



Decision

Matter of: Sysco Corporation--Reconsideration

File: B-418466.2

Date: June 6, 2020

Alexander Saksen, Esq., Gordon Rees Scully Mansukhani, LLP, for the requester. Robert Schaper, Esq., and Sherine Bediako, 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 of decision dismissing a protest for failure to submit comments on the agency report is denied where the requester does not show that our prior decision contains errors of fact or law or information not previously considered.

DECISION

Sysco Corporation, of Houston, Texas, requests that we reconsider our decision dismissing its protest alleging that the Defense Logistics Agency was unreasonable in rejecting the firm's proposal as late under solicitation No. SPE30019R0011, issued for food distribution services. Sysco argues that it had reason for failing to file comments on the agency report by the established deadline and that we should reconsider our dismissal based on those reasons.

We deny the request.

BACKGROUND

Sysco filed a protest with our Office on February 11, 2020, arguing that the agency "inexplicably" rejected the firm's proposal, despite Sysco following "the shipping instructions as outlined in the Statement of Work" including making a delivery attempt "by a commercial carrier within the stated hours of operation." Protest at 1. Although Sysco filed initially without representation, on February 18, an attorney entered a notice of appearance on behalf of Sysco. Electronic Protest Docketing System (Dkt.) No. 6. On March 12, the agency submitted an agency report containing protected information, and a redacted copy of the report. See *generally* Agency Report.

On March 16, our Office issued a notice suspending the deadline for submission of comments, and issued a protective order in the protest. Notice of Extension of [Deadline] for Submitting Comments; Notice of Protective Order. After admission of Sysco's counsel to the protective order, our Office established a new due date for the filing of comments, extending the deadline to March 26. Dkt. No. 16. Sysco did not submit comments on the agency report by the established deadline, and, as a consequence, the protest was dismissed in accordance with our Bid Protest Regulations. *Sysco Corporation*, B-418466, Mar. 27, 2020 (unpublished decision). This request for reconsideration followed on April 6.

DISCUSSION

Sysco argues that its actions show that it did not intend to abandon its protest, such as hiring counsel, gaining admission of that counsel to a protective order, and communicating with our Office through the date set for submitting comments. Request for Consideration at 3. The requester also argues that our Office could have decided the protest based on the filings it had received. *Id.* at 4-5. Finally, Sysco argues that the firm's outside attorney had logistical and technical difficulties in filing comments due to the COVID-19 "Stay at Home Order" in his home state, which difficulties, Sysco asserts, should not be held against it. *Id.* at 5-6. We have considered each argument, and find that none provide a basis for reconsideration.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out factual and legal grounds upon which reversal or modification of the decision is warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.14(a), (c). A requester's disagreement with our decision does not meet this standard. *Id.*; *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. Here, the requester does not set forth any factual or legal grounds upon which reversal or modification of the decision dismissing its protest is warranted.

As stated in our dismissal of this protest, the filing deadlines in our Regulations are prescribed under the authority of the Competition in Contracting Act of 1984; their purpose is to enable us to comply with the statute's mandate that we resolve protests expeditiously. 31 U.S.C. § 3554(a); *Keymiaee Aero-Tech, Inc.*, B-274803.2, Dec. 20, 1996, 97-1 CPD ¶ 153. To avoid delay in the resolution of protests, section 21.3(i) of our regulations provides that a protester's failure to file comments within 10 calendar days "shall" result in dismissal of the protest except where GAO has granted an extension or has established a shorter period. 4 C.F.R. § 21.3(i); *Wolverton Property Mgmt., LLC--Recon.*, B-415295.4, June 6, 2018, 2018 CPD ¶ 205 (dismissing request for reconsideration of decision dismissing protest for failure to submit comments in response to agency report). But for this provision, a protester could idly wait after receipt of the report for an indefinite time, to the detriment of the protest system and our ability to resolve the protest expeditiously. *Id.* at 2; *California Env'tl. Eng'g*, B-274807, B-274807.2, Jan. 3, 1997, 97-1 CPD ¶ 99 at 5-6.

Here, the record is clear, and the requester does not dispute the fact that Sysco did not submit comments to the agency report by the established deadline, and therefore, in accordance with section 21.3(i) of our regulations, the protest was dismissed. That Sysco states it did not intend to abandon its protest, or that the protest could be decided on initial pleadings, does not negate the regulation's requirement that the protest be dismissed for failing to submit comments to the agency report. See *Wolverton Property Mgmt., LLC--Recon.*, *supra*.

Moreover, while Sysco states that the firm's attorney experienced logistical and technical difficulties in filing its comments, this does not provide a basis for reconsideration. In this regard, Sysco describes the specifics of its difficulties, and argues that this information was not previously considered in the decision to dismiss the protest. Request for Reconsideration at 6. For example, the requester states that on March 26, its attorney exchanged four emails with our Office, requesting an extension of time. According to Sysco, its request was denied because, among other things, "the EPDS system was online, [and] counsel could access files [through] EPDS." *Id.* at 6. The requester now argues that "access to email does not necessarily equate to access to computer files or EPDS." *Id.* Sysco further argues that "drafting and filing a PDF version of any responsive comments via cell phone would have been impossible." *Id.* Finally, Sysco argues that its attorney did not have their EPDS login credentials, could not access their firm's network, and did not have access to a printer during the quarantine. *Id.*

Despite the logistical and technical difficulties endured by its attorney, none of this serves as a basis to reconsider the dismissal of Sysco's protest. Our Office had already extended the deadline for filing comments once in order to accommodate the need to admit Sysco's attorney to the protective order. In addition, Sysco reached our Office, via email, regarding extending this filing deadline, and the request was denied. *Id.* As a result, Sysco was required to file comments by March 26, and failed to do so. Sysco's failure to submit comments by the established deadline required dismissal of its protest in accordance with 4 C.F.R. § 21.3(i); *Wolverton Property Mgmt., LLC--Recon.*, *supra*.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel