



Decision

Matter of: AeroSage, LLC -- Reconsideration

File: B-417238.6

Date: July 22, 2019

David M. Snyder, AeroSage, LLC, for the protester.
Matthew Vasquez, Esq., and Jacqueline Neumann, Esq., Defense Logistics Agency, for the agency.
Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where the request repeats arguments previously made and disagrees with our prior decision, which do not provide a basis for reconsideration.

DECISION

AeroSage, LLC, a service-disabled veteran-owned small business of Tampa, Florida, asks that we reconsider our decision in AeroSage, LLC, B-417238, B-417238.3, Apr. 3, 2019, (unpublished decision), where we dismissed the firm's protest challenging the award of a contract to Tayrona Oil, Inc., a small business of West Palm Beach, Florida, under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 for biodiesel fuel. In its protest, AeroSage, LLC raised various challenges to the agency's decision to award a contract to Tayrona.

We deny the request for reconsideration.

BACKGROUND

The RFQ, issued on January 4, 2019 as a small business set-aside, sought delivery of 6,000 gallons of biofuel. Agency Report, Tab 1, RFQ, at 1. On January 7, the agency issued a delivery order to Tayrona in the amount of \$17,094. On January 8, AeroSage filed a protest challenging that order, which our Office docketed as B-417238.1. In its protest, AeroSage raised various challenges to the agency's decision to issue an order to Tayrona. Specifically, the protester asserted that the agency failed: (1) to provide a reasonable response time for the solicitation; (2) to follow section 13.104 of the Federal

Acquisition Regulation (FAR), which requires an agency to promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government; (3) to consider all timely submitted quotations; (4) to make a price reasonableness determination; and (5) to satisfy the procedures of FAR subpart 19.6, which requires an agency to refer a small business concern found to be nonresponsible to the Small Business Administration for a Certificate of Competency. Protest at 4. The protester also asserted that the awardee's quotation failed to provide a required certification of compliance with environmental requirements and was not timely submitted.¹ Id. at 2-4.

On January 23, the agency notified our Office that it intended to take corrective action in response to AeroSage's 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. Although the protester objected to the agency's decision to withdraw its notice of corrective action, we concluded that it had not shown that the agency's actions were unreasonable. AeroSage LLC, supra, at 2 n.3.

Subsequently, the agency filed an agency report, which provided a detailed response to a protester's allegations. Id. at 2-3 (discussing the agency's responses to AeroSage's protest allegations). The protester submitted comments to the agency report that failed to rebut or otherwise substantively address the agency's arguments. Id. The protester later submitted untimely supplemental arguments, which we did not consider in our decision. We found that AeroSage's failure to provide substantive response to the agency's contentions provided us with no basis to conclude that the agency's position with respect to the issues in question were unreasonable or improper. Id. citing Avaya Gov't Sols., Inc., B-409037 et al., Jan. 15, 2014, 2014 CPD ¶ 31 at 4. We concluded that AeroSage's substantive protest contentions had been abandoned, and did not consider them further, resulting in dismissal of the protest on April 3, in an unpublished decision. See id.

DISCUSSION

AeroSage requests reconsideration of our April 3 decision, arguing that the decision dismissing its protest is "based on false and incomplete facts and characterizations of the grounds for protest." Request for Reconsideration at 1. The protester raises various arguments as to why our decision was erroneous, which we address in more detail below. We have considered each of AeroSage's arguments, and find that none form the basis for reconsideration.

¹ Aerosage also filed a supplemental protest with our Office arguing that the agency failed to comply with our Bid Protest Regulations' requirement that the agency notify an awardee when a protest has been filed. AeroSage LLC, supra, at 2. That protest allegation was dismissed because we do not consider protests concerning procedural matters that do not involve the validity of contract award. Id.

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); Bluehorse 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. Bluehorse Corp.- Recon., supra.

The gravamen of AeroSage's request for reconsideration centers on our decision to not consider the firm's untimely comments, and our conclusion that its substantive protest issues were abandoned for failure to refute or provide any meaningful response to the agency report in its timely comments. Request for Reconsideration at 1-4. In this regard, our prior decision recognized that the protester "submitted an updated response to its comments that was filed . . . after the due date for comments." AeroSage, supra, at 2 n.4. As we explained in our decision, "[t]o the extent the protester attempted to rebut the agency's conclusions in its [later] submission, we consider this an untimely and piecemeal presentation of arguments, which we will not consider." Id. at 2 n.5. While the protester challenges our decision to not consider its untimely submission, the firm's disagreement with that decision does not provide a basis for reconsideration. See Bluehorse Corp.- Recon., supra. Moreover, AeroSage does not point to any aspect of its initial comments that were timely submitted, to show that it meaningfully responded to the agency report, and as such has not shown our prior decision dismissing its substantive protest issues as abandoned was erroneous. Id.

The protester also argues that the prior decision erred in that it did not consider that, in initially deciding to take corrective action, the agency admitted to violations of law. Request for Reconsideration at 2-3. However, as noted in the decision, "[a]lthough the protester objects to the agency's decision to withdraw its notice of corrective action, it has not shown that the agency's actions were unreasonable." AeroSage, supra, at 2 n.3. While AeroSage now seeks to revisit its prior contentions, which were considered and addressed in the prior decision, such repetition of arguments previously made does not provide a basis for our Office to reconsider the earlier decision. Bluehorse Corp.- Recon., supra.

Finally, the protester argues that the agency improperly redacted and withheld requested or required documents in the agency report. Request for Reconsideration at 3. However, the record shows that these objections were raised and adjudicated by the assigned attorney during the pendency of the prior protest. As such, AeroSage's renewed challenges to the adequacy of the record do not form a valid basis for reconsideration. Id. Moreover, none of the protester's objections to the adequacy of the record impact the salient issue that the firm's protest was dismissed for failing to

provide substantive response to the explanations given by the agency in the agency report.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel