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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Savantage Financial Services, Inc.

File: B-292046; B-292046.2

Date: June 11, 2003

Stephen S. Kaye, Esq., and William E. Olson, Esq., Bryan Cave, for the protester. John R. Caterini, Esq., and Barry C. Hansen, Esq., Department of Justice; Thedlus L. Thompson, Esq., General Services Administration; and David L. King, Esq., and John W. Klein, Esq., Small Business Administration, for the agencies. Henry J. Gorczycki, Esq., Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. A protester may challenge an agency's decision not to provide the protester with a solicitation for a purchase under the Federal Supply Schedule, where this decision was based upon the agency's determination, pursuant to Federal Acquisition Regulation § 8.404(b)(3) (which applies to orders expected to exceed the maximum order threshold), that the protester did not appear to offer best value, as determined by the agency from market information obtained from schedule vendors and product demonstrations; GAO will review the reasonableness of the agency's determination.
2. Agency decision not to provide the protester with a solicitation for an acquisition of a unified financial management system under the Federal Supply Schedule program was reasonable, where, in accordance with Federal Acquisition Regulation § 8.404(b)(3), the agency reasonably determined that the protester did not appear to offer best value (price and other factors considered) when compared to schedule vendors that were provided with the solicitation.

DECISION

Savantage Financial Services, Inc. protests the decision of the Department of Justice (DOJ) not to provide the firm with request for quotations (RFQ) No. JIJMD-03-0240, which sought quotes from Federal Supply Schedule (FSS) vendors for software and services for a unified financial management system (UFMS).

We deny the protest.

In 2001, DOJ decided to replace the seven different financial management systems that it currently uses with one UFMS. The agency decided that this system should be a commercial off-the-shelf (COTS) product certified by the Joint Financial Management Improvement Program (JFMIP) as meeting core federal accounting and systems security requirements.¹

DOJ also decided to acquire this system under an FSS contract pursuant to Federal Acquisition Regulation (FAR) Subpart 8.4. There are seven JFMIP-certified vendors (including Savantage) of financial management software systems on the applicable FSS. The maximum order threshold for this schedule is \$500,000; the government estimate of this order is \$[DELETED]. Agency Report at 1, Tab 22, UFMS White Paper, at 1.

In November 2002, DOJ asked all seven JFMIP-certified vendors to complete a market survey describing their products. The survey, which was approximately 100 pages in length, stated that the agency planned to acquire “a core commercial off-the-shelf (COTS) financial management product(s),” and that

[t]he implementation approach for UFMS is to minimize any customization to the base COTS product to support DOJ specific unique business processes.

Agency Report, Tab 1, Market Survey, at 1, 3. Vendors were asked to indicate whether their products could provide each of these features without customization or, if customization would be required, whether the required level of effort would be low (1 week or less), medium (between 1 and 4 weeks) or high (more than 4 weeks). Id. at 17. Each vendor was also requested to identify clients who had purchased or were operating the vendors’ federal sector products. Id. at 11.

DOJ also asked each vendor to provide a demonstration of its software system. Agency Report, Tab 18, Vendor Demonstrations Agenda, at 1. The request for demonstrations stated the following objectives for the demonstrations:

- Understand your product’s position in the federal government market and commitment and plans for re-certification testing with the JFMIP

¹ JFMIP is a joint and cooperative undertaking of the General Accounting Office, the Department of Treasury, Office of Management and Budget (OMB), and Office of Personnel Management, which, among other things, tests and certifies core financial management system software. See <www.jfmip.gov/jfmip>; see also OMB Circular No. A-127, “Financial Management Systems,” Transmittal Memorandum No. 2, June 10, 1999.

- Obtain an overview of the basic operations of your software package and identify your product's key market discriminators
- Observe basic navigational and ease of use qualities
- Understand through demonstration of generic financial management transactions basic processing approaches offered by your product
- Better understand the JFMIP-products in the marketplace to focus the direction and requirements of the government's solicitation.

Id. The request also informed vendors as follows:

Information gleaned from this research will not be used to target a particular solution or narrow the potential field of products for future acquisition activities.²

Id.

Six vendors, including Savantage, responded to the agency's survey and provided product demonstrations. After the market survey and product demonstrations, DOJ decided to solicit quotes for the software and related services from only four vendors, not including Savantage.

This decision was made by the agency's Director of the Finance Staff, Justice Management Division, who based his decision on a variety of information, including his personal experience since 1999 with DOJ's prior implementations of financial management systems, professional knowledge of available financial management system products and other federal agencies' implementations, and personal knowledge of the products and implementations of a number of the vendors here, including Savantage.³ Affidavit of Director of the Finance Staff, Apr. 9, 2003, at 2, 4-5. Of particular concern to the director, with respect to his decision not to solicit Savantage, was that the market survey showed that Savantage's product would

² Although this statement suggests that the agency's market research was not a competition, as explained below, the information was used for the purpose of excluding vendors that did not appear to offer best value. The protester, however, does not assert that it would have acted differently had it known of the agency's intent to use this information to determine which vendors should be solicited.

³ DOJ's Finance Staff Director is responsible for the agency's financial policy and reporting, financial systems compliance, and audit corrective action reporting. He is also responsible for the development and operation of the financial management systems used by four of DOJ's organizational components.

require substantially more customization than the vendors that were selected to receive the RFQ. This, the director found, was consistent with his knowledge of Savantage's similar federal projects. *Id.* at 13-14, 16-17. In addition, the director noted that Savantage had less extensive experience on similar projects than the selected vendors, both in total number and in scope of implementation. Savantage, the director concluded, did not appear to provide the best value as compared to the other vendors.

On February 14, 2003, Savantage was informed as follows:

The Department, using the results of this market research effort, evaluated such things as the degree to which vendors have implemented projects of equivalent size and scope as the UFMS Project, and the availability of a standard COTS product that can meet the Department's requirements with minimal customization. Based on its evaluation, the Department has concluded that your company would have no reasonable chance of being selected for award over other schedule vendors offering JFMIP-certified software. Accordingly, I have concluded that it would not serve the interests of the Department, or be in Savantage's interest, for you to undergo the expense and effort of responding to an RFQ.

Protest, attach. C, Letter from Contracting Officer (Feb. 14, 2003), at 1. This protest followed a debriefing.

The protester challenges DOJ's decision to exclude Savantage from further competition on the basis that DOJ's evaluation of the market research information was unreasonable and unequal, and that DOJ failed to consider price in selecting which firms would be solicited. In this regard, Savantage complains that DOJ violated FAR § 8.404(b)(3). That section provides that, before an agency places an order that exceeds the maximum order threshold, it must:

- (i) Review additional schedule contractors' catalogs or pricelists, or use the GSA Advantage! on-line shopping service;
- (ii) Based upon the initial evaluation, generally seek price reductions from the schedule contractor(s) appearing to provide the best value (considering price and other factors); and
- (iii) After seeking price reductions, place the order with the schedule contractor that provides best value and results in the lowest overall cost alternative (see [FAR §] 8.404(a)). If further

price reductions are not offered, an order may still be placed, if the ordering office determines that it is appropriate.

DOJ argues that its decision not to provide Savantage with the RFQ is not reviewable by our Office. Specifically, the agency asserts that the market research, which Savantage challenges as unreasonably and unequally evaluated, was not a “competition” which can be protested to our Office. DOJ states that market research merely “informs agency purchasers about the products that are available to satisfy particular procurement needs.” Agency Report at 13, citing FAR § 10.002. Moreover, DOJ contends that conducting market research to determine which vendors should be solicited was consistent with FAR § 8.404(b)(3).⁴

In DOJ’s view, our review of agency procurement decisions under FAR Subpart 8.4 is limited to two situations: (1) “an allegation that an agency improperly defined its needs so as to exclude a particular vendor,” Agency Report at 12, citing Delta Int’l, Inc., B-284364.2, May 11, 2000, 2000 CPD ¶ 78, and (2) review of an agency’s conduct of a “formal competition” after issuance of a solicitation.⁵ See, e.g., COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34. DOJ asserts that neither situation is present here. DOJ argues that, absent the issuance of a solicitation that includes evaluation criteria, our Office has no basis to review an agency’s “best value” decision as to which FSS vendor to solicit, Agency Report at 14; elsewhere, DOJ contends that the language of FAR § 8.404(b)(3) (regarding the determination of which FSS vendors “appear[] to provide the best value”) leaves agencies a “significant degree of discretion.” Id. at 16.

⁴ In March 2003, after DOJ’s decision at issue here, the General Services Administration (GSA) added the following provision to its special ordering procedures for orders of services expected to exceed the maximum order threshold:

In addition, the request shall be provided to any contractor who specifically requests a copy of the request for the proposed order.

See <www.gsa.gov>. A similar provision is included in a proposed rule that would amend FAR Subpart 8.4. 68 Fed. Reg. 19,294, 19,296 (Apr. 18, 2003). This new requirement appears to apply only to procurements of services priced at hourly rates.

⁵ DOJ concedes, however, that we could also review what it characterizes as an allegation of an “outright” violation of a requirement of FAR Subpart 8.4, such as an allegation that an agency had not reviewed the catalogs or pricelists of three FSS vendors, as required by FAR § 8.404(b)(2). Agency Report at 12 n.4. Presumably, DOJ would include in this category a protest alleging that an agency had failed to consider “reasonably available information,” as required by FAR § 8.404(b)(2). See REEP, Inc., B-290665, Sept. 17, 2002, 2002 CPD ¶ 156.

We first address the question of our jurisdiction to hear this protest, before turning to the question of whether Savantage has stated a valid basis of protest.

The authority of our Office to decide bid protests is established by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556 (2000), which provides that the Comptroller General shall decide protests challenging, among other things, solicitations and awards of contracts. This includes solicitations and awards of orders under the FSS. See Severn Cos., Inc., B-275717.2, Apr. 28, 1997, 97-1 CPD ¶ 181, at 2-3 n.1. Our jurisdiction to hear challenges of solicitations includes jurisdiction to consider a protester's challenge that it was unreasonably not solicited by an agency. See, e.g., GMA Cover Corp., B-288018, Aug. 17, 2001, 2001 CPD ¶ 144 at 3 (failure to solicit a vendor's quote under simplified acquisition procedures). Because Savantage is challenging DOJ's decision not to provide the firm a copy of the RFQ (and thus not to allow the firm to compete for the FSS order), we conclude that we have jurisdiction to hear the protest.

With respect to whether Savantage has stated a valid basis for protest, Savantage contends that DOJ's decision to exclude the firm from the RFQ competition violates FAR § 8.404. Our authority under CICA provides that our Office shall decide a "protest concerning an alleged violation of a procurement statute or regulation." 31 U.S.C. § 3552. FAR § 8.404 is plainly a procurement regulation, so that Savantage has stated what on its face appears to be a valid basis of protest.

DOJ, however, apparently believes that the language of FAR § 8.404 leaves the agency with unreviewable discretion as to the determination that Savantage challenges, so that the firm has, in effect, not stated a valid basis of protest. We disagree.

The FSS program provides federal agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying. FAR § 8.401(a). Section 259(b)(3) (2000) of title 41 of the United States Code provides that the procedures established for the GSA's multiple award schedule program (that is, the FSS program) satisfy the general requirement in 41 U.S.C. § 253(a)(1) for use of competitive procedures if participation in the program has been open to all responsible sources, and orders and contracts under the FSS procedures result in the lowest overall cost alternative to meet the needs of the government.

Use of the FSS in lieu of conducting a full and open competition is thus premised on following the Subpart 8.4 procedures to reach a determination regarding what the agency's needs are and which FSS vendor meets those needs at the lowest overall cost. See Delta Int'l, Inc., *supra*, at 4. As noted above, DOJ concedes that an agency's failure to follow the procedures in Subpart 8.4 by, for example, failing to review the catalogs or pricelists of three FSS vendors, is reviewable in a bid protest. Agency Report at 12 n.4. Moreover, where an FSS vendor protests the agency's

decision not to solicit from the protester for an FSS purchase the agency is making, we will review the agency's action for compliance with applicable law.⁶ Thus, in Delta Int'l, Inc., *supra*, we reviewed an agency's decision not to consider the protester's product, and instead to issue an order to another firm based upon the agency's determination that only that firm's product would meet its needs. In that case, we stated that the

fundamental principle of government accountability dictates that . . . determinations [under FAR § 8.404(a) as to the government's needs and which products or services meet those needs at the lowest overall cost] are subject to review, and we view it as axiomatic that, in order to withstand review when challenged in a bid protest, the agency must be able to provide a reasonable basis for its determinations regarding its needs and the FSS supply or service that meets those needs at the lowest overall cost.

Id. at 4.

Similarly, we believe that an agency must be able to provide a reasonable basis for its determinations regarding which FSS vendor offers the best value, which is the determination at issue in this protest. In order to obtain the benefits of the streamlined procedures of the FSS program, DOJ was required here to comply with the rules set out in FAR Subpart 8.4, including, in particular in this case, FAR § 8.404(b)(3). Specifically, with respect to orders that are expected to exceed the maximum order threshold stated in vendors' FSS contracts, such as the \$[DELETED] order anticipated here, FAR § 8.404(b)(3) requires an ordering agency to review information about additional schedule contractors products or services (beyond the three that must be considered for purchases below the maximum order threshold); "[b]ased upon the initial evaluation, generally seek price reductions from the schedule contractor(s) appearing to provide the best value (considering price and other factors)";⁷ and then place the order with the vendor that provides the best value and results in the lowest overall cost alternative.

⁶ A firm that does not have an FSS contract, however, is not an interested party to file a protest with our Office challenging an agency's determinations in the context of an FSS purchase pursuant to FAR Subpart 8.4. Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102.

⁷ While DOJ focuses on the nonbinding word "generally" in the regulation, Agency Report at 15, we view that to mean that agencies are not required to seek price reductions for large orders. The issue before us, however, is not whether DOJ was required to take the step of issuing an RFQ to seek price reductions, but whether, given that the agency decided to issue the RFQ only to some of the vendors whose products it had reviewed, whether it had a reasonable basis for excluding Savantage from that group.

DOJ does not deny that it was required to comply with FAR § 8.404(b)(3). The agency conducted a comparative evaluation of the relative merits of the vendors' products and abilities, through its market survey, in order to determine which vendors appeared to offer the best value. It was the best value determination that led to the letter from the agency quoted above, in which DOJ stated that Savantage did not have a "reasonable chance of being selected for award" and would therefore be excluded from further consideration; in particular, it would not be permitted to compete under the RFQ.⁸ Savantage protests the reasonableness of that best value determination (and the associated decision to exclude Savantage from the RFQ competition), and, as we said in Delta Int'l, "we view it as axiomatic that, in order to withstand review when challenged in a bid protest, the agency must be able to provide a reasonable basis" for its determinations, including the best value determination at issue here. We therefore review the agency's best value determination for reasonableness.

While DOJ correctly points out that the vendors were not provided evaluation criteria on which the agency would perform a best value analysis, we do not agree with DOJ that this means that we have no basis to review the reasonableness of the analysis. Instead, we agree with the statement that DOJ made elsewhere in its agency report, that the regulatory language calling for a determination as to the "contractor(s) appearing to provide the best value" leaves agencies a "significant degree of discretion." Agency Report at 16. A significant degree of discretion does not equate to unfettered discretion, nor does it leave our Office with no meaningful criteria to apply in reviewing an agency's action. Particularly here, where the agency requested, received, and reviewed detailed submissions from the vendors, we see no basis to find that even substantial discretion can entirely shield from review the agency's decision, based on what was effectively the first phase of a competition, to exclude a firm from further consideration for a \$[DELETED] award. Nonetheless, as we turn to the merits in our analysis, we review the reasonableness of DOJ's best value determination in the context of the significant degree of discretion afforded to the agency by the regulation.

DOJ argues that its decision not to provide Savantage with the RFQ was reasonable because, based upon the agency's evaluation, Savantage did not "appear to provide the best value." Agency Report at 16. DOJ states that there were two significant considerations in the agency's evaluation of the vendors: (1) the relative amount of customization that would be required for vendors' software, and (2) the vendors' relative experience and performance on previous, similar federal projects. With respect to software customization, DOJ relied upon the information provided by the vendors as to the extent to which their COTS software would require customization

⁸ The protester points out that what DOJ did was akin to a competitive range determination under negotiated procedures. Protester's Comments at 1.

to perform 194 identified functions. Savantage identified 28 customizations that would be needed to perform those functions, whereas the vendors that the agency selected to receive the RFQ identified significantly less customization (the four vendors identified, respectively, 1, 6, 7 and 17 customizations).⁹ Agency Report, Tab 3, Analysis of Vendor Responses; Tab 21, Vendor Customization Comparison.

Savantage argues that DOJ's judgment that Savantage's software needed "too much customization" was not reasonable because of a number of factual errors in DOJ's analysis. Protester's Comments at 6-8. First, Savantage complains that two of the customizations it identified in the survey information provided in 2002 would be eliminated when Savantage issued a new version of its software, which it informed DOJ was planned for release in March 2003. Savantage argues that because these two customizations were expected to be eliminated prior to the order, these customizations should not have been counted by the agency. Savantage also references information provided by two vendors that received the solicitation that states that the vendors' software could not provide certain functions, but that these functions were not reflected in the agency's account of customizations required for these vendors.

We find that these arguments, even if accepted on their face, failed to demonstrate the unreasonableness of the agency's determination that Savantage's software would require greater customization than that of the vendors that received the RFQ. That is, accepting these arguments would only decrease Savantage's number of required customizations to 26 and increase the other vendors' required customizations to 8 and 19, respectively. Savantage's software would continue to require significantly more customization than these two vendors.

Savantage also complains that DOJ failed to consider the relative level of effort required for the vendors' respective customizations. For example, Savantage complains that DOJ did not consider whether vendors' customization was required in mandatory areas.¹⁰

We agree that the record does not show that DOJ specifically considered whether vendor customization was required in mandatory areas. Nevertheless, the record

⁹ Although the report states that Savantage's survey response indicated 27 total required customizations, the correct number, as reported in the agency's Vendor Customization Comparison, is actually 28 customizations. See Agency Report, Tab 3, Analysis of Vendor Responses, at 33-35; Tab 21, Vendor Customization Comparison, at 3.

¹⁰ Certain of the functional requirements were identified as having a "mandatory priority" while others were identified as "value added-high" or "value added-low." See Agency Report, Tab 3, Analysis of Vendor Responses, at 3-5.

does establish that the Director of Finance Staff reviewed each vendor's survey information and considered his own knowledge of, and experience with, the vendors' products. Based on this integrated assessment, the director concluded that Savantage was likely to need significantly more customization than the vendors selected to receive the RFQ. Supplemental Affidavit of the Director of the Finance Staff, Apr. 25, 2003, at 6. Although Savantage disagrees with this assessment and argues that the agency should have conducted a more formal evaluation, we find that Savantage has not shown this judgment to be unreasonable. In this regard, we note that Savantage had far more medium level and low level of effort customizations identified than other vendors and no vendor had more high level of effort customizations identified than Savantage. Agency Report, Tab 3, Analysis of Vendor Responses, at 1, 3, 8, 12, 35. In the context of determining which vendors "appear to provide best value" under FAR § 8.404(b)(3), we find that the agency reasonably concluded that Savantage's product would require significantly more customization than that of the other vendors, even though DOJ did not consider whether vendors' customization would be required in mandatory areas.

Savantage also objects to the agency's conclusion that Savantage had less experience with projects of similar size and scope as compared to the other vendors.

The record shows that the Director of Finance Staff was concerned that "there have been no federal agency implementations of the off-the-shelf version of the [financial management system] software which Savantage is marketing to DOJ." Affidavit of Director of Finance Staff, Apr. 9, 2003, at 21. In particular, he was concerned with the implementation of Savantage's product at two of the federal clients identified by Savantage: the [DELETED] and the [DELETED].¹¹ In this regard, the director had personal knowledge of Savantage's implementation efforts at [DELETED]. Based upon his experience, the director concluded that Savantage's implementation efforts at [DELETED] had significant problems, its software was heavily customized, and the implementation exceeded budget and schedule. Furthermore, the director noted, Savantage's system is still not used for all major financial functions at [DELETED]. With respect to Savantage's implementation of its software at [DELETED], the director noted that during the [DELETED] implementation DOJ had conferred with [DELETED] concerning Savantage's implementation, and found that [DELETED] reported similar problems and customization. *Id.* at 13-14. With respect to the five other federal clients identified by Savantage, DOJ determined that these other clients either were not implementing the same Savantage product that the vendor demonstrated for DOJ, or were implementing limited systems for specific purposes and not a total financial management system, as DOJ requires here.

With respect to the other vendors selected to receive the RFQ, DOJ found that all had a record of numerous and successful implementations of their products with

¹¹ [DELETED].

federal clients. Although not all these implementations proceeded without problems, DOJ found that those problems were limited and that in some instances the client agency contributed to the problems. Of particular importance to DOJ was that the other vendors had numerous federal implementations of their financial management system software beyond those where problems were identified, unlike Savantage.

We find no basis from our review of the record to object to DOJ's determination that Savantage had less extensive experience on similar projects than the selected vendors, both in total number and in scope of implementation. Although Savantage complains that other vendors' implementations required customization, the record shows that DOJ considered this, but found that these vendors had more experience and a greater degree of success than did Savantage. Supplemental Affidavit of the Director of the Finance Staff, Apr. 25, 2003, at 6-7. We also find unpersuasive Savantage's argument that the agency did not consider the underlying reason(s) why Savantage's product was not being used for all of [DELETED]'s financial functions. Apart from implicitly acknowledging that its software was in fact not used for all [DELETED]'s required functions, Savantage has not provided us with any basis to question the agency's conclusion that Savantage's implementation at [DELETED] was less than successful.

Savantage also complains that DOJ's judgment that Savantage had less experience than other vendors and that Savantage's software implementations at [DELETED] and [DELETED] were less than successful was tantamount to a non-responsibility determination that was required to be referred to the Small Business Administration (SBA) under that agency's certificate of competency (COC) procedures. However, as noted above, the record reflects that DOJ's judgment that Savantage did not appear to offer the best value was based upon an integrated assessment that Savantage's product would require more customization than the other vendors and that Savantage's experience was less favorable than the other vendors. Thus, even were we to accept Savantage's argument that DOJ's assessment of Savantage's relative experience concerned a matter of the firm's responsibility, the determination not to provide Savantage with the RFQ was not based upon this assessment alone.¹² Referral of a small business concern's responsibility to the SBA for consideration under COC procedures is not required where the rejection of that concern's proposal is for reasons not related to responsibility, as well as for reasons that properly would be categorized as matters of responsibility. See SBS Tech. Servs., B-259934, Apr. 19, 1995, 95-1 CPD ¶ 205 at 5.

¹² The parties disagree as to whether or not DOJ's assessment of Savantage's relative experience concerns a matter of responsibility, and, within the context of this procurement, whether a decision not to solicit a small business vendor based upon such an assessment would be required to be referred to SBA. Given our decision above, we do not decide these issues.

Savantage also argues that the agency's judgment that Savantage did not appear to offer the best value was unreasonable because DOJ did not consider price in making that determination. Specifically, Savantage asserts that DOJ currently has a license to use Savantage's software and that the agency did not consider that the Savantage's price for its system would reflect no charge for license fees.

DOJ states that vendors' prices were considered in deciding which vendors appeared to offer best value. Specifically, the agency states that prior to the market survey and product demonstrations, the Director of Finance Staff was provided with cost estimates for acquiring the UFMS and that these estimates were based upon the vendors' published FSS pricing. Supplemental Agency Report at 3. Furthermore, the director states that he requested that his program office and support contractor (which were reviewing the vendors' schedule prices and calculating the cost estimate) inform him if there were any significant price differences between the vendors, and no significant price differences were reported. Supplemental Affidavit of the Director of the Finance Staff, Apr. 25, 2003, at 2. DOJ also disputes Savantage's contention that the agency did not consider the benefit of Savantage's "free" license to use the firm's financial management system software. The director states that he learned of the allegedly "free" software license on January 30, 2003, but did not consider the "free" license offer to be significant, because the price for the software would be a relatively small part of the overall system cost, especially where extensive system customization is required. This judgment was based upon the director's review of the overall costs for Savantage's system at INS, which reflected substantial sums in fiscal year 2003 for maintenance, technical support and other fees and reflected even greater costs during the years of 1997 to 2000. Affidavit of the Director of the Finance Staff, Apr. 9, 2003, at 28. The director concluded that the offer of a free license did not significantly enhance Savantage's price considering the risk of increased costs associated with the anticipated customization of Savantage's product. Moreover, the technical problems associated with extensive customization offset any advantage from the free software license. Affidavit of the Director of the Finance Staff, Apr. 9, 2003, at 27-29; Supplemental Affidavit of the Director of the Finance Staff, Apr. 25, 2003, at 4-5.

Although Savantage disagrees with the director's judgment as to which vendors appear to offer the best value (price and other factors considered), the protester offers no evidence to show that there are any significant differences in the vendors' schedule prices. Furthermore, the protester does not rebut the director's judgment that there would be significant implementation, support, and maintenance costs associated with Savantage's system, which would outweigh the benefit of its free license to use the software. In short, the protester has provided us with no basis to question the agency's judgment that Savantage did not offer any significant price advantage.

In sum, we find from our review of the record that DOJ reasonably determined under FAR § 8.404(b)(3) that, given Savantage's lower relative ranking for experience and customization, Savantage did not appear to provide best value such that the firm should have been solicited.

The protest is denied.

Anthony H. Gamboa
General Counsel