



## Decision

**Matter of:** LS3 Inc.

**File:** B-415635.2

**Date:** November 2, 2018

---

Steven A. Roberts, for the protester.  
Tyler J. Freiburger, Esq., Heather B. Mims, Esq., Babara S. Kinosky, Esq., and David R. Warner, Esq., Centre Law and Consulting, LLC, for BruckEdwards, Inc., an intervenor.  
Dennis A. Adelson, Esq., Vijaya S. Surampudi, Esq., Anna O. Walker, Esq., and Jose Otero, Esq., Department of Labor, for the agency.  
Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest alleging that an agency has unreasonably delayed completing its corrective action in response to a previous protest is dismissed where the protester has failed to allege any improper agency action or violations of procurement law or regulation.

---

### DECISION

LS3 Inc., of Odenton, Maryland, protests the implementation of corrective action by the Department of Labor (DOL), proposed in response to a protest of the agency's issuance of a task order under Federal Acquisition Regulation (FAR) subpart 8.4 to BruckEdwards, Inc., of Herndon, Virginia, under request for quotations (RFQ) No. 1605DC-17-Q-00074, for information technology (IT) security services. The protester contends that the agency unreasonably delayed implementing corrective action.

We dismiss the protest.

### BACKGROUND

The solicitation was issued on August 28, 2017, to vendors holding federal supply schedule (FSS) contracts under schedule 70 special item number 132-62 or schedule 84, for support services for the DOL's security center. RFQ Summary Page; RFQ at 6, 62. The solicitation anticipated the award of a single fixed-price task order with one 12-month base period and four 12-month option periods. RFQ at 1. Award

was to be made on a best-value tradeoff basis considering the following factors: technical approach, past performance, and price. RFQ at 68. As relevant here, the solicitation warned vendors under the price factor that vendors would be responsible for understanding task elements contained in the performance work statement (PWS). Id. at 66.

The agency received quotations from LS3 and BruckEdwards.<sup>1</sup> Agency Report (AR), Contracting Officer's Statement of Facts (COS) at 1. As relevant here, the agency determined that LS3's quotation was unacceptable because it was unclear whether LS3's fixed price included all services required under the PWS. On September 28, the agency issued the task order to BruckEdwards. Id.

On October 30, 2017, LS3 timely filed its initial protest against the agency's issuance of a task order to BruckEdwards, which our Office docketed as B-415635, challenging the agency's evaluation of its quotation. In response, the agency advised our Office and the protester that it would reexamine the evaluation and make a new award decision. AR, Tab 4, Notice of Corrective Action. Based on that corrective action, our Office dismissed LS3's initial protest as academic on November 28, 2017. AR, Tab 5, LS3, B-415635, Nov. 28, 2017 (unpublished decision).

In January 2018, as part of its corrective action, the agency sought and received clarifications from LS3. See AR, Tab 6, DOL Request to LS3 for Clarification of Quote; id., Tab 7, LS3 Clarification Response.

Between February and April of 2018, LS3 made several inquiries regarding the status of the agency's corrective action. AR, Tab 8, Various Email Correspondences at 1-4. In response, the agency provided updates to its progress. Id. On June 11, LS3 wrote to agency counsel requesting that the agency expedite the corrective action. AR, Tab 9, LS3 Letter to DOL.

On July 30, LS3 filed this protest, which was docketed as B-415635.2. In essence, LS3's protest repeats arguments raised in its October 30, 2017 (B-415635) protest, challenging the agency's original evaluation of its quotation prior to the agency's corrective action. Protest at 1-9. LS3 also argues that the agency has unduly delayed implementing corrective action, based on the length of time since dismissal of its earlier protest. Id. at 1, 5, 9.

On August 27, two days prior to the due date for the agency report addressing the most recent protest, the agency advised LS3 that it had again selected BruckEdwards' for

---

<sup>1</sup> Because no protective order was issued for this protest, our discussion of some aspects of the agency's evaluation is necessarily general to avoid reference to proprietary or source-selection information. Nonetheless, our conclusions are based on our review of the entire record.

award.<sup>2</sup> AR, Tab 10, Notice of Award at 2. Id. That same day, the agency also informed our Office that its corrective action was completed, and requested that our Office dismiss LS3's protest as academic.<sup>3</sup> Agency's Notice of Completion of Corrective Action and Request to Dismiss.

## DISCUSSION

LS3's July 30 protest raises two primary arguments. A substantial portion of the protest repeats arguments raised in LS3's October 30, 2017 (B-415635), protest relating to the original evaluation of LS3's quotation. See Protest at 1-9. The remaining argument alleges that the agency unreasonably delayed implementing its corrective action. Protest at 1, 5, 9. For the reasons discussed below, we dismiss LS3's protest.<sup>4</sup>

With regard to LS3's attempt to revive arguments raised in its October 30, 2017 protest, as the agency correctly points out, we do not reinstate protests. See AR, Memorandum of Law (MOL) at 11-12; AdaRose Inc.--Protest and Costs, B-299091.2, Jan. 14, 2008, 2008 CPD ¶ 18 at 3. A protest that was once dismissed as academic is not "revived" by subsequent agency action. Instead, the subsequent action may give rise to a new basis for protest, even if some of the issues raised by the subsequent action are the same as the issues raised in the earlier protest. See Pemco Aeroplex, Inc.--Recon. and Costs, B-275587.5, B-275587.6, Oct. 14, 1997, 97-2 CPD ¶ 102 at 4-5. As such, LS3's challenges to its initial evaluation are dismissed.

With regard to LS3's argument that the agency has unduly delayed implementing corrective action, we agree with the agency that the protest as filed with our Office fails

---

<sup>2</sup> The agency's notice also provided LS3 with the results of the agency's reevaluation of LS3's quotation under all factors. See AR, Tab 10, Notice of Award

<sup>3</sup> Because our Office did not dismiss the protest, the agency filed its report in response to LS3's protest on August 29. The protester filed its comments to the agency report on September 6.

<sup>4</sup> In filing and pursuing its protest, LS3 has made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester's assertions and find no basis to sustain its protest. For example, LS3 has made several requests for the reimbursement of various costs in connection with both its earlier protest and the instant protest. See, e.g., Protest at 2, 9; Protester's August 29 Request for Costs. We have no basis to recommend reimbursement of costs here. See Pemco Aeroplex, Inc.--Recon. & Costs, supra at 5; 4 C.F.R. § 21.8(e). As stated above, the agency initiated corrective action in response to LS3's earlier protest before submitting an agency report. Therefore, LS3's request for a recommendation for reimbursement of its costs in connection with its initial protest does not meet our standard for recommending reimbursement of protest costs. With regard to the instant protest, 4 C.F.R. § 21.8(e) has no applicability because the agency did not take corrective action in response to this protest.

to allege a cognizable basis of protest.<sup>5</sup> See AR, MOL at 9-11. Although LS3 objected to the length of time that it has taken DOL to complete its proposed corrective action, LS3 has not identified any violation of procurement law or regulation by the agency. See Computer Cite, B-412162.3, July 15, 2016, 2016 CPD ¶ 186 at 4. In this respect, the protester has not alleged that the agency was required to have completed its corrective action by an earlier date, asserted that any alleged delay is contrary to law or regulation, or alleged any bad faith by agency personnel. Computer Cite, supra.

The protest is dismissed.<sup>6</sup>

Thomas H. Armstrong  
General Counsel

---

<sup>5</sup> While we dismiss this argument as legally insufficient, we note that the agency's completion of the corrective action rendered those arguments academic. We do not consider academic protests. General Dynamics Mission Sys., Inc., B-414587, B-414587.2, May 11, 2017, 2017 CPD ¶ 142 at 1; Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132.

<sup>6</sup> Starting on May 1, 2018, GAO implemented its electronic protest docketing system (EPDS). CWIS, LLC, B-416544, July 12, 2018, 2018 CPD ¶ 236 at 1-2. Under regulations effective that day, all new protests are required to be filed using the EPDS system, which requires payment of a filing fee, as provided in authorizing legislation. See generally 83 Fed. Reg. 13817 (Apr. 2, 2018). On August 29, LS3 submitted a response to the agency's August 27 request for dismissal in which LS3 raised wholly new allegations challenging the agency's now-completed corrective action: specifically, the new evaluation of quotations and award decision. Our Office advised LS3 on August 31 that new protest allegations challenging the agency's corrective action were distinct from the issues raised in its July 30 protest (where LS3 challenged the earlier selection decision and the amount of time the agency used to complete its corrective action). GAO August 31 Notice. To the extent the protester desired our Office consider the new allegations filed on August 29 challenging the results of the reevaluation, LS3 was required to file a new protest in accordance with our regulations. However, the protester did not file a new protest as advised. LS3 also requested in its comments to the agency report that our Office review the agency's recently completed corrective action. Protester's Comments at 1. In the absence of a properly-filed protest, we have no basis to consider or address these allegations.