



Decision

Matter of: ASG Solutions Corporation d/b/a American Systems Group--
Reconsideration

File: B-422558.2

Date: February 26, 2025

Ritobrata Banerjee, for the requester.
Kevin E. Bolin, Esq., Department of the Navy, for the agency.
Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Request for reconsideration based on change in requester's status as a potentially interested party is denied where the change occurred after issuance of our decision dismissing protest because requester was not an interested party at the time the protest was filed.

DECISION

ASG Solutions Corporation d/b/a American Systems Group (ASG), a small business of San Diego, California, requests reconsideration of our decision in *American Systems Group*, B-422558, June 13, 2024 (unpublished decision), in which we dismissed ASG's protest because the protester, as a suspended contractor, was not an interested party to maintain the protest.

We deny the request for reconsideration.

BACKGROUND

In its protest filed with our Office on May 3, 2024, ASG challenged the agency's issuance of a sole-source purchase order to Futron Inc., of Woodbridge, Virginia, for installation energy management support services. Protest at 1. Specifically, ASG argued the Navy misclassified the procurement "as a 'Commercial Service' instead of [using] the **Mandatory Navy Contracting Vehicle for Non-Commercial Services--**

Seaport NxG in accordance with (IAW) FAR [Federal Acquisition Regulation] 33.104” to compete the work as “it always has done” in the past.¹ *Id.* at 1, 3.

We dismissed the protest because we found that ASG was not an interested party to maintain the protest. *American Systems Group, supra* at 1. Our decision noted that 12 days after ASG filed the protest, “the protester and its owner and president each were suspended from federal government contracting for an indefinite period and subjected to proposed debarment.” *Id.* (citing Req. for Dismissal at 1, exh. 1). We explained that, under the Competition in Contracting Act and our Bid Protest Regulations, only an interested party may protest a federal procurement, and that a protester is not an interested party where it would not be in line for contract award were its protest to be sustained. *Id.* Our decision further explained that because “a proposed debarred contractor generally is not eligible for the award of a federal contract . . . such a protester would not be in line for contract award even if its protest were sustained.” *Id.* Although, ASG represented it had “appealed the termination for default that prompted the suspension and proposed debarment,” we found that “the suspension nevertheless remains in place pending the protester’s appeal.” *Id.* at 2. We concluded that “[t]he protester therefore remains suspended and ineligible for award,” and we dismissed the protest because ASG was “not an interested party to challenge the contract award” to Futron. *Id.*

DISCUSSION

In requesting reconsideration, ASG represents that it is no longer suspended or debarred as of November 19, 2024.² Req. for Recon. at 1. Thus, ASG maintains, the firm is an interested party that “can be awarded the contract in the event the protest was sustained.” *Id.* Based on this change in the firm’s status as a potentially interested party, ASG asks that we rescind our prior dismissal and reopen the protest to be decided on the merits. *Id.*

Under our 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). Information not previously considered does not mean, however,

¹ Seaport NxG stands for Seaport Next Generation and refers to the Navy’s multiple-award indefinite-delivery, indefinite-quantity contracts for professional support services. <https://www.navsea.navy.mil/Business-Partnerships/SeaPort-NxG/> (last visited Feb. 12, 2025).

² We note that ASG’s request is for “re-opening of the protest.” Req. for Recon. at 1 (emphasis removed). As our regulations do not specifically provide for such requests, we consider ASG’s request as asking our Office to reconsider our decision to dismiss the protest, pursuant to the provisions of section 21.14 of our regulations. See 4 C.F.R. § 21.14.

information that arises from events that took place after we issued our decision. *InSpace 21 LLC*, B-410852.4, Apr. 3, 2015, 2015 CPD ¶ 124 at 5.

The facts here are uncontroverted. When we issued our decision on June 13, 2024, ASG was listed on the System for Award Management (SAM.gov) as an excluded party that was “ineligible” for any new orders or awards. Req. for Dismissal exh. 1, SAM.gov Exclusion Listing at 1-2. As a result--and in accordance with applicable procurement laws and regulations--we concluded ASG’s ineligibility for any new contract awards meant the firm was not an interested party to maintain its protest. In requesting reconsideration, ASG does not dispute that it was listed on SAM.gov as an excluded party at the time the decision was issued. Rather, ASG represents that as of November 19, 2024, the firm is no longer an excluded party. Req. for Recon. at 1. The firm, therefore, asks us to rescind our decision and to reopen ASG’s protest based on this new information. *Id.* We decline to do so.

The subsequent change to ASG’s excluded party status does not provide a basis to reconsider our prior decision. The change in ASG’s excluded party status occurred five months after we issued our decision. As such, there are no grounds for our Office to conclude that we erred in finding ASG was not an interested party based on the firm’s excluded party status at the time we issued our decision on June 13. See e.g., *InSpace 21 LLC--Recon.*, *supra* at 5 (denying request for reconsideration where change in firm’s potential interested party status one month after dismissal decision did not establish that we erred in finding firm was not an interested party at the time of the decision); *Environmental Protection Agency; CGI Fed., Inc.--Recons.*, B-299504.3, B-299504.4, July 23, 2008, 2008 CPD ¶ 149 at 5 (declining to vacate decision sustaining protest where protester was eligible for award, and an interested party, at the time of the decision, but was suspended and became an ineligible excluded party after the decision because changes in excluded party status do not apply retroactively).

Moreover, the provision in our regulations permitting a party to request reconsideration of a decision issued by our Office does not contemplate rescinding or vacating a prior decision based on changes in fact that occur after issuance of the decision. See 4 C.F.R. § 21.14; *Environmental Protection Agency; CGI Fed., Inc.--Recons.*, *supra* at 4 (citing *U.S. Bancorp Mortgage Co. v. Bonner Mall P’ship*, 513 U.S. 18, 29, 115 S. Ct. 386, 130 L. Ed. 2nd 233 (1994), in which the Supreme Court explained its view that settlement of a dispute by the parties after the issuance of a decision does not justify vacating an issued decision).

The request for reconsideration is denied.

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General Counsel