

Decision

Matter of: RCG of North Carolina, LLC--Reconsideration

File: B-418824.4

Date: January 29, 2021

Alan Grayson, Esq., for Organic Supply LLC, the requester.
Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision declining to consider arguments that were not filed as a protest in accordance with the Government Accountability Office's Bid Protest Regulations is denied where the protester is unable to show any error of fact or law warranting reversal or modification of our decision.

DECISION

Organic Supply LLC, of Palm Beach, Florida, asks that we reconsider our decision resolving another party's protest, B-418824, B-418824.3, *RCG of North Carolina*, Sept. 17, 2020, 2020 CPD ¶ 298, in which we stated that we would not consider allegations raised on Organic Supply's behalf because the firm had not filed a protest with our Office in accordance with our Bid Protest Regulations.

We deny the request because it does not meet our standard for reconsideration.

On June 12, 2020, RCG of North Carolina filed a protest with our Office challenging the terms of request for proposals No. SPE1C1-20-R-0102, issued by the Defense Logistics Agency (DLA) for disposable surgical masks. In that same filing, counsel for RCG stated that he was representing both Organic Supply and RCG, and presented different arguments for the two firms. On June 15, our Office informed RCG's attorney, by registered email, that if he wished to file a bid protest challenging a solicitation on behalf of multiple protesters, and raising discrete issues, each protester must file a separate protest and pay a filing fee.¹ Further, the email stated "GAO has opened the protest on behalf of RCG. A separate protest and filing fee needs to be filed on behalf of Organic Supply," specifying that the filing had to be completed by close of business on June 15.

¹ "Filing Fee" means the fee authorized pursuant to 31 U.S.C. § 3555(c)(2) that a protester must pay when filing a new protest.

Our Office never received a filing by Organic Supply, nor any response from RCG's attorney to that email. In our decision resolving RCG's protest, as stated above, we declined to consider the allegations raised by RCG on behalf of Organic Supply.

RCG's attorney now asks that we reconsider the decision not to address the arguments that he raised on behalf of Organic Supply in RCG's protest. In his request, the attorney states that he never received the June 15 email, and questions whether it was sent to the proper email address, noting that a similar email address exists and is owned by a different law firm; and also questions whether the email was directed to RCG or Organic Supply, instead of the attorney.

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. Bid Protest Regulations, 4 C.F.R. § 21.14(a), (c). The request before us does not meet this standard.

Here, the only fact in dispute is whether the registered email from our Office, advising the attorney that each protester would need to file its own protest and pay a separate fee, was delivered.² This fact, however, is not material to the issue before us, which is whether Organic Supply filed a protest in this matter and if so, whether our Office improperly declined to consider it. In short, even if we accepted the assertion that the courtesy email sent to the attorney was not delivered, Organic Supply's arguments would not warrant reversal or modification of the decision rendered in response to RCG's protest.

As established by our regulations, EPDS is GAO's web-based electronic protest docketing system; our website includes instructions and guidance on the use of EPDS. See 4 C.F.R. §21.0(f). EPDS is the method used for filing initial protests and protest-related documents and, under our regulations, "[a] document is *filed* on a particular day when it is received in EPDS by 5:30 p.m., Eastern Time." 4 C.F.R. §§ 21.0(g) (emphasis in original) and 21.1(b). Our Regulations specifically state that except under circumstances not applicable here, a protest must be filed through EPDS, 4 C.F.R. § 21.1(b); further, the guidance provided on our website states that a protest will not be deemed "filed" in accordance with GAO's Bid Protest Regulations until the filer has: (i) submitted all of the information required by the "File a New Protest" portal in EPDS; and (ii) successfully completed payment of the filing fee. See <https://www.gao.gov/legal/bid-protests/file-a-bid-protest> (Instructions for E-Filing, at 4) (last accessed Jan. 29, 2021).

Here, it is beyond dispute that no protest was filed with our Office in accordance with these requirements on behalf of Organic Supply, and that no protest filing fee was paid

² Our review of the record reveals that the email was sent to the attorney at the email address the attorney provided to our Office, and the registered receipt shows that it was delivered at 11:53 a.m. on June 15, 2020.

on behalf of Organic Supply. While the attorney argues that Organic Supply was listed first in the protest letter that was filed, and that it was therefore improper to impute to RCG the filing and the single fee that was paid, this argument fails. When a protest is filed through EPDS, the filer--in this case, the attorney at issue--completes an online form, starting with the company name and address for the protester. The protester named by the attorney when he completed the form was RCG. Once the form is completed, the online system advises the filer that it will be directed to a website, pay.gov, to pay a protest filing fee, and that the protest filing is not complete until the protester has successfully made the payment. There is no option to insert the names of multiple protesters on the form, since each protester must file its own separate protest.

The requester also argues that because our Regulations do not include "failure to pay the filing fee" among the reasons why a protest might be dismissed, it was improper to "dismiss" Organic Supply's protest. Since Organic Supply never filed a protest with our Office, there was no protest to dismiss.

Because we conclude that no error of fact or law has been shown, the request for reconsideration is denied.

Thomas H. Armstrong
General Counsel