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Decision

Matter of: AINS, Inc.
File: B-405902.3
Date: May 31, 2012

Lawrence J. Sklute, Esq., Sklute & Associates, for the protester.
Grant H. Willis, Esq., Jones Day, for Privasoft Corp., an intervenor.
Barry C. Hansen, Esq., and Kristen E. Bucher, Esq., Department of Justice, for the agency.
Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably evaluated and selected awardee's quotation as the lowest price offer consistent with solicitation's stated evaluation criteria and record does not support protester's argument that the agency ordered services not on the awardee's Federal Supply Schedule contract.

DECISION

AINS, Inc., of Gaithersburg, Maryland, protests the issuance of a task order to Privasoft Corp. of Ottawa, Canada, under request for quotations (RFQ) No. DJJ-09-F-1791-0003, issued by the Department of Justice (DOJ) for Freedom of Information Act (FOIA) electronic case management system services.

We deny the protest.

BACKGROUND

The RFQ was provided to AINS and Privasoft, each of whom holds a blanket purchase agreement with DOJ for an electronic FOIA case management system under their respective General Services Administration (GSA) Federal Supply Schedule (FSS) 70, information technology (IT), contracts.¹ Agency Report (AR)

¹ As relevant here, the vendors hold FSS 70 contracts under special item numbers (SIN) 132-33, perpetual software license; SIN 132-34, software maintenance

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at 8; see RFQ amend. 1, at 34. The RFQ contemplated the issuance of a combination fixed-price and labor hour task order for a base year and 2 option years. See RFQ amend. 1, at 15, 32, 34-37; AR, Tab 13, Award Determination, at 1.

A detailed statement of work (SOW) was included with the RFQ which requires the vendor to provide a commercially available software platform for, and implement, an electronic case management system for tracking and processing FOIA requests received by DOJ's Executive Office of United States Attorneys (EOUSA). See SOW at 3, 6, 16, 33. The system must accommodate up to 150 users and meet detailed performance requirements for user reliability, response time, and scalability (i.e., user capacity). Id. at 4, 8-10. For example, the system must enable up to 75 users to connect to the software concurrently and conduct various functions, such as text searches, within specified minimal target times.² See id. at 8-10. Vendors were also informed that the system should support EOUSA's FOIA user roles, such as role administrator, paralegal/district user, case handler, and case creator. Id. at 4. The vendor must provide training for an initial 25 users, with possible training for up to 150 users, including administrators, EOUSA staff, and all system users.³ See id. at 11, 16 (deliverables). During system implementation, the vendor must also provide all management, administration, staffing, planning, and scheduling of items and services required for successful implementation, including services such as research, analysis, presentations, briefings, and/or work groups with subject matter experts. See id. at 11-12, 17.

The RFQ stated that the task order would be issued to the vendor whose quotation was determined to be most advantageous to the government on the basis of price and technical merit. Vendors were also advised that, if technical quotations were determined to be substantially equal, price would become the determinative selection factor. See RFQ amend. 1, at 35. Vendors were instructed to provide separate technical and price quotations. Id. at 32.

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service; SIN 132-51, IT professional services; and SIN 132-50, training courses. AINS IT Schedule Pricelist at 2; Privasoft IT Schedule Pricelist at 1-2.

² The RFQ explains that FOIA requests submitted to EOUSA are currently processed by a local staff of approximately 25 members and involves approximately 150 users across EOUSA and the 94 US Attorneys' Offices (USAO). See RFQ amend. 1, at 3-4. The RFQ states that the implementation phase will involve the 25 local users and that the number of additional users in the second phase will be determined on an on-going basis as USAOs implement the new system. Id. at 4.

³ The SOW provided that the training must include a variety of methods, including, but not limited to, hands-on instructional training, training videos, and training guides, and the vendor must develop training curricula, manuals, and materials, as well as reference manuals for each user. SOW at 11, 14.

With regard to the technical merit factor, vendors were required to describe their overall approach to performing and managing the SOW requirements. Id. at 34. The RFQ advised vendors that their technical approach should clearly explain any standard processes and procedures, certifications, technical proficiencies, and/or capabilities that the vendor will rely on to perform each technical requirement. Id. The RFQ stated that the agency would evaluate the adequacy of the proposed technical approach in successfully performing and managing the requirements.⁴ Id.

With regard to price, vendors were instructed to submit prices for five contract line items (CLIN): perpetual software licenses (CLIN 0001); annual software maintenance (CLIN 0002); help desk support (CLIN 0003); training (CLIN 0004); and initial system integration and implementation (CLIN 0005). Id. at 33-35; see Schedule. With respect to CLIN 0004, vendors were instructed to quote a fixed price per student for training. See RFQ, amend. 1, at 33-35. Vendors were also required to identify any quantity discounts proposed and specify prices for training held at the vendor's location versus the agency's location, as well as prices for other forms of training proposed, e.g., web-based training.⁵ Id. at 33. With respect to CLIN 0005, vendors were instructed to quote hourly rates for proposed labor categories and provide their total estimated labor hours required to fully integrate and implement the electronic FOIA system according to the SOW requirements. Id. at 34. The RFQ stated that the agency would evaluate price quotations by adding the total prices for the base and all option years. See id.

AINS and Privasoft submitted quotations, which were evaluated by the agency's technical evaluation panel (TEP). AR at 18. As relevant here, Privasoft proposed its AccessPro integrated software suite, comprised of three components which would be assigned in relevant combinations to agency users based on their respective roles.⁶ See Privasoft Technical Quotation at 2-3. Privasoft stated that it has

⁴ The technical factor included two subfactors: technical approach and past performance, listed in descending order of importance. RFQ amend. 1, at 34.

⁵ Vendors were advised that the agency reserved the right to order training in any media proposed, or in any combination of media proposed. RFQ amend. 1, at 33-34. Other than the requirement that vendors provide training for an initial 25 users and that training include a variety of methods, the RFQ did not require the vendors to propose a specified type of training. See RFQ amend. 1, at 5, 11, 14, 16.

⁶ Privasoft stated that the three components (AccessPro Case Management, AccessPro Redaction, AccessPro Workgroup) function as an integrated software suite and share the same database, file store, and key data. See Privasoft Technical Quotation at 3.

deployed AccessPro at customer sites with over 75 users.⁷ Id. at 6. Privasoft also stated that AccessPro is currently used by DOJ's Office of Information Policy (OIP), where the software was tailored for 50 users and over 240 technical and functional requirements.⁸ See id. at 6, 8.

The TEP found that both vendors' software products would meet or exceed performance requirements, including response times and scalability to 75 concurrent users, and that both products would improve the agency's FOIA case tracking capabilities. See AR, Tab 12, Technical Evaluation Report, at 4-5.

The Contracting Officer (CO) reviewed the vendors' initial price quotations, conducted discussions with the two vendors, and evaluated their revised price quotations. AR at 21-23; see Tab 6, AINS Discussions; Tab 7, Privasoft Discussions; Tab 13, Award Determination, at 2-3. As relevant here, AINS quoted [DELETED] under CLIN 0004 based on 125 students at a unit price of [DELETED] per student for a 2-day, hands-on class with a maximum of 10 students per class. See AINS Revised Price Quotation at 1-4. AINS did not indicate whether that it was offering a discount off its FSS schedule for training. See id. The CO calculated AINS' CLIN 0004 price based on 25 users instead of 125 users, and determined AINS' overall evaluated price to be \$396,537 by adding the price for all CLINS. AR, Tab 13, Award Determination, at 2-3.

Privasoft offered three "training modules as *optional* purchase[s]" and quoted prices per participant under CLIN 0004 based on varying numbers of students for each module.⁹ See Privasoft Revised Price Quotation at 2-3 (emphasis in original). However, Privasoft noted that its proposed initial system integration and

⁷ In its initial price quotation, Privasoft also stated that under its concurrent user license model, the number of users is unlimited and all FOIA stakeholders could login and use the licenses up to the number of purchased licenses. Privasoft Initial Price Quotation at 3. The TEP did not review price quotations. See AR at 21.

⁸ The SOW states that the vendor's case management system must support, among other things, EOUSA's reporting capabilities of all FOIA business processes required by OIP, including EOUSA's annual report to OIP. See SOW at 3, 6; AR at 7. According to Privasoft, its software is used to process initial FOIA requests submitted to eight DOJ components and generate annual agency-wide reports for 37 DOJ FOIA components. See Privasoft Technical Quotation at 6, 8.

⁹ Specifically, Privasoft offered the following training modules under CLIN 0004: 1) AccessPro Suite group training for IT Administrators; 2) AccessPro Suite training for FOIA Administrators; and 2) AccessPro Case Management & Redaction training for end-users. See Privasoft Revised Price Quotation at 2. Privasoft indicated that the prices for its optional training courses represented discounts of 50 to 67 percent off its GSA rates. Id. at 3.

implementation services (i.e., the services that Privasoft quoted under CLIN 0005) would include instructor-led, example-based classroom training for a number of administrators and as many end users as EOUSA could accommodate in the agency's classroom facilities. See id. In response to a discussion question, Privasoft informed the CO that the vendor would not object to EOUSA either broadcasting the training or recording it for future internal use, but that any associated costs in that regard, e.g., for videoconference equipment, would be at the agency's expense. See AR, Tab 7, Privasoft Discussions, at 3. Because the agency could record and reuse the implementation training that Privasoft proposed under CLIN 0005, the CO did not consider or evaluate the price of Privasoft's optional training under CLIN 0004, and she determined Privasoft's overall evaluated price to be \$311,200 by adding Privasoft's prices for the remaining CLINS. See AR, Tab 13, Award Determination, at 2.

The CO, who was the source selection authority for this procurement, agreed with the TEP's technical evaluations and concluded that price would be the deciding factor in issuing the task order based on the relatively equal technical merit of Privasoft's and AINS' quotations. See id. at 4. She found that Privasoft's price was consistent with the vendor's FSS prices and the agency's independent government cost estimate, as well as historical data regarding Privasoft's implementation of OIP's FOIA system. See id. at 2-3. The CO determined that it was in the government's best interest to issue the task order to Privasoft based on its lower price and the order was issued to the vendor on September 26, 2011. Id.; AR, Tab 14, Task Order.

AINS protested to our Office, challenging the agency's technical and price evaluations and alleging, among other things, that the optional training courses quoted by Privasoft did not appear on its FSS contract. In response to the protest, the agency stayed performance of the task order and informed our Office that it would take corrective action by reevaluating quotations. We dismissed the protest as academic on November 10.

The CO reviewed the RFQ requirements and vendors' revised quotations, and considered whether a new source selection decision was required. See AR, Tab 16, Reevaluation and Revised Award Determination, at 5. She largely concurred once again with the TEP's earlier evaluations and ratings, with one exception. Id. at 5-6. She also reviewed Privasoft's FSS contract, concluding that the optional training courses appeared on its FSS price schedule. See id. at 11-12. The CO affirmed her original price evaluation and source selection decision, and issued a notice to proceed to Privasoft. See id. at 11-13. This protest followed.

DISCUSSION

The protester raises numerous objections to the agency's evaluation and selection decision, essentially arguing that Privasoft did not satisfy all of the RFQ's material

requirements, particularly with regard to training.¹⁰ We have considered all of AINS' arguments, and, although we only discuss the more significant claims, we find that none provides a basis to sustain AINS' protest.

AINS contends, for example, that Privasoft's proposed software does not meet the requirement of scalability to 75 users. Protester's Comments at 30-32. The protester also argues that Privasoft's proposed implementation training is only intended for the initial testers of the application and does not meet the SOW's user training requirement. See id. at 28-29, citing Privasoft Revised Price Quotation at 3; Protest at 20-21.

In this respect, AINS alleges that the agency evaluated the vendors' training prices unequally. For example, the protester argues that the agency ignored Privasoft's prices under CLIN 0004, and alternatively that Privasoft's training prices (as well as Privasoft's overall price) could not be evaluated because they are dependent on the type of user and the specific training course. See Protest at 21; Protester's Comments at 17-24, 29-28. The protester also argues that the RFQ required vendors to quote, and the agency to evaluate, training costs for 125 users because the SOW requires the vendor to provide 125 software licenses.¹¹ Protester's Comments at 7-8; see Protester's Supp. Comments at 4-15. Moreover, AINS argues that Privasoft's FSS contract does not include training related to the vendor's third proposed software component, AccessPro Workgroup.¹² Protester's Comments at 19; see supra n.6.

The agency answers AINS' contentions that Privasoft's quotation was not technically acceptable by citing to several provisions of the quotation that, in DOJ's view, show

¹⁰ Although AINS originally protested the evaluation of its technical quotation, see Protest at 8-18, it withdrew these protest grounds. Protester's Comments at 25, 38.

¹¹ Under CLIN 0001, vendors were required to price software licenses for 125 users. See RFQ amend 2.

¹² In its comments, AINS further argues, for the first time, that even the AccessPro Workgroup component--as opposed to the training for this component--is not included in Privasoft's FSS contract. Compare Protester's Comments at 24-28 with Protest at 19. We dismiss this protest ground as untimely. Under our Regulations, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2011). Where a protester initially files a timely protest, and later supplements it with independent protest grounds, the later-raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. FR Countermeasures, Inc., B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 9.

that Privasoft satisfied the SOW's requirements. See AR at 45-47. For example, the agency states that Privasoft's implementation training, which occurs during testing and acceptance activities, touches on all levels of system use, contrary to Privasoft's contentions. Id. at 43. The agency also states that, not only is the implementation training allowable and consistent with Privasoft's FSS contract, it will ultimately save the government time and money. See id. at 43-45. The agency adds that the RFQ did not specify or require any specific manner of training and that such details were left to the discretion of the offeror. See id. at 42.

Where, as here, an agency issues an RFQ to FSS contractors under Federal Acquisition Regulation (FAR) subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. See Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Maybank Indus., LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 5; OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A contracting agency has the primary responsibility for determining its legitimate needs and for determining whether an offered item will satisfy those needs, since it is the agency that is most familiar with the conditions under which the supplies or services will be used and that must bear the burden of difficulties incurred by reason of a defective evaluation. Berkshire Computer Prods., B-246305, Feb. 28, 1992, 92-1 CPD ¶ 242 at 2.

The record here does not support the protester's assertion that Privasoft's quotation did not satisfy the RFQ requirements, or that the agency unreasonably evaluated the awardee's quotation. Nothing in the awardee's quotation, for example, suggests that its proposed system could not accommodate up to 75 concurrent users. On the contrary, Privasoft's quotation included statements asserting that its proposed system could be used by over 75 concurrent users and that its licensing model supported an unlimited number of users.¹³ Nor has AINS shown that it was unreasonable for the agency to find that Privasoft's proposed implementation training met the agency's user training requirements. The SOW requires the vendor to provide initial user training using a variety of methods and advised vendors that

¹³ To the extent that the protester argues in this regard that Privasoft only provided blanket statements of compliance with the SOW, see Protester's Comments at 31, as a general matter, agencies may reasonably rely upon such statements in evaluating proposals. See, e.g., Beckman Coulter, Inc., B-405452, Nov. 4, 2011, 2011 CPD ¶ 231 at 5.

training should begin early in the project. See RFQ amend. 1, at 5, 11, 16. The vendor is also required to provide all the services needed for successful implementation including research, analysis, presentations, briefings, and/or expert workgroups. Id. at 5, 11-12, 17. Furthermore, the RFQ explicitly advised vendors that the agency reserved the right to order training in any media proposed, or in any combination of media proposed. Id. at 33-34. In this regard, Privasoft described its implementation training as instructor-led, example-based, classroom training for FOIA end users, and, other than the protester's disagreement, AINS has not shown that Privasoft's proposed training is inconsistent with the RFQ's requirements.

Because GSA administers the FSS program, we requested GSA's views on whether the optional training offered by Privasoft is listed on its FSS contract and allowed the parties to comment. When an agency announces its intention to order from an existing FSS vendor, all items quoted and ordered are required to be on the vendor's FSS contract at the time the order is issued. See, e.g., Maybank, supra, at 4. The sole exception to this requirement is for items that do not exceed the micro-purchase threshold of \$3,000, since such items properly may be purchased outside the normal competition requirements in any case. Id.

GSA informed us that all the constituent elements of the optional training quoted by Privasoft were contained on Privasoft's schedule contract and that, even if combined or renamed, the services are properly within the scope of Privasoft's schedule contract. See GSA's Comments. In any event, the agency has indicated that it does not intend to purchase the optional training quoted by Privasoft, but will record and reuse the training included as part of Privasoft's separately priced system implementation services. In fact, the record shows that the agency did not evaluate the price of Privasoft's optional training.

We also find no basis here to question the agency's price evaluation. The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Computer Sys. Int'l, Inc., B-276955, B-276955.2, Aug. 13, 1997, 97-2 CPD ¶ 49 at 3. It is up to the agency to decide upon the appropriate method for evaluation of cost or price in a given procurement, although the agency must use an evaluation method that provides a basis for a reasonable assessment of the cost of performance under the competing proposals. S.J. Thomas Co., Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73 at 3. Generally, GSA has already determined that prices under FSS contracts are fair and reasonable, and, thus, ordering activities are generally not required to make a separate determination of fair and reasonable pricing. In situations where, as here, a statement of work is required, the ordering agency must perform a price evaluation to determine that the vendor's total price is reasonable. See FAR §§ 8.404(d), 8.405-2(d).

As discussed above, the RFQ stated that the agency would evaluate price quotations by adding the total prices for the base and all option years. RFQ, amend. 1, at 34. Contrary to AINS' assertion, the RFQ did not instruct vendors to

quote prices for a specific number of students, nor provide for the evaluation of CLIN 0004 in that regard. Rather, the RFQ instructed vendors to quote prices per student under CLIN 0004. With regard to AINS, the agency evaluated AINS' price for CLIN 0004 on a per student basis, as was quoted by AINS. With regard to Privasoft, the agency specifically asked the vendor during discussions for additional details regarding its proposed implementation training and, as we discuss above, reasonably found that Privasoft offered to satisfy the agency's training requirement at no additional cost to the agency.¹⁴ Accordingly, the CO considered Privasoft's price for CLIN 0004 to be zero, and here too, other than disagreeing with the agency, AINS has not shown that the agency's price evaluation was unreasonable.¹⁵

Finally, we find no merit to AINS contention that the agency's corrective action in response to AINS' earlier protest was unreasonably and untimely implemented. See Protest at 3-9. As discussed above, we have found no merit to any of AINS' objections to the agency's evaluation of technical and price quotations. Accordingly, there is no basis to question the CO's reliance upon the agency's earlier evaluation judgments, or to question the agency's corrective action in that regard. In sum, AINS has not shown that the agency's technical and price evaluations, or its selection decision, were unreasonable or inconsistent with the RFQ; the protester's

¹⁴ Similarly, the record shows that the agency also did not evaluate the price of an optional Public Access Link (PAL) portal for online submission, tracking, and receipt of final requested documents that AINS quoted for each performance period. AR, Tab 13, Award Determination, at 3; AINS Revised Price Quotation at 1-2.

¹⁵ In its comments on the agency report, AINS argues for the first time that it would have quoted a lower price for CLIN 0004 if the agency had informed AINS that the agency would evaluate AINS' training price based on 25 students instead of 125 students. See Protester's Comments at 8-12. AINS suggests in this regard that it would have offered a greater volume discount of between 67 and 75 percent for training and would thus likely have been issued the task order. See id. This argument is not only untimely and defies logic, compare id. with Protest at 17-18, see supra n.12, but is undercut by AINS' actions during the course of the competition. The record shows that AINS initially quoted a unit price for CLIN 0004 of [DELETED] per student based on 25 students, and, after discussions, quoted the same [DELETED] per student rate based on 125 students. Compare AINS Initial Price Quotation at 1 with AINS Revised Price Quotation at 1-4.

disagreement with the agency's judgment does not establish that the agency acted unreasonably. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The protest is denied.

Lynn H. Gibson
General Counsel