionally, SageCare contends that, “the decision did not consider and erred in fact and law the articulated ground for protest being the 4 CFR § 21.0 (e) adverse action of Agency reversing course in no longer pleading that the AeroSage protested allegations were correct and no longer warrant corrective remedy.” Id. at 3. Although we do not address every argument raised by SageCare in

¹ Mr. Snyder responded to the e-mail that same day by stating: “We will pay the additional SageCare filing fee for the timely filing of SageCare’s portion of the joint protest, if that is what you decide.” Email from Mr. Snyder to GAO, Jan. 16, 2019 (5:23 p.m.) at 1. Mr. Snyder’s response did not contain an affirmative statement demonstrating an intent to file a separate protest on behalf of SageCare, but rather offered to file a protest contingent upon receiving a response from our Office. Accordingly, our Office did not recognize the supplemental filing submitted by SageCare on January 10, 2019, (attempting to amend the protest originally filed by AeroSage) as a separate protest.

its reconsideration request, we have reviewed all of SageCare's assertions and find that none provide a basis to reconsider our decision.²

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. Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

Here, SageCare fails to demonstrate that our Office erred in concluding that its protest was not filed "within 10 days of actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3). SageCare's February 8 protest, asserted that the agency "violated acquisition law and regulation in the improper evaluation, proposed award, delivery with out acceptance of this assisted simplified acquisition primarily to prejudice the protester." SageCare Protest (B-417238.4) at 2. Our Office dismissed the protest after concluding that "the protester knew or should have known of its basis of protest on January 8, 2019, when the agency provided notice of award to the President of AeroSage, who is also the President of SageCare." SageCare, Inc., *supra* at 1. Although SageCare's request for reconsideration raises various collateral challenges, it does not directly address our Office's finding that its initial protest, which challenged the order that was issued to Tayrona, was not timely filed. SageCare Request for Recon. at 3. Accordingly, SageCare has provided no basis for our Office to reverse or modify our prior decision and its request that our Office reconsider our timeliness conclusion is denied.

SageCare also argues that our decision contained an error of fact and law because it did not expressly address SageCare's allegation challenging DLA's February 1, withdrawal of the notice of corrective action that was submitted in response to the AeroSage (B-417238.1) protest.

² For example, SageCare also asserts that the decision "erred in lack of compliance 4 CFR § 21.3(j) where hearing officer failed to permit or even give protester an opportunity to respond because must receive GAO's approval before submitting additional statements or responses." SageCare Request for Recon. at 1. Our regulations contemplate that our Office may request or permit the submission of additional statements by the parties as may be necessary for fair resolution of a protest. See 4 C.F.R. § 21.3(j). Before additional statements may be submitted, the parties must receive GAO's approval. Id. In this regard, SageCare's allegation does not provide a basis to reverse or modify our prior decision, because while our regulations permit us to allow parties to submit additional statements, they do not provide that parties will be automatically given the right to do so. Accordingly, this allegation does not meet the standard necessary to warrant reversal or modification of our prior decision. Veda, Inc.--Recon., *supra*.

Here the agency's notice of corrective action, in response to the protest filed by AeroSage, stated that "[a]s the purchase order has been completely performed, DLA Energy intends to take corrective action by reimbursing the protester its reasonable bid and proposal costs." Corrective Action Notice (B-417238.1) at 1. The subsequent withdrawal notification indicated that the agency "hereby withdraws its notice of corrective action." Corrective Action Notice Withdrawal at 1. While SageCare's protest alleged that DLA's withdrawal of the notice of corrective action submitted in response to AeroSage's (B-417238.1) protest was improper, SageCare's protest failed to include any legally sufficient grounds explaining why the agency's decision to withdraw was unreasonable.

Instead, SageCare's protest focused on the alleged improprieties with the agency's decision to issue the order to Tayrona. SageCare Protest (B-417238.4) at 1-4. For example, the protest asserted that "[w]hen Agency withdrew their corrective action SageCare, the government, and the VA [Veterans Administration] requesting agency were all adversely impacted by not considering or utilizing the lower price timely quote." Id. at 2. The agency's purported failure to consider SageCare's alleged lower priced quotation does not provide a legally sufficient basis of protest to challenge the agency's decision to withdraw its proposed corrective action to reimburse AeroSage its reasonable bid and proposal costs. As a result, this reconsideration ground is dismissed.³ See 4 C.F.R. § 21.5(f); Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. In sum, our prior decision properly dismissed SageCare's underlying protest, and again, SageCare has not demonstrated any error of law or fact in our decision. See Veda, Inc.--Recon., supra.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel

³ Because we dismiss this allegation as legally insufficient, we express no view on whether SageCare is an interested party to challenge the agency's withdrawal of a proposed corrective action submitted in response to a protest filed by AeroSage, a separate protester.