



## Decision

**Matter of:** AeroSage, LLC--Reconsideration

**File:** B-417247.4

**Date:** July 9, 2019

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David M. Snyder, for the protester.

Matthew Vasquez, Esq., and Jacqueline Neumann, Esq., Defense Logistics Agency, for the agency.

Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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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 that warrants reversal or modification of the decision.

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### DECISION

AeroSage, LLC, of Tampa, Florida, a service-disabled veteran-owned small business, requests reconsideration of our decision in AeroSage, LLC, B-417247.3, May 6, 2019 (unpublished decision), regarding the award of a sole-source contract extension to contract No. SPE605-19-D-1251, issued to Total Petroleum Puerto Rico Corp., of Guaynabo, Puerto Rico, by the Defense Logistics Agency (DLA) to supply ground fuel to various locations in Puerto Rico. In the protest, AeroSage argued that DLA did not provide a proper justification and approval (J&A) to issue a sole-source award. Our Office dismissed the protest as untimely.

We dismiss the request for reconsideration.

On August 7, 2018, DLA issued request for proposals (RFP) No. SPE605-18-R-0231, for the delivery of various types of fuel to different locations in Puerto Rico. RFP at 1. As amended, the due date for initial proposals was October 26, at 4:30 p.m. Eastern Standard Time (EST). RFP, amend. 07, at 2. AeroSage submitted protests to the agency on October 26 and November 2 objecting to the terms of the solicitation and the agency's failure to negotiate with offerors. The agency dismissed these protests on January 4, 2019. On January 15, AeroSage filed a protest with our Office raising the same issues that it raised in its earlier agency-level protests. On February 27, we

dismissed AeroSage's protest as untimely and for failure to state a valid basis for protest. See AeroSage, LLC, B-417247, Feb. 27, 2019 (unpublished decision).

On January 31, DLA issued, on a sole-source basis, a four-month extension of a contract that had been awarded to Total Petroleum on October 16, 2018, to cover its fuel requirements while AeroSage's GAO protest was being decided. Request for Dismissal at 1; exh. 1, J&A, at 1-2. The agency prepared a J&A for the award and published it on the FedBizOpps website on March 8. Request for Dismissal, exh. 2, FedBizOpps Notice, at 3.

On March 8, AeroSage filed a request for reconsideration of our Office's dismissal of its earlier protest. In its request, the protester cited the J&A as "new information [which] validates the alleged protest facts" and therefore warrants the reconsideration of GAO's dismissal of AeroSage's protest. B-417247.2 Request for Recon. at 3. On March 18, at 5:29:56 PM EST, AeroSage filed a document in the reconsideration proceeding, which it titled a "supplemental protest." The filing sought to challenge the agency's sole-source award of the 4-month extension to Total Petroleum, but the document was not filed as a new protest on our Office's electronic protest docketing system (EPDS) and the protester did not pay a filing fee in connection with its challenge.

On March 19, our Office notified the parties that the new protest filing had been improperly filed, and instead should have been filed as a separate protest in accordance with our Bid Protest Regulations. B-417247.2 Notice of Removal of Supp. Protest Filings at 1. Our Office noted that a request for reconsideration is not the proper place to consider a challenge to DLA's new award decision. Id. We therefore removed the protester's supplemental protest filings from the B-417247.2 docket. Id. On March 21, the protester filed a request to re-docket the supplemental protest. On March 22, we denied the request.<sup>1</sup>

On March 22, AeroSage filed a protest with our Office, which we docketed as B-417247.3. The protester asserted that the agency had not issued an adequate J&A to award a sole-source for the 4-month contract extension. AeroSage also asserted that the award to Total Petroleum was improper in any case. On May 6, our Office

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<sup>1</sup> The protester's March 21 request argued that its protest, even if re-filed, would be timely because AeroSage had originally raised its protest grounds in its March 8 and March 18 filings. Request for Re-Docketing at 3. Our Office's March 22 denial of the protester's request specifically apprised the protester, however, that because AeroSage had not properly filed a protest with our Office, we did not consider any protest to "currently [be] before us." Denial of Request for Re-Docketing at 1. Our Office further advised the protester that "once a protest is filed it must meet our timeliness rules at that time." Id. Notwithstanding this guidance, on March 22, the protester filed its challenge to the sole-source contract as a new protest on the EPDS system and paid the EPDS filing fee at that time.

dismissed the protest as untimely. The decision noted that the March 22 protest was filed more than 10 days after the publication of the J&A on March 8.

The protester argues that the decision should be reconsidered because it contains errors of fact and law. In this regard, the protester argues that the decision erred in concluding that the protest of the sole-source contract extension was filed on March 22. The protester asserts that it timely protested the sole-source contract extension by raising objections to the J&A in its March 8 and March 18 filings in the B-417247.2 reconsideration proceeding. AeroSage contends that these filings constituted timely supplemental protests and that our Office erred in not treating the filings accordingly.<sup>2</sup>

To prevail on a request for reconsideration, the requesting party either must show that our prior decision contains errors of either fact or law, or must present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.14(a); Waterfront Techs., Inc.--Recon., B-403638.4, June 29, 2011, 2011 CPD ¶ 126 at 3. Our Office will not consider a request based on repetition of arguments previously raised, and disagreement with the prior decision does not meet the standard for granting reconsideration. 4 C.F.R. § 21.14(c); Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

Here, AeroSage's request does not demonstrate that our decision contains an error of fact or law, and does not present new information warranting reversal or modification. We therefore conclude that the request does not meet our standard for reconsideration.

As an initial matter, we find that the March 8 and March 18 filings do not constitute properly-filed supplemental protests. A supplemental protest is a challenge to an agency's procurement decision that is related to an earlier-filed protest challenge, where the earlier-filed protest challenge has not yet been decided. Here, the March 8 filing was not a protest of the agency's sole-source award and instead was a request for reconsideration, *i.e.*, a request that our Office reverse or modify our earlier decision dismissing AeroSage's solicitation challenge. See 4 C.F.R. § 21.14. While the March 8 filing discussed the J&A, it did so in the context of requesting the reversal or modification of our Office's decision in the B-417247.1 proceeding.

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<sup>2</sup> AeroSage also challenges our Office's requirement that SageCare Inc., an affiliate of the protester, pay a separate EPDS fee. We have previously decided this issue and informed the protester before that its affiliate must pay a separate filing fee for a protest. See AeroSage, LLC.--Recon., B-417247.2, April 5, 2019, 2019 CPD ¶ 137 at 3 n.1.

The protester additionally contends that our Office erred in dismissing AeroSage's protest without requiring the agency to provide an agency report. We have previously advised the protester, however, that our Bid Protest Regulations permit us to stay the requirement for submission of an agency report pending consideration and resolution of a party's request for dismissal. See id. at 4 n.2.

The March 18 filing was labeled a “supplemental protest,” but was also incorrectly filed within the separate, reconsideration proceeding. In this respect, the March 18 filing was a new protest rather than a challenge to our Office’s earlier dismissal decision, which in turn addressed a separate protest to the solicitation terms, not the sole-source contract challenged in the “supplemental protest.”

Relying on our decision in Coulson Aviation (USA), Inc., B-411525, B-411525.2, Aug. 14, 2015, 2015 CPD ¶ 272 at 5, the protester argues that the required elements of a protest are a written statement of objection to the agency’s action and a request for relief.<sup>3</sup> Our decision in Coulson, however, relates to agency-level protests, not GAO protests, and thus does not set forth the standard for filing a protest with our Office. Instead, new protests submitted to our Office must comply with our Bid Protest Regulations and be filed through the EPDS system, a process that includes the payment of a filing fee. See JEQ & Co., LLC--Recon., B-415338.8, May 9, 2019, 2019 CPD ¶ 175 at 2 n.3.

Because neither the March 8 or the March 18 filings were properly filed protests, we find that our Office correctly concluded that the protester did not file its protest until March 22, which is the date on which the protester filed a new protest in EPDS and paid the applicable fee. As this was more than 10 calendar days after the date that the protester knew, or should have known, its basis for protest, we find that our Office did not err in concluding that the protest was untimely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(2).

Last, the protester contends that our decision erred in rejecting AeroSage’s assertion that its protest should be considered by our Office under the “significant issue” exception to our timeliness requirements.<sup>4</sup> Request for Recon. at 4-5. Here, we find

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<sup>3</sup> In support of its argument, AeroSage notes that in at least one prior protest, our Office permitted the protester to refile an incorrectly filed protest without the refiling affecting the timeliness of the protest. See B-417247.3 Request for Recon. at 2 (citing B-417289.2 and B-417289.3 proceedings). While we have previously granted the protester some latitude, in light of the new EPDS system and the protester’s pro se status, to correct its incorrectly filed protest submissions, such latitude was never intended to be unlimited or indefinite. Ultimately, it is the protester’s responsibility to file its protest correctly. In this respect, our Office does not permit the filing of a new protest under the guise of a “supplemental protest,” where that protest in actuality challenges a separate agency action, even where that agency action is related in some way to a previously-resolved protest. See EPDS Instructions at 2, available at <https://www.gao.gov/assets/690/681754.pdf> (Last visited on June 26, 2019).

<sup>4</sup> The request for reconsideration also challenges our Office’s rejection of AeroSage’s contention that the protest should be considered under the “good cause” exception to our timeliness rules; however, the protester’s request does not provide any compelling reason beyond the protester’s control that would meet our Office’s standard for applying that exception.

that the protester's arguments are largely based on repetition of arguments it previously raised in the underlying protest. We find that this disagreement with the prior decision does not meet our standard for granting reconsideration. 4 C.F.R. § 21.14(c); Veda, Inc.--Recon., supra.

The request for reconsideration is dismissed.

Thomas H. Armstrong  
General Counsel