



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Network Engineering, Inc.

File: B-272380

Date: September 16, 1996

Milton C. Harper for the protester.

Larry Loughrey for Imaging Technology Corporation, an intervenor.

Susan Bernstein, Esq., and Robert S. Brock, Esq., Federal Emergency Management Agency, for the agency.

Christine Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In a procurement for computerized photographic identification card systems, the awardee's proposed card printer reasonably satisfied a requirement for upgradeable printer memory since it is possible to upgrade the printer's memory by replacing the printer's programmable read-only memory module.
2. An agency reasonably accepted the awardee's general statement of compliance with a solicitation requirement, notwithstanding that the solicitation called for descriptive literature, since the agency also accepted a similar statement of compliance from the protester and thus treated both offerors equally.

DECISION

Network Engineering, Inc. (NEI) protests the award of a contract for computerized photographic identification card systems to Imaging Technology Corporation (ITC) under request for proposals (RFP) No. EMW-96-RP-0019, issued by the Federal Emergency Management Agency (FEMA). The protester contends that the awardee's proposal was technically unacceptable because its proposed printer did not comply with the specifications.

We deny the protest.

The RFP, which was issued on April 22, 1996, sought proposals for 15 computerized photographic identification card systems, including training, maintenance and warranty services, on a firm, fixed-price basis. The card systems were to produce identification cards featuring, among other things, the employee's photograph, personal information, signature, and the FEMA seal. Each card system was to include an image-capturing device such as a video camera; an IBM-compatible

computer, 486 series or better; a DOS operating system, 6.0 series or higher; a commercially available data base; all necessary cables, wiring, and equipment accessories; and a printer.

The RFP provided for award based upon the low-priced, technically acceptable proposal. The statement of work (SOW) included 38 requirements that the offered system must meet in order to be considered technically acceptable; the requirements included both design and performance specifications. The RFP required offerors to submit descriptive literature demonstrating their system's compliance with the SOW requirements.

The RFP was issued after FEMA terminated a contract awarded to NEI after ITC successfully protested the award to our Office. See Imaging Technology Corp., B-270124, Feb. 12, 1996, 96-1 CPD ¶ 68.

NEI, ITC, and three other firms submitted proposals in response to the RFP by the May 10, 1996, receipt date. NEI's proposed card system included the ImageCard II Plus printer manufactured by DataCard Corporation. ITC's proposed card system included the Persona II printer manufactured by Fargo Electronics, Inc. FEMA included NEI's and ITC's proposals in the competitive range, conducted two rounds of discussions, and received best and final offers (BAFO). Both NEI and ITC were found to have submitted technically acceptable BAFOs. As NEI's price was \$326,233.10 and ITC's price was \$292,697.67, FEMA awarded the contract to ITC.

NEI contends that ITC's proposed printer does not meet three SOW requirements, and that FEMA therefore should have rejected ITC's proposal as technically unacceptable and awarded the contract to NEI.

NEI first protests that the printer proposed by ITC does not meet the SOW requirement that "[p]rinter memory must be field upgradeable." In its proposal, ITC stated that,

"The printer supplied with the system uses very little memory installed in the printer, therefore there is no need or advantage to adding any additional memory to the printer. ITC has configured the printers that will be supplied with the systems with the maximum memory. All card preparation is performed by the host computer."

NEI interprets ITC's response as a concession that the memory in its printer is fixed and cannot be upgraded, either in the field or elsewhere.

The record, including testimony received at a hearing conducted by our Office, reflects that the Fargo Persona II printer proposed by ITC contains 512 kilobytes of random access memory (RAM). ITC's representative testified that the printer's

memory can be upgraded by replacing the printer's programmable read-only memory (PROM) module. Videotape transcript (V. Tr.) 10:40:45; 11:41:20. This individual also testified that the new PROM could be installed "in the field" at the desired FEMA facility. V. Tr. 10:40:45. A Fargo representative confirmed in an affidavit that a new PROM would enhance the memory of the Persona II printer to 2 megabytes (MB) overall and that this memory upgrade could be accomplished in the field, although he did not state whether the net additional memory would be in the form of RAM, read-only memory (ROM), or some combination thereof.¹ Although ITC's proposal did not mention the PROM upgrade ability and FEMA therefore lacked this information during the proposal evaluation, FEMA's Technical Evaluation Panel (TEP) chairman testified that such an upgrade would satisfy the requirement that "[p]rinter memory must be field upgradeable." V. Tr. 10:34:40.

The protester argues that the specification does not contemplate a PROM upgrade, as in ITC's proposed printer, but rather a single in-line memory module (SIMM) upgrade, as in NEI's proposed printer. According to testimony received from NEI's president, a SIMM is a standard commercial item containing RAM, which one can purchase off-the-shelf and install in any printer containing a SIMM socket. V. Tr. 11:37:57. One can upgrade the memory of NEI's proposed printer from 8 MB up to 32 MB of RAM by installing SIMMs into the printer's SIMM sockets. V. Tr. 9:52:07. In contrast, a PROM must be programmed to perform within a particular printer, inasmuch as a PROM replaces the printer's firmware or operating system. V. Tr. 11:37:57. Whether space can be set aside for RAM in a PROM depends upon how efficiently the PROM's code is written. V. Tr. 11:40:06. The protester presumes that the specification precludes a PROM approach because PROMs are not readily available commercial items, are manufactured through a complicated reprogramming process, and will not necessarily expand the printer's RAM, thus defeating the specification's alleged purpose of enhancing the printer's processing capability.

In our view, the specification is not nearly as precise as the protester would suggest. The specification merely states that "[p]rinter memory must be field upgradeable." The specification does not differentiate between RAM and ROM; does not state how much or what kind of memory the printer must initially possess or an upgrade must produce; does not state whether an upgrade must be accomplished via a SIMM or PROM module; and does not state any functional

¹RAM is a type of memory into which the user can enter information and instructions ("write") and from which the user can call up data ("read"). RAM is the computer's working memory, into which applications programs can be loaded and then executed. ROM is a type of memory which is permanently programmed with frequently used instructions. ROM does not allow the user to "write" or change the program. Donald D. Spencer, Computer Dictionary at 321, 323, 336 (3rd ed. 1992).

purpose for the upgrade requirement. In the absence of a clearly stated requirement for a particular type of printer memory upgrade, we cannot object to FEMA's acceptance of the awardee's system with a printer that in fact had PROM upgrade ability. See ECCO Corp., GSBCA No. 8202-P, 86-1 BCA 18683, 1986 BPD ¶ 2; see also SAIC Computer Sys., B-258431.2, Mar. 13, 1995, 95-1 CPD ¶ 156. While ITC's proposal does not reasonably suggest that its printer possessed a memory upgrade ability, the protester suffered no prejudice as a result of FEMA's acceptance of ITC's proposal despite this deficiency because the proposed printer in fact satisfied this requirement, something that FEMA could and should have ascertained during proposal evaluation and discussions.

NEI also contends that ITC's proposed printer does not meet the SOW requirement that "[t]he printer must be upgradeable in the field to accommodate the addition of a magnetic stripe or smart card technology."²

ITC's product literature for the Persona II printer listed the magnetic stripe and the smart card chip encoding modules as options. ITC stated in its proposal that either option could be installed in the field.

The protester questions the accuracy of the awardee's product literature and proposal representations. The protester has submitted Persona II descriptive literature, which describes the magnetic stripe and smart card encoding modules as "factory installed options." Two Fargo sales representatives allegedly advised the protester that only factory installation was available.

ITC did not include in its proposal the descriptive literature relied upon by the protester, which characterizes the magnetic stripe and smart card encoding modules as "factory installed options." Although the descriptive literature submitted with ITC's proposal is silent as to where these options could be installed, ITC stated in its proposal that installation in the field was available. Considering the information available to it, FEMA reasonably concluded that the printer could be upgraded in the field. While ITC's product literature was deficient in addressing the field-upgrade requirement, FEMA overlooked the same deficiency in NEI's product literature and allowed both offerors to meet the requirement through general statements of compliance. Because FEMA treated both offerors equally, we cannot object to the acceptance of ITC's proposal in this respect. See Bridgeport Machs., Inc., B-265616, Dec. 6, 1995, 95-2 CPD ¶ 249. Moreover, the record reflects that ITC's statement of compliance was, in fact, accurate because Fargo has authorized and trained ITC to upgrade its printers in the field. The fact that Fargo's sales

²Encoding an identification card with either a magnetic stripe or smart card data allows the card to be used for gaining access into a secured building.

representatives and product literature did not disclose Fargo's relationship with ITC does not alter our conclusion in this regard.³

NEI claims that the Persona II printer does not satisfy the requirement that "[t]he printer must be capable of printing at least 1,000 cards before any cleaning or maintenance is required." NEI's proposed ImageCard II Plus printer satisfies this requirement through an automatic cleaning mechanism, which spares the user from having to clean or maintain the printer before 1,000 cards are printed. Because the Persona II printer lacks an automatic cleaning mechanism, NEI alleges that the printer will require cleaning or maintenance well before 1,000 cards are printed.

The record reflects that the TEP chairman sought confirmation from a Department of Defense agency using a Fargo Persona-series printer that the printer could satisfy the "1,000-card" requirement without an automatic cleaning mechanism. V. Tr. 10:26:56. Through this source, the TEP chairman learned that, while Fargo Persona printers do not use automatic cleaning mechanisms, they can nevertheless print more than 1,000 cards without cleaning or maintenance. V. Tr. 10:25:10; 10:26:56.⁴ Here too, we cannot object to FEMA's conclusion that ITC's proposed printer met the RFP cleaning and maintenance requirement.

The protest is denied.

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³The protester also claims that smart card technology does not exist for the Persona II printer, which allegedly should have rendered ITC's proposal technically unacceptable. ITC's product literature stated that the smart card technology would be "available mid 1996 -- call for details." Whether the smart card encoding module was commercially available when ITC submitted its proposal is irrelevant, since the printer could be found technically acceptable if it accommodated either smart card or magnetic stripe technology, and no dispute exists that the magnetic stripe encoding module was available.

⁴ITC's vice president confirmed at the hearing that, based upon his experience, Fargo Persona printers can print up to 15,000 cards without cleaning or maintenance, assuming a clean office environment such as FEMA's facilities. V. Tr. 11:31:08.