



Decision

Matter of: AeroSage, LLC--Reconsideration

File: B-417529.3

Date: October 4, 2019

David M. Snyder, for the protester.
Matthew Vasquez, Esq., Defense Logistics Agency, for the agency.
Michael P. Grogan, Esq., and Amy B. Pereira, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is dismissed where the requesting party repeats arguments previously made and generally disagrees with our prior decision.

DECISION

AeroSage, LLC, a service-disabled veteran-owned small business (SDVOSB) of Tampa, Florida, requests that we reconsider our decision in AeroSage, LLC--Costs, B-417529.2, June 7, 2019 (unpublished decision), in which we dismissed its request that our Office recommend it be reimbursed the costs of filing and pursuing its protest challenging request for quotations (RFQ) No. SPE605-19-Q-0234, issued by the Defense Logistics Agency (DLA) as a small business set-aside, for the delivery of fuel to the Veterans Affairs Medical Center in Battle Creek, Michigan.¹ In its request, AeroSage maintains that reconsideration should be granted because our Office's decision contains errors of fact and law.

We dismiss the request because it fails to provide a basis for reconsideration.

On April 26, the agency issued RFQ No. SPE605-19-Q-0231 as a SDVOSB set-aside for this requirement. On April 30, DLA cancelled that RFQ because the agency did not

¹ While the requester continues to refer to its protest and requests as jointly filed by AeroSage, LLC and SageCare, Inc., our Office recognizes and docketed the protest, request for reimbursement, and this request for reconsideration as filed solely by AeroSage, LLC.

receive quotations meeting the agency's requirement for a small business refinery in the Michigan area. That same day, DLA resolicited for the subject requirement, under RFQ No. SPE605-19-Q-0234, this time, as a small business set-aside. Minutes before quotations were due, AeroSage filed a protest with our Office that was docketed as B-417529, arguing that the agency's cancellation and resolicitation was improper. Later that day, DLA notified AeroSage that it submitted the lowest-priced quotation in response to the solicitation, RFQ No. SPE605-19-Q-0234.² On May 1, AeroSage withdrew its protest; AeroSage stated that DLA agreed to take proper corrective action by awarding it a contract under RFQ No. SPE605-19-Q-0231 and agreed to reimburse AeroSage's \$350 protest filing fee. Notification of Withdrawal, B-417529, May 1, 2019, at 1. On May 10, our Office issued a confirmation of withdrawal for AeroSage's protest.

On May 16, AeroSage filed a request that our Office recommend the reimbursement of the reasonable costs of filing its protest, including its \$350 filing fee. On May 31, the agency responded to AeroSage's request by providing, among other things, that AeroSage was mistaken that DLA agreed to take corrective action in response to AeroSage's protest. Agency Response, May 31, 2019, at 1-3. On June 3, AeroSage submitted its response to the agency's filing, in which AeroSage: requested a complete agency report; argued that DLA did, in fact, take corrective action; filed a supplemental protest challenging DLA's evaluation under RFQ No. SPE605-19-Q-0231 and the award of a contract under RFQ No. SPE605-19-Q-0234; and asserted that it was suspending its withdrawal of its protest.

On June 7, our Office dismissed AeroSage's request for a recommendation of reimbursement of costs. AeroSage, LLC--Costs, B-417529.2, June 7, 2019 (unpublished decision). We stated that pursuant to the Competition in Contracting Act (CICA), 31 U.S.C. §§ 3551-3557, and our Bid Protest Regulations, "a recommendation for the payment of the reasonable costs of pursuing a protest is

² The requester argues that our decision was factually inaccurate when it stated that DLA issued a purchase order to AeroSage on April 30. Req. for Reconsideration at 2-3. The record reflects that on April 30, DLA notified AeroSage, via email, that it was awarded the purchase order and that AeroSage was to "use this message as the purchase order and authorization. . . ." Agency Response, Exh. 9 at 1. However, it appears the agency did not issue the purchase order until May 1. Agency Response, Exh. 16 at 1. This misstatement concerning the date the purchase order was issued was not a material error; indeed, AeroSage provides no evidence or information to suggest that the date of award bears on the outcome of its request for reimbursement of costs. Our Office will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contained a material error of law or fact, or identifies material information that was not previously considered. We find no basis to grant reconsideration on this basis because this error was not material to AeroSage's protest or request grounds. Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4; Sallyport Global Holdings, Inc.--Recon., B-415460.5, Apr. 12, 2018, 2018 CPD ¶ 140 at 4.

expressly predicated upon a determination by our Office that a solicitation, proposed award, or award does not comply with a statute or regulation, 31 U.S.C. § 3554(c)(1); 4 C.F.R. § 21.8(d), or where the agency has decided to take corrective action in response to a protest, and our Office has dismissed the protest on that basis, 4 C.F.R. § 21.8(e).” AeroSage, LLC--Costs, *supra* at 2. We concluded that because AeroSage was issued a purchase order under RFQ No. SPE605-19-Q-0234, and because it withdrew its protest, AeroSage had no basis to request a recommendation for reimbursement of costs; we then dismissed its request. *Id.* Our Office also dismissed AeroSage’s supplemental protest as untimely because AeroSage’s arguments “were known or should have been known to the protester from the first protest, which, as noted above, was voluntarily withdrawn.” *Id.* at 2 n.2.

On June 12, AeroSage filed this request for reconsideration, alleging that our Office committed legal and factual errors in dismissing AeroSage’s request for reimbursement.³ For the reasons discussed below, we find that AeroSage has failed to meet the required standard for a request for reconsideration.⁴

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 prior decision do not meet this standard. Veda, Inc.--Recon., *supra*, at 4. Further, the requesting party must specify any errors of law made or information not previously considered. Department of Defense--Recon., B-416733.2, Mar. 18, 2019, 2019 CPD ¶ 110 at 2. We will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contains a material error of law or fact. *See, e.g., Department of Justice; Hope Village, Inc.--Recon.*, B-414342.5, B-414342.6, May 21, 2019, 2019 CPD ¶ 195 at 4; Sallyport Global Holdings, Inc.--Recon., *supra*, at 4.

First, AeroSage claims that our Office erred by failing to require DLA to file a complete agency report in response to its request for a recommendation for reimbursement of protest costs. Req. for Reconsideration at 2. In this regard, the requester argues that it “was intentional error to dismiss” AeroSage’s request for reimbursement while it “was awaiting required/requested information for a complete response. . .” because “[t]he protestor’s detailed response was a conditional response pending information. . . .” *Id.* However, under CICA and our Bid Protest Regulations, an agency is not required to

³ AeroSage filed its request with our Office on June 11 at 11:03 p.m. ET. Consistent with our Bid Protest Regulations, a document is deemed filed when it is received by our Office by 5:30 p.m. 4 C.F.R. § 21.0(g). Accordingly, AeroSage’s request is deemed filed the next day our Office was open, which was June 12. 4 C.F.R. § 21.0(d).

⁴ To the extent that AeroSage is requesting reconsideration of our Office’s May 10 confirmation of withdrawal, such a request is untimely filed. 4 C.F.R. § 21.14(b).

produce an agency report where we have dismissed the underlying protest.⁵ Here, our Office dismissed AeroSage's request for a recommendation for reimbursement of costs because the requester withdrew its underlying protest and was issued the purchase order and also dismissed Aerosage's supplemental protest as untimely. Accordingly, because neither CICA nor our Bid Protest Regulations require a contracting agency to submit a report in response to protest allegations that have been dismissed, AeroSage fails to state a valid basis for reconsideration. See 31 U.S.C. §§ 3553(b)(3), 3554(a)(4); 4 C.F.R. § 21.5.

Next, AeroSage argues that our decision to dismiss its request for reimbursement was in error because it claims that the agency agreed to take corrective action. Req. for Reconsideration at 3-4. In this regard, AeroSage contends that the agency's May 31 response contained misstatements about whether DLA agreed to take corrective action and whether DLA's contracting officer had authority to agree to corrective action. Id. at 3-4. The requester also argues that the withdrawal of its protest was conditional on the agency taking corrective action and paying its costs of filing and pursuing its protest.⁶ Id. at 3-4. However, AeroSage presented these arguments in its June 3 response and our Office previously considered these arguments when we dismissed AeroSage's request for a recommendation for reimbursement of costs. Protester's Response, June 3, 2019, at 3-4, 6. As stated above, the repetition of arguments already considered fails to provide an adequate basis for reconsideration of our decision.⁷ 4 C.F.R. § 21.14(c); Veda, Inc.--Recon., supra, at 4.

AeroSage next argues that our dismissal of the requester's supplemental protest arguments was in error. Req. for Reconsideration at 2. AeroSage contends that our

⁵ The Competition in Contracting Act generally requires a contracting agency to provide GAO with a complete report within 30 days of notice of the protest. 31 U.S.C. § 3553(b)(2)(A). However, "[a] Federal agency need not submit a report to the Comptroller General . . . if the agency is sooner notified by the Comptroller General that the protest concerned has been dismissed" Id., § 3553(b)(3); see also § 3554(a)(4) (the Comptroller General may dismiss a protest that, among other things, on its face does not state a valid basis for protest); Bid Protest Regulations, 4 C.F.R. § 21.5 ("A protest or specific protest allegations may be dismissed any time sufficient information is obtained by GAO warranting dismissal. Where an entire protest is dismissed, no agency report need be filed; where specific protest allegations are dismissed, an agency report shall be filed on the remaining allegations.").

⁶ Even if our Bid Protest Regulations permitted a protester to conditionally withdraw its protest, which they do not, the record shows that AeroSage did not condition its withdrawal. See Protester's Statement of Withdrawal, May 1, 2019 ("We withdraw our protest because the Agency has agreed to proper corrective action.").

⁷ In any event, as our decision explained, whether the agency agreed to take corrective action or not is irrelevant because AeroSage was awarded the purchase order and voluntarily withdrew its protest. See AeroSage, LLC--Costs, supra, at 2 n.3.

dismissal, predicated on the fact that AeroSage's arguments were known or should have been known when it filed its original protest, was "demonstrably and intentionally false and in error." Id. However, the requester's argument provides no basis for reconsideration. AeroSage's supplemental protest challenged various improprieties in the solicitation DLA cancelled (RFQ No. SPE605-19-Q-0231) and improprieties in the award under the solicitation that AeroSage initially protested (RFQ No. SPE605-19-Q-0234). Our review of the record confirms that the bases of these arguments were known or should have been known by the requester when AeroSage filed its initial protest on April 30, and were, therefore, properly dismissed. AeroSage, LLC--Costs, supra, at 2 n.2. To the extent AeroSage raised supplemental protest arguments regarding whether the agency agreed to take corrective action, the record reflects that our Office properly determined that we need not resolve these allegations, as we found that AeroSage was awarded the purchase order and voluntarily withdrew its protest. AeroSage, LLC--Costs, supra, at 2 n.3.

Finally, to the extent that AeroSage is arguing that DLA is involved in a "systemic scheme to steer assisted acquisition awards to favored vendors," or that the agency is involved in a "cover-up" concerning fraudulent behavior, these arguments do not constitute a valid basis for reconsideration.⁸ Req. for Reconsideration at 5-6. These arguments were not raised during the protest or in AeroSage's request for reimbursement, and the requester has not explained why it could not, or did not, raise these arguments earlier. That AeroSage now raises these arguments for the first time in its reconsideration request cannot provide a basis for us to reconsider our earlier decision. Department of the Navy--Recon., B-405664.3, May 17, 2012, 2012 CPD ¶ 49 at 3.

The request for reconsideration is dismissed.

Thomas H. Armstrong
General Counsel

⁸ AeroSage's allegation that the agency acted in bad faith by deliberately making false statements does not serve as a basis for our Office to grant reconsideration. AeroSage raised this argument in its June 3 response, which we previously considered when we dismissed its request for a recommendation for the reimbursement of its costs. Protester's Response, June 3, 2019, at 4. As provided above, the repetition of arguments already considered does not provide a basis for reconsideration. 4 C.F.R. § 21.14(c); Veda, Inc.--Recon., supra, at 4.