

## Dunning-Kruger Strikes Again (Part 2)

Written by Nick Sanders

Wednesday, 30 November 2016 00:00 -

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In the [first part](#) of this story, we related how Rocko's company hired Apogee Consulting, Inc. to help them navigate the rough waters associated with FAR Part 15.403 and FAR Table 15-2. We were referred to Rocko but problems quickly developed. Among those problems was a looming schedule conflict. Rocko was going to be out of the country for several weeks and Ed was going to take a two-week vacation. Things looked problematic until Ed called the prime contractor and obtained schedule relief. We all agreed that, while Rocko was away, his staff would work on the detailed estimates. As data was developed it would be reviewed by Apogee Consulting, Inc. for compliance. When Ed was away, Rocko would review the detailed estimates and apply "management judgment" to the pricing.

At least, that's what we *thought* we all agreed to.

Despite several attempts by Ed to get insight into how the detailed estimates were going, we ran into a seeming brick wall. Phone calls went unreturned, as did emails and even text messages. Ed and I began to suspect that the staff wasn't actually working on anything, despite their apparent enthusiasm at our in-person meeting and despite their acceptance of action items. We began to get the idea that nothing would be done without Rocko's hands-on participation. And he was out of the country. Or was soon to be out of the country. It was not exactly crystal clear where he was and what he wanted us (and his staff) to be doing on the project.

All we could do – and we did it, over and over – was to send emails pointing out that Ed was going to be out of pocket very soon, for about two weeks. If he couldn't review anything before his vacation, it was going to have to wait until his return. As was becoming the norm with this client, we received no response to our (multiple) emails on the topic of scheduling.

Ed took off for his planned vacation having reviewed nothing. We had no idea whether the client had done anything at all. From what little info trickled to Ed, we got the sense that Rocko had decided (despite our advice to the contrary) to hold the line on the competitive quote he had submitted several weeks before hiring us—regardless of whether he could justify a higher price in the sole-source environment.

Folks, it's tough to add value when the client refuses to take your advice.

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Thinking that Rocko must have returned from his European trip, I reached out to him in Ed's absence. I tried a couple of emails, with nothing coming back. Not a good sign.

At this point I noticed that Rocko hadn't yet paid our first invoice. Readers of the blog know (or should know) that our standard payment terms are 15 days after receipt of invoice. Fifteen days may seem like a quick turn, but it's what the DoD expects from its prime contractors with respect to small business subcontractors—so it's become our expectation. We make exceptions from time to time, but this wasn't one of them. Rocko had signed our standard engagement letter contract specifying payment 15 days after invoice receipt. And he was now at 30 days and climbing. So I started nagging him about that, as well. Similar lack of response.

Nothing regarding project status and nothing regarding payment. The tone of my emails got a bit more strident.

Finally I got this email in response to one of mine—

I'm now back [from Europe] as of today. I will speak to accounting tomorrow regarding your invoice. I have a [prime contractor] analyst arriving at 8 am on Wednesday. If you would like to be included that would be great. My problem with our start has been the following: I only need one not two experts. I'm not sure where Ed fits in. If either of you has time Wednesday we begin at 8am. We need to get back on track.

Again: communication problems. To say our wires were crossed would be a polite way of putting it.

1.

We had previously agreed—and had gotten buy-in from the prime—that we would slip the original schedule to give Ed and Rocko a chance to review the inputs. Now Rocko was telling me—with 48 hours advance notice—that he had scheduled a meeting with the prime.

2.

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What was the analyst going to do? I had no idea. Ed had no idea. And Rocko wasn't saying. We had no strategy, no plan, and (as far as I knew) no work product. Normally, I would expect the interaction to be a bit of a disaster.

3.

Rocko knew that Ed was out of town and could not support the meeting. He scheduled it anyway.

4.

I couldn't support the meeting, which was why Ed was the lead on the project. A fact that had been made very clear to Rocko (or so I thought). Rocko didn't have two experts; he had Ed and I was backing-up Ed while he was on vacation. Another fact that had been made very clear to Rocko.

5.

The sentence "We need to get back on track" was troubling, to say the least. Ed and I had just spent the past month trying very hard to move the project forward, with little or nothing to show for it.

What does one say to that mishmash of misinformation? I tried to put a positive spin on my response, but even as I typed the response to Rocko, I knew in my heart that it was too late to affect anything. Dunning-Kruger had struck again and this project was going to crater.

Ed returned from vacation later that week and, before he did anything else, we talked about strategy. We figured our best bet was for Ed to call/text/email Rocko as if everything was fine. Rocko replied to Ed's text, letting us know that he had successfully negotiated the FRP contract and the project was over. And our check would be in the mail in 10 days.

How Rocko had successfully negotiated a price will remain forever a mystery. It is likely that he was unable to prepare a bottoms-up cost estimate in the required FAR Table 15-2 format. It is near certain that he didn't have anything approaching FAR-compliant indirect rates. Apparently a deal was struck and the prime contractor was satisfied.

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The only theory I can think of is that the prime went back to the old RFQ and decided that competition had actually been achieved even though there was only one actual bidder. There are a couple of seldom-used FAR loopholes [found at FAR 15.403-1(c)(1)] that state—

A price is based on adequate price competition if ...

1. There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and ... Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition. ...

2. Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(Note we've renumbered and edited the FAR subsection for clarity. If you want the exact verbiage and all the rules associated with the loopholes, you need to read FAR 15.403-1(c)(1) very carefully.)

Thus, it may well be possible that the representative of the prime contractor was able to use one of those two loopholes to find an exception to the requirement to submit certified cost or pricing data, so long as Rocko was willing to hold to his original quoted price. We don't know that's the case; but we also don't know it wasn't the case. And we don't know how much money (if any) Rocko left on the table by sticking with his original quote.

The point of this story is that Rocko knew what he wanted and he wasn't going to let any self-proclaimed SME's get in his way. All our experience and knowledge meant nothing to Rocko, because there was no upside for him. So long as he was going to hold his original pricing, there was no possible value we could add. Even if we were right and he could have charged more because his subcontract award was a lock, all that would have done is make him look bad to his staff.

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Meanwhile we are still waiting for Rocko's payment, now 60+ days overdue.