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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: Dell Marketing LP

File: B-400784

Date: January 27, 2009

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Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated quotations in response to solicitation for computer workstations is denied where record shows that agency's evaluation was in accordance with terms of solicitation and applicable statutes and regulations.

DECISION

Dell Marketing, LP, of Round Rock, Texas, protests the issuance of a blanket purchase agreement (BPA) to Hewlett-Packard Company (HP), of Bethesda, Maryland, under request for quotations (RFQ) No. SSA-RFQ-08-1428, issued by the, Social Security Administration (SSA), to purchase computer hardware under the successful vendor's Federal Supply Schedule (FSS) contract. Dell asserts that the agency misevaluated the quotations submitted in response to the RFQ and failed to engage in meaningful discussions.

We deny the protest.

The RFQ contemplated the award of a fixed-unit-price BPA to acquire an estimated quantity of microcomputer workstations, 19-inch and 22-inch flat panel LCD monitors, sound cards, speakers, keyboards and memory upgrades, along with a 4-year warranty on all equipment, and miscellaneous support and installation services. RFQ at 13.

The RFQ advised that the agency would use a three-step evaluation process. During step one, quotations would be reviewed for technical and past performance acceptability. RFQ at 81-82. The step one evaluation is not at issue in the protest. During step two, the technically acceptable quotations were to be evaluated for conformance with various standards relating to implementation of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d (2000), along with certain agency-specific (SSA) accessibility standards. RFQ at 82. The step two evaluation was to be based on a review of written materials submitted with the quotations, in particular, the vendors' voluntary product accessibility templates (VPATs); the agency also reserved the right to conduct a hands-on evaluation to assess products' existing level of compliance with the section 508 and SSA standards. *Id.* The agency would issue the BPA following step two to the firm whose products were determined to be the most compliant with the section 508 and SSA standards; otherwise, it would move on to step three. *Id.* During step three, where two or more quotations were fully compliant, or two quotations were deemed equally compliant, the BPA would be issued to the vendor with the lowest priced, technically acceptable quotation. RFQ at 83.

The agency received three quotations, including Dell's and HP's. The agency determined that Dell's and HP's quotations were technically acceptable. Agency Report (AR), exh. 39. With respect to compliance with the section 508 and SSA accessibility standards, the agency determined initially that it did not have sufficient information to reach a conclusion with respect to either vendor's quotation. Accordingly, the agency engaged in three rounds of clarifications relating to the vendors' VPAT information (as well as an additional round relating to changes to the agency's requirements and clarifications of technical issues relating to the quoted equipment). AR, exhs. 10, 11, 20, 21, 25, 26, 34, 35. During this time, the agency also performed hands-on testing of the vendors' offered products, and memorialized its conclusions. AR, exhs. 17, 24; Agency Letter, Nov. 25, 2008, attachs. A-C. Thereafter, the agency determined that HP had quoted the most section 508 compliant products and, consistent with the scheme discussed above, issued a BPA to HP, notwithstanding that its price was higher than Dell's. After being advised of the agency's issuance of the BPA to HP, Dell filed the instant protest.

By way of background, the section 508 accessibility standards, which are promulgated by the Architectural and Transportation Barriers Compliance Board, are divided into several categories. Under 36 C.F.R. part 1194, subpart B (2008), all electronic and information technology (EIT) is divided into six broad categories: software applications and operating systems (36 C.F.R. § 1194.21); web-based intranet and internet information and applications (36 C.F.R. § 1194.22); telecommunications products (36 C.F.R. § 1194.23); video and multimedia products (36 C.F.R. § 1194.24); self contained, closed products (36 C.F.R. § 1194.25); and desktop and portable computers (36 C.F.R. § 1194.26). Additionally, 36 C.F.R. § 1194.31 contains the section 508 accessibility standards for all types of EIT in terms of functional performance criteria, and 36 C.F.R. § 1194.41 contains the standards for

all types of EIT in terms of the availability of product information, documentation and support. These accessibility standards were applied by the agency to the information provided by the competitors in their respective VPATs to determine the degree to which vendors' products met the requirements of section 508. AR, exh. 15.

The agency also conducted hands-on testing of the vendors' products to evaluate their compatibility with several SSA-specific software applications that are used by the agency's employees with disabilities. The two software applications of relevance here are JAWS (a screen reader application) and MAGic (a screen magnification application). RFQ at 18. As noted, these applications are referred to in the record as the SSA accessibility standards.

Dell's protest relates to the agency's assessment of the vendors' products' degree of compliance with the section 508 standards and compatibility with the SSA standards. In reviewing protests relating to an agency's evaluation of quotations or proposals, we will not independently reevaluate proposals; rather, we will review the record to ensure that the agency's evaluation was consistent with the terms of the solicitation and applicable statutes and regulations. Engineered Elec. Co. d/b/a/ DRS Fermont, B-295126.5, B-295126.6, Dec. 7, 2008, 2008 CPD ¶ 4 at 3-4. We have considered all of Dell's assertions and find them to be without merit. We discuss Dell's principal arguments below.¹

¹ Dell raised numerous assertions in its initial protest. The agency provided a detailed response to these arguments in its report. In its comments on the agency report, Dell made no further mention of several of these arguments; accordingly, we deem them abandoned. See Accumark, Inc., B-310814, Feb. 13, 2008, 2008 CPD ¶ 68 at 2 n.1. Among these abandoned arguments are the following: the agency improperly found that the HP workstation was more compliant with the section 508 standards relating to functional performance criteria (36 C.F.R. § 1194.31) and product information, documentation and support (36 C.F.R. § 1194.41); the agency improperly failed to find Dell's 19-inch monitor to be either the most compliant monitor quoted, or that it was at least as conforming as HP's monitor, and misevaluated both vendors' 19-inch monitors under 36 C.F.R. §§ 1194.26 and 1194.31 (desktop and portable computer standards and functional performance criteria, respectively); the agency improperly failed to evaluate HP's 22-inch monitor under the section 508 standards relating to telecommunications products (36 C.F.R. § 1194.23); the agency improperly found HP's quotation technically acceptable, despite the fact that its 22-inch monitor did not meet the RFQ's warranty requirements; and the agency improperly evaluated the vendors' websites in its section 508 compliance assessment.

ADEQUACY OF EVALUATION DOCUMENTATION

Dell asserts that the agency did not adequately document its evaluation conclusions in its section 508 compliance review. According to the protester, the agency merely gave evaluation credit to vendors for the self-representations on their VPATS,² without reviewing in detail the content of the submissions, and assigned point scores for compliance with the various standards without identifying the underlying rationale.

This argument is without merit. In this regard, the record shows that the agency's evaluators engaged in a protracted review of the vendors' VPAT submissions, during which they repeatedly sought additional information where they identified deficiencies or informational gaps in the VPATs. For example, after reviewing the initial VPATs, the evaluators summarized their conclusions, noting those areas where the vendors failed to address the informational requirements of the VPATs. AR, exh. 14, at 1-2. The agency then sent clarification requests to both vendors requesting additional details in support of their claims regarding compliance. AR, exhs. 25, 26. For example, the agency sent the following inquiry to Dell after reviewing its initial VPATs submission:

In reviewing the section 508 information templates [VPATs] that [were] submitted for the hardware in SSA-RFQ-08-1428 it has been determined that the templates that [were] submitted [do] not provide enough remarks/explanation as to how and why they do not support the requirements or why you feel [that one or another of the standards] is 'Not Applicable.' Please provide detail[ed] responses on all the templates stating the reason why they support the requirements or why you feel it is not applicable. Also, please provide templates on your website.

AR, exh. 26. This process was repeated numerous times throughout the agency's evaluation. AR, exhs. 25, 26, 29, 30.

The record also shows that the agency's evaluation conclusions changed throughout this process in response to the information received from its requests for clarification. Cf. AR, exh. 14 (indicating that the evaluators reached no firm conclusions respecting the degree to which the vendors' products fully supported, supported in part, or did not support the section 508 standards), AR, exh. 32 (indicating that the evaluators reached a preliminary conclusion that HP quoted two

² The vendors indicated on their VPATS that their products "supported" the section 508 standards, "partially supported" the standards or declared that the standards were "not applicable (N/A)." AR, exhs. 10, 11, 27, 28, 34, 35.

products that fully supported the section 508 standards and two that partially supported the standards, while also finding that Dell offered two products that partially supported the section 508 standards and one that was “indeterminable” from the VPAT), and exh. 38 (the agency’s final determination that four HP products fully supported and one partially supported the section 508 standards, and that one Dell product fully supported and four partially supported the standards). In short, we find that, contrary to Dell’s assertions, the evaluators in fact performed a detailed evaluation of the VPATS, and the record adequately memorializes that evaluation.

MISEVALUATION OF QUOTED PRODUCTS

Inapplicable Standards

Dell asserts that the agency improperly assigned HP “evaluation points” for its workstation and 22-inch monitor under the software applications and operating systems criteria (36 C.F.R. § 1194.21). According to Dell, since this acquisition does not include software, giving credit for section 508 compliant software was unreasonable. Dell maintains that, in contrast, it received no similar evaluation points because its quotation accurately characterized this standard as not applicable. Similarly, Dell maintains that the agency improperly assigned HP an extra evaluation point for quoting a 22-inch monitor that had a compliant touch screen or touch-operated controls, even though the agency is not acquiring such products. According to the protester, in both situations, the competitors should have been assigned a “not applicable” rating for these items.

The protester’s assertion is based on a premise that mischaracterizes the agency’s evaluation. The record shows that the VPATs were reviewed under numerous—and sometimes differing—regulatory categories, depending on the product in question. For example, the workstation VPATs were reviewed for compliance under 36 C.F.R. §§ 1194.21, 1194.23, 1194.26, 1194.31 and 1194.41. AR, exh. 38. Within each regulatory category, there were a discrete number of requirements; for example, under 36 C.F.R. § 1194.21, there were 12 requirements. *Id.* However, there is no indication in the record that the agency assigned evaluation points under the various categories, or that it subsequently tallied points for purposes of evaluating the compliance of a given product with the section 508 standards. Rather, the record shows that the agency’s methodology was to assign a rating of “supports” to a component where all of the standards were rated as either “fully supported” or “not applicable” AR, exh. 38; that is, the evaluation made no distinction between a “fully supported” and a “not applicable” rating for purposes of determining compliance. The controlling consideration was whether a component received one or more ratings of “partially supported” for a category; in that case, the component automatically received a rating of “partially supported” for the category. *Id.* Thus, the record shows that the agency’s ultimate evaluation conclusion would not have changed, even if the protester were correct that the agency improperly assigned HP’s workstation and 22-inch monitor “supported” rather than “not applicable” ratings for

some of the requirements. It follows that there is no basis for us to question the evaluation in this area.

Disparate Evaluation

Dell asserts that the agency disparately evaluated the quotations regarding the RFQ requirement for information, documentation, and support for their products that would accommodate disabled workers. Dell claims that HP and itself met the requirement the same way—in the form of a toll-free number, available Monday through Friday during regular business hours, that would accommodate callers using telecommunications device for the deaf/teletypewriter (TDD/TTY) terminals (which are used by hearing and speech impaired individuals). Dell also asserts that both vendors offered information, documentation and support via their websites 24 hours a day.³ HP's workstation, 19-inch monitor and 22-inch monitor were rated as fully supporting the standard, while Dell's received partially supports ratings under 36 C.F.R. § 1194.41. Dell maintains that these disparate evaluation conclusions were unreasonable given that the two vendors quoted identical approaches.

This argument is without merit. While Dell may have quoted the same toll-free number approach as HP, the record shows that this aspect of the quotations was not the reason for the disparate ratings in this area. The agency evaluated the vendors' websites under 36 C.F.R. § 1194.22 to determine whether they supported the section 508 standards. The vendors' VPATs and the agency's evaluation conclusions show that HP's website was rated "fully supports" for all 16 requirements under 36 C.F.R. § 1194.22, whereas Dell's was rated "fully supports" under only 6 of the requirements and "partially supports" under 5 (Dell designated 5 of the requirements "not applicable"). AR, exh. 11, at 16-17; 34, 38. Consistent with its evaluation methodology (discussed above), the agency therefore rated HP's website as "fully supports" and Dell's as "partially supports." AR, exh. 38.

In rating the vendors' other offered components, the agency assigned "fully supports" ratings to the HP products under 36 C.F.R. § 1194.41 because HP quoted TDD/TTY terminals and a website that had been determined to fully support the section 508 standards. AR, exh. 38. In contrast, when rating Dell's other components, the agency assigned "partially supports" ratings to Dell's workstation and 22-inch monitor under 36 C.F.R. § 1194.41 because, although Dell also quoted

³ The protester asserts that only one of the two information, documentation and support alternatives (i.e., either TDD/TTY or a section 508 compliant website) was required under the RFQ. The record shows, however, that Dell consistently proposed to meet the information, documentation and support requirement through both its TDD/TTY service as well as on-line website support. AR, exh. 10, at unnumbered pages 14-16, (workstation), 19 (19-inch monitor), and 23-24 (22-inch monitor). The agency therefore properly evaluated its quotation as offering both.

TDD/TTY terminal support and a website, its website had been rated only “partially supports.” This evaluation conclusion was unobjectionable; since the Dell website did not fully support the section 508 standards, and the remaining products were dependent on that website to provide prospective users with the information, documentation and support, the agency reasonably concluded that Dell’s components warranted a partially supports rating.

HANDS-ON TESTING

Dell asserts that the agency misevaluated its workstation when it conducted its hands-on test for purposes of determining whether the workstation was compatible with the SSA accessibility standards (the JAWS and MAGic software applications). The RFQ required vendors to supply workstations that had operating system software already installed, but the agency installed the JAWS and MAGis software applications prior to conducting the hands-on testing. The agency found that the Dell workstation did not perform as well as HP’s when these applications were run. AR, exh. 24; Agency Letter, Nov. 25, 2008, attachs. A-C. According to Dell, its and HP’s workstations employ the same [deleted], and therefore should have performed more or less identically; it thus infers that there had to be a problem with the agency’s installation of the JAWS and MAGic software applications on its workstation, or that the agency must have configured its workstation incorrectly prior to conducting the hands-on test.⁴

This argument is without merit. First, Dell has not asserted or demonstrated that, even though its workstation and the HP workstation have certain components in common, they are configured identically, such that identical test results necessarily would be expected. HP points out, for example, that differences in other system components, firmware, or other hardware configuration questions leave open the possibility that the two workstations would perform differently. HP Supplemental Comments, Dec. 23, 2008, at 19. Further, there is no other evidence supporting Dell’s inference that the performance of its workstation during the hands-on test was attributable to errors on the part of the agency in installing the JAWS and MAGic software applications, or in otherwise configuring its workstation prior to the test.

⁴ Dell argues that the agency improperly failed to engage in meaningful discussions because it failed to bring the findings of the agency’s hands-on testing to its attention during discussions. However, since the record shows that the hands-on testing did not lead to a conclusion that the proposal was technically unacceptable, the agency was not required to bring the matter to Dell’s attention during discussions. See Portfolio Disposition Mgmt. Group, LLC, B-293105.7, Nov. 12, 2004, 2004 CPD ¶ 232 at 2 (agencies are not required to discuss every element of a technically acceptable proposal that receives less than the maximum possible score).

In any case, the record shows that, ultimately, the agency's observations during the hands-on test resulted in its merely concluding that there was a difference in performance between the two workstations, not that the Dell product was technically unacceptable. In this respect, the record includes an e-mail chain that began with an e-mail from the head of the testing group to several other people in the agency. In response to that e-mail, one of the agency's procurement officials stated: "It is unclear whether the report below proposed to fail the Dell 755, but the way I interpret the comments, it is a performance issue and not a failure." Agency Letter, Nov. 25, 2008, attach. C, at 7. The head of the agency's testing group essentially concurred, stating in response:

I am only saying that MAGic flickers in inverse mode more on this system than in the others. Flickering has been an issue on EWD [employees with disabilities] systems before that have drawn complaints from EWD MAGic users. MAGic performance due to combined slowness and flickering was not as good on this Dell system compared to the others.

Id. Likewise, there is no indication that the agency considered the hands-on test results for Dell in either the section 508 compliance findings, or in the source selection decision itself. In the final section 508 compliance evaluation report, there is no mention of the results of Dell's test results, and there is only a passing reference to HP's results. The report states:

Based on a review of the VPATs provided by each vendor, the final determination is as follows:

Hewlett Packard (4 Fully Supports, 1 Partially Supports)

Dell (1 Fully Supports, 4 Partially Supports)

Based on currently available information, the VPATs indicate that Hewlett Packard provides the most compliant all around solution. According to [one of the members of the hands-on test group] the HP also complies with SSA Assistive Technologies (JAWS, MAGic, Dragon).

AR, exh. 38, at 1. These conclusions are repeated verbatim in the source selection decision, AR, exh. 42, at 6. It thus does not appear that the test results were used as a discriminator in the award decision.

The protest is denied.

Gary L. Kepplinger
General Counsel