



Decision

Matter of: AeroSage, LLC--Reconsideration

File: B-418292.7

Date: June 16, 2020

David M. Snyder, for the protester.
Jacqueline Neumann, Esq., Matthew Vasquez, Esq., May Sena, Esq., and Howard M. Kaufer, Esq., Defense Logistics Agency, for the agency.
Katherine I. Riback, Esq., and Evan C. Williams, 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.

DECISION

AeroSage LLC, a service-disabled veteran-owned small business (SDVOSB) of Tampa, Florida, requests that our Office reconsider our decision, *AeroSage LLC*, B-418292 *et al.*, Feb. 27, 2020, 2020 CPD ¶ 77, in which we denied the protest of the terms of request for proposals (RFP) No. SPE605-20-R-0200, issued by the Defense Logistics Agency (DLA) for various types of fuel to be delivered to Department of Defense and federal civilian agency customers. The protester also requests that our Office reconsider its protest challenging other aspects of the agency's conduct of the procurement.

We deny the request for reconsideration.

BACKGROUND

In our prior decision, we denied in part and dismissed in part AeroSage's protest of the terms of the solicitation and its challenges to other aspects of the agency's conduct of the procurement. We denied AeroSage's protest that the amount of time for offerors to submit proposals was unreasonable because the record did not demonstrate that the amount of time was unreasonable. *AeroSage, LLC, supra* at 5-6. We also denied the protester's challenge of the agency's use of a requirements contract in this procurement

because the record did not demonstrate that the agency's exercise of discretion in selecting the contract type was unreasonable. *Id.* at 6.

Our Office also dismissed numerous other protest grounds raised by AeroSage. For example, our Office dismissed AeroSage's protest that all of the requirements solicited under the RFP should have been set aside for SDVOSBs to rectify DLA's failure to meet its small business set-aside goals. We dismissed this argument for failure to state a valid basis of protest, because an agency's alleged failure to meet its small business set-aside goals does not dictate that any particular procurement should be set aside. *Id.* at 8. We also dismissed, for failure to state a valid basis, AeroSage's protest that the agency provided an inadequate amount of time for discussions and the submission of final proposal revisions. *Id.* at 10. We also dismissed as abandoned AeroSage's challenge to the reasonableness of the solicitation's documentation requirements, because we found that the record contained no substantive response by AeroSage to the agency's defense of its requirements.¹ *Id.* at 11 n.8.

AeroSage requests that we reconsider the decision because, according to AeroSage, it was based on legal and factual errors. Req. for Recon. at 1. AeroSage contends, among other things, that we failed to address violations of the Antideficiency Act; that the decision failed to address more fully the protester's assertions regarding the agency's stay of performance and the fact that GAO does not administer the requirement to withhold Competition in Contracting Act (CICA) awards; and that AeroSage was not provided a justification by GAO for the agency's withholding of certain documents. *Id.* at 2-3.

DISCUSSION

Under our Bid Protest Regulations, to obtain reconsideration of a decision, 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).

AeroSage has not met this standard. As an initial matter, we recognize that our prior decision did not specifically discuss all of the protester's arguments, including the protester's concerns regarding the Antideficiency Act (31 U.S.C. § 1341(a)). 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." See *Research Analysis & Maint., Inc.--Recon.*, B-409024.2, May 12, 2014, 2014 CPD ¶ 151 at 6 (citing 31 U.S.C. § 3554(a)(1)). In further keeping with our mandate, our Office does not issue decisions in response to reconsideration requests to address a protester's dissatisfaction that a decision does not address each of its protest issues. *Id.*

¹ The details of the procurement are set forth in our prior decision and need not be repeated here.

In any event, regarding the protester's argument that DLA's collection of tax reimbursements from other agency appropriated funds constitutes an unlawful augmentation of the agency's appropriation, and was thus an Antideficiency Act violation, we have stated many times that our bid protest jurisdiction extends to violations of procurement laws and regulations, and does not generally extend to questions of fiscal law. Supp. Protest, B-418292.2, Jan. 31, 2020, at 3; Req. for Recon. at 2; see 31 U.S.C. § 3552; *NTELX Inc.*, B-413837, Dec. 28, 2016, 2017 CPD ¶ 13 at 2 n.2 (dismissing allegations of violations of purpose statute because they presented fiscal law issues not within our bid protest jurisdiction); *Alliant Enterprise JV, LLC*, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 5 n.8 (dismissing allegation of a violation of the voluntary services prohibition and, in turn, the Antideficiency Act, because the Antideficiency Act is not a procurement statute). As a result, this aspect of AeroSage's request for reconsideration does not meet our standard for reversal or modification of our earlier decision.

AeroSage also requests reconsideration of issues that were specifically addressed in our previous decision. For example, the agency notified our Office that it had overridden the CICA automatic stay provisions concerning this procurement. In response, AeroSage in its protest, and now again in its request for reconsideration, challenges the reasonableness of the agency's justification for overriding the stay.² Req. for Recon. at 2. As we explained in our earlier decision, the sufficiency of the agency's justification for issuing the stay is not a matter for GAO's consideration. *AeroSage, LLC, supra* at 11; see 4 C.F.R. § 21.6 (stating that GAO does not administer the requirements to withhold award or suspend contract performance under CICA). In this regard, AeroSage's repetition of arguments it made during our consideration of its prior protest falls short of our standard for reversing or modifying our earlier decision. See *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

Finally, AeroSage argues that it was not provided a justification by GAO for the agency's withholding of certain documents. Req. for Recon. at 2-3. For example, AeroSage complains that the agency failed to provide it with a copy of the Small Business Administration's (SBA) nonmanufacturer rule waiver. Req. for Recon. at 3. Under the SBA's regulations, when the SBA has waived the nonmanufacturer rule, the contracting officer must provide written notification to potential offerors of any waiver being applied to a specific acquisition at the time a solicitation is issued. 13 C.F.R. § 121.1206(a). Because SBA's regulations require the contracting officer to provide offerors with written notification of the waiver, but does not require the agency to provide the actual waiver to potential offerors, we found that AeroSage failed to allege a

² CICA provides that "a contract may not be awarded in any procurement after the Federal agency has received notice of a protest with respect to such procurement from the Comptroller General and while the protest is pending." 31 U.S.C. § 3553(c)(1).

violation of procurement law or regulation, and therefore dismissed this allegation as failing to state a valid basis of protest.³ *AeroSage, LLC, supra* at 8.

Generally, a protester's disagreement with decisions regarding document release during the course of a protest is not, by itself, a ground for reconsideration of a GAO decision on the merits. *AeroSage LLC--Recon.*, B-414314.3, July 24, 2017, 2017 CPD ¶ 232 at 4. Since the issues involved in document disputes usually do not relate directly to claimed errors of law or fact in the prior decision, or information not previously considered, the standard for reconsideration set out in our regulations does not include such disputes. *Id.* Thus, AeroSage's complaint that it was denied a justification for the fact that it was denied certain documents to pursue its protest does not meet our standard for reversal or modification of our earlier decision. See *id.*; *CDA Inv. Techs., Inc.--Recon.*, B-272093.3, Mar. 11, 1997, 97-1 CPD ¶ 103 at 6 n.6; *HLJ Mgmt. Grp., Inc.--Recon.*, B-225843.5, Mar. 6, 1989, 89-1 CPD ¶ 237 at 6 (denying request for reconsideration where our Office, after reviewing the protester's document request and the agency's response, independently concluded, in accordance with our regulations, that the agency was responsive to the request for relevant documents); *Metron Corp.--Recon.*, B-227014.2, Sept. 25, 1987, 87-2 CPD ¶ 299 at 3-4 (“[O]ur bid protest decisions must be based on the full factual and evidentiary record regardless of the fact that [protected] documents are withheld from a protester.”).

In essence, AeroSage's request for reconsideration is limited to disagreement with our previous decision, which does not meet our standard for reversing or modifying that decision.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel

³ Our decision noted that the agency provided the actual waiver as part of its report answering the protest. *AeroSage, LLC, supra* at 9 n.6.