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Decision

Matter of: KMS Solutions, LLC

File: B-405323.2; B-405323.3

Date: October 6, 2011

Joseph P. Hornyak, Esq., Terry L. Elling, Esq., Gregory R. Hallmark, Esq., and Jacob W. Scott, Esq., Holland & Knight LLP, for the protester.

Craig A. Holman, Esq., William S. Speros, Esq., Stuart W. Turner, Esq., and Emma V. Broomfield, Esq., Arnold & Porter LLP, for Mission Essential Personnel, LLC; W. Jay DeVecchio, Esq., Kevin C. Dwyer, Esq., Ethan E. Marsh, Esq., Kristen M. Rogers, Esq., and Marina K. Jenkins, Esq., Jenner & Block LLP, for L-3 Services, Inc.; and Sean D. Forbes, Esq., and Bryant S. Banes, Esq., Neel Hooper, & Banes, PC, for Linc Government Services, LLC, the intervenors.

Lt. Col. Patrick L. Vergona, and Capt. Joon K. Hong, Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In evaluating protester's proposal under the most-heavily-weighted management evaluation factor, the agency reasonably determined that protester's proposal contained multiple errors and omissions that reflected a lack of understanding or an approach that could not be expected to meet the solicitation's requirements.

2. Based on its consideration of a Defense Contract Audit Agency (DCAA) audit performed in 2010, and the protester's specific non-concurrence with various DCAA criticisms regarding protester's cost accounting system, the procuring agency reasonably determined that protester's accounting system was inadequate for award of a cost-reimbursement contract.

DECISION

KMS Solutions, LLC, of Alexandria, Virginia, protests the Department of the Army's rejection of KMS's proposal submitted in response to request for proposals (RFP) No. W911W4-11-R-0003 for the Department of Defense Language Interpretation and Translation Enterprise (DLITE) procurement. KMS challenges the agency's determination that KMS's proposal was unacceptable.

We deny the protest.

BACKGROUND

The solicitation at issue was published in December 2010, seeking proposals to provide linguist support services (that is, interpreters/translators) for military operations throughout the world.¹ Pursuant to this solicitation, the agency conducted two separate procurements for two related functions: 1) force projection operations and 2) train and sustain operations.² RFP at 2. KMS, a large business, protests the agency's actions with regard to the procurement for force projection operations.

With regard to the protested procurement, the solicitation advised offerors that the agency intended to award multiple indefinite-delivery/indefinite-quantity (ID/IQ) contracts on a best value basis,³ and established the following evaluation factors listed in descending order of importance: management,⁴ technical, past performance, socio-economic, and cost.⁵ RFP at 226-28. The solicitation further

¹ The solicitation explained that the government's demand for contractor-provided foreign language support services has grown substantially since the events of September 11, 2001, and that the need for such services is expected to grow and become more diverse during the 5-year contract performance period. Agency Report (AR), Tab 15, RFP at 2.

² With regard to force projection operations, the contractor will provide interpretation and translation services in support of humanitarian, peacekeeping, contingency, and combat operations, to include interrogations and intelligence collection; the estimated ceiling for this procurement is \$7.76 billion. RFP at 2-3, 26-27. With regard to train and sustain operations, the contractor will provide interpretation and translation services during military field training exercises and other operational simulations; the estimated ceiling for this procurement is \$1.94 billion. RFP at 2-3, 19.

³ Task orders will subsequently be awarded pursuant to the ID/IQ contracts. The task orders will use various pricing structures, with a preference for using "[a] hybrid of fixed price and cost reimbursable [pricing]." RFP at 5.

⁴ The solicitation provided that each management proposal should include a management plan, a staffing plan, a transition plan, and a security plan. RFP at 195-97.

⁵ Under the heading "Factor 5: Cost," section M of the solicitation provided that cost proposals would be evaluated for realism and reasonableness and further stated: "[a]n offeror's accounting system shall be adequate for determining costs applicable to the contract." RFP at 228. Section L of the solicitation directed each offeror to

(continued...)

advised offerors that the agency intended to make award without conducting discussions and that initial proposals should reflect the offerors' best terms with regard to both cost and non-cost factors. Id. at 209. Finally, the solicitation stated that award could not be made on the basis of a proposal that was determined to be unacceptable for failure to meet the solicitation's requirements. Id. at 185.

In February 2011, initial proposals were submitted by 11 offerors, including KMS; those proposals were thereafter evaluated.⁶ Consistent with the solicitation provisions, the agency did not conduct discussions with any offeror.

In evaluating KMS's proposal under the most-heavily-weighted management evaluation factor, the agency concluded that KMS's proposal "contains major errors and omissions," and rated the proposal unacceptable under that factor. Management Evaluation Report at 9; AR Tab 17, Source Selection Evaluation Board (SSEB) Report at 5-6; AR Tab 23, Source Selection Decision Document (SSDD) at 5. With regard to the requirement that an offeror must have an adequate accounting system for purposes of awarding a cost-reimbursement contract, the agency concluded that KMS's accounting system was inadequate.⁷ AR, Tab 22, Cost/Price Evaluation Team (CPET) Report Addendum at 3; SSEB Report at 32; SSDD at 5. Thereafter, the source selection authority (SSA) determined that KMS's proposal was ineligible for award, noting that the proposal's weaknesses and

(...continued)

"provide evidence of [its] accounting system being adequate in accordance with FAR [Federal Acquisition Regulation §§] 16.301-3, 16.403-1 and in compliance with FAR [Part] 31, Contract Cost Principles and Procedures." RFP at 206, 228.

⁶ Although the RFP did not identify the rating system to be employed, the agency evaluated proposals under the non-cost/price factors using an adjectival rating system. Of relevance to this protest, the agency assigned adjectival ratings of outstanding, good, acceptable, marginal, and unacceptable under the management evaluation factor. In this regard, the agency's internal guidance defined an unacceptable rating as applicable where a proposal contained "a major error(s), omission(s) or deficiency(ies) that indicates a lack of understanding of the problems or an approach that cannot be expected to meet requirements and none of these conditions can be corrected without a major rewrite or revision of the proposal." Management Evaluation Report at 7-8.

⁷ The agency also evaluated KMS's proposal as unacceptable under the socio-economic evaluation factor, marginal under the technical evaluation factor, and acceptable/high risk under the past performance factor. Since we conclude that the agency reasonably excluded KMS's proposal from further consideration on the basis of either the determination that KMS's management proposal was unacceptable or the agency's determination that KMS's cost accounting system was inadequate, we do not discuss the evaluation under the remaining evaluation factors.

significant weaknesses were “so great in quality and quantity that a complete rewrite would be required.”⁸ SSDD at 6. Thereafter, KMS was notified that its proposal had been rejected. This protest followed.⁹

DISCUSSION

KMS’s protest challenges virtually every aspect of the agency’s evaluation. As discussed below, we conclude that the agency reasonably determined that KMS’s proposal was unacceptable under the management factor and reasonably determined that KMS’s cost accounting system was inadequate. In our view, since discussions were not conducted with any offeror, either of these determinations provided a reasonable basis for rejecting KMS’s proposal.

Unacceptability of KMS’s Management Proposal

KMS first challenges the agency’s evaluation of its proposal under the management factor, disputing the agency’s identification of the multiple evaluated flaws. In this regard, KMS asserts that the agency’s determination that the proposal was unacceptable was not reasonable.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency’s judgment was reasonable and in accord with the evaluation factors set forth in the RFP. A protester’s mere disagreement with the agency’s judgment does not render the evaluation unreasonable. Hanford Env’tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4.

Here, the solicitation provides that each offeror’s management proposal must provide its approach to meeting DLITE objectives and “convey[] the offeror’s understanding of Department of Defense (DoD) and Intelligence Community (IC) procedures, processes, and missions.”¹⁰ RFP at 195. Offerors were advised that

⁸ The agency subsequently selected the following offerors’ proposals for award: CACI Premier Technology, Inc; Global Linguist Solutions LLC; L-3 Services, Inc.; Linc Government Services LLC; Mission Essential Personnel LLC; and Northrop Grumman Technical Services, Inc. AR, Tab 27, Notices of Award.

⁹ KMS filed an initial protest on July 12 and a supplemental protest on July 15.

¹⁰ More specifically, each offeror’s management plan was to describe the offeror’s approach to: “managing all proposed subcontractors; managing the deployment of linguists to OCONUS [outside continental United States] locations as required; managing risk; controlling and reducing cost; managing all deliverables required by the PWS [performance work statement], and performing all tasks required by the PWS.” RFP at 226-27.

their proposals would be evaluated for “accuracy, clarity, completeness, reasonableness, realism, and credibility.” RFP at 226.

Overall, it is clear that the agency did not believe that KMS’s management proposal was sufficiently accurate, clear, or complete to demonstrate the requisite understanding. In evaluating KMS’s management proposal, the agency identified multiple weaknesses and significant weaknesses¹¹ related to aspects of KMS’s proposal that, in the agency’s judgment, reflected a lack of understanding or an approach that could not be expected to meet the contract requirements. KMS’s protest challenges the agency’s assessments with regard to virtually every evaluated flaw. We have reviewed the evaluation record and find no basis to question the agency’s assessments. Our discussion below provides some examples of the evaluated flaws on which the agency’s unacceptability determination was based.¹²

With regard to organizational structure and lines of communication, section L of the solicitation required that an offeror’s management plan “shall explain the communication and reporting processes and procedures the offeror will employ to ensure [the] Government is aware of personnel status and any performance, schedule, and/or cost issues.” RFP at 195.

In responding to the RFP requirements regarding reporting processes and procedures, KMS’s proposal stated that [deleted]. AR, Tab 16, Vol. 2, KMS Management Proposal at 6. The agency identified this as a proposal flaw, criticizing KMS’s proposed approach for failing to maintain the independence of the quality

¹¹ The agency defined a weakness as “[a] flaw in the proposal that increases the risk of unsuccessful contract performance,” and defined a significant weakness as “a flaw that appreciably increases the risk of unsuccessful contract performance.” SSEB Report at 3.

¹² We note that KMS’s protest parses the language of the agency’s internal definition of an unacceptable rating to assert that only proposal flaws which the agency labeled as “significant weaknesses” could properly form the basis for an unacceptability determination. KMS Protest, July 12, 2011, at 10. KMS’s assertion is without merit. First, the terms of the RFP did not so limit the agency’s evaluation. Further, as noted above, the agency’s internal guidance defined an unacceptable proposal as one that contained errors or omissions reflecting a lack of understanding or an approach that could not be expected to meet the solicitation’s requirements. Management Evaluation Report at 8. In our view, proposal flaws that increased the risk of unsuccessful contract performance (that is “weaknesses”), as well as proposal flaws that appreciably increased such risk (that is “significant weaknesses”) were properly considered in the agency’s determination of unacceptability. In reviewing the reasonableness of the agency’s determination, we have considered all of the evaluated flaws in KMS’s management proposal.

control function and elaborating that “[the quality control function] should be in a coordinating role to the PM [program manager] as quality control must remain unbiased.” Management Evaluation Report at 11.

Similarly, in describing its internal reporting procedures and organizational structure, KMS’s proposal indicated that [deleted]. The agency identified this as a flaw, noting that the security function is vital to successful contract performance, “especially recruitment,” and elaborated that “[n]ot having [deleted] may delay the screening of candidates.” Id.

With regard to the reporting and communication requirements, the agency criticized KMS’s proposed lines of communication. In this regard, KMS’ proposal contained the following chart, labeled “Communication and Points of Interface.”

[deleted]

KMS Management Proposal at 10.

Referring to this chart, the agency assessed a flaw in KMS’s proposed lines of communication, stating: “[KMS] present[s] a very cryptic ‘points of interface’ chart that does not depict in an understandable order actual lines of intended communication.” Management Evaluation Report at 10. The agency further pointed out that the chart, and the narrative directly above the chart, contradicted each other. Specifically, the narrative above the chart stated: “It is important to note that our [deleted] serves as the single point of contact with the Contracting Officer.” KMS Management Proposal at 10. Yet, as shown, the chart indicated lines of communications, or “points of interface,” between the contracting officer and [deleted] different KMS personnel: [deleted]. Id. Finally, in criticizing KMS’s proposal with regard to its proposed lines of communication, the agency noted that KMS’s proposal did not provide for direct communication between its in-country manager and the agency’s in-country contracting officer’s representative (COR) or administrative contracting officer’s representative (ACOR), stating: “Failure to establish LOCs [lines of communication] between the in-country manager and in-country COR/ACOR increases the risk to the Government.” Id.

By way of another example, the agency criticized KMS's proposed response to the RFP requirements regarding requests for task order proposals (RTOPs).¹³ Specifically, section L of the solicitation required each offeror to, "Describe [your] ability and approach to rapidly and adequately respond to no-notice/short-notice deployment requirements." RFP at 195. In addressing this requirement, KMS's proposal provided the following chart.

[deleted]

KMS Management Proposal at 17.

As shown above, rather than describing any particular approach to responding to no-notice/short-notice requirements, KMS's proposal contained general references to [deleted].¹⁴ Id. Nothing in its proposal actually described its "proven response procedures," nor did it provide any meaningful information regarding its "RTOP Response Format," asserting only, without explanation, that it is [deleted]. Id. In identifying this as a flaw in KMS's proposal, the agency noted that the proposal "offers only conclusory titles instead of actual processes." Management Evaluation Report at 10.

By way of yet another example, section L of the solicitation provided that each offeror's management proposal must address "management of risk" and, specifically, must address transition risk. In this regard, the solicitation required each offeror to describe its approach to "identify program risk and application of resources to

¹³ The solicitation provides that every ID/IQ contract holder must respond to every RTOP issued. Specifically, the RFP states that, "[c]ontractors are mandated to submit either a request for waiver [within 24 hours after receipt of RTOP] or a proposal in response to every RTOP," cautions that "[c]ontractors must provide compelling justification in their request for a waiver," and warns that failure to comply with this requirement may result in a contractor's "off-ramp." RFP at 40.

¹⁴ KMS's proposal also contained a narrative discussion regarding the RTOP requirements which essentially restates the limited information in the chart and does not describe any specific approach. KMS Management proposal at 16-17.

mitigate, monitor, and close out risk elements in a disciplined and timely manner” and similarly to “identify and address transition risks.” RFP at 195, 197. Although KMS’s proposal identified general risks, (for example, [deleted]), its proposal failed to identify any particular causes of these risks; accordingly, its proposal did not provide any specific mitigation strategies. KMS Management Proposal at 18-19, 40. The agency identified this as a flaw in KMS’s proposal because it “does not detail any actual processes for mitigation.” Management Evaluation Report at 10.

By way of yet another example, section L of the solicitation directed that each offeror’s management plan must “[d]escribe any corporate experience that relates to the level and complexity of the work detailed in the PWS.” RFP at 195. KMS’s response to this requirement stated that the firm has provided [deleted] linguists as a subcontractor for an incumbent prime contractor. KMS Management Proposal at 4. In criticizing KMS’s proposal for failing to demonstrate an adequate understanding of the contract requirements, for describing only general responsibilities, and for failing to propose specific processes and procedures, the agency noted that the DLITE contract at issue will require over 7,000 linguists and concluded that KMS has “little, if any, corporate experience in managing contracts of the scope and complexity of the DLITE effort.” Management Evaluation Report at 9.

Overall, the agency summarized its criticisms of KMS’s management plan stating that the plan:

contains major errors and omissions that indicate a lack of understanding of the problems or an approach that cannot be expected to meet requirements and none of these conditions can be corrected without a major rewrite or revision of the proposal. Specifically, its plan draws into question KMS’s ability to manage the deliverables and tasks required by the PWS as well as its ability to manage risk. Moreover, its plan does not address how it will use and manage its subcontractors and does not detail any actual processes for risk mitigation by using merely conclusory terms.

Management Evaluation Report at 9.

KMS asserts that all of the above examples of evaluated flaws are unreasonable. More specifically, KMS asserts that the agency applied unstated evaluation criteria, disagrees with the agency’s judgments regarding the significance of KMS’s errors or omissions, maintains that the agency misinterpreted or overlooked information in KMS’s proposal, and complains that the solicitation imposed page limitations that precluded KMS from providing a more comprehensive approach. We have considered all of KMS’s various assertions and conclude that they provide no bases

for sustaining the protest in that they read the terms of the solicitation too narrowly,¹⁵ reflect mere disagreement with the agency's judgments,¹⁶ or reflect untimely challenges to the terms of the solicitation.¹⁷

Based on our review of the entire record, we conclude that the agency reasonably determined that KMS's management proposal contained multiple errors and omissions that reflected a lack of understanding or an approach that could not be expected to meet the solicitation requirements.¹⁸ Accordingly, we find no basis to question the agency's determination that KMS's proposal was unacceptable under the most important evaluation factor, management. Further, since the solicitation precluded award to an unacceptable proposal, and the agency did not conduct discussions with any offeror, the exclusion of KMS's proposal from further consideration was reasonably based on the agency's determination that KMS's management proposal was unacceptable.

Inadequacy of KMS's Cost Accounting System

As noted above, the solicitation provided that "[a]n offeror's accounting system shall be adequate for determining costs applicable to the contract," and directed each offeror to "provide evidence of their accounting system being adequate in accordance with FAR [§§] 16.301-3, 16.403-1 and in compliance with FAR [Part] 31, Contract Cost Principles and Procedures." RFP at 226, 228.

In responding to these solicitation provisions, KMS's proposal directed the agency's attention to a Defense Contract Audit Agency (DCAA) audit, performed in September 2006, which had concluded that KMS's cost accounting system was adequate for performing cost reimbursement contracts. AR, Tab 16, KMS Proposal,

¹⁵ A solicitation need not identify every possible consideration under each stated evaluation factor, provided the matters the agency considers are reasonably related to, or encompassed by, the stated criteria. Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229 at 4.

¹⁶ A protester's mere disagreement with the agency's judgment does not render the evaluation unreasonable. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4.

¹⁷ A protest challenging the terms of the solicitation must be submitted prior to the closing date for submission of proposals. 4 C.F.R. § 21.2(a)(1) (2011).

¹⁸ In addition to the specific examples of evaluated flaws discussed above, the agency also evaluated flaws in KMS's management proposal with regard to its proposed subcontractors, its approach to recruiting, its transition schedule, and its management of linguists. Management Evaluation Report at 9-19.

Vol. 6 at 59. Notably, KMS's proposal made no reference to any subsequent DCAA audit.¹⁹

Following submission of KMS's proposal in February 2011, the cost/price evaluation team (CPET) chair contacted DCAA personnel to obtain an update on the status of KMS's accounting system. AR, Tab 25, DCAA Email at 4. DCAA responded that it had, in fact, performed an audit of KMS's accounting system in 2010, and that a final report had been issued in March 2011.²⁰ Id. Notwithstanding the failure of KMS's proposal to disclose any information regarding the 2010 DCAA audit, the CPET chair's inquiries revealed the following chronology of prior events.

From May 25 through July 2, 2010, DCAA conducted an audit of KMS's cost accounting system during which DCAA identified multiple aspects of KMS's system that it characterized as "inadequate procedures" or "deficiencies." AR, Tab 24, DCAA Audit Report No. 02171-2010C17740004 at 4, 29-62. Specifically, the audit identified deficiencies and inadequacies related to KMS's accumulation and segregation of costs,²¹ as well as to its billing system for preparation of reimbursement claims.²² Id. at 29-62.

On July 20, 2010, the agency conducted an exit interview with KMS personnel,²³ and provided a draft copy of its "Results of Audit and Statement of Conditions and Recommendations" to KMS at that time. Id. at 5. On October 12, 2010, KMS formally responded to that DCAA document. Id. at 27-62. In its response, KMS concurred with many of the identified deficiencies, but stated that it did not concur, in

¹⁹ KMS provided a February 2009 DCAA letter that referred to the 2006 audit report; the 2009 letter did not reflect any DCAA audit activity independent of the 2006 audit, and it did not provide an opinion as to the adequacy of KMS's accounting system in 2009. KMS Proposal, Vol. 6 at 59.

²⁰ The audit was performed at the request of the Department of the Navy, Naval Surface Warfare Center.

²¹ For example, DCAA found that KMS's accounting system reflected [deleted], provided an explanation of the bases for that finding, and concluded that KMS's accounting practices for [deleted] were "not logical." DCAA Audit Report No. 02171-2010C17740004 at 37-38. Similarly, the DCAA found that KMS's [deleted] was improper. Id. at 39-40.

²² For example, DCAA found that, in providing linguists as a subcontractor under the incumbent contract, KMS [deleted]. Id. at 30. DCAA noted that [deleted]. Id. The 2010 DCAA audit found that KMS was [deleted]. Id.

²³ The exit interview was attended by KMS's Chief Financial Officer, its Director of Contracts and Pricing, and its Vice President for Finance and Administration. Id. at 5.

whole or in part, with several others, specifically including DCAA's findings with regard to inadequate procedures for [deleted], improper [deleted], and non-compliance with FAR provisions regarding [deleted]. Id.

On March 7, 2011, DCAA issued its final report affirming its earlier findings and stating that there are "significant deficiencies that are considered to be material weaknesses in KMS accounting system that could result in misstated costs." Id. at 2. The report concluded that "[KMS's] accounting system and billing procedures are inadequate," and recommended "suspension of a percentage of progress payments or reimbursement of costs." Id.

Based on the information provided by DCAA, including the audit report and KMS's October 2010 response rejecting several of DCAA's findings and recommendations, the CPET concluded that KMS's accounting system was inadequate for purposes of awarding a cost-reimbursement contract.²⁴ CPET Report Addendum at 3. In reaching that conclusion, the CPET referred to the specifically identified DCAA findings with which KMS had non-concurred, characterizing those as "material deficiencies that go to the heart of an adequate cost accounting system, [which] present significant cost risk to the government, and are inappropriate for the award of an ID/IQ contract for which cost-type task orders are contemplated." Id.

KMS protests that the agency's determination of inadequacy regarding KMS's cost accounting system was improper for various reasons.²⁵ We disagree.

²⁴ Pursuant to FAR § 16.301-3(a)(3), an agency may award a cost-reimbursement type contract only when "[t]he contractor's accounting system is adequate for determining costs applicable to the contract."

²⁵ Initially, KMS asserts that the agency's determination of inadequacy was improper pursuant to the provisions of FAR Subpart 42.3 which provides that, "When a contract is assigned for administration . . . the contract administration office (CAO) shall perform [certain] contract administration functions." FAR § 42.301. (Emphasis added.) Subpart 42.3 then provides guidance regarding particular contract administration functions that must, thereafter, be performed by the CAO; these mandatory CAO functions include ongoing responsibility, during the contract performance period, for determining the adequacy of the contractor's accounting system. FAR § 42.302(a)(12). Based on these provisions, KMS asserts that, even in the process of awarding a contract, only an administrative contracting officer is authorized to render an assessment regarding the adequacy of an offeror's accounting system. We reject KMS's assertion on the basis that the provisions in FAR Subpart 42.3 concern matters of contract administration which apply after a contract has been awarded; they are inapplicable to the contract formation actions at issue here.

KMS first maintains that the determination regarding the adequacy of an offeror's cost accounting system is a matter of an offeror's responsibility, see McKissack+Delcan JV II, B-401973.2, B-401973.4, Jan. 13, 2010, 2010 CPD ¶ 28 at 6, and asserts that the agency improperly treated the issue as a matter of proposal acceptability. The agency responds that, although the adequacy of an offeror's cost accounting system is generally a matter of responsibility, where a solicitation provides for evaluation of offerors' accounting systems under a stated evaluation factor, the issue becomes a matter of the proposal's acceptability. See A-TEK, Inc., B-299557, May 3, 2007, 2007 CPD ¶ 89 at 3-4. The agency maintains that the solicitation here provided for evaluation of offerors' accounting systems under the cost evaluation factor and, thus, converted the issue to a matter of proposal acceptability.

We need not resolve whether the terms of this solicitation converted the adequacy of KMS's accounting system from a matter of responsibility to a matter of proposal acceptability because, even assuming that they did not, and that this issue properly constituted a matter of responsibility as KMS asserts, the agency's actions reasonably constituted a nonresponsibility determination.

As KMS asserts, questions regarding an offeror's capability to perform a contract involve matters of responsibility, and an agency's responsibility determinations may be based on information received up to the time of award. American Tech. & Analytical Servs., Inc., B-282277.5, May 31, 2000, 2000 CPD ¶ 98 at 3. However, an agency need not permit an offeror unlimited opportunities to address responsibility concerns. Sygnetics, Inc., B-404535.5, Aug. 25, 2011, 2011 CPD ¶ 164 at 5; Kilgore Flares Co., B-292944 et al., Dec. 24, 2003, 2004 CPD ¶ 8 at 10-11. The determination of a prospective contractor's responsibility rests within the broad discretion of the contracting officer, who, in making that decision, must necessarily rely on his or her business judgment. We therefore will not question a negative determination of responsibility unless the determination lacks a reasonable basis. Oertzen & Co. GmbH, B-228537, Feb. 17, 1988, 88-1 CPD ¶ 158 at 3.

Referring to our decision in McKissack, supra, KMS suggests that the agency should have "open[ed] a dialogue" with KMS following the agency's discovery of the 2010 DCAA audit. Protest, July 12, 2011, at 23-24. To the extent KMS's protest relies on McKissack to maintain that an agency must engage in a post-closing date dialogue with offerors before making a nonresponsibility determination, it misreads our decision. In McKissack, we found that an agency's nonresponsibility determination, which was based on the inadequacy of the protester's accounting system, did not have a reasonable basis. Accordingly, we sustained the protest and noted that an agency "may open a dialogue" to address responsibility concerns without such dialogue necessarily constituting discussions. McKissack at 9. While noting that such dialogue is permissible, we did not conclude that it is required where an agency

has an otherwise reasonable basis for assessing the adequacy of an offeror's accounting system.

Here, we believe the agency had a reasonable basis for evaluating the adequacy of KMS's accounting system. Based on our review of the record, we find no basis to question the substantive support for the agency's determination that KMS's accounting system was inadequate to perform a cost reimbursement contract. As discussed above, the DCAA audit specifically identified multiple deficiencies in KMS's cost accounting system, including KMS's inadequate procedures for [deleted], its improper [deleted], and its non-compliance with FAR provisions governing [deleted]. The CPET specifically considered these particular deficiencies, as well as KMS's express non-concurrence with those DCAA findings, in determining that KMS's system was inadequate. In pursuing this protest, KMS has not meaningfully challenged the substance of the DCAA's findings of deficiencies and inadequacies. Accordingly, even assuming that the agency's assessment constituted a nonresponsibility determination, we find no basis to question that determination.

Alternatively, KMS asserts that the agency's reliance on the final DCAA audit report issued in March 2011, along with KMS's non-concurrence with several of the DCAA-identified deficiencies constituted improper reliance on "outdated information." Protest, July 12, 2011, at 24. Specifically, KMS refers to FAR § 9.105-1(b)(3), which states: "Information on financial resources and performance capability shall be obtained or updated on as current a basis as is feasible up to the date of award." KMS asserts that the agency failed to properly seek updated information from KMS prior to determining that KMS's accounting system was inadequate.

In the context of the facts presented here, we find KMS's assertion that the 2010-11 data was "outdated" to be truly remarkable. That is, KMS is asserting that it properly directed the agency's attention to a 2006 DCAA audit for purposes of complying with the solicitation's requirement that KMS "provide evidence of [its] accounting system being adequate," yet maintains that the agency's consideration of the data from DCAA's 2010 audit (including the final audit report issued less than 4 months before the agency's award determinations), was improper because that information was "outdated." Protest, July 12, 2011, at 23-25; KMS Comments, Aug. 1, 2011, at 27-29. KMS's inconsistent positions regarding what constitutes sufficiently recent information undermines its assertion that the 2010-11 data was "outdated," and we reject KMS's assertion that the agency failed to comply with FAR § 9.105-1(b)(3).

As noted above, an agency need not provide an offeror unlimited opportunities to address responsibility concerns. Sygnetics, Inc., *supra*; Kilgore Flares Co., *supra*. Here, we conclude that KMS was given ample opportunity to provide meaningful, current, and updated information to demonstrate the adequacy of its cost accounting system, and that it failed to do so. We further conclude that the agency reasonably considered the substance of the 2011 DCAA report, along with KMS's

non-concurrence with several of the DCAA-identified deficiencies. We note that, in pursuing this protest, KMS has not meaningfully challenged the substantive bases underlying the DCAA's determination that KMS's accounting system contained deficiencies and inadequacies. On this record, we find no merit in KMS's assertion that the agency improperly determined that KMS's cost accounting system was inadequate. Accordingly, we find that the agency reasonably rejected KMS's proposal.

Summary

As discussed above, we conclude that the agency reasonably evaluated KMS's proposal as unacceptable with regard to the most-heavily-weighted evaluation factor, management, and that, based on this determination, KMS's proposal was properly excluded from further consideration. We also conclude that the agency reasonably determined that KMS's cost accounting system was inadequate and that, based on that determination (whether it constituted a nonresponsibility determination or a finding of proposal unacceptability), KMS's proposal was properly excluded from further consideration. Accordingly, on either basis, the agency properly rejected KMS's proposal.

The protest is denied.

Lynn H. Gibson
General Counsel