



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Access Logic, Inc.

**File:** B-274748; B-274748.2

**Date:** January 3, 1997

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Andrew Mohr, Esq., Cohen & White, for the protester.

Russell F. Sauer, Jr., Esq., Latham & Watkins, for EISI, Inc., an intervenor.

Vincent A. Salgado, Esq., and Thomas W. Berndt, Esq., National Aeronautics and Space Administration, for the agency.

John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest of rejection of equal products offered in response to a brand name or equal procurement for commercial items is sustained where rejection was based on failure of proposal to meet requirements that were not conveyed by the solicitation.

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## DECISION

Access Logic, Inc. protests the award of a contract to EISI, Inc., under request for offers (RFO) No. 2-36632(CDT), issued by the National Aeronautics and Space Administration (NASA), for a 360-degree rear projection display system which will be used to simulate the outside view from an air traffic control tower.

We sustain the protest.

NASA conducted this procurement under the procedures set forth in Part 12 of the Federal Acquisition Regulation (FAR), "Acquisition of Commercial Items." Pursuant to FAR § 12.202 (Federal Acquisition Circular (FAC) 90-39), the agency conducted market research to determine which products would best meet its needs. After evaluating various projectors and screens during demonstrations held at vendor and customer sites and an industry convention, pursuant to the streamlined procedures set forth in FAR Subpart 12.6, and in particular FAR § 12.603, the agency issued the RFO as a combined synopsis/solicitation. The RFO incorporated FAR § 52.212-1 (FAC 90-39), "Instructions to Offerors--Commercial Items," which stated that offers must show, among other things, "[a] technical description of the items being offered in sufficient detail to evaluate compliance with the requirements of the solicitation. This may include product literature, or other documents, if necessary." The RFO

also stated that award would be made to the responsible offeror which submitted the lowest-priced, technically acceptable offer responsive to the solicitation.

Among other items, the RFO specified the Electrohome Marquee 9501LC ACON brand name projection systems, or equal, and Optawave projection screens, or equal.<sup>1</sup> Although the RFO specified brand name or equal items, it did not include the standard "brand name or equal" clause which alerts offerors to include information in their offers sufficient to establish the equality of the products they are offering to the listed brand name. The RFO included a "Projection Display System Requirements Document," which apparently constituted the agency's salient characteristics, and included required specifications for the projectors and screens. That document also stated that the contractor is to provide all necessary design, engineering, installation labor, projector adjustments, project management, documentation, screens, equipment and materials, to furnish a complete and operational projection display system.

Six proposals were submitted. Instead of the brand name projection system, Access Logic proposed as an equal a BarcoGraphics 1209 rear projection display system; the firm also proposed Dia-Nippon ProScreen 180 degree viewing cone screens as equal to the brand name screens. Access Logic's proposal, which was priced at \$665,901, was rejected as technically unacceptable for reasons which we will address in detail below. Award was made to EISI at a price of \$773,168, as the lowest-priced, technically acceptable offeror.

Based on our review of the record, we conclude that NASA improperly found Access Logic's offer unacceptable for failing to meet requirements not set forth in the RFO. Once offerors are informed of the criteria against which proposals will be evaluated, the agency must adhere to them. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In a brand name or equal acquisition, the contracting agency has an obligation to inform offerors of the characteristics that are essential to the government's needs and a product offered as an "equal" one need not meet unstated features of the brand name product. Tri Tool, Inc., B-265649.2, Jan. 22, 1996, 96-1 CPD ¶ 14. Similarly, in an acquisition of commercial items, the description of the agency's needs "must contain sufficient detail for potential offerors of commercial items to know which commercial products or

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<sup>1</sup>The RFO in fact only stated that "or equal" offers would be considered for the projectors, and not the screens. Nonetheless, the solicitation included detailed technical requirements for the screens--suggesting that a brand name or equal method also was intended for the screens. More importantly, in its evaluation of proposals and its defense of this protest, NASA has treated the solicitation as a brand name or equal solicitation for both the projectors and the screens. Under these circumstances, we have reviewed the evaluation as if the RFO permitted offers of equal products for both items.

services to offer." FAR § 12.202(b); Metfab Eng'g. Inc.; Mart Corp., B-265934; B-265934.2, Jan. 19, 1996, 96-1 CPD ¶ 93.

Among the reasons for rejecting Access Logic's offer, NASA concluded that Access Logic's offer did not meet RFO requirements concerning the "gain" and "half gain" angle for the projection screens and took exception to an RFO requirement concerning vertical mullions between the screens. Concerning these requirements, the RFO stated that:

"The [c]ontractor shall provide a 360 degree rear projection screen system, with minimum vertical mullions, . . . Use only products which comply with the following requirements:

1. Custom fresnel/lenticular acrylic optical screens with 4.0 gain, . . .

. . . . .

3. Physical separation between the screens to be as small as possible so as to make it difficult to see the screen edge lines."

The only reference in Access Logic's proposal concerning the mullions was a statement that "[t]he screens will be installed as-close together as-possible, with minimal vertical mullions." NASA reports that Access Logic's proposal "did not provide any actual designs or other supporting information indicating an acceptable construction method. Thus, [Access Logic's] proposal was considered unclear and in need of clarification." NASA orally requested Access Logic to clarify the reference in its proposal to mullions. According to Access Logic, it responded to this inquiry by stating that, based on a post-award review of the site, including a seismic review, in the best case, it would fuse the screens together so there would be no mullions and, in the worst case, 3/4-inch wide mullions would be used to connect the screens.<sup>2</sup>

According to NASA, Access Logic's response to the agency's questions indicated the firm was uncertain as to how to satisfy the installation requirements and, absent

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<sup>2</sup>Access Logic explains that it informed the agency that it intended to perform an on-site engineering review, including a seismic review (given that the facility will be located in an earthquake zone) to determine the most effective installation to meet technical requirements and building codes, including seismic considerations. The firm also states that it explained that it expected the mullions to be barely visible with the screens fused together and that "at worst case we expected the mullions would be 3/4 of an inch, which would provide sufficient support from a seismic perspective."

more specific information about the fusing alternative, the agency was obligated to evaluate the 3/4-inch mullion alternative. NASA found the proposal's reference to mullions and Access Logic's explanation to be unacceptable because 3/4-inch mullions "would create a thick defined edge line between screens and significantly distract from images of aircraft and ground equipment moving across the screens." Also, according to NASA, Access Logic's apparent need for post-award input "cast doubt on whether [Access Logic] was capable of designing and installing the screens in a manner that would satisfy the Government's requirements." NASA also states that Access Logic's experience--which appears to involve mostly two-screen, co-planar installations rather than curved, seamless installations like that required by the solicitation--did not alleviate this concern.

The RFO did not require mullions of any specific width. The only requirements were for "minimum vertical mullions" and for "[p]hysical separation between the screens . . . as small as possible so as to make it difficult to see the screen edge lines." Nothing in Access Logic's proposal indicated that it would not meet these requirements in installing the system. On the contrary, the proposal statement that "[t]he screens will be installed as-close together as-possible, with minimal vertical mullions," is entirely consistent with the RFO requirements. Moreover, nothing in the market research submitted by NASA indicates there is a consensus in the industry that 3/4-inch mullions would not be "as small as possible" or that the screens could be attached with no visible line between them. In fact, NASA's market research report states the expectation that in NASA's planned facility "the screens will have a small but discernible line between them." In addition, NASA makes no effort to rebut Access Logic's belief that the 3/4-inch mullion size would be "as small as possible" depending upon the seismic protection need. Thus, it appears that NASA simply has its own view, one that would not be readily apparent to the commercial sector, as to the width of the mullions that it would be willing to accept. To the extent that NASA had such a specific requirement, it should have specified it in the RFO. Since it did not, a vendor's failure to meet the requirement cannot provide a basis for rejecting the vendor's proposal.<sup>3</sup> Industrial Storage Equip.-Pac., B-228123, Dec. 4, 1987, 87-2 CPD ¶ 551. Under the circumstances, we conclude that NASA's determination that Access Logic's proposal took exception to an RFO requirement concerning the mullions was unreasonable.

We also conclude that NASA unreasonably found Access Logic's proposal was unacceptable because the projection screens offered by the firm do not meet "gain" and "half gain" angle requirements of the RFO. "Gain" is a measurement of luminance (brightness) when viewed from the center of the screen. Screens with

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<sup>3</sup>Although the agency also argues the proposal should have included design or other supporting information to show compliance with this requirement, the RFO had no such requirement. The RFO only required design information during performance of the contract.

higher "gain" values have a higher luminance when viewed from the center of the screen. The "half gain" angle, which is measured in degrees away from the center of the screen, is the angle at which the brightness is one half of the level at the center of the screen. A higher half gain angle is better than a lower angle.

As set forth above, the RFO specified a "gain" of 4.0. That was the only requirement concerning gain; the RFO specified no half gain angle. Access Logic's proposed screens have a gain of 5.0 which NASA argues was unacceptable simply because it exceeds the 4.0 gain set forth in the specifications. NASA explains that based on its market research, it determined that screens with a marked concentration of brightness in the center were less desirable because of the adverse effects this characteristic would have on the simulated control tower environment. In this respect, while screens that are bright in the center (a higher gain value) provide the best frontal images, images viewed from peripheral angles on such screens lack brightness consistency. According to the agency, by contrast, screens with lower gain values, such as the 4.0 gain specified in the RFO, offer better quality images at relatively high peripheral viewing angles (high half gain angles). NASA states that image quality as viewed from peripheral angles relative to the screens is especially important here because the staff is expected to move around in the simulated control tower.

NASA also states that its market research revealed that higher half gain angles can be achieved only at the expense of lower gain, or lower brightness, when viewed from the center of the screen. According to NASA, "[t]his is a limitation on technology that is well known throughout the industry," and is the reason the agency specified the Stewart Optawave screen, which has a gain of only 4.0. These concerns also led to the conclusion that the higher gain of 5.0 of Access Logic's proposed screens is unacceptable. NASA argues that Access Logic should have known the limits on the technology and the protester's argument that its proposed screens, with a gain of 5.0, were acceptable indicates a lack of understanding of the agency's requirements.

NASA also notes that Access Logic's proposed screens have a 35-degree half gain angle, which is not equivalent to the 52-degree half gain angle of the brand name screens called for by the RFO. Although the agency acknowledges that no half gain angle was specified in the RFO, according to the agency, Access Logic should have been aware that by specifying Optawave screens with a gain of 4.0, "the solicitation also was requiring that any screen have an equivalent corresponding half gain angle." NASA explains that, since the projection system is to be used in a control tower simulator with 12 screens in a 360-degree configuration, "[Access Logic] had to know that realistic peripheral images would be crucial in a state-of-the-art control tower simulator."

Neither the gain nor the half gain angle of Access Logic's proposed screens provided a reasonable basis for finding Access Logic's proposal unacceptable. The

RFO did not specify a half gain angle. NASA argues that Access Logic should have understood the need for realistic peripheral images in a state-of-the-art 360-degree control tower and should have known, since the Optawave screen with a gain of 4.0 was specified, that the half gain angle of the brand name screens was required, and that the 4.0 gain specified in the RFO could not be exceeded. Nonetheless, these limits on gain and half gain angle, which NASA now argues represent its minimum needs, were not stated in the RFO and nothing in the RFO indicated that the higher level of brightness (gain) of Access Logic's proposed screens would be inconsistent with the intended use of the screens. In this respect, NASA's explanation of why offerors should have known that a gain of 4.0 could not be exceeded relates entirely to the impact which a gain over 4.0 would have on the half gain angle. Since the RFO did not specify a half gain angle--which would be the obvious way to indicate a concern with the quality of peripheral images--we do not see how the agency's need for realistic peripheral images (the half gain angle) could have been conveyed to offerors by specifying a gain of 4.0. If the agency considered it essential that the screens have a gain of exactly 4.0, the RFO should have stated that the 4.0 gain could not be exceeded. Industrial Storage Equip.-Pac., supra.

In other words, while NASA's concern about the brightness consistency of the projection screens and its desire for projection screens with a high half gain angle are reasonable, these concerns were not reasonably conveyed to vendors. In this respect, the record does not show that the specification of a gain of 4.0--the only information in the RFO concerning brightness of the screens--should have conveyed to vendors in the commercial marketplace that high half gain angles were mandatory.

NASA also concluded that the projectors proposed by Access Logic failed to meet a requirement of the RFO for automatic convergence. The RFO required that "[e]ach projector shall have an automatic convergence system and image shifter built in." Automatic convergence is a function that automatically converges or focuses a picture on a screen for maximum clarity and avoids the need for manual focusing.

On its face, Access Logic's proposal stated that the proposed projectors have an automatic convergence feature and NASA does not question whether that feature would be provided. Rather, the agency explains that it considered Access Logic's proposal unacceptable because it did not include documentation demonstrating that the automatic convergence system proposed by the firm would work in the rear projection system required by the agency. In our view, however, since the proposal otherwise recognized the system would use rear projection and did not take exception to the requirement for automatic convergence in the rear projection format, the absence of a specific statement that the automatic convergence feature of the proposed equipment would work in the rear projection system provided no

basis for concluding that the proposal was unacceptable.<sup>4</sup> See Inframetrics, Inc., B-257400, Sept. 30, 1994, 94-2 CPD ¶ 138.

Finally, NASA found Access Logic's proposal unacceptable because it did not list the firm's key personnel or design and engineering staff that would install the projection system. As Access Logic points out, however, the RFO did not require the submission of information about key personnel or staff. Although the contractor is to provide all necessary design, engineering, installation labor, projector adjustments, project management, etc., to provide a complete and operational projection display system, there was no requirement for offerors to submit any information concerning staff. Under the circumstances, the absence of such information in Access Logic's proposal provided no basis for finding that proposal unacceptable. Grey Advertising, Inc., *supra*.<sup>5</sup>

Although the record indicates that EISI delivered the projectors and screens and related equipment to NASA before the contract was suspended as a result of this protest, the equipment has not yet been installed. Accordingly, we recommend that NASA terminate the contract and resolicit with an appropriate statement of the agency's needs. We also recommend that Access Logic be reimbursed its cost of

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<sup>4</sup>Agency officials assert they orally asked Access Logic's president about the automatic convergence capability of the projectors proposed by the firm and the firm failed to provide information responsive to that question. While the record concerning the communications between NASA and Access Logic is unclear, Access Logic's president states that, when asked, he orally informed the agency that the firm's proposed projectors do provide automatic convergence for a rear screen projection format and that, had NASA asked, the firm would have submitted commercial literature specifically stating that it does. We note that Access Logic has submitted to this Office commercial literature that shows that its proposed automatic convergence unit will work in a rear projection screen system. While NASA asserts that it communicated the need for further information concerning this matter and argues that Access Logic could have provided this information in response to the agency's questions, the appropriate literature clearly was available to the firm and we conclude that Access Logic would have provided that literature had the agency clearly conveyed the need for such literature.

<sup>5</sup>NASA also concluded that Access Logic's proposal was unacceptable because it did not include information concerning service personnel. As a matter of contract performance, the RFO required that "the Contractor shall have an office with full time service personnel located within 100 miles of the [NASA] site." Since the RFO did not require the submission of information about personnel or staff and NASA has referred to nothing in Access Logic's offer that suggests the firm would not meet this requirement, we conclude it was unreasonable to find the proposal unacceptable on this basis.

pursuing this protest, including reasonable attorneys' fees. Bid Protest Regulations, § 21.8(d)(1), 61 Fed. Reg. 39039, 39046 (1996) (to be codified at 4 C.F.R. § 21.8(d)(1)). Access Logic's certified claim for such costs, detailing the time expended and costs incurred, should be submitted directly to the agency within 60 days after receipt of this decision. Bid Protest Regulations, § 21.8(f)(1), 61 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.8(f)(1)).

The protest is sustained.<sup>6</sup>

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<sup>6</sup>Access Logic filed a supplemental protest in which it argues (1) NASA illegally conducted this procurement as a "brand name only" procurement under the guise of a "brand name or equal" procurement without properly documenting the "brand name only" procurement, and (2) NASA was biased against Access Logic because agency officials were predisposed to award only to an offeror proposing the brand name products. Since we have sustained the protest and since it is not practicable for us to make a recommendation for corrective action, no useful purpose would be served by addressing these issues.