



## Decision

**Matter of:** Sygnetics, Inc.

**File:** B-405138, B-405138.2, B-405138.3

**Date:** August 22, 2011

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### DIGEST

Protest challenging evaluation of protester's past performance and the best value source selection is denied, where the record confirms the basis of the protester's satisfactory past performance, and agency's selection of offerors with higher past performance ratings is consistent with the evaluation criteria; record does not support that agency was biased against the protester, as alleged.

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### DECISION

Sygnetics, Inc., of Rochester Hills, Michigan, protests the Department of Veterans Affairs' (VA) contract awards to MERS/Missouri Goodwill Industries of St. Louis, Missouri, Rehabilitation Team Associates, Inc. of Bay City, Michigan, and Sterling Medical Associates of Cincinnati, Ohio, pursuant to request for proposals (RFP) No. VA798-9-RP-0059, to provide various assistance services for veterans. Sygnetics protests the agency's evaluation of Sygnetics past performance as merely satisfactory, challenges the agency's best value determinations, and asserts that agency personnel were biased against Sygnetics.

We deny the protests.

### BACKGROUND

This solicitation was issued in February 2010 in connection with the VA's responsibility to assist service-disabled veterans in obtaining employment and/or to achieve independence in daily living. RFP at 6. Offerors were advised that awards

would be made on a best value basis, considering price and non-price evaluation factors, and the solicitation established the following non-price evaluation factors: past performance, technical/management approach, and socio-economic status. The solicitation further provided that past performance was the most important non-price factor and stated that the non-price factors combined were significantly more important than price. *Id.* at 205. With regard to evaluation of past performance, offerors were advised that proposals would be assigned adjectival ratings of excellent, good, satisfactory, marginal and unsatisfactory, and that these ratings corresponded to the agency's assessments, based on each offeror's past performance record, as to whether "essentially no risk exists that the offeror will successfully perform the required effort," "little risk exists," "some risk exists," "substantial risk exists," or "extreme risk exists." *Id.* at 212-13. Finally, the solicitation provided that individual contracts would be awarded for performance at various VA regional offices (RO) around the country and offerors were permitted to compete for multiple RO contracts.<sup>1</sup> *Id.* at 205-06.

In April 2010, initial proposals were submitted by multiple offerors, including Sygnetics and the three awardees. Specifically, Sygnetics submitted proposals for the St. Louis, Detroit, and Denver ROs.<sup>2</sup> Sygnetics had previously performed work under predecessor contracts for various ROs, including San Diego and St. Louis.

The agency evaluated Sygnetics' proposal, identifying multiple weaknesses with regard to its prior performance under the predecessor contracts, and initially assigning a rating of marginal under the past performance factor. Thereafter, the agency conducted two rounds of discussions with Sygnetics, identifying various problems with Sygnetics past performance.

For example, in discussions questions transmitted in December 2010, the agency provided the following assessments by personnel familiar with Sygnetics' prior performance for the St. Louis RO:

About 50% of the [Sygnetics'] reports received required rewrites. [The agency's] VRC's [vocational rehabilitation counselors] eventually took what info they got in reports, and did own rewrites. Quality marginal at best. . . .

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<sup>1</sup> The solicitation contemplated that at least one contract would be awarded for each of the RO responsible for providing the veteran assistance services at issue here. The record shows that the VA made 49 awards for 47 ROs. Agency Report (AR) at 2.

<sup>2</sup> The agency indicated that it intended to award no more than three contracts per offeror.

Preponderance of the reports did not meet delivery schedules.  
Chronic lateness. . . .

AR, Tab D.2, Sygnetics Discussions, at 2.

Similarly, with regard to Sygnetics' prior performance for the San Diego RO, the agency's discussion questions quoted the agency's assessment of that performance as follows:

[T]here were significant difficulties with invoicing, timeliness, and follow-up. Quality of delivery (counseling and reports) was Excellent but administrative problems existed. . . . Sygnetics management implemented organizational changes, changes in process and additional staff that corrected most of the problems.

Id. at 2-3.

In responding to the agency's discussion questions concerning its past performance, Sygnetics acknowledged its past performance problems with regard to the San Deigo RO, and discussed the improvements that it had made in performing that contract. However, Sygnetics's responses did not address any of the past performance issues with regard to the St. Louis RO. Contracting Officer's Statement at 11; AR, Tab B-29, Sygnetics Final Revised Past Performance Proposal Documents, at 6-8.

Following discussions, final revised proposals were requested, received, and evaluated. Based on the agency's consideration of all the past performance information provided, including Sygnetics responses to the agency's discussion questions, the agency upgraded Sygnetics' past performance rating from "marginal" to "satisfactory." In summarizing its final assessment, the agency explained:

The Past Performance of Sygnetics, Inc. with teaming partners demonstrates an ability to successfully perform the required size, scope, and complexity of the [solicitation at issue] for the Detroit, St. Louis, and Denver ROs. Of concern for this teaming arrangement is Sygnetic's ability to overcome past administrative challenges. During the [predecessor contracts] Sygnetics did address identified performance issues in the San Diego Regional Office by providing a new subcontractor. Additionally, Sygnetics was able to address the majority of the administrative past performance issues which have been identified by the VA. As stated above, Sygnetics received past performance ratings ranging from excellent to marginal. . . . [T]he range in past performance ratings was of concern for the Government. Based on the Offeror's entire performance record, some risk still exists that the Offeror will successfully perform the required effort.

AR, Tab F.2, Final Past Performance Evaluation Report, at 16.

In contrast to Sygnetics' "satisfactory" past performance rating, the agency's final past performance assessments for each of the awardee's proposals was "excellent." Id. at 5, 7, 8.

The offerors' proposed prices for the three contracts at issue were as follows:

	<b>Sygnetics' Price</b>	<b>Awardee's Price</b>
<b>St. Louis RO</b>	\$ 221,527	\$ 238,508 (MERS/Missouri Goodwill Indus.)
<b>Detroit RO</b>	\$ 287,832	\$ 325,960 (Rehailitation Team Assocs.)
<b>Denver RO</b>	\$1,387,789	\$1,367,462 (Sterling Medical Assocs.)

AR, Tab F.3, Final Price Evaluation Report, at 15-21.

With regard to the St. Louis and Detroit ROs, the agency performed cost/technical tradeoffs that considered the offerors' respective ratings with regard to all of the non-price factors, specifically including the most important factor, past performance. Ultimately, the agency concluded that the value to the government associated with the stronger past performance of MERS/Missouri Goodwill Industries, and Rehabilitation Team Associates outweighed each of their higher prices, and selected those companies for contracts awards for the St. Louis and Detroit RO, respectively. AR, Tab F.4, Price Negotiation Memorandum, at 627-28, 649. With regard to the Denver RO, the agency selected Sterling Medical Associates for award on the basis of its stronger past performance and its lower price. These protests followed.

## DISCUSSION

With regard to all three contract awards, Sygnetics protests that the agency improperly evaluated Sygnetics past performance as merely satisfactory. With regard to the two contracts for which Sygnetics's proposals offered lower prices, Sygnetics asserts that the agency's best value determinations were unreasonable. Finally, Sygnetics asserts that agency personnel were biased against Sygnetics due to congressional testimony that Sygnetics provided in July 2009.

### Past Performance

First, Sygnetics asserts that the agency's assignment of only a "satisfactory" rating for Sygnetics's three proposals was unreasonable. Among other things, Sygnetics argues that its prior performance problems were caused by circumstances beyond its control. Protester's Comments at 2-7.

An agency's evaluation of past performance is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable. Yang Enter., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 5; Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5. In this regard, an agency's past performance evaluation may be based on a reasonable

perception of a contractor's prior performance, regardless of whether that contractor, or another offeror, disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 5. In short, we will not substitute our judgment for that of the agency, and a protester's mere disagreement with such judgment does not provide a basis to sustain a protest. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Here, as discussed above, the agency's evaluation record documents various problems that Sygnetics had in performing similar contract efforts for the VA's San Diego and St. Louis regional offices. Sygnetics has not materially disputed the facts reflected in the agency's contemporaneous evaluation documents. While Sygnetics disputes the significance of the problems, the cause of the problems, and the significance of Sygnetics' corrective actions, its views in that regard constitute mere disagreement with the agency's judgment. Further, with regard to the problems under the prior contract for the St. Louis RO, Sygnetics failed to meaningfully address these issues either during its earlier discussions with the agency while the procurement was being conducted, or in its subsequent protest submissions to this Office. Finally, we note that the agency's final evaluation of Sygnetics' past performance was upgraded from marginal to satisfactory. On this record, we find no basis to question the reasonableness of the agency's determination that Sygnetics' past performance was merely satisfactory and that, based on its history, there was some risk as to whether Sygnetics would successfully perform the contract requirements at issue here.

#### Best Value Determination

Next, with regard to the contracts for the St. Louis and Detroit ROs, for which Sygnetics proposed lower prices, Sygnetics challenges the agency's best value determination. In this regard, Sygnetics asserts that its lower price for each contract "combined with the poor 'discretion' of the VA's Contracting Officer (CO) in regard to our past performance rating made for an unreasonable best value decision." Protester's Comments at 8. More specifically, Sygnetics complains that, because of the significant weight the solicitation gave to past performance, the agency's alleged errors in evaluating Sygnetics' past performance led to an unreasonable best value determination.

Where, as here, a solicitation contemplates award on a best value basis and provides that the non-price considerations are more important than price/cost, agencies have discretion to make award to a concern that has submitted a higher-priced/cost, technically superior offer; the agency's decision is governed only by the test of rationality and consistency with the solicitation's stated evaluation scheme. Tessada and Assocs., Inc., B-293942, July 15, 2004, 2004 CPD ¶ 170 at 8.

Here, the solicitation advised offerors that past performance was the most important evaluation factor. Further, as discussed above, our review of the agency's

contemporaneous evaluation record supports the reasonableness of the agency's past performance assessment. Finally, we find nothing unreasonable in the agency's conclusion that the two awardee's excellent past performance ratings outweighed Sygnetics' lower proposed price.

## Bias

Finally, Sygnetics protests that it was given an unfavorable past performance rating in retribution for its testimony before the Subcommittee on Economic Opportunity of the House Committee on Veterans Affairs in July 2009 regarding a previous contract. The protester contends that since delivering its testimony, individuals at the VA have continued to "block my ability to do business with their agency." Protest at 3.

Government officials are presumed to act in good faith, and a protester's claim that agency officials were motivated by bias or bad faith must be supported by convincing proof. Our Office will not attribute unfair or prejudicial motives to agency officials on the basis of inference or supposition. Operational Support and Servs., B-299660.2, Sept. 24, 2007, 2007 CPD ¶ 182 at 3.

Here, as discussed above, we have reviewed the agency's contemporaneous evaluation record and find nothing unreasonable with regard to Sygnetics' past performance evaluation. Further, the record shows that the agency's contemporaneous criticisms of Sygnetics during its prior contract performance decreased after its congressional testimony. A comparison of the average ratings for Sygnetics' past performance at 20 different stations shows that Sygnetics' ratings actually increased in four out of five rating areas after the firm provided its Congressional testimony in July 2009. AR, Tab G.10, Sygnetics Performance Comparison, at 11. Specifically, Sygnetics' average rating for quality of service increased from 2.1 to 2.5 from April 2009 to August 2009; timeliness of performance increased from 1.8 to 2.1; customer satisfaction increased from 2.0 to 2.3; and responsiveness increased from 2.6 to 3.0. Id. The firm's average overall performance rating also increased from 2.1 to 2.4. Id. On this record, we find no merit to the protester's allegations of retaliation or bias.

The protest is denied.

Lynn H. Gibson  
General Counsel