



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Card Technology Corporation

File: B-275385; B-275385.2

Date: February 18, 1997

Michael A. Hordell, Esq., and Laura L. Hoffman, Esq., Gadsby & Hannah, for the protester.

David S. Cohen, Esq., Cohen & White, for DataCard Corporation, an intervenor.

Jeanne A. Anderson, Esq., Department of Veterans Affairs, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award of purchase order for printers to Federal Supply Service (FSS) vendor without providing protester an opportunity to compete was proper where agency determined that only one printer was compatible with the system with which it was to operate, and protester does not submit any evidence showing that it offers a compatible printer listed on the FSS.

DECISION

Card Technology Corporation protests the Department of Veterans Affairs (VA) issuance of purchase order Nos. A64026 and 101-C67065 to DataCard Corporation for Image Card II color printers under its General Services Administration (GSA) Federal Supply Schedule (FSS) contract. Card Technology also challenges the award to DataCard under its FSS contract pursuant to request for quotations (RFQ) No. 101-18-96, for a Veterans Identification Card (VIC) system.

We deny the protests.

On August 13, 1996, the VA issued the RFQ to three FSS vendors capable of providing the VIC system. The RFQ set forth minimum and maximum quantities, as well as the agency's current known requirements for readers, reader/writers, and plastic cards. Two offerors--DataCard and Card Technology--submitted quotations, and the agency made award to DataCard based on its low price (\$7,187,947.60 versus \$8,688,260.70 for Card Technology). Subsequently, the VA identified a need for color printers, pop-up keyboards, and service and support to modify DataCard supplied software and to reinstall and relocate DataCard equipment at certain VA facilities, and issued the two purchase orders to DataCard for these requirements.

Card Technology maintains that it was improper for the VA to purchase Image Card II color printers from DataCard under its FSS contract without providing Card Technology an opportunity to compete for the requirement.

The FSS program managed by GSA provides agencies with a simplified process for obtaining commonly used supplies and services at prices associated with volume buying. Federal Acquisition Regulation (FAR) § 8.401(a). When placing an order under a schedule contract, the procuring agency is not required to seek further competition, synopsise the solicitation or award, or to determine separately fair and reasonable pricing, since the planning, solicitation, and award phases of the FSS comply with FAR requirements. FAR § 8.404(a). When ordering from the FSS, the determination of the agency's minimum needs and which product meets those needs is the agency's responsibility; the agency may consider such factors as special features of one item not provided by comparable items which are required for effective program performance. FAR § 8.404(b)(2)(ii)(A). We will only review this determination for reasonableness. Design Contempo, Inc., B-270483, Mar. 12, 1996, 96-1 CPD ¶ 146.

The VA states that it purchased the Image Card II printers under DataCard's FSS contract because it required a printer that was compatible with the DataCard VIC system it had purchased (under the RFQ), and it was not aware that any other printer would interface with the DataCard system. More specifically, the agency's project manager for the VIC project states that,

"[b]ased on our review of the technical manuals, our experience with the hardware and software, and routine discussions with DataCard during installation and set-up of their equipment, it appears that the interface between the QuickWorks workstation and the printers/embossers is non-standard and proprietary to DataCard. Though the software runs on a standard personal computer and connects via a standard cable, the actual data being sent over that cable is formatted in such a way that only Data Card printers understand its meaning. To the best of my knowledge, there are no other printers available that conform to this special interface."¹

¹DataCard supports this position. It states that printers configured to run with the DataCard 280 systems must receive commands from DataCard's proprietary software, QuickWorks, and that Quickworks contains a number of unique attributes that will not work on printers that are not specifically designed to support it. For example, DataCard states, QuikWorks has an interface that treats the magnetic stripe data on an identification card in a specified manner. Special encoder interfaces or filters have been developed, tested and released for both the

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The protester does not dispute that the agency's minimum need is for a color printer that is compatible with the DataCard VIC system; it asserts only that it can provide a compatible printer. In this regard, the protester asserts that, even if QuikWorks is proprietary, it is simple enough to install other capture systems software products on DataCard's 280 systems to make the system compatible with other printers.

We find that the agency's actions were proper since the information provided by Card Technology does not demonstrate that it offers a color printer that can be made compatible with DataCard's 280 system. In this regard, the protester has not explained or furnished literature showing that any specific software would make a specific Card Technology printer compatible with the DataCard system, or how any specific software would achieve this end. Indeed, despite specifically requesting permission to respond to comments in which DataCard explains why no other printer will work with its 280 system, the protester did not address DataCard's explanation that there are special encoded devices on the printer, that the printer has been specifically developed to take advantage of the selective overlay capabilities that are available in QuikWorks software, and that no other printer has these capabilities.² Absent such explanation and information, Card Technology's general assertion that it would be "simple" to achieve compatibility amounts to no more than disagreement with the agency's specific determination that only DataCard's printer is compatible with the DataCard system. This is not sufficient to show that the agency's determination was unreasonable. See National Mailing Sys., B-251932.3, Aug. 4, 1993, 93-2 CPD ¶ 78.³

¹(...continued)

DataCard 280 and the DataCard Image Card II printer to use this interface. DataCard also states that the ImageCard II has been specifically developed to take advantage of the selective overlay capabilities that are available in the QuikWorks software, and that only DataCard's Image Card II printers provide these capabilities.

²In addition, notably, although it is aware of the purchase price of DataCard's printers, Card Technology has submitted no evidence that its allegedly compatible printer is lower priced than DataCard's. Card Technology did submit a copy of its FSS contract to show that it had a printer available, but the schedule did not indicate a price (or that the printer is compatible). Further, Card Technology has not disputed DataCard's statement that Card Technology only offers printers that are much higher priced than DataCard's.

³Card Technology also argues that the agency improperly failed to consider three price lists, as required by FAR § 8.404(b)(2) (to ensure that the government's needs
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In its December 23 comments in response to the agency's protest report, Card Technology argues for the first time that DataCard's quotation should have been rejected as unbalanced; the agency improperly purchased a DataCard reader not covered by its FSS contract; DataCard improperly was provided with inside information that the VA would purchase additional components of the VIC; and the VA's purchase of certain additional items constituted a cardinal change to the initial RFQ. However, these arguments are based on copies of purchase orders that the protester received under a FOIA request on November 18. Since protest arguments such as these, to be timely, must be raised no later than 10 days after the basis for the argument was known or should have been known--here, November 18--these arguments are untimely and will not be considered. Bid Protest Regulations, section 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)).

In a supplemental protest, Card Technology questions whether DataCard included the price of required keyboards and service in the quotation it submitted in response to the RFQ for the VIC system; Card Technology maintains that an award to DataCard without these required items would be improper. The VA states, and the record shows, that DataCard's initial offer did contain pricing for the required items, including the keyboards and warranty service.⁴

The protests are denied.

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³(...continued)
are being met at the lowest available price), before issuing the purchase orders to DataCard. However, as Card Technology has not shown that it offers a compatible printer, Card Technology would not be in line for award if we sustained the protest on this ground and thus is not an interested party to raise this issue. See generally American Overseas Book Co., Inc., B-266297, Feb. 9, 1996, 96-1 CPD ¶ 60.

⁴Card Technology filed January 23 comments on the agency's protest report on the supplemental protest. However, those comments also further addressed the issues raised in Card Technology's initial protest. To the extent the comments address the original protest issues, they are untimely and unauthorized, and have not been considered.