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**Comptroller General
of the United States**

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

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Decision

Matter of: Electronic Vision Access Solutions

File: B-401473

Date: August 25, 2009

James H. Roberts III, Esq., Van Scoyoc Kelly PLLC, for the protester.
David S. Cohen, Esq., Victor G. Klingelhofer, Esq., John J. O'Brien, Esq., and Catherine K. Kroll, Esq., Cohen Mohr LLP, for Integration Technologies Group, Inc., an intervenor.
H.R. Roberson, Esq., and Lori R. Larson, Esq., Internal Revenue Service, for the agency.
Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably found awardee's proposed system to be commercially available where it was of a type customarily used by, and had been sold to, the general public, in accordance with the Federal Acquisition Regulation definition incorporated by the solicitation, as amended.
 2. Protest that awardee's proposal was technically unacceptable, because the awardee did not propose a Braille study function, is denied where the solicitation did not require such a function.
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DECISION

Electronic Vision Access Solutions (EVAS) of Westerly, Rhode Island, protests the award of a contract to Integration Technologies Group, Inc. (ITG) of Falls Church, Virginia, under request for proposals (RFP) No. TIRNO-08-R-00029, issued by the Internal Revenue Service (IRS), Department of the Treasury, for hardware, software, and related support services for qualified individuals with disabilities. EVAS complains that ITG proposed a computer monitor that was not commercially available and that ITG did not offer a Braille display system that was compatible with the Job Access With Speech (JAWS) screen reading software.

We deny the protest.

The RFP sought offers for commercially available hardware and software assistive technology (AT)¹ and support services (such as integration with existing technology, installation, training, hardware maintenance and software support) for qualified disabled individuals at the IRS. Among other things, offerors were to propose a Braille Display System (which had to be compatible with the JAWS software), see RFP amend. 1, at 45, and a “commercially available” LCD color monitor. Id. at 43. As amended, the RFP defined commercially available to be:

“Commercially available hardware and software” shall mean AT products that meet the criteria set forth in Federal Acquisition Regulation (FAR) Subpart 2.1--Definitions for “commercial component”, “commercial computer software” and “commercial item.”

Id. at 5. Prior to this amendment, the RFP defined “commercially available” to be AT products that “are in current production.” See RFP at 115. The RFP provided for award of an indefinite-delivery/indefinite-quantity, fixed-price contract to the offeror with the lowest-priced, technically-acceptable proposal.

Technical proposals were required to be submitted in three sections. As relevant here, the second section required offerors to demonstrate their ability to provide the AT items listed in the AT technical specifications portion of the statement of work, including demonstrating that the item proposed by the offeror satisfied the section 508 standards “for the most compliant product currently available in the market place.”² RFP amend. 1, at 140.

Proposals were received from three offerors, including ITG and EVAS. In its initial technical evaluation, the agency found that it was not possible for any offeror to meet all section 508 requirements for the LCD color monitor. The agency therefore amended the solicitation to provide, in particular, that “[t]he requirement for Item #47, LCD Color Monitor, to comply with Section 508 technical standard 1194.23(k)(4) is hereby removed due to commercial non-availability of a fully conforming

¹ AT was defined by the RFP to “mean those hardware and software items whose primary function is to adapt information technology for use by individuals with disabilities.” RFP amend. 1, at 5.

² Section 508 of the Rehabilitation Act of 1973, as amended, requires that agencies procure electronic and information technology that allows individuals with disabilities the same access as persons without disabilities, unless doing so would impose an undue burden on the agency. See 29 U.S.C. § 794d(a)(1)(A) (2006). Section 508 accessibility standards are promulgated by the Architectural and Transportation Barriers Compliance Board.

commercial item(s).”³ RFP amend. 4, at 2. Offerors were provided an opportunity to modify their proposals in response to this amendment. Following evaluation of the revised proposals, the agency further amended the technical specifications and provided the offerors with another opportunity to revise their proposals.

The IRS established a competitive range that included the proposals of all three offerors and conducted discussions. With regard to discussions with ITG, the agency informed ITG that its proposed LCD color monitor did not appear to be compliant with the amended solicitation’s section 508 technical specifications. Specifically,

[i]n accordance with [the] Solicitation . . . in order for an item to receive a rating of “pass”, it must meet the 508 standards for the most compliant product currently available in the market place. The item proposed by ITG to meet the IRS’ requirement for a LCD Color Monitor is not fully compliant with Standard 1194.26(a)(1194.23k(1)).⁴

See Agency Report (AR), Tab J.3, ITG Response to Discussion Questions, at 5. In response, ITG clarified how its proposed monitor satisfied the specified standard and proposed to add a tactile marking to distinguish the power button from other buttons on the monitor. *Id.* The IRS found that ITG’s proposal, as clarified, fully complied with section 508 standards. AR, Tab L.2, Final Technical Evaluation Report, at 4.

After evaluating final proposals, ITG’s proposal was found to be technically acceptable and the lowest priced. The IRS awarded the contract to ITG, and this protest followed.

EVAS argues that ITG’s proposal should have been rejected because ITG’s proposed monitor is not “commercially available.” In this regard, EVAS asserts that ITG’s proposed monitor has not been produced by the manufacturer for nearly a year and that the protester was informed that the monitor was “out of stock,” “obsolete,” or “discontinued” when it attempted to purchase the monitor from the manufacturer or resellers.

As noted above, the RFP, as amended, informed offerors that the definition of “commercial item” in FAR § 2.101 would be used to determine whether an offered item was “commercially available.” See RFP amend. 1, at 5. The FAR defines an

³ This standard insures that all locking or toggle controls are visual discernable, and discernable either through touch or sound. See 36 C.F.R. § 1194.23(k)(4).

⁴ This standard insures that controls and keys are tactilely discernable without having to activate the controls or keys. 36 C.F.R. § 1194.23(k)(1).

item to be commercially available if it “is of a type customarily used by the general public” and “has been sold, leased, or licensed to the general public.” FAR § 2.101. Here, it is not disputed that ITG’s monitor is of a type customarily used by the general public and has been sold to the general public. Neither the FAR definition, nor any other requirement in the solicitation, requires that an offered item either must be in current production, or must currently be sold to the general public. Therefore, we find reasonable the agency’s determination that ITG’s monitor was “commercially available.”⁵

Despite the fact that ITG’s offered monitor satisfied the amended solicitation’s definition of “commercially available,” the protester argues that the IRS itself found ITG’s monitor to be “commercially non-available,” noting that during discussions the IRS informed ITG that the awardee’s monitor did not meet the section 508 standards for the most compliant product “currently available in the marketplace.” This argument, however, is without merit. Whether ITG’s monitor satisfied the section 508 standards for the most compliant product “currently available in the marketplace” has nothing to do with whether the monitor is commercially available. In any event, as noted above, the agency found following discussions that ITG’s proposal satisfied the section 508 standards. See AR, Tab L.2, Final Technical Evaluation Report, at 4.

The protester also argues that ITG’s proposal should have been rejected as technically unacceptable because ITG’s proposed Braille display system was not “compatible with the JAWS [Job Access with Speech] Screen Reader Software,” as required by the RFP.⁶ See RFP amend. 1, at 45. Specifically, EVAS argues that ITG’s proposed Braille display system will not run the Braille study function in the JAWS software.

The IRS responds that it is true that ITG’s proposed Braille display system does not support the Braille study function in the JAWS software. The agency states, however, that the “Braille study” function—which is “a training tool for teaching and

⁵ After the protest was filed, ITG provided to the contracting officer an email (also dated after the protest was filed) from the manufacturer of the firm’s offered monitor that states that the monitor was currently being manufactured and that the monitor was available to resellers and end users through the manufacturers wholesale distribution and authorized reseller sales channel. Contracting Officer’s Statement, attach., Email from manufacturer of the monitor to ITG, June 16, 2009. Although EVAS argues that no weight should be given to this “post hoc” email, the protester has not shown that the manufacturer’s statements are inaccurate in any regard.

⁶ The JAWS screen reader software, which is produced by Freedom Scientific, “is a screen reader that translates the contents of the monitor screen or data being entered from the keyboard into speech and/or Braille.” See RFP amend. 1, at 48.

learning Braille”--was not required by the solicitation. See AR, Tab O. In this regard, the agency explains that the JAWS program

is a screen reading software application manufactured by Freedom Scientific, Inc. for computer users whose vision loss prevents them from seeing screen content. A refreshable Braille display is a piece of hardware that provides Braille output from the screen reader software. The JAWS software gathers the screen content from the operating system, converts it into Braille characters and sends it to the Braille display system where the information displayed on PC screens is made accessible to blind users through the use of the Braille display, an electro-mechanical device that displays Braille characters.

Legal Memo at 16 (citations omitted). The agency explains that ITG’s proposed Braille display system performs these tasks, and is thus “compatible” with the JAWS screen reader software.

EVAS disagrees, noting that the RFP provided required JAWS software training and that the Braille study mode is not “just a tool for teaching Braille,” rather it also “assists a user who is new to Braille.” Protester’s Comments at 7-8. We find no merit to the protester’s arguments in this regard. The RFP’s training requirements provide for training in the use of the software and not providing Braille training. See RFP amend. 1, 23-24. In this regard, the protester does not cite to any part of the RFP that specifically requires that the contractor support a “Braille study” function. Rather, we find that the RFP provides that the awardee’s proposed software must support Braille displays, that is, the proposed software be able to display screen content in Braille. Given that ITG’s Braille display system performs this function, we find reasonable the agency’s determination that the awardee’s Braille display system was compatible with the JAWS software. Moreover, the JAWS software itself specifically refers to the awardee’s Braille display system as being compatible, see AR, Tab O, JAWS Help Menu Screen Shot, and the JAWS help function provides detailed instructions for installing and operating the awardee’s display system with JAWS. See Id., JAWS Help Instructions.

The protest is denied.

Daniel I. Gordon
Acting General Counsel