

Decision

Matter of: AeroSage, LLC--Reconsideration

File: B-419113.6; B-419113.7

Date: March 15, 2021

David M. Snyder, AeroSage, LLC, for the protester.
Matthew Vasquez, Esq., Defense Logistics Agency, for the agency.
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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 that warrants reversal or modification of the decision.

DECISION

AeroSage, LLC, of Tampa, Florida, requests reconsideration of our decision in *AeroSage, LLC*, B-419113 *et al.*, Dec. 15, 2020 (unpublished decision), wherein we dismissed AeroSage's protests challenging various aspects of the terms of, and the award decision made under, request for proposals (RFP) No. SPE605-20-R-0228, issued by the Defense Logistics Agency (DLA). The requester argues that our decision contains numerous errors of fact and law that warrant reversal or modification of our prior decision dismissing its protests.

We deny the request for reconsideration.

BACKGROUND

The RFP, issued on April 30, 2020, sought to procure various fuel products for the Department of Defense and federal civilian agencies in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, and South Carolina. *AeroSage, LLC*, B-419113 *et al.*, *supra* at 1. The RFP included 578 line items and contemplated the award of fixed-price requirements contracts, with a period of performance from October 1, 2020 through September 30, 2025. *Id.*

The RFP contemplated that each line item would be evaluated and awarded independently, on a lowest-price, technically acceptable basis. *Id.* The solicitation

sought proposals for various types of fuel and fuel products, and required that an offeror provide a statement for each fuel product offered, indicating that the offeror would provide the specific product that meets the applicable specifications set forth in the solicitation. *Id.* at 1-2. Additionally, to be technically acceptable for marine gas oil (MGO), biodiesel and ethanol fuel (E85), an offeror was required to submit a certificate of analysis (COA), certificate of quality, or specification sheet demonstrating that the offeror could provide fuel meeting the applicable specification. *Id.* at 2.

AeroSage submitted an offer, proposing on 571 line items. *Id.* Although the agency found AeroSage's technical proposal unacceptable for all products, DLA did not eliminate AeroSage's proposal from further consideration. Instead, the agency included AeroSage's proposal in the competitive range, and held discussions with all offerors within the competitive range. *Id.* During discussions, AeroSage was informed that its technical proposal was unacceptable for two reasons. First, AeroSage failed to provide the required certificates with its E85, MGO, and biodiesel fuel offers. Second, AeroSage did not submit a letter indicating it would deliver a product conforming to the technical specifications listed in the solicitation for all products on which it proposed. *Id.*

The agency requested final proposal revisions by August 11. *Id.* at 3. On August 11, AeroSage submitted a response objecting to the requirement to submit certificates for its offer on E-85, MGO, and biodiesel fuels. As relevant to the protest, AeroSage did not submit any additional COAs for other fuel products at that time; AeroSage also did not provide a statement for each fuel product identifying the specification to which its offered product would conform. *Id.*

On August 12, the agency issued amendment No. 9, which incorporated two updated Federal Acquisition Regulation (FAR) provisions into the solicitation. *Id.* Offerors were instructed to acknowledge and return this amendment by August 14. *Id.* AeroSage acknowledged the amendment that same day, and provided additional COAs that had not previously been submitted. *Id.* AeroSage was found to be the lowest-priced offeror for 19 line items, but did not receive any awards; the agency found AeroSage's proposal to be technically unacceptable because the offer failed to provide the required information by the established deadline for revised proposals. *Id.*

AeroSage was notified of the award decision on September 1 and provided a debriefing on September 4. *Id.* at 4. AeroSage filed its initial protest to our Office on September 9, which was docketed as B-419113.1. Between September 10 and October 6, AeroSage made six additional filings, each identified as "supplemental protests" and self-labeled these filings as B-419113.2 through B-419113.7.¹ *AeroSage, LLC, B-419113 et al.*, Electronic Protest Docketing System (EPDS) Docket Sheet.

¹ Our decision dismissing AeroSage's protests mistakenly referenced decisions docketed as B-419113.1 through B-419113.6. *AeroSage, LLC, B-419113 et al.*, *supra* at 1. As noted in our decision, although the protester self-labelled its documents as supplemental protests, B-419113.6 and B-419113.7, those submissions did not actually

On December 15, our Office dismissed AeroSage's protests. Our decision dismissed the primary arguments raised in AeroSage's initial protests (docketed as B-419113.1 and B-419113.2), in which AeroSage challenged the agency's evaluation of its proposal, alleging that DLA had treated offerors disparately in the evaluation of proposals. Our decision found that "[n]othing in AeroSage's allegation establishes a cognizable basis of protest, nor does it include sufficient information to establish the likelihood that the agency in this case violated applicable procurement laws or regulations." *AeroSage, LLC, B-419113 et al., supra* at 4-6.

Additionally, our decision dismissed, as untimely, AeroSage's argument that the COA requirement was unnecessary and was being used by the agency to limit competition. *Id.* at 5. We also dismissed the arguments raised in AeroSage's supplemental protests as matters not for consideration by our Office, such as the adequacy of a debriefing raised in its supplemental protest docketed as B-419113.3; the agency's override of the stay on performance raised in its supplemental protest docketed as B-419113.4; and the agency's and the Small Business Administration's (SBA) processing of size protests raised in its protest docketed as B-419113.5. *Id.* at 7-8.

On December 22, AeroSage filed two requests for reconsideration of our prior decision dismissing its protests.²

DECISION

In its requests, AeroSage alleges that our decision contains numerous errors of fact and law, and presents information that the requester contends was not previously considered that warrant reversal or modification of our prior decision dismissing its protests.

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), (c). We will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contains a material error of law or facts. *The i4 Grp. Consulting, LLC--Recon.*, B-418842.2, Oct. 8, 2020, 2020 CPD ¶ 326 at 3; *AeroSage, LLC--Recon.*, B-417529.3, Oct. 4, 2019, 2019 CPD ¶ 351 at 2 n.2. The repetition of arguments made during our consideration of the original

raise any new supplemental protest grounds, and our Office did not docket them as supplemental protests within EPDS. *Id.* at 7 n.11, 8 n.12. Consequently, AeroSage's requests for reconsideration were docketed as B-419113.6 and B-419113.7. *AeroSage, LLC, B-419113 et al.*, EPDS Docket Sheet.

² AeroSage filed these two requests for reconsideration on the same day. Because the second filing (B-419113.7) incorporates the arguments made in the first filing (B-419113.6), all references and citations here are to the request for reconsideration docketed as B-419113.7.

protest or disagreement with our decision does not meet this standard. *Wyle Labs., Inc.--Recon.*, B-416528.3, Mar. 6, 2019, 2019 CPD ¶ 102 at 3; *SageCare, Inc.; AeroSage, LLC--Recon.*, B-414168.4 *et al.*, July 13, 2017, 2017 CPD ¶ 224 at 2; *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. Further, a party's assertion of new arguments or presentation of information that could have been, but was not, presented during the initial protest also fails to satisfy the standard for granting reconsideration. *Department of the Navy--Recon.*, B-405664.3, May 17, 2012, 2013 CPD ¶ 49 at 2; *Precise Mgmt., LLC--Recon.*, B-410912.2, June 30, 2015, 2015 CPD ¶ 193 at 4. As discussed below, we find that none of the arguments presented by the requester provides a basis to grant the request for reconsideration.

Here, AeroSage requests reconsideration of issues that were specifically considered in our previous decision or simply repeats many of its earlier arguments. For example, AeroSage argues that our decision contained errors of fact and law because: (1) the COA requirement for a commercial item procurement was unreasonable; and (2) the agency engaged in unequal treatment by allowing other offerors--but not AeroSage--to submit modifications to their proposal after the August 11 deadline for final proposal revisions. Req. at 3-5.

Our decision dismissing AeroSage's protests specifically addressed these arguments, finding them to be untimely challenges to the solicitation or failing to state a valid basis of protest. *AeroSage, LLC*, B-419113 *et al.*, *supra* at 5-6. Also by way of example, AeroSage asserts, once again, that the requirements are unduly restrictive of competition because they are bundled. *Compare* Req. at 3-4 *with AeroSage, LLC*, B-419113.2 Protest. Similarly, AeroSage argues that our decision contained an error of law by mischaracterizing the basis of its protest (B-419113.5) as requesting our Office to determine size qualifications, and repeats its contention that the agency's processing of size protests was improper. *Compare* Req. at 2 *with AeroSage, LLC*, B-419113.5 Protest at 1, 2, 5. AeroSage's complaint provides no basis to support its assertion that our previous decision contained an error of law.

AeroSage also contends that our decision contains numerous statements that are either false or mischaracterizations of its arguments.³ These assertions largely reflect AeroSage's disagreement with our conclusions. For example, AeroSage makes several arguments disputing our conclusion that AeroSage did not provide convincing proof of

³ Similarly, AeroSage contends that our decision also contained a factual error stating that it was not an interested party regarding four line items when it is not an interested party regarding three line items. Req. at 5-6. The relevant standard for granting reconsideration before our Office is whether our decision contains a material error of fact or law; that is, but for the error, our Office would have likely reached a different conclusion as to the merits of the protest. *The i4 Grp. Consulting, LLC--Recon.*, *supra* at 3. To the extent our decision mistakenly listed the number of line items for which AeroSage was not an interested party, such error was immaterial to our decision dismissing its protest for failing to state a valid basis. *AeroSage, LLC*, B-419113 *et al.*, *supra* at 6.

bad faith or bias by agency personnel towards AeroSage. Req. at 4-5. Also by way of example, AeroSage disagrees with our conclusion that there was no factual basis to find unreasonable the agency's evaluation of its technical proposal as unacceptable. *Id.* at 6.

As we stated in our decision dismissing AeroSage's protest, government officials are presumed to act in good faith, and a protester's contention that such officials are motivated by bias or bad faith must be supported by convincing proof. *AeroSage, LLC, B-419113 et al., supra* at 4 n.7. We fully considered the information that AeroSage characterized as indications of bad faith; our Office, however, did not find that AeroSage satisfied the requisite heavy burden of proof. *Id.* Similarly, our decision found that AeroSage did not substantively refute the agency's assertion that AeroSage failed to provide certain information required by the solicitation that rendered AeroSage's proposal technically unacceptable. *AeroSage, LLC, B-419113 et al., supra* at 5. Its request for reconsideration, again, does not lead us to conclude that the agency's evaluation was unreasonable. Req. at 6. AeroSage's arguments here are nothing more than its disagreement with our decision and do not provide a basis for our Office to reconsider the earlier decision.⁴

AeroSage's remaining allegations of factual and legal error also do not provide a basis to reconsider our decision dismissing its protests. For example, AeroSage expresses its dissatisfaction regarding the documents that were produced in the underlying protests. Req. at 2-3. 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. *AeroSage, LLC--Recon., B-418292.7,*

⁴ In expressing disagreement with our conclusions, AeroSage now asserts in its request for reconsideration that the agency should have referred certain offerors to the SBA for a responsibility determination. Req. at 6. In its protest docketed as B-419113.3, AeroSage provided a long list of its "protest arguments," which included "responsibility determination," without providing any specific information or arguments. See *AeroSage, LLC, B-419113.3 Supp. Protest* at 4.

Our Regulations do not permit a piecemeal presentation of evidence, information, or analysis, since a piecemeal presentation could disrupt the procurement process indefinitely; accordingly where a party raises, in its request for reconsideration, an argument that it could have raised, but did not, at the time of the protest, the argument does not provide a basis for reconsideration. *JEQ & Co., LLC--Recon., B-415338.8, May 9, 2019, 2019 CPD 175* at 4-5; *HH & K Builders, Inc.--Req. for Recon., B-238095.2, May 8, 1990, 90-1 CPD ¶ 458* at 2. AeroSage did not raise this argument in its earlier protests. Therefore, this newly raised argument provides no basis for reconsideration of the dismissal decision.

June 16, 2020, 2020 CPD ¶ 197 at 4. AeroSage's complaint that it was not provided documents that it requested 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.

Finally, AeroSage contends that new information--specifically a decision, issued by the Department of Veterans Affairs, denying an agency-level protest filed by AeroSage as academic--validates the merits of AeroSage's challenges to the agency's allegedly improper actions of procuring fuel from other sources despite the contracts at issue being requirements contracts. Req. at 6. We find, however, that this "new information" has no relevant bearing on the bases for our dismissal of AeroSage's protests and, therefore, does not warrant the reversal or modification of our decision. *AeroSage, LLC--Recon.*, B-417247.2, Apr. 5, 2019, 2019 CPD ¶ 137 at 5.

In sum, AeroSage's requests merely express disagreement with the bases for dismissing its earlier protests, repeats arguments made during our consideration of those protests, and does not present information that was not previously considered. AeroSage's requests do not satisfy our standard for reconsideration and do not warrant reversal or modification of our prior decision. *Wolverton Property Mgmt., LLC--Recon.*, B-415295.4, June 6, 2018, 2018 CPD ¶ 205 at 4.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel