



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Sygnetics, Inc.

File: B-404535.5

Date: August 25, 2011

Tony Tarkowski for the protester.

Lt. Col. Patrick L. Vergona, Department of the Army, for the agency.

Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Challenge to the procuring agency's determination that the protester was not eligible for award because it did not have an adequate cost accounting system is denied where the agency reasonably relied on a Defense Contract Audit Agency (DCAA) report that found deficiencies in the protester's cost accounting system, and where the protester did not demonstrate that it has corrected those deficiencies.

DECISION

Sygnetics, Inc., of Rochester Hills, Michigan, protests the decision of the Department of the Army, Army Contracting Command--National Capital Region, to reject its proposal in connection with request for proposals (RFP) No. W91WAW-09-R-0013 for personnel support services. The protester argues that the agency improperly concluded that it did not have an approved cost accounting system (CAS), as required by the solicitation and the Federal Acquisition Regulation (FAR).

We deny the protest.

BACKGROUND

The RFP, issued on April 9, 2009, sought proposals to provide personnel support services for Department of Defense activities. The RFP anticipated awards of multiple indefinite-quantity/indefinite-quality (ID/IQ) cost-reimbursement contracts, with base periods of 1 year with four 1-year options.

As relevant here, the RFP required offerors to have a CAS that was approved by the Defense Contract Audit Agency (DCAA) within the last 2 years. RFP § M.4.5.d. The

RFP further noted that “[a]n approved CAS is mandatory for [a]ward.” Id. In response to a question from an offeror, the agency stated “[t]he request for a DCAA audit of a contractor’s accounting system (as needed) will be initiated by the Contracting Officer or by his/her representative.” RFP amend. 3, Q&A No. 30.

The Army received proposals from 16 offerors by the solicitation closing date. Prior to award, the DCAA advised that Sygnetics’ most recent audit, which was completed in November 2009, concluded that the company did not have an approved CAS. Contracting Officer (CO) Statement at 2; see also Agency Request for Dismissal (B-404545.2), at 4. Based on DCAA’s statement, the agency removed the protester from award consideration. On November 3, 2010, the Army awarded 14 ID/IQ contracts.

On November 17, following a debriefing, Sygnetics filed a protest with our Office (B-404535.2), arguing that the agency unreasonably rejected its proposal based on the agency’s finding that the protester lacks an adequate CAS. As relevant here, the protester argued that DCAA had not updated its November 2009 audit findings to reflect responses provided by the protester to DCAA in December 2009, and that the CO was required, under the terms of the RFP, to seek such an update from DCAA.

On December 10, 2010, the Army advised our Office that it would take corrective action in response to the protest. The agency stated that it would “reengage DCAA and request it conduct an audit of the contractor’s [CAS] and issue a report that indicates if DCAA considers the contractor’s CAS to be adequate for contract award of this ID/IQ contract.” Army Notice of Corrective Action (B-404535.2), Dec. 16, 2010, at 1.

DCAA completed its revised audit of Sygnetics’ CAS and provided preliminary findings to the protester on January 13, 2011, and also conducted an exit interview with the protester concerning the findings on January 18. Agency Report (AR), Tab 7, DCAA Audit Report, Jan. 20, 2011, at 3. In the preliminary report and interview, DCAA advised Sygnetics that it viewed the deficiencies identified in Sygnetics November 2009 audit to have been addressed. Id. DCAA further advised, however, that it had identified six additional deficiencies, which rendered Sygnetics’ CAS unacceptable: (1) lack of adequate procedures for segregating and eliminating unallowable costs from claimed costs; (2) inadequate procedures to support the proper classification of costs; (3) allocation of general and administrative (G&A) expenses over a total cost input base that did not result in an equitable allocation; (4) costs billed in non-compliance with contract terms; (5) untimely notification under the limitations of funds clause; and (6) costs billed not in accordance with the allowable cost and payment clause. Id.

On January 19, Sygnetics provided a response to the DCAA’s findings, stating that for five of the deficiencies (Nos. 1-2, 4-6), the protester would immediately adopt policies that would comply with the FAR; for each of those five deficiencies, the protester stated that “[e]ffective 1/18/11 the provisions of [the applicable FAR

requirement] will be adhered to.” DCAA Audit Report, Jan. 20, 2011, app. 1, at 1, 3-4. For the remaining deficiency concerning the allocation of G&A expenses (No. 3), the protester argued that its CAS complied with the FAR, and that, in light of the size of Sygnetics’ business, the protester should not be required to use a separate indirect rate for subcontractor labor. Id. at 2-3.

On January 20, DCAA issued its final report regarding Sygnetics’ CAS, which reached the following conclusion: “In our opinion, Sygnetics’ accounting system is inadequate for accumulating and billing costs under Government contracts.” AR, Tab 7, DCAA Audit Report, Jan. 20, 2011, at 3. The report discussed each of the deficiencies cited by DCAA, and the protester’s January 19 response. For the five responses that the protester stated would be immediately addressed, the DCAA recommended that a “follow-up accounting system review be performed to ensure the contractor’s proposed corrective actions have been implemented and adequately address the conditions.” Id. at 5, 7, 10-12. With regard to Sygnetics’ response regarding the allocation of G&A expenses, DCAA stated that it did not agree with the protester’s argument that its existing CAS complied with FAR part 31. Id. at 9. Instead, DCAA recommended that Sygnetics “revise their allocation practices to result in an equitable distribution of indirect costs to cost objectives.” Id.

On February 14, Sygnetics submitted a statement to the CO, arguing that award of a contract was appropriate because the protester had addressed all of DCAA’s concerns. In its response, the protester stated that “[a]s in the past, we have immediately addressed the issues and state that our accounting system has either been corrected to reflect all inadequacies that were identified, or [is] in the process of being corrected.” AR, Tab 8, Letter from Sygnetics to CO, Feb. 14, 2011, at 3. Sygnetics attached its January 19 response to DCAA as evidence that the protester had addressed all of the deficiencies and that its CAS should be viewed as acceptable.

On March 2, Sygnetics filed a protest with our Office arguing that the DCAA improperly found that Sygnetics does not have an adequate CAS, and that the agency had made a de facto finding of non-responsibility by not awarding the protester a contract. The Army advised our Office that it had not yet made a final determination as to whether to award a contract to Sygnetics. Consequently, on March 9, we dismissed the protest as premature.

On March 10, the protester again wrote the agency stating that “all additional conditions that were identified in January 2011 have been addressed, and we feel our accounting system is adequate.” Protest (B-404535.5), exh. J, Letter from Sygnetics to CO, Mar. 10, 2011. The protester did not provide any additional information concerning its CAS at that time.

On April 15, the Army issued a final determination that Sygnetics did not meet the RFP requirement to have an adequate CAS. AR, Tab 9, Revised Source Selection Decision, at 5-6. The source selection authority (SSA) noted that he had “reviewed

the RFP, the 20 January 2011 final report by the DCAA, which includes Sygnetics' response thereto, the Sygnetics proposal, the 14 February 2011 documents submitted by Sygnetics to the [CO], and the SSEB evaluation." Id. at 4. The SSA concluded that, notwithstanding the protester's representations regarding the acceptability of its CAS, the record showed that DCAA had not revised its position that Sygnetics' CAS was unacceptable. Id. at 5-6.

On April 20, the Army advised Sygnetics that its proposal had been rejected based on its inadequate CAS. This protest followed.

DISCUSSION

Sygnetics argues that the Army's rejection of its proposal was unreasonable because DCAA's conduct in performing its audit of Sygnetics was improper and because the agency unreasonably relied on DCAA's finding that the protester's CAS was unacceptable without considering other information provided by the protester regarding the acceptability of its CAS. For the reasons discussed below, we conclude that these arguments have no merit.¹

The evaluation of an offerors' CAS is a matter of responsibility. McKissack+Delcan JV II, B-401973.2, B-401973.4, Jan. 13, 2010, 2010 CPD ¶ 28 at 6. FAR § 9.104(e) provides that "to be determined responsible, a prospective contractor must . . . have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them." FAR § 16.301-3(a)(1) requires that cost-reimbursement contracts are only used when a contractor's accounting system is adequate for determining costs applicable to the contract.

Offeror responsibility is to be determined based on any information received by the agency up to the time award is proposed to be made. FAR § 9.105-1(b)(3); American Tech. & Analytical Servs., Inc., B-282277.5, May 31, 2000, 2000 CPD ¶ 98 at 3. The determination of a prospective contractor's responsibility rests within the broad discretion of the contracting officer, who, in making that decision, must necessarily

¹ The Army argues that the protest was received by our Office more than 10 days after its May 9, 2011, debriefing, and was therefore untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2011). Sygnetics filed its protest with our Office via e-mail through the protests@gao.gov address. A date stamp placed on a paper copy of Sygnetics' protest by our Office staff indicated that the protest was received on May 20, 2011; a copy of the protest with this date stamp was provided to the agency. Our records show, however, that the e-mail was received by our Office's e-mail servers on May 19, but was quarantined by our information technology staff due to concerns regarding some of the attachments, and was not forwarded to the protests@gao.gov e-mail inbox until the next day. Because the e-mail message was received by our e-mail servers on May 19, we consider the protest timely filed.

rely on his or her business judgment. We therefore will not question a negative determination of responsibility unless the determination lacked a reasonable basis. McKissack+Delcan JV II, supra. In this regard, however, while an agency may rely on a reasonable DCAA audit finding, an agency's reliance upon the advice of DCAA does not insulate the agency from responsibility for error on the part of DCAA. See ASRC Research & Tech. Solutions, LLC, B-400217, B-400217.2, Aug. 21, 2008, 2008 CPD ¶ 202 at 11 n.12.

DCAA's Actions in Conducting Audits

First, Sygnetics argues that DCAA acted improperly in conducting the audit that was the subject of the January 20, 2011, report. In this regard, the protester argues that DCAA should have limited its review to the Sygnetics' responses to the audit deficiencies identified in November 2009, instead of conducting a new audit. The protester, however, provides no support for its argument that DCAA must limit its review to those deficiencies identified in prior reports, nor does the protester provide support for its argument that DCAA acted improperly by identifying new deficiencies. Indeed, DCAA identification of additional legitimate concerns with Sygnetics' accounting system was entirely consistent with that agency's responsibility for verifying that the system was adequate to support the award of a cost-reimbursement contract. FAR § 16.301-3(a)(1).

Sygnetics' also argues that DCAA's delay in addressing the protester's responses to the November 2009 audit report was unreasonable, and that if DCAA had addressed Sygnetics' responses to that audit more quickly, Sygnetics may have also been able to better address the six deficiencies raised in the January 2011, audit report. Again, however, the protester does not cite any support for its argument that the timeframes here constitute a violation of a procurement law or regulation. Although there may have been a delay in DCAA's consideration of Sygnetics' responses to its November 2009 audit, the Army took corrective action in response to protest B-404535.2 in order to ensure that DCAA considered those responses and updated its audit of the protester's CAS. The fact that new deficiencies were identified does not demonstrate, as discussed above, that DCAA or the Army acted improperly. Furthermore, there is no requirement that an agency permit an offeror with unlimited opportunities to correct or address concerns regarding its responsibility, prior to making award. See Kilgore Flares Co., B-292944 *et al.*, Dec. 24, 2003, 2004 CPD ¶ 8 at 10-11 (agency is not required to continue to discuss the protester's responsibility where protester had provided inadequate response to agency's concerns); Commerce Funding Corp., B-236114, Oct. 2, 1989, 89-2 CPD ¶ 287 at 4 (same). On this record, we find no basis to sustain the protest.

Army's Actions in Reviewing DCAA's Audit Report

Next, Sygnetics argues that the Army unreasonably relied on the DCAA audit report in concluding the protester did not have an approved CAS, and unreasonably failed to consider the protester's additional information stating that it had addressed all of

the deficiencies. The record shows, however, that the SSA and CO considered the information provided by DCAA in its audit report, as well as the information provided by Sygnetics to DCAA. CO Statement at 4-5; AR, Tab 9, Revised Source Selection Decision, at 4. Aside from its January 19, 2011, response to DCAA's initial findings, which was addressed in DCAA's report, the protester does not identify any other substantive information provided to the CO that demonstrates that the protester had addressed the deficiencies identified by DCAA.² For example, the protester's February 14 and March 10 letters to the CO merely repeat the protester's arguments that it had or was in the process of addressing the deficiencies, in the same manner set forth in the January 19 response.

In any event, to the extent that Sygnetics argues that the information it provided to the Army demonstrates that its CAS was acceptable, we do not agree. While Sygnetics argues that the January 20, 2011, audit report indicates that it had addressed all of the deficiencies identified by DCAA, the audit report in fact stated that Sygnetics disagreed with the G&A finding; for this reason, the report stated that DCAA did not consider this issue to have been addressed. Tab 7, DCAA Audit Report, Jan. 20, 2011, at 9. The report also stated that while Sygnetics had agreed to correct five of the deficiencies, DCAA recommended future monitoring of the protester's responses to these deficiencies. *Id.* at 5, 7, 10-12. For these reasons, the DCAA concluded that, notwithstanding Sygnetics' responses, "the six current conditions listed above are outstanding, and, as a result, the accounting system is considered inadequate." *Id.* at 3.

With regard to the G&A allocation deficiency, the protester does not explain why DCAA's concern was incorrect, or how it has otherwise addressed this deficiency. DCAA expressed concern in its initial report and exit interview that Sygnetics' CAS applied G&A rates in a manner that did not reflect an "equitable distribution of indirect costs." *Id.* at 8. DCAA recommended that the protester "allocate G&A expenses over a base that is representative of benefits realized in accordance with FAR [§] 31.203," and that "Sygnetics should be properly tracking and classifying labor spent directly managing specific subcontracts as direct in accordance with FAR [§] 31.202." *Id.* While Sygnetics argued to DCAA that "setting up a separate indirect rate for subcontractor labor will not result in a more accurate allocation of costs," so that no corrective action was required, *id.*, app. 1, Sygnetics Response, Jan. 19, 2011, at 3, the DCAA disagreed and reiterated the recommendation that the protester "revise their allocation practices to result in an equitable distribution of

² Sygnetics states that it provided additional information to the Defense Contract Management Agency on May 14, in response to that agency's inquiries concerning the protester's response to the January 2011 DCAA audit, and states that this information was also provided to the CO. Protester's Comments at 2. This information, however, was provided after the agency rejected Sygnetics' proposal, and thus has no bearing on the Army's award decision.

indirect costs to cost objectives.” AR, Tab 9, DCAA Audit Report, Jan. 20, 2011, at 9. On this record, we conclude that the Army reasonably relied on DCAA’s advice that the protester’s CAS was not acceptable, in light of Sygnetics’ failure to acknowledge or correct this evaluated deficiency.

As to the five remaining deficiencies cited in DCAA’s January 2011 report, Sygnetics does not dispute that these deficiencies required correction. Instead, the protester’s response merely indicated that the protester would comply with the recommendations. Based on this stated intention to comply, however, the DCAA report recommended further review to determine whether compliance had been achieved. *Id.* at 5, 7, 10-12. We conclude that although Sygnetics stated that it would comply with the remaining recommendations, the CO could rely on DCAA’s recommendation that further review of the protester’s CAS should be completed prior to finding the CAS acceptable for those issues.

In sum, we see nothing unreasonable in the Army’s conclusion that, based on the DCAA audit report and the information provided by Sygnetics, the protester did not have a CAS that was approved by DCAA, as required by the RFP.

The protest is denied.³

Lynn H. Gibson
General Counsel

³ Sygnetics raises other collateral issues. For example, the protester contends that the agency’s failure to consider Sygnetics’ information regarding the acceptability of its CAS is evidence of bad faith and bias against the protester. Government officials are presumed to act in good faith, and a protester’s contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Career Innovations, LLC*, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. Although Sygnetics contends that the additional items cited in DCAA’s January 2011 audit report and the delays in completing the DCAA’s audit reports and the corrective action are evidence of bias against the protester, these inferences do not support the protester’s accusation that the Army or DCAA has acted improperly or in bad faith.