



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Rice Services, Ltd.--Reconsideration

**File:** B-249513.4

**Date:** March 1, 1993

William R. Purdy, Esq., Ott, Purdy & Scott, for the  
protester.

Andrew T. Pogany, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

The protester has the duty to set forth a detailed statement of all legal and factual grounds in its initial protest; issues not reasonably identified as protest grounds will not be considered as such by the General Accounting Office in response to protester's request for reconsideration of dismissal of its protest as untimely.

### DECISION

Rice Services, Ltd. requests reconsideration of our dismissal as untimely of its protest of the Department of the Treasury's award of a contract to Southern Food Service Management, Inc., under request for proposals (RFP) No. FTC-92-7, for full food services.

We deny the request for reconsideration.

The RFP stated that award would be made to the offeror whose proposal was most advantageous to the government, price and other factors considered. Four technical evaluation factors were stated, including the factor management and administration which, in turn, included seven items to be evaluated. Price was the fifth evaluation factor; the RFP stated that price would be more important than any individual technical factor, but less important than the sum of all technical factors.

Five proposals were received on May 21, 1992. Four, including the protester's proposal, were determined by the agency to be within the competitive range. Discussions were held with each offeror, and best and final offers (BAFO) were received by July 24, 1992. The agency employed an evaluation plan under which technical factors were assigned 70 points and price was assigned 30 points (100 maximum

total points). The agency evaluated BAFOs and assigned the highest rating of 76 combined technical/price points to Southern's proposal; the protester's proposal received 72 technical/price points. (In raw evaluation terms, Southern's proposal was found technically superior because Southern proposed staffing levels 15 percent higher than the protester although the protester was 18 percent lower in price.) Award to Southern followed on July 16. Rice requested a debriefing that same day and received the debriefing on July 17.

At the debriefing, the Rice representative asked to see all amendments Southern had submitted to see if they were signed and dated correctly. The contracting officer replied that Southern had properly signed all forms and showed them to Rice (the representations and certifications). The parties then discussed the fact that Rice had failed to submit a written business continuity plan<sup>1</sup> as requested by the agency during discussions. The Rice representative then stated that he and his father "had talked on the plane back and they had decided that we didn't need it." The contracting officer states that he then attempted to fully debrief the protester concerning all other aspects of the evaluation and the shortcomings of its proposal, but Rice simply declined to be debriefed. Specifically, Rice stated, in response to the contracting officer's attempts to debrief the firm, that "Rice had all the information [it] needed." Rice then filed its initial protest with our Office.

In its initial protest, Rice's only major contention, as we stated in our dismissal, concerned Rice's business continuity plan. Rice stated that during discussions the agency inquired into Rice's business continuity plan which Rice orally answered at that time. According to Rice, the agency told the firm that a written business continuity plan was not necessary and, in reliance on that advice, Rice did not submit such a written business continuity plan in its BAFO. Rice concluded that it "was induced not to submit a written business continuity plan, and this had a significant impact on Rice's technical score." Moreover, except for the missing business continuity plan, Rice stated that it "would have been the successful offeror."

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<sup>1</sup>Rice is a partnership, and the agency states that it requested a business continuity plan because it was concerned with the continued operation of the firm in the event of the demise of certain family members in key positions in the partnership.

In our dismissal, we stated that the record showed that the written business continuity plan was evaluated under one of seven items of the management and evaluation factor. The agency's evaluation plan allocated 2 points for this item. The protester received 1.5 points and was deducted only .5 points because of the missing plan (as stated, the evaluation was based on a total of 100 maximum points). Since the record clearly showed that the missing business continuity plan had no effect on the selection decision, we dismissed that protest ground as academic. See Naho Constr., Inc., B-244226, Sept. 12, 1991, 91-2 CPD ¶ 241. Rice has not requested reconsideration of this portion of our dismissal.

In its comments on the agency report, the protester, apparently realizing that the business continuity plan was not material to the agency's selection decision, for the first time advanced numerous challenges to the evaluation of its proposal and the selection decision. For example, the protester argued that the agency's finding that Rice's staffing levels were too low was unreasonable; that the agency did not give sufficient numerical weight to price in its evaluation; that Rice's technical proposal should have been considered essentially technically equal to the awardee's proposal; and that certain individual raters' raw evaluation scores were unreasonable for numerous technical factors. We concluded that these issues had been untimely raised.

Our Bid Protest Regulations provide that protests not based upon alleged solicitation improprieties must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. See 4 C.F.R. § 21.2(a)(2) (1992). In our prior dismissal, we stated that a protester's failure to pursue a matter within a reasonable time by actively seeking information that might reveal the basis for a protest renders its subsequent protest untimely. See Foreign Exchange Serv.-Dulles, B-209017, Oct. 21, 1982, 82-2 CPD ¶ 356. We also stated that a protester fails to diligently pursue within a reasonable time the basis for a protest where it had but did not take the opportunity for a debriefing. See id.

In our dismissal, we found that the protester had simply failed to allege or show that the contracting officer would not have debriefed the protester concerning broader evaluation issues had the protester simply requested specific additional information at the meeting and allowed the contracting officer to do so. The contracting officer stated that he was willing and able to do so. Had the protester taken full advantage of the opportunity for a debriefing on July 17 (at least to the extent of asking

basic questions about its proposal's evaluation), we found that it could have filed equivalent or substantially equivalent protest grounds within 10 working days of the debriefing rather than in its comments on the agency report approximately 2 months later. We therefore dismissed these protest grounds raised in Rice's comments as untimely. Rice has not requested reconsideration of our finding that issues first raised in the comments were untimely filed.

Rather, in its reconsideration request, Rice essentially argues that its initial protest was "broad enough" to include a challenge to the agency's selection decision based upon technical equality of proposals and upon an inadequate emphasis on price. Rice states that its "factual allegations" and "requests for relief" should have been read by our Office as additional general protest bases, even though the initial protest itself did not specifically raise these issues. It was the protester's duty to set forth in its initial protest a detailed statement of all legal and factual grounds of protest. 4 C.F.R. § 21.1(b)(4). We have read again its initial protest and again conclude that the only fairly raised issue concerned the business continuity plan which the protester specifically alleged deprived the firm of the award. While Rice in its factual recitation mentioned (in one sentence) that award had been made to a higher priced offeror, it did not challenge the award on that basis. Moreover, we noted in our dismissal that Rice, prior to filing its initial protest, received the agency's notice of award which advised the protester of its technical evaluation score, its price score, its total price/technical score, the awardee's total score, and the contract award amount. The protester has still not explained why it could not have filed an initial protest which reasonably identified the technical equality of proposals or the weight to be given price as protest issues. We again find that the protester failed to do so. See Hampton Rds. Leasing, Inc.--Recon., B-244887.2, Apr. 1, 1992, 92-1 CPD ¶ 330.

The request for reconsideration is denied.

  
James F. Hinchman  
General Counsel