



United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** United International Investigative Services, Inc.

**File:** B-286327

**Date:** October 25, 2000

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Alan M. Grayson, Esq., Ira E. Hoffman, Esq., and Deniz H. Hardy, Esq., Grayson & Kubli, for the protester.  
C. Joseph Carroll, Esq., United States Marshals Service, for the agency.  
Glenn G. Wolcott, Esq. and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest based on information obtained during post-award debriefing is not timely filed where protester who was excluded from competitive range requested that the debriefing be delayed until after award.

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### DECISION

United International Investigative Services, Inc. (UIIS) protests the bases for the United States Marshals Service's exclusion of UIIS's proposal from the competitive range under request for proposals (RFP) No. MS-00-R-0005 to provide court security services.

We dismiss the protest as untimely.

### BACKGROUND

On April 5, 2000, the agency issued RFP No. MS-00-R-0005 seeking proposals to provide court security services in the 7<sup>th</sup> and 9<sup>th</sup> judicial circuits.<sup>1</sup> On May 10, UIIS submitted its proposal responding to this solicitation. Thereafter, the agency evaluated UIIS's proposal as having various deficiencies with regard to, among other things, contract management and past performance. On June 8, the agency notified

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<sup>1</sup> UIIS is the incumbent contractor for court security services in the 9<sup>th</sup> judicial circuit.

UIIS that its proposal had not been included in the competitive range. UIIS responded by letter dated June 9, stating:

In accordance with [Federal Acquisition Regulation] FAR 15.505, United Investigative Services Inc. requests a debriefing in response to the Government's determination of exclusion of UIIS from the competitive range . . . . As provided in FAR 15.505(a)(2), UIIS requests that this debriefing be delayed until after award.

Letter from UIIS to Contracting Officer (June 9, 2000).

Consistent with UIIS's request, the agency did not schedule a pre-award debriefing. On September 13, the agency awarded contracts for court security services in both judicial circuits to another offeror. Thereafter, the agency provided UIIS with a written debriefing, received by UIIS on September 19, in which the agency identified the various proposal deficiencies which had led to exclusion of UIIS's proposal from the competitive range. On September 22, UIIS filed this protest challenging the agency's evaluation of its proposal.

The agency requests that UIIS's proposal be dismissed as untimely, arguing among other things, that by specifically requesting that the agency delay any debriefing until after a contract had been awarded, UIIS failed to diligently pursue the information on which its protest is based. The agency notes that, in requesting the post award debriefing, UIIS specifically referenced the FAR provision which warns offerors that such requests for delayed debriefings "could affect the timeliness of any protest filed subsequent to the debriefing." FAR § 15.505(a)(2).<sup>2</sup>

This Office's bid protest timeliness rules provide that protests, other than those based on alleged solicitation improprieties, shall be filed not later than 10 days after the basis of the protest is known or should have been known, with the exception of protests challenging a procurement "under which a debriefing is requested and, when requested, is required." Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2000).

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<sup>2</sup> Section 15.505 of the FAR states:

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 2305(b)(6)(A) and 41 U.S.C. 253b(f) – (h)).

. . . . .

- (2) At the offeror's request, this debriefing may be delayed until after award. . . . Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

Here, UIIS asserts that its protest is timely because it was filed within 10 days after its September 19 receipt of the debriefing. We disagree.

The Competition in Contracting Act (CICA), as amended, requires that offerors who are excluded from the competitive range must be debriefed by the procuring agency if, within 3 days after receiving notice of such exclusion, the offeror requests a pre-award debriefing. Specifically, that statute states:

(1) When the contracting officer excludes an offeror . . . from the competitive range . . . the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. . . .

(2) The contracting officer is required to debrief an excluded offeror in accordance with subsection (e) [which provides for post-award debriefings] only if that offeror requested and was refused a preaward debriefing under paragraph (1) of this subsection.

41 U.S.C. § 253b(f) (Supp. IV 1998) (emphasis added).

As stated in our timeliness rules, a post-debriefing protest will be considered timely if filed as late as 10 days after the debriefing, even as to issues that should have been known before the debriefing, if that debriefing is “required.” As noted above, Congress specifically addressed the issue of when agencies are required to give post-award debriefings to offerors excluded from the competitive range, stating that such debriefings are required “only if that [excluded] offeror requested and was refused a preaward debriefing.” 41 U.S.C. § 253b(f).

Here, the record is clear that UIIS did not request a pre-award debriefing. Rather, UIIS expressly requested that its debriefing be delayed until after award. Accordingly, we do not view the debriefing provided by the agency on September 19 as being “required” as contemplated by the controlling statute and our Bid Protest Regulations. Thus, UIIS may not properly rely on its own decision to request a delayed debriefing as a basis to extend the period for filing its protest by more than 3 months after UIIS received notification of its exclusion from the competitive range.

Since UIIS’s debriefing does not fall within the exception to the general requirement, stated above, that protests must be filed no later than 10 days after the basis of the protest is known or should have been known, 4 C.F.R. § 21.2(a)(2), we next consider whether UIIS’s decision to delay seeking the information on which its protest is based was consistent with the obligation to diligently pursue that information. A protester may not passively await information providing a basis for protest; rather, a protester has an affirmative obligation to diligently pursue such information, Automated Med. Prods. Corp., B-275835, Feb. 3, 1997, 97-1 CPD ¶ 52 at 2-3, and a protester’s failure to utilize the most expeditious information-gathering approach

may constitute a failure to meet its obligation in this regard. See, e.g., Thomas May Constr. Co., B-255683, Mar. 23, 1994, 94-1 CPD ¶ 210 (protester did not diligently pursue its basis for protest where it waited until after it received notice of award to file Freedom of Information Act requests to seek information that was publicly available at bid opening). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129 at 2.

Here, UIIS's protest is based on the information it ultimately obtained regarding the multiple deficiencies in its own proposal.<sup>3</sup> Clearly, any pre-award debriefing which UIIS could have received--but for its specific request to delay receipt of this information--would have contained the very information on which its protest is now based. Further, as noted above, the very regulatory provision on which UIIS relied in its request to delay the debriefing warns offerors that such requests may affect the timeliness of subsequently filed protests. On the facts here, we find that UIIS's request to delay receipt of the information regarding deficiencies in its own proposal does not constitute the diligent pursuit contemplated by our Bid Protest Regulations. In short, we consider the protest to be untimely.

The protest is dismissed.

Anthony H. Gamboa  
Acting General Counsel

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<sup>3</sup> Indeed, it is clear that UIIS was fully aware that the debriefing would provide this type of information. In its letter to the agency requesting that the debriefing be delayed, UIIS stated:

UIIS also requests a detailed listing and breakdown of any weaknesses and deficiencies found in its proposal, together with any strengths and advantages you may have identified. Through such a detailed approach, UIIS hopes to become more responsive for its next submittal to the U.S. Marshals Service.

Letter from UIIS to Contracting Officer (June 9, 2000).