



Comptroller General  
of the United States

452135

Washington, D.C. 20548

## Decision

**Matter of:** Technology Management & Analysis Corporation

**File:** B-256313.3; B-256313.5

**Date:** May 9, 1994

Jacob B. Pompan, Esq., and David B. Stinson, Esq., Pompan, Ruffner & Werfel, for the protester.  
Robert E. Gregg, Esq., Hazel & Thomas, for MKI Systems, Inc., an interested party.  
William A. Longwell, Esq., U.S. Marine Corps, for the agency.  
Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protester did not diligently pursue relevant information that may reveal grounds of protest where protester, after lengthy period of inaction following notice of award, merely intervened as an interested party in another firm's protest and then filed its own protest following receipt of agency report submitted in response to the other firm's protest. Timeliness requirements cannot be governed by protester's purely discretionary decision of when and whether to intervene in another party's protest.

### DECISION

Technology Management & Analysis Corporation (TMA) protests the award of a cost-plus-fixed-fee contract to MKI Systems, Inc. under request for proposals (RFP) No. M67854-93-R-2098, issued by the U.S. Marine Corps for engineering and technical support services. In its initial protest, and in its subsequent supplemental protest, TMA essentially argues that the agency miscalculated technical and cost proposals; that the agency should have conducted discussions; and that the agency failed to properly find that TMA's proposal, which allegedly offered a lower evaluated cost, was superior or at least equal to MKI's proposal, which would have entitled the firm to the award.

We dismiss the protests as untimely filed.

On January 21, 1994, the agency awarded the contract, based on initial proposals, to MKI; the agency then apparently promptly notified (by facsimile) unsuccessful offerors of the award.<sup>1</sup> On January 27, Radian, Inc., another offeror under the RFP, filed a protest with our Office against the award to MKI. On February 3, both Radian and TMA were provided with debriefings. During its debriefing, TMA states that the agency, among other things, advised the firm that it had received a marginal score for project leaders under the personnel factor and that the agency had raised TMA's evaluated costs under the agency's cost realism analysis by approximately \$100,000; TMA states that MKI's proposal was not discussed.<sup>2</sup> TMA also states that the agency advised the firm that the overall technical evaluation of its proposal was favorable. TMA has submitted an affidavit from the president of TMA who states that he and the other TMA participants at the debriefing "agreed that the information provided by the Marine Corps did not

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<sup>1</sup>On January 14, the agency had previously notified unsuccessful offerors of its intent to award the contract to MKI to permit small business size challenges of the successful offeror.

<sup>2</sup>According to the protester, during the debriefing, it was informed that under the agency's cost realism analysis, TMA's G&A rate on subcontractors was raised, pursuant to an audit by the Defense Contract Audit Agency (DCAA), by approximately \$100,000. TMA states that it orally requested at the debriefing to be furnished information concerning the cost adjustment, specifically a copy of the DCAA audit report, which the agency never furnished the firm despite one additional telephone call by the protester. According to the agency, TMA's representatives were told during the debriefing that their technical proposal was rated essentially equal to that of MKI in all technical areas except personnel experience, an area in which the personnel proposed by MKI were determined by the agency to be superior. The agency also states that TMA was told that "its evaluated cost to the Government was very close to that of MKI," but that MKI "offered the 'best value' to the government because of the additional technical merit" (superior experience of proposed personnel). TMA denies that the agency informed the firm of MKI's evaluated costs or the scoring of MKI's technical proposal, including any mention of the alleged superiority of MKI's proposed personnel. Finally, the agency also states that TMA never requested any information during or after the debriefing concerning its proposal or concerning any matter related to the source selection decision.

present a sufficient basis upon which to file a protest." Since they believed that TMA's proposal had received a high rating, and while they disagreed with the marginal score for the project leaders, the TMA representatives believed that even if the marginal score for the project leaders were raised, the outcome (award to MKI) would not have been different. TMA therefore essentially did nothing after the debriefing.

In the meantime, in response to Radian's protest of January 27, our Office requested an agency report from the Marine Corps which was due on March 7. On February 3, we issued a protective order to Radian's counsel. On February 22, counsel for Radian was admitted under the protective order. On February 28, TMA, through counsel, for the first time requested permission to intervene as an "interested party" to Radian's protest. On March 3, TMA's counsel completed its application for admission to the protective order; since we received no objection to the admission of TMA's counsel, we admitted TMA's counsel to the protective order on March 7.

On March 14, Radian and TMA both received the agency report, which was dated March 7. After reviewing the report, TMA, on March 28, filed its initial protest based upon information allegedly contained in the agency report. Concerning timeliness, TMA stated as follows:

"This Protest is based upon information contained in the 7 March 1994 Agency Report . . . filed in the Protest of Radian, Inc. . . . TMA, an interested party in that Protest, received the Agency Report on 14 March 1994. Accordingly, TMA's Protest of issues arising from the Agency Report is timely, having been filed not later than 10 days after receipt of the Agency Report by TMA. 4 C.F.R. § 21.2(a)(2)."

After a request for additional documents by Radian's counsel, TMA, on March 28, received certain documents which formed the basis for its subsequent supplemental protest, filed on April 6. Concerning timeliness, counsel for TMA stated in the supplemental protest as follows:

"This supplemental protest issue is timely filed in that the basis for the protest was made known to TMA in documents provided by the Agency to TMA by letter dated 24 March 1994. That letter, with documents enclosed, was received by TMA on 28 March 1994. Accordingly, the protest issue has been raised within the 10 working day period specified in the GAO Bid Protest Regulations. 4 C.F.R. § 21.2(a)(2)."

The agency has filed a motion to dismiss TMA's protests as having been untimely filed; we have received briefs on the issue from the parties.

Protesters are required to diligently pursue information that may reveal grounds of protest; the requirement of diligent pursuit of relevant information imposes a duty upon protesters to pursue that information in a reasonably expedient method considering the circumstances. See Adrian Supply Co.--Recon., B-242819.4; B-242819.5, Oct. 9, 1991, 91-2 CPD ¶ 321; Delaware Eastwind, Inc., B-228533, Nov. 18, 1987, 87-2 CPD ¶ 494.

TMA argues that the information conveyed to TMA at the debriefing provided "no hint" as to its principal basis of protest (that the agency miscalculated MKI's proposal with respect to the use of certain consultants). TMA also argues that the debriefing provided insufficient information since the negative information conveyed at the debriefing concerning its allegedly deficient project leaders (and apparently the cost realism adjustment) did not lead TMA to believe that a successful challenge of the award could be made. In short, TMA argues that by subsequently requesting to participate as an interested party in Radian's protest, "TMA protected its interests and 'diligently' pursued information about MKI which now forms the basis for its protest." TMA concludes that it first learned the bases of its protests upon receipt of the agency report (and subsequent documents) in Radian's protest and should not have to "assume something untoward [had] occurred" with the agency's evaluation prior to that time and file a protest with our Office based on such an assumption."

For the reasons that follow, we conclude that the protester failed to diligently and expeditiously pursue relevant information that may have revealed grounds of protest. From the time of award to the time that TMA filed its first protest, a period of approximately 9 weeks had elapsed. The protester claims that it had no basis to protest as a result of the notice of award or as a result of the debriefing on January 27, 1994; if this is so, the protester also had no informational basis to intervene on February 28.<sup>3</sup> Without any explanation from the protester, we conclude that the timing of its intervention in Radian's protest was a purely

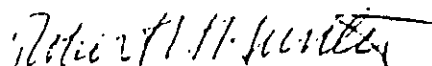
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<sup>3</sup>Where, after notice of award, a lengthy period of inaction precedes the filing of a protest, our Office looks to see if an "intervening event" subsequently occurred that timely triggered the later-filed protest. See generally Waukesha Engine Div. of Dresser Indus., Inc., B-215265, June 24, 1985, 85-1 CPD ¶ 711. The record here shows no such intervening event.

discretionary act intended solely to uncover possible bases of protest since, as stated above, there simply was no intervening event after the notice of award and the debriefing which would have required the protester to assert its rights in our forum.<sup>4</sup>

We cannot permit the timing of the protest process to be governed by the protester's own discretionary act of intervening or not intervening in another party's protest at a time of its own choosing. For example, here, Radian subsequently filed two additional supplemental protests, the last of which is due for a decision by our Office months after our original decision was due for Radian's first protest. If TMA, as a result of its own purely discretionary act, first intervened in Radian's last supplemental protest, received the third agency report, and then filed its initial protest, there would be no reasonable limit on the length of time within which protests must be filed after notice of award. In short, we think that permitting TMA to "piggyback" on the protest of another party would severely compromise the ability of our Office to expeditiously and fairly resolve protest controversies without unduly delaying or disrupting the competitive procurement process.

Accordingly, we dismiss the protests.<sup>5</sup>

  
 Robert P. Murphy  
 Acting General Counsel

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<sup>4</sup>It is evident that the protester's sole interest in intervening in Radian's protest was to uncover possible bases for protest for itself. This is because the protester had no economic interest in supporting the agency's defense of its award to MKI; the protester also was not an interested party to assert bases of protest on behalf of another offeror, Radian, a firm which could potentially receive the award if the protest were sustained. See 4 C.F.R. § 21.0(a) (1993).

<sup>5</sup>TMA also argues that if its protests are found to have been untimely filed, the arguments raised in these documents should be considered by our Office in our consideration of Radian's protest. As stated above, TMA, because it failed to timely protest, is not an interested party to argue on behalf of Radian or in support of the agency's award to MKI; accordingly, its pleadings will be disregarded during our consideration of Radian's protest.