



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Privasoft Inc.

File: B-400853

Date: January 27, 2009

Robert Allen Evers, Esq., and George M. Coburn, Esq., Robert Allen Evers Law Offices, Chartered, for the protester.

Lawrence J. Sklute, Esq., Sklute & Associates, for AINS, Inc., an intervenor.

James E. Hicks, Esq., Drug Enforcement Administration, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Price evaluation, which included all option year license prices, was reasonable where vendor did not indicate any price reduction in option years for initial, “perpetual” licenses quoted in base year, and solicitation, as clarified by agency, provided that option year license pricing represented the cost of initial licenses for subsequent years.

DECISION

Privasoft Inc., of Herndon, Virginia, protests the issuance of a delivery order to AINS, Inc., of Gaithersburg, Maryland, under request for quotations (RFQ) No. 08-SI-0461, issued by the Department of Justice, Drug Enforcement Administration (DEA), for software in support of the Electronic Freedom of Information Act (EFOIA) program at DEA. The competition was limited to vendors holding General Services Administration (GSA) Federal Supply Schedule (FSS) contracts. Privasoft asserts that the agency improperly evaluated the vendors’ pricing.

We deny the protest.

The RFQ sought quotations for all labor and materials to provide EFOIA software and any necessary customization, and contemplated the issuance of a delivery order for a base year, with up to 4 option years. Quotations were to be evaluated under four technical factors—compliance with section 508 of the Rehabilitation Act of 1973; operational compatibility with current and future DEA operating environment; product demonstration and associated documentation; and past performance/experience. The RFQ required vendors to submit pricing for licenses

and maintenance “for up to 25 [named] users” (NU), implementation, and training for the base year, and for licenses and related maintenance “for up to 25 [NUs]” for each of the 4 option years.

Apart from responses to vendor questions, the RFQ did not address how prices would be evaluated. In this regard, prior to the due date for quotations, Privasoft posed the following question:

On the bid sheet (form 18), can DEA confirm whether it is seeking to purchase additional licenses in Years 2, 3, 4, [and] 5 of the contract (line items 1001, 2001, 3001, [and] 4001), or whether it is simply asking for the cost of the initial 25 licenses for subsequent years?

Agency Report (AR), Tab 8, at Question 25. DEA published the following response for all potential vendors:

DEA is asking for the cost of the initial 25 licenses for subsequent years. DEA anticipates 16 users at present, with efforts underway to increase staffing to no more than 25 users.

AR, Tab 8, at Answer 25.

Privasoft and AINS submitted quotations and participated in product demonstrations. Both quotations were evaluated as satisfying the requirements of the performance work statement, but AINS’s was scored higher technically. With regard to price, both vendors included separate unit prices for each license and related maintenance for each of the 25 specified NUs for the base and option years.

The agency initially calculated a total price for each vendor using their quoted prices for 25 NUs for the base and option years. Based on these calculations, AINS’s total evaluated price was \$1,076,914.63 and Privasoft’s, including volume discounts for the base year, was \$1,089,759.26. Because the agency did not have a current need for all 25 licenses and related maintenance, it re-evaluated both vendors’ pricing using 18 NUs for the base year and 25 NUs in the option years, which resulted in an evaluated price of \$1,028,556.53 for AINS and \$1,043,605.10 for Privasoft. Since AINS’s evaluated price was lower under both calculations, DEA issued a delivery order to AINS.

Privasoft challenges the evaluation of its quoted price. We will review a price evaluation to determine whether it was reasonable and consistent with the solicitation’s evaluation criteria. The Arora Group, Inc., B-277674, Nov. 10, 1997, 98-1 CPD ¶ 64 at 4. The evaluation here was reasonable.

Privasoft asserts that, because its quotation identified its licenses as “perpetual,” and notwithstanding that it priced the 25 licenses for each option year as directed by the

RFQ, the agency's price evaluation improperly included the price of all 25 licenses in each option year. In Privasoft's view, since the agency issued the order based on the price of 18 licenses in the base year, the only additional cost (for Privasoft) would be for up to 7 additional perpetual licenses in each option year. (In this regard, Privasoft asserts that the agency properly included AINS's price for all 25 licenses in the option years because AINS did not identify its licenses as perpetual.) Had the agency used the reduced quantities in its evaluation, Privasoft's total price would be lower than AINS's.

This assertion is without merit. The agency made clear through its response to question 25, that it expected vendors to quote a price for "the cost of the initial 25 licenses for subsequent years" and Privasoft did this. AR, Tab 8, at Answer 25. While Privasoft's quotation identified its licenses as "perpetual," it did not indicate that this designation would result in any reduction in price. To the contrary, its price for each license in the option years was equal to or greater than the price quoted for the base year. To the extent Privasoft intended to quote a reduced price for licenses in the option years, it was required to clearly indicate this in its quotation, not leave it to the agency to deduce from its reference to perpetual licenses. Since an agency's evaluation is dependent upon the information furnished in a quotation, it is the vendor's burden to submit an adequately written quotation for the agency to evaluate; a protester's failure to fulfill its obligation in this regard does not render the evaluation unreasonable. SOS Interpreting, Ltd., B-287505, June 12, 2001, 2001 CPD ¶ 104 at 12. Given the absence of any indication in Privasoft's quotation of reduced pricing for the option years, the agency reasonably considered Privasoft's option prices and quantities--as quoted--in its evaluation.

In its comments in response to the agency report, Privasoft asserts that the agency improperly applied its quoted volume discounts only to the base year prices; the discounts also should have been applied to the option year prices. Privasoft notes, in this regard, that its quotation included two discounts--a "DEA volume discount on total order" for orders placed by a specific date, and an additional discount for an earlier order--and did not limit application of the discounts to the base year only.¹ Comments at 3-4. According to the protester's calculations, proper application of these discounts would have resulted in its evaluated price being lower than AINS's. In the alternative, Privasoft asserts that its price would have been lower than AINS's had the agency evaluated only the base year pricing. In this regard, it notes that neither the RFQ, nor the response to question 25, indicated that the agency intended to evaluate prices based on both the base and option periods. Id. at 4.

¹ We note that, notwithstanding Privasoft's assertion that its volume discounts applied to both its base and option year pricing, its quotation only included a calculation of these discounts for the base year; no volume discounts were indicated or calculated for the option year pricing. Privasoft Quotation at 3-4.

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. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2008). Privasoft learned the basis of both of these protest grounds in a post-award letter from DEA explaining that the price analysis had included both the base and option years, resulting in 5-year prices for both vendors.² DEA Letter, Nov. 21, 2008. The letter also included a table with calculations clearly showing that the agency had used Privasoft's base and option year pricing in the evaluation and had applied Privasoft's volume discounts only to its base year prices. *Id.* Since Privasoft did not specifically challenge these aspects of the evaluation until it filed its comments, more 1 month after receiving the November 21 letter, this aspect of the protest is untimely and will not be considered.³

Since the agency reasonably evaluated Privasoft's prices as higher than AINS's, and Privasoft has not objected to the technical evaluation of AINS's quotation, the agency properly issued the delivery order to AINS.

The protest is denied.

Gary L. Kepplinger
General Counsel

² To the extent Privasoft is protesting the RFQ's failure to detail the agency's price evaluation methodology, its protest is also untimely. The lack of this information represents an alleged solicitation impropriety, clear from the face of the RFQ, which had to be challenged prior to the deadline for receipt of quotations. *See* 4 C.F.R. § 21.2(a)(1).

³ Our conclusion is not changed by Privasoft's assertion that the agency improperly decided to consider option year pricing, in part, because it viewed Privasoft's low base year pricing as an attempt to "buy in." Comments at 4. The fact that this information was first included in the agency report does not make Privasoft's protest timely. Regardless of the agency's rationale for including option-year pricing in the evaluation, the essence of Privasoft's protest is the agency's evaluation methodology and, as discussed above, Privasoft did not raise this ground until more than 10 days after it knew, or should have known, of this methodology. In addition, the agency explains that it also included option-year pricing because it considered it beneficial to the government. Contracting Officer's Statement at 4. Privasoft does not explain, and we fail to see, how the agency's view of Privasoft's "buying-in" had any impact on the actual price evaluation, or otherwise prejudiced the protester. We will not sustain a protest absent a showing of a reasonable possibility that the protester was prejudiced by the agency's actions. *McDonald-Bradley*, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; *see Statistica, Inc. v. Christopher*, 102 F.3d 1577, 1581 (Fed Cir. 1996).