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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: Compunetix, Inc.

File: B-298489.4; B-298489.5

Date: January 12, 2007

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Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency performed an unreasonable evaluation of proposals is denied where the record shows that the agency's conclusions were reasonable, and were consistent with the stated evaluation scheme and applicable procurement statutes and regulations.

DECISION

Compunetix, Inc. protests the award of a contract to Frequentis USA, Inc. by the National Aeronautics and Space Administration's (NASA) Goddard Space Flight Center, pursuant to request for offers (RFO) No. NNG05096022R, issued to procure Mission Operations Voice Enhancement (MOVE) systems. Compunetix, whose proposal was lower rated and higher priced than the awardee's, challenges virtually every evaluation conclusion reached by the agency, and contends that Frequentis is not a small business eligible for award under this small business set-aside procurement.

We deny the protest.

BACKGROUND¹

The solicitation here was issued on July 29, 2005, and sought offers “for the design, acquisition, development, integration, test, delivery and maintenance of all hardware, firmware, and software components” for the MOVE system configurations to be delivered to each site. RFO, Cover Letter, at 1. The Contracting Officer (CO) explains that the MOVE system being procured will “provide real time switching, conferencing, and monitoring of mission voice services in support of launches, simulations, landings, spacecraft emergencies, and critical operations.” CO’s Statement, Nov. 13, 2006, at 6. NASA anticipates replacing its existing mission voice systems—which were custom-designed and are aging—with standardized products over a 5-year period, followed by product support and maintenance for an additional 10 years. Id. To achieve standardization, the solicitation anticipates the use of commercial off-the-shelf (COTS) hardware and software to the maximum extent possible, RFO, Statement of Work (SOW), at 1-2, but also anticipates the development of certain products to meet NASA’s unique requirements. Id. at 3-8.

The RFO anticipated the award of what NASA terms “a commercial firm-fixed-price hybrid contract with both a basic requirement and indefinite delivery indefinite quantity” requirements, RFO at 78, for a period of 15 years. The basic requirement is to provide voice systems to three NASA centers: Goddard, the Marshall Space Flight Center, and the Johnson Space Center. The RFO also includes 15 options for installing the MOVE system at various other NASA sites, including the Jet Propulsion Laboratory, the Mission Control Center Moscow, and Vandenberg Air Force Base. CO’s Statement, supra, at 7. The competition was limited to small business offerors.

The RFO advised potential offerors that proposals would be evaluated under three factors, in declining order of importance: mission suitability, price, and past performance. RFO at 94. Although the price factor was more important than past performance, offerors were advised that mission suitability and past performance combined would be more important than price. Id.

With respect to the mission suitability factor, the RFO advised that proposals would be evaluated using a 1000-point scale, divided into four subfactors, as follows: (1) understanding the requirements and technical approach, 450 points; (2) management and capabilities, 200 points; (3) technical and schedule risk, 300 points; and (4) safety and health plan, 50 points. RFO at 99. In addition, NASA

¹ This protest challenges a procurement that has already been the subject of two other protests—one resulting in agency corrective action, the other withdrawn—and a small business size challenge (which the Small Business Administration (SBA) decided in favor of Frequentis). As a result, there are numerous procedural events recounted in the record not relevant to our current review. Only the details relevant to the protest now before us are included in this decision.

anticipated assigning adjectival ratings to the resulting point scores of: excellent, very good, good, fair, or poor. AR, Tab 50, at 15. Similarly, NASA anticipated assigning the same adjectival ratings (but not point scores) under the past performance evaluation factor, with the addition of a rating of “neutral” for offerors without relevant past performance. Id. at 14.

With respect to price, the RFO advised that the agency would calculate a total evaluated price comprised of the price for the basic requirement identified above, the price for 13 of the 15 option sites (the 2 remaining option sites were deemed less likely to be needed), and the total evaluated indefinite-delivery/indefinite-quantity (ID/IQ) price (i.e., the price per unit of the ID/IQ items multiplied by the estimated quantities needed). RFO amend. 6, at 5-6.

On September 5, 2005, NASA received proposals from five offerors, which were reviewed by a source evaluation board (SEB) team. By the end of an evaluation process that stretched over a year until the September 27, 2006, final award date, the agency held two rounds of discussions; obtained two sets of final proposal revisions; eliminated one offer from the competitive range; made an initial award decision; took corrective action in response to a protest filed with our Office by one of the other offerors; again prepared revised evaluation documents and a new selection decision; and waited for a decision on a size protest from the SBA, which ultimately held that Frequentis is a small business eligible for the award of this contract. At the conclusion of this extended process, the results of NASA’s evaluation were as follows:

	Mission Suitability (Points -- Rating)	Past Performance	Total Evaluated Price
Frequentis	822 -- Very Good	Very Good	\$48.3 million
Compunetix	778 -- Very Good	Excellent	\$56.5 million
Offeror A	710 -- Very Good	Excellent	\$44.0 million
Offeror B	675 -- Good	Excellent	\$51.0 million

AR, Tab 50, at 66.

These results were presented to NASA’s selection authority for this procurement, who reviewed the evaluation materials and prepared a source selection statement memorializing his considerations. AR, Tab 51. He noted first that Frequentis received the highest score under the mission suitability factor, the most significant

evaluation factor, and submitted the only proposal rated excellent under the most heavily-weighted mission suitability subfactor, understanding the requirement and technical approach.² AR, Tab 51, at 14. With respect to past performance, the selection official noted the difference between the offerors' levels of relevant experience and past performance, and concluded that past performance was not a significant discriminator between the offerors--specifically, he noted that the slightly lower past performance rating of very good for Frequentis did not offset the differences in the mission suitability ratings and prices. Id.

The selection official next compared Frequentis to both Compunetix and Offeror B, noting that the Frequentis proposal received higher technical ratings and offered a lower price than either of the proposals submitted by those offerors. He then compared the higher score given the Frequentis proposal relative to Offeror A's proposal under the mission suitability factor, and under three of the four mission suitability subfactors. Based on his assessment of the technical merits of the Frequentis proposal, he explained that the "value of the superior mission suitability [score] when viewed in terms of the modest additional price" (\$48.3 million for Frequentis versus \$44.0 million for Offeror A), led him to select Frequentis for award. Id. at 15. This protest followed.

DISCUSSION

In protesting the award decision here, Compunetix, as mentioned above, challenges virtually every evaluation conclusion reached by the NASA evaluators.³ Our

² We have omitted the details regarding the scores and ratings given the offerors at the mission suitability subfactor level. As the selection official indicates however, Frequentis received a higher score under three of the four mission suitability subfactors. AR, Tab 50, at 22. Frequentis received a lower score than Compunetix under the technical and schedule risk subfactor, and was assessed by the evaluators as having a weakness in the area of technical and schedule risk. As discussed below, Compunetix argues that the evaluators acted unreasonably in not assessing this risk as a significant weakness rather than a weakness.

³ There is no overstatement here. Under the most heavily-weighted mission suitability subfactor (understanding the requirement and technical approach), Compunetix first quotes the findings of the evaluators supporting their conclusion that the Frequentis proposal offered a significant strength under the subfactor. Compunetix then parses the quote and raises eight separate arguments regarding how, it, too, should have received a significant strength in each of those areas. Similarly, the protester raises six separate arguments regarding strengths of Frequentis proposal--all alleging that the protester, too, should have received a strength in each area. Finally, the protester identifies 28 separate features of its proposed system that it argues should have been assigned a strength by the agency evaluators. In addition to the 42 separate arguments raised regarding the first

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standard in reviewing such challenges is to examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria, and with applicable statutes and regulations. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. Based on our review of all of the arguments raised here, the agency's detailed responses, and the comprehensive evaluation materials provided, we think Compunetix has failed to show that NASA's evaluation was unreasonable.

While we have reviewed all of Compunetix's challenges regarding the technical evaluation here, we need not address each in detail. Instead, we set forth below two representative examples. First, Compunetix complains that NASA unreasonably found that Frequentis deserved a strength for offering "a T1 interface that has only one port on a single interface card, minimizing the loss of voice circuits in the event of a failure on the interface card." AR, Tab 51, at 4. The protester explains that it also should have received a strength because, while its T1 interface could accommodate up to **[deleted]** ports on a single interface card, NASA could have used only one port per card to minimize the loss of voice circuits in the event of a failure. The protester also complained that this result was unfair because NASA had instructed that it was "satisfactory" to offer up to **[deleted]** ports per T-1 unit. Initial Protest at 11.

In answer, NASA explains that while it was willing to accept up to **[deleted]** ports per card, as the protester contended, using **[deleted]** ports per card was not the optimal solution. Agency Memorandum of Law, Nov. 13, 2006, at 9. The agency additionally explains that while Compunetix met the requirement, Frequentis exceeded it, and the agency evaluators reasonably saw this feature as a strength in the proposal. Nothing the protester argues in response shows that this conclusion was unreasonable.

Second, and in many ways more significant, is the protester's challenge to the weakness assigned the Frequentis proposal by the agency in the area of technical and schedule risk.

As discussed above, NASA's RFO for the MOVE system sought the use of COTS hardware and software to the maximum extent possible, but also anticipated the modification of products and development of items to meet the agency's requirements. RFO, SOW, at 1-8. There is no dispute that the balance of commercial items versus modified or development items identified by Frequentis in its approach was a subject of concern for the agency. This matter was identified by NASA as a

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mission suitability subfactor, the protester raises similar challenges to the evaluation of the second and third mission suitability subfactors—*i.e.*, management and capabilities, and technical and schedule risk. This leads, ultimately, to 58 separate contentions regarding the mission suitability factor alone.

weakness and raised during discussions. The final evaluation report prepared for this procurement includes the following comments on this subject:

Weakness: The number of concurrent development efforts when combined with their complexity represents a technical risk.

The Government requires capabilities in the MOVE voice systems that are based upon large numbers of simultaneous conferences where each conference has many participants. The Offeror's hardware that has been designed and deployed is dissimilar to the NASA mission environment, thus driving elements of redesign throughout the system.

Although the Offeror has proposed a very effective development management plan, and has identified the development efforts and associated risks in detail, the concern still remains that the amount and complexity of modification that is required and has not been performed in the deployment of similar systems; this constitutes a technical risk to the Government.

The number and severity of the development effort leads to an increased risk of unsuccessful contract performance.

AR, Bates Stamped page 7,028.⁴ In a distilled form, these concerns are also set forth in the selection statement. Specifically, the selection authority notes:

Frequentis USA received one weakness in relation to its development effort. Although they proposed a very effective development management plan, and identified the development efforts and associated risks in detail, the number of concurrent development efforts when combined with their complexity represents a technical risk.

AR, Tab 51, at 6. In the protester's view, the risk described above should have been considered a significant weakness, rather than a weakness.

In our view, the protester's arguments regarding the extent of the weakness that should be assigned to the Frequentis proposal due to the development efforts required, and the complexity of those efforts, is a matter of judgment best reserved

⁴ We cite here to the Bates Stamped page in the record because Tab 49 of the agency report, which contains the Final Evaluation Report, contains two versions of the report. We are citing to the second version, which the agency advises contains minor edits of the first version.

for agency evaluators; we will not substitute our judgment for the agency's. See Foundation Eng'g Sciences, Inc., B-292834, B-292834.2, Dec. 12, 2003, 2003 CPD ¶ 229 at 3. The record shows that NASA clearly recognized and understood this issue, and carefully examined the facts surrounding it. The protester cannot claim that this weakness was buried in earlier reports, or somehow forgotten; instead, the selection official included his own summary of the extent of the weakness in his decision selecting Frequentis for award. AR, Tab 51, at 6.

In addition, the agency's supplemental report explains that NASA decided this matter did not rise to a significant weakness because

none of the proposed development was internal to the core switching system, and only 3.3 percent of the proposed development—the key set interface—was internal to the switch at all. . . . The remaining 96.7 percent of the development was targeted at keyset or LSA [Local Site Administrator subsystem] software development, rightly regarded by NASA as less risky. [Citation omitted.] In addition, the amount of development that was required was well documented and appeared to NASA to be well managed, as evidenced by the Strength awarded to Frequentis for its understanding of the risk.

Supp. Agency Memorandum of Law, Dec. 4, 2006, at 13.

Finally, we note that five of the seven voting members of NASA's evaluation board are career voice system engineers, four of whom authored the requirements here. Agency Memorandum of Law, Nov. 13, 2006, at 27. Despite the protester's arguments to the contrary, we find it unlikely that NASA's evaluators did not understand the issues here, and, as stated above, we will not substitute our judgment for theirs based on the disagreement of the protester and its expert. See Rockhill Indus., Inc., B-278797, Mar. 16, 1998, 98-1 CPD ¶ 79 at 4.

We turn next to the protester's argument that NASA unreasonably evaluated Frequentis with respect to its status as a manufacturer and as a result improperly failed to find its proposal ineligible for award. Supp. Protest, Nov. 20, 2006, at 9. For the reasons set forth below, we think the protester's argument ultimately and essentially challenges the awardee's size, which is a matter reserved for the SBA, not our Office.

The RFO here advised that this procurement was a 100-percent small business set-aside. The protester's arguments are that Frequentis is not itself the manufacturer of this equipment, as required by the SBA's regulations, 13 C.F.R. § 121.406(a) (2006), and is, therefore, other than a small business and ineligible for award.

In this procurement, Frequentis certified that it was a small business under the applicable size standard. When a concern self-certifies that it is eligible for award under the applicable size standard, the Federal Acquisition Regulation (FAR) provides that the CO shall accept that representation unless another offeror challenges the concern's representation, or the CO has a reason to question the representation. FAR § 19.301(b). Although there was initially no outside challenge--that came later--the CO raised questions about the extent to which Frequentis was relying on a large business subcontractor for manufacturing space. After these questions were answered, the CO decided she had no reason to further question the self-certification, or to refer the matter to the SBA. Supp. CO's Statement, Dec. 4, 2006, at 1-2.

Although a challenge to the size status of a particular firm is for review solely by the SBA, see Bid Protest Regulations, 4 C.F.R. § 21.5(b)(1) (2006), we have considered protests asserting that an awardee's proposal, on its face, evidences a clear intent not to comply with the subcontracting limitation applicable to small business procurements. See, e.g., KIRA Inc., B-287573.4, B-287573.5, Aug. 29, 2001, 2001 CPD ¶ 153 at 3; Parmatic Filter Corp., B-285288, B-285288.2, Aug. 14, 2000, 2000 CPD ¶ 185 at 10. Assuming that we likewise would review a challenge to an awardee's intent, as evident from the face of its proposal, to manufacture the items being procured under a small business set-aside, there is nothing in the record here to support a finding that Frequentis clearly indicated it did not intend to comply with the SBA's manufacturing requirements. Instead, the CO investigated the issues and was satisfied by the answers she received. The SBA then reviewed the matter and concluded--as did the CO--that Frequentis is the manufacturer of these items for purposes of the SBA size regulations. This question squarely raises a matter reserved for the SBA, not our Office.

In conclusion, as indicated above, we have reviewed all of the issues raised in this protest, including the technical challenges not expressly discussed above, as well as the allegations that the agency did not reasonably evaluate prices (in this fixed-price competition), the assessment of past performance was unreasonable, and discussions were unequal. In every instance, we have seen nothing in this record to support a conclusion that this evaluation was anything other than reasonable and well-supported.

The protest is denied.

Gary L. Kepplinger
General Counsel