Normally our perspective is that of the contractor, the commercial entity that enters into a contract with the Federal government and then has to figure out how to comply with a myriad of rules and regulations while at the same time delivering a product or service on time, on budget, and with the expected quality. It's a tough job and not every company can navigate those rough waters, and so those companies often turn to consultants—such as Apogee Consulting, Inc.!—to assist them. Since that's what we do, we naturally bias toward the contractor's viewpoint. But not always.

Today we want to explore things from the perspective of a Navy Contracting Officer, a seasoned veteran nearing the end of a long civil service career, who was tasked with negotiating a $1 Billion contract for spare parts. It could have—and it *should* have—been the crowning moment of his career; yet events did not turn out that way. Instead of retiring on a high note, covered in glory, the Navy CO retreated under fire and faded away into obscurity.

The Naval Supply System Command Weapon Systems Support (WSS) was formerly known as the Naval Inventory Control Point. What does WSS do?

WSS provides Joint, Allied, Navy, and Marine Corps Forces program and supply support for Naval Weapons Systems. WSS maintains centralized control over more than 400,000 different line items of repair parts, components, and assemblies that keep ships, aircraft, and weapons operating, while also providing logistics and supply assistance. WSS is responsible for negotiating and procuring these parts from DoD contractors. It operates two primary sites in Mechanicsburg and Philadelphia, Pennsylvania.

The Contracting Officer in question was located at the WSS site in Philadelphia, PA. He was tasked with negotiating a $1 Billion aircraft spare part contract with an unnamed prime contractor. As part of the process, the CO requested "field pricing assistance" from the Defense Contract Audit Agency (DCAA) and, accordingly, DCAA issued Audit Report No. 02151-2010B27000001 on July 6, 2010. In that report, DCAA found that "the contractor's proposal was not an adequate basis for establishing a fair and reasonable price." In particular, DCAA found that $240 million of the proposed costs were "unsupported" because the prime contractor failed to obtain the required cost or pricing data from its subcontractors. In addition, DCAA questioned $17 million of proposed material costs, asserting that they were overstated because the contractor used "inflated escalation factors" and failed to decrement costs by the amount of vendor discounts. (We assume those discounts were related to payment terms but it's not especially clear.)

Despite DCAA's findings and recommendations, the WSS CO negotiated a firm, fixed-price contract for the spare parts. As part of the negotiations, the period of performance was reduced from 5 years to 3 years. The 40 percent reduction in duration resulted in a 42.4 percent reduction in price, such that the negotiated contract value was $576 million not $1 Billion as initially proposed. Apparently, the CO did not negotiate much if any other reductions to the proposed price. In particular, the CO never obtained the missing subcontractor cost or pricing data, and did not obtain price reductions for DCAA's "questioned" costs. One might say that the CO simply ignored DCAA's audit findings and negotiated the best deal he could.

What was the CO thinking? Were there schedule pressures on him, such that he couldn't afford to wait for subcontractor cost or pricing data to be obtained and analyzed? Did he simply disagree with DCAA's findings?

We do know that the CO wrote that he relied on the prime contractor's "adequate" estimating system to justify his acceptance of the proposed subcontractor costs. "The contracting officer reasoned that the prime contractor's [adequate] estimating system eliminated the need to comply with the cost or pricing data requirements." That doesn't sound right, even to us. Even though we keep hearing and reading that contractor business systems are the "first line of defense against fraud, waste, and abuse," we're pretty sure that having approved and adequate business systems don't relieve anybody from having to comply with FAR requirements. It would be nice if they did; but they don't. We expect a seasoned CO would have known that.

As is the case with so many actions in these centrally controlled days, the CO's file was "peer reviewed" prior to contract award. Apparently, the peer review raised concerns as to whether the CO had adequately responded to the DCAA audit findings; however, those concerns didn't stop the CO from finalizing the contract award, and those concerns didn't stop the CO's supervisor from approving the contract award. So much for peer reviews.

The CO's approach must have ticked somebody off, because a complaint was filed on the DoD Inspector General Hotline—which is how we **learned** about this story.

As one might well expect, the DoD IG "substantiated the compliant." The IG excoriated the CO for failing to obtain the required subcontractor cost or pricing data. The IG also criticized the CO

for failing to follow DoD PGI 215.406(B)(1), which requires that disagreements over "significant" amounts of questions costs be resolved, or escalated for resolution. As we know, that didn't happen in this case. The IG wrote—

The contracting officer had a responsibility to comply with regulatory requirements and appropriately consider the DCAA audit findings. By not fulfilling his responsibility, WSS was unable to adequately demonstrate that the resulting contract price of $576 million was fair and reasonable. The contracting officer could have potentially negotiated a lower contract value and achieved significant savings for the Government if he had appropriately considered DCAA's findings.

The DoD IG made several recommendations aimed at preventing a recurrence of the situation. The Deputy Assistant Secretary of the Navy (Acquisition and Procurement) concurred with each of them. Among the recommendations was to "consider appropriate administrative action" to apply to the CO. The response to that recommendation was a concurrence with the notation that it would be impossible to do so, because the CO had retired before the IG's report was issued.

And so we are reminded, once again, that this is a tough environment and nobody wins any awards for failing to comply with the complex web of statutes, rules and regulations. As tough as the contractors have it, sometimes the government employees have it just as tough, if not tougher.