



Decision

Matter of: JBW FEDITC II JV, LLC--Costs

File: B-424191.3

Date: May 15, 2026

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

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Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation of reimbursement of the costs of filing and pursuing prior protests is denied where the agency's corrective action was not unduly delayed.

DECISION

JBW FEDITC II JV, LLC, a mentor-protégé joint venture of San Antonio, Texas, requests our Office recommend that JBW be reimbursed for the costs of filing and pursuing its protests challenging the Air Force's alleged removal of a cybersecurity requirement from the U.S. Small Business Administration's small business development program, commonly referred to as the 8(a) program.¹

We deny the request.

BACKGROUND

The instant request stems from two underlying protests dismissed by our Office as academic after the agency took corrective action. See *JBW FEDITC II JV, LLC*, B-424191, B-414191.2, Feb. 20, 2026 (unpublished decision). In the protests, JBW alleged that the Air Force improperly removed some of the "Information Security Support Services" (IS3) requirement--currently performed under an 8(a) contract--from

¹ Section 8(a) of the Small Business Act authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. See 15 U.S.C. § 637(a); 13 C.F.R. § 124.501(a).

the 8(a) program.² *Id.* at 1.³ Specifically, JBW represented that on December 22, 2025, the Air Force informed the incumbent contractor the agency “intended to allow ‘all IS3 Task Orders to expire and [did] not intend to pursue an IS3 follow-on effort as such term is described in SBA’s 8(a) Program regulations.’” *Id.* In its initial and supplemental protests, JBW asserted that contrary to the agency’s statement there would be no IS3 follow-on requirement, the Air Force had moved some of the IS3 work to either Booz Allen Hamilton (BAH) or Leidos, or both, through modifications to existing task orders being performed by those firms under indefinite-delivery, indefinite-quantity contract vehicles outside the 8(a) program.⁴ *Id.*

The original due date for the agency’s report responding to the protests was February 4, 2026. *Acknowledgment of Protest and Notice of Protective Order* at 1, Electronic Protest Docketing System (EPDS or Dkt.) No. 4.⁵ On January 28, prior to the due date for the agency report, the Air Force filed a request for dismissal. Dkt. No. 13. In the dismissal request, the Air Force represented “there is no follow-on contract for IS3 work,” and maintained that the allegations in JBW’s protests were “based on rumors and hearsay.” Req. for Dismissal at 1. Additionally, the agency stated “the Air Force has confirmed that there is no IS3 work being performed on the Booz Allen Hamilton and Leidos contracts identified to support the protest allegations.” *Id.* at 2. Further, the agency claimed “as the Air Force has not awarded any IS3 follow-on work, there is no Agency record related to any such requirement,” and, based on this claim, asked our Office to consider the dismissal request and its attachments to be the agency report. *Id.* at 5. On January 28, based on the representations made in the dismissal request and its attachments, we granted the Air Force’s request to treat the dismissal request as the agency report, and required JBW to submit comments within 10 days. Dkt. Nos. 13-14.

On January 30, before the submission of comments, JBW objected to the scope of document production in the dismissal request and asked for additional document production. Dkt. No. 15. In response, our Office required the Air Force to produce additional documents in support of its dismissal request. *Id.* After reviewing the additional documents, our Office determined that “continuing to treat the dismissal request at Dkt. No. 13 as the AR [agency report] is not appropriate,” and we scheduled a conference call with the parties “to discuss a path forward for protest development.” Dkt. No. 22. During the call on February 9, our Office informed the parties that, at this

² FEDITC--the mentor member of the JBW FEDITC joint venture--is also a member ASIRTek Federal Services, LLC, the incumbent contractor performing the current IS3 contract for the Air Force under the 8(a) program. Protest (B-424191) at 2-3.

³ Our citations use the Adobe PDF pagination of documents in the record.

⁴ BAH and Leidos are not small business concerns. JBW’s initial protest (B-424191) raised allegations related to BAH, while JBW’s supplemental protest (B-424191.2) asserted challenges related to Leidos.

⁵ Our citations to EPDS are to the docket in the underlying protests.

time, “GAO declines to dismiss the protest as requested,” and we established a “new due date for the agency’s report” of February 17.⁶ Dkt. No. 23.

On February 13, prior to the reinstated due date for the agency report, the Air Force notified our Office of its intent to take corrective action and requested that we dismiss the protests as academic. Dkt. No. 26; Notice of Corrective Action at 2. JBW objected to dismissal of its protests as academic because it viewed the agency’s proposed corrective action as (1) addressing only the protest allegations related to IS3 work being improperly performed by Leidos, and (2) failing to address the allegations related to IS3 work being improperly performed by BAH. Objection to Corrective Action at 1. We agreed that the Air Force’s proposed corrective action was insufficient to render academic JBW’s protest allegations related to BAH, and required the agency to “respond to protester’s corrective action (CA) objection.” Dkt. No. 27.

On February 17, in lieu of submitting an agency report, the Air Force filed an amended notice of corrective action. Dkt. No. 29. In the amended notice, the agency: (1) stated its intent to terminate modifications to a Leidos contract that were allegedly part of the IS3 requirement; (2) represented that while there had been discussions about modifying a BAH contract to add some work that was allegedly part of the IS3 requirement, those modifications never occurred; (3) committed to “not place any IS3 positions onto any [BAH] contracts, or any other contract”; and (4) committed to “make a determination regarding whether the work under the expired IS3 contract is still required,” and if it was still required to “either procure the work through the 8(a) program or request that the requirement be released from the 8(a) program.” Revised Notice of Corrective Action at 1-2. Based on the proposed corrective action, as amended, the Air Force requested that we dismiss the protests as academic. *Id.* at 2.

JBW again objected to dismissal of its protests, arguing that the amended corrective action still was insufficient to render the protests academic. Objection to Revised Corrective Action at 1. We found dismissal appropriate, however, in light of the Air Force’s commitment to cease work allegedly being performed in contravention of the regulations governing the 8(a) program and to undertake the necessary steps to comply with 8(a) program regulations *vis-à-vis* any continuation of the IS3 requirement. *JBW FEDITC II JV, LLC, supra* at 3. In dismissing the protests as academic, our decision noted that JBW’s concerns with the proposed corrective action “merely anticipate[d] improper future agency action,” and that such concern did “not provide a basis for our Office to retain a protest.” *Id.* In this regard, our decision noted that we “consider[ed] it implicit that the agency will undertake a good faith effort to implement the corrective action.” *Id.*

⁶ After our call with the parties, and still on the same day (February 9), JBW submitted additional objections in response to the Air Force’s document production letter--commonly referred to as a 5-day letter--and additional pre-agency report document production submitted by the Air Force on February 5. Dkt. Nos. 20, 25.

DISCUSSION

JBW now asks that our Office recommend it be reimbursed the costs of filing and pursuing its protests. The requester maintains that its protests “caused IS3 positions to be pulled back from one large business, Leidos, and inhibited further work being moved out of the IS3 program to another large business, BAH,” indicating, in JBW’s opinion, that its “protest was clearly meritorious.” Req. for Costs at 3. Despite JBW’s purportedly clearly meritorious protests, the requester contends “the Agency did not take prompt corrective action, and chose instead to try to use procedural maneuvering to overcome the protest, and then to obfuscate the record when those efforts failed.” *Id.* The requester acknowledges that “GAO usually assesses whether corrective action is prompt by reference to the deadline for the AR,” but argues that by asking our Office to treat its dismissal request as the agency report the Air Force “continued to fight the protest long after the original deadline for the AR had passed.” *Id.* at 4. As a result, JBW asserts it was required “to expend unnecessary time and resources . . . to file a supplemental protest, review an agency record and file multiple document objections as well as objections to proposed corrective action before the Agency took sufficient corrective action.” *Id.* The requester posits that “[u]nder these circumstances, a recommendation for an award of costs is proper.” *Id.*

The agency argues “GAO should deny JBW’s cost request” as the requester has failed “to show that its protest allegations were ‘clearly meritorious’.” Resp. to Req. for Costs at 1. We need not reach the parties’ dueling contentions regarding the merit, or lack thereof, with respect to JBW’s underlying protests, because, as explained below, we find the agency did not unduly delay taking corrective action in response to those protests.

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs. 4 C.F.R. § 21.8(e). We will recommend reimbursement of costs if, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. *RBVetCo, LLC d/b/a Rocky Bleier Constr. Grp.-Costs*, B-420698.2, July 13, 2022, at 2. Where an agency takes corrective action by the due date for submission of its report, we generally regard the action as prompt, and will not recommend reimbursement of protest costs. *Id.*

Here, as noted above, the original due date for the agency report was February 4, prior to which the Air Force submitted a request for dismissal that it asked our Office to treat as its agency report. Initially, we granted the Air Force’s request to treat the dismissal request as the agency report. Following further development, however, our Office found it necessary to rescind our treatment of the dismissal request as the agency report, and we reinstated the requirement for the submission of the agency report, with a due date of February 17. Prior to this reinstated agency report due date, on February 13, the Air Force notified our Office of its intent to take corrective action--which the Air Force later

amended in response to JBW's objection--ultimately resulting in our dismissal of the protests as academic on February 20.

As an initial matter, we disagree with JBW's characterization that the timeline here reflects the Air Force "continued to fight the protest *long after* the original deadline for the AR had passed." Req. for Costs at 4 (emphasis added). Instead, the sequence of events shows nine days passed between the original February 4 due date for the agency report and the Air Force's submission of its initial corrective action notice on February 13.⁷ More importantly, our decisions have explained that when, as here, the due date for an agency report has been extended, corrective action may still be considered prompt if it is taken prior to the extended due date because, in such circumstances, a protester has not been put to the time and expense of filing comments responding to an agency report. *Logic Gate, LLC--Costs*, B-421342.5, Jan. 31, 2024, at 3.

We turn now to the substance of JBW's contention that the agency failed to take prompt corrective action prior to the due date for the agency report. The unique circumstances here present a somewhat paradoxical fact pattern from which it appears possible to find, at first glance, that the Air Force both did and did not submit an agency report responding to JBW's protests. Looking at the totality of the circumstances, however, we find only one conclusion appropriate--that the Air Force did not submit an agency report responding to JBW's protests and instead took corrective action prior to the February 17 due date for submission of such a report.

As detailed above, the parties engaged in approximately 3-weeks⁸ of back-and-forth submissions related to the Air Force's dismissal request, disputes over the scope of document production for both the dismissal request and the forthcoming agency report, and the sufficiency of proposed corrective action to render the protests academic. These types of filings are routinely engaged in by parties in our bid protest forum prior to submission of an agency report.

For example, our decisions have explained that, even when, as here, we decline to grant an agency's pre-report dismissal request, the agency's submission of a colorable unsuccessful dismissal request does not constitute undue delay, nor does it provide a

⁷ We note that in the midst of the parties' disputes over the appropriate scope of document production, the Air Force experienced a brief lapse in appropriations that caused our Office to have to suspend and later re-establish some filing deadlines related to the parties' document disputes--resulting in a 2-day extension, without which it is likely only seven, rather than nine, days would have passed between the original due date for the agency report and the Air Force's submission of its initial corrective action notice. See Dkt. Nos. 15, 17, 19.

⁸ From the Air Force's submission of its dismissal request on January 28 to JBW's final filing, on February 18, objecting to dismissal of its protests as academic based on the agency's amended proposed corrective action. See Dkt. Nos. 13 and 30, respectively.

basis for our Office to find a protester entitled to protest costs when the agency ultimately decides to take corrective action before its report is filed. *RBVetCo, LLC d/b/a Rocky Bleier Constr. Grp.--Costs, supra* at 2. We have expounded further that an agency's filing of a dismissal request does not represent a lack of diligence when the agency later takes corrective action before the agency report deadline because an agency's pursuit of a reasonable procedural litigation strategy does not constitute undue delay in taking corrective action. *Logic Gate, LLC--Costs, supra* at 3

Additionally, our decisions have declined to treat the production of relevant documents before the due date for the agency report as a basis to consider an agency's corrective action as unduly delayed, notwithstanding that such document production may cause a protester to expend time and expense in document review. *Livanta, LLC--Costs, B-404215.2, Apr. 5, 2011, at 3*. Rather, we have explained that early document production can facilitate the efficient resolution of protests, and have even described early document production as "highly useful" to the protest process. *Id.; Logic Gate, LLC--Costs, supra* at 4. A fact borne out by the events here, which reflect that our Office's review of the documents produced by the Air Force in support of its dismissal request, and our communication with the parties about those documents, led to resolution of the protests *via* corrective action prior to submission of an agency report, and prior to JBW's expenditure of time and resources to prepare and file comments.⁹

Here, while we do not question that, as a diligent protester, JBW was required to expend effort in reviewing the dismissal request and document production that was submitted before the agency report, the requester has not demonstrated a basis for our Office to recommend reimbursement of the firm's costs of filing and pursuing its protests. Rather, we find the agency's corrective action--initiated prior to the reinstated due date for the agency report--was prompt and payment of protest costs is not warranted. See *Livanta, LLC--Costs, supra* at 3; *Logic Gate, LLC--Costs, supra* at 4.

The request is denied.

Edda Emmanuelli Perez
General Counsel

⁹ As noted above, on February 9, our Office held a conference call with the parties to discuss resolution of the dismissal request and further development of the protest through reestablishment of the agency report requirement. During the call, the assigned GAO attorney expressed her preliminary views of the adequacy of the early document production submitted by the agency in support of its dismissal request.