

From: John Roberts <JRoberts@aandmengineering.com>
Date: October 16, 2017 at 12:59:24 PM CDT
To: Ryan Jackson <jackson.ryan@epa.gov>
Subject: Fwd: Our October 5, 2017 phone call on your CPARs review of EPS71311

Ryan,

My efforts to get the unsatisfactory rating have failed. Can you help?

Thanks, John.

Sent from my iPhone

Begin forwarded message:

From: "Denno, Donald" <Denno.Donald@epa.gov>
Date: October 16, 2017 at 7:21:38 AM CDT
To: John Roberts <JRoberts@aandmengineering.com>
Cc: "Fritz, Koni" <Fritz.Koni@epa.gov>
Subject: RE: Our October 5, 2017 phone call on your CPARs review of EPS71311

Mr. Roberts,

Thank you for your email of October 12, below. Please note that this CPARS evaluation process has been completed, including a careful final review that considered your comments. The CPAR has been signed and posted.

Donald J. Denno

Regional Acquisition Manager

EPA Regions 7 and 10

11201 Renner Rd.

Lenexa, KS 66219

(913)551-7995

From: John Roberts [<mailto:JRoberts@aandmengineering.com>]
Sent: Thursday, October 12, 2017 7:55 AM
To: Denno, Donald <Denno.Donald@epa.gov>
Cc: Fritz, Koni <Fritz.Koni@epa.gov>; John Roberts <JRoberts@aandmengineering.com>
Subject: FW: Our October 5, 2017 phone call on your CPARs review of EPS71311

Mr Denno,

I again respectfully request that the CPAR rating on Management be revised from Unsatisfactory to at least Satisfactory and the Assessing Official Comments be revised on contract EPS71311.

While we appreciate the change in the rating on Quality, the overall impact is still the same, as we both should know. The unsatisfactory rating on Management as well as the Recommendation (“Given what I know today about the contractor’s ability to perform in accordance with this contract or order’s most significant requirements, I would not recommend them for similar requirements in the future.”) will effectively eliminate ART, A&M, or the ART—A&M Joint Venture (JV) from competing for future federal government projects. This \$20M project will not be able to be used as an example project by these small businesses on future proposals due to the unsatisfactory performance rating.

Again, the tree removal issue, although minor as you state, was not during this 09/30/2015-12/13/2016 performance period and should not even be a topic of consideration. Please refer to Progress Payment No. 16 dated July 29, 2015, (which is before the performance period for this rating) where the tree removal was discussed and it was noted in the “COR COMMENTS” that the land owner had been consulted and the area had been repaired “to their liking.”

The dust plume, also minor, occurred in spite of us having a water truck on site at all times, unless it was temporarily disabled. I don't have the specific information to argue your claim that there were no attempts to mitigate the observed dust plume. But, again, as you state, it was a minor incident.

I have had a chance to check into the new claim that you brought forward –“the city police setting up a roadblock to prevent your company's trucks from entering town.”

To my knowledge, and I checked with every employee who worked at the project site, there was no such roadblock as you claim, although the City did put up signs for no through truck traffic. The haul route through the City of Oronogo was an EPA designated haul route, and EPA failed to coordinate the route with the City, resulting in some business and residential property owners as well as the City itself, getting upset with the truck traffic. Potential claims of damages by the City were warned by the COR Mark Doolan in his email to Tolga Ertugrul, and cc Koni Fritz, on March 22, 2016. The text of his email is as follows:

Tolga: I have been informed by Goldfields LLC that the City of Oronogo is trying to collect money from them for road

repair on MM Hwy for damage resulting from them hauling to the Oronogo Circle pit. This message is to instruct you to

very carefully document the condition of the road in the haul route through Oronogo BEFORE conducting any over the

road hauling to the pit. I understand you plan to start on - road trucking next week, so it is imperative the documentation

occurs this week. I suggest both photographs and video footage of the entire route, concentrating on any existing

damage with its exact location. This effort will aid us in refuting any future claims by the City. Please contact me if you

have any questions.

Our corporate health and safety officer, David Cooper, did as Mr Doolan recommended and took pictures and video of the existing condition of the haul route. Mr. Cooper met with the Mayor of Oronogo and others, and guaranteed that our JV would be responsible for any repairs necessary due to damages that we might cause. By email from Tolga Ertugrul on May 2, 2016, to Koni Fritz and Mark Doolan, Tolga informed EPA of the haul route issues, David Cooper's meeting with the Mayor, the City's demands, our commitment to work with EPA and the City to arrive at a reasonable and safe resolution to the haul route issues, and requested EPA for guidance on how to proceed. The primary concerns were that the EPA designated haul route was through a city neighborhood and EPA had not properly coordinated the use of that road with the City, not of street damages caused by our company. The EPA then designated a new haul route which was unsafe due to a very narrow and deteriorated bridge with a low posted load limit, and then went back to the original haul route through the city. There were no claims of damage by the City as a result of this contract, and no repairs to the streets had to be made.

My complaint on the CPARS rating is that the FAR is not being followed. We made our rebuttal to the assessing official's rating and comments in accordance with the FAR. Your reviewing official comments brought up new issues as reasons for supporting the unsatisfactory rating in management (the two trees and the dust plume). You stated that these incidents were minor, but when combined with the communication issues, still justified an unsatisfactory rating.

We addressed the two new issues (trees and dust plume), with the trees not even being within the rating period and having been resolved with the landowner to his liking, and you then brought up a new issue with the "roadblock". There was no roadblock. The haul road issue was an issue of mutual concern of not only EPA and this contract, but the other remedial action contract being performed by Goldfields LLC, as stated in the referenced Mark Doolan email. The haul road issue was due to EPA designating a haul route through the city and not coordinating with the City, not because of issues caused by us as the contractor.

None of these issues should be cause for an unsatisfactory rating according to the language in FAR Subpart 42.15, Table 42-1. "To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety or environmental deficiency reports, or letters).

*You state that the removal of two trees and dust plume are minor (not significant). The tree removal was resolved with the landowner to his liking.

* The tree removal issue wasn't even in this rating period.

* the "roadblock" (which wasn't a roadblock, but signage keeping truck traffic off the EPA designated city street haul route) was a challenge not only of this JV, but also EPA and another contractor using the repository.

* The communication issues, which was the original basis for the Unsatisfactory rating, was addressed by forwarding you reams of documentation showing our excellent communication.

* The JV did not have any trouble overcoming the stated deficiencies.

* there was nothing provided by EPA that showed that any of the issues impacted the Government. (they didn't)

*EPA did not use management tools such as deficiency reports or letters to the JV notifying us of the deficiencies, thus giving us a chance to take corrective action, had corrective action been necessary assuming it was a continuing problem of multiple significant events, which it wasn't.

Mr Denno, if you haven't already, I suggest you also contact Leanna Balsley, Bryant Burnett, and Todd Campbell about our performance on this contract, just so you get a well balanced and unbiased perspective. During the time period of Option Year 1, Leanna Wilder (Balsley) was the contracting officer who was notified of the threat to delay our work by Mr. Doolan (as discussed in my below October 6 email). Bryant Burnett and Todd Campbell were alternate COR's. Due to the significance and impact of your evaluation, I appreciate you getting their input also.

Thanks, John

John Roberts, P.E.

President

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Jroberts@aandmengineering.com

From: Denno, Donald [<mailto:Denno.Donald@epa.gov>]

Sent: Saturday, October 07, 2017 9:57 AM

To: John Roberts

Cc: Fritz, Koni

Subject: Re: Our October 5, 2017 phone call on your CPARs review of EPS71311

Mr. Roberts,

Thank you for your email below. I do not agree that we discussed everything you note below, but I do appreciate your position. It must be difficult to be brand new to a company and this be one of the first things that you are confronted with, especially since you weren't involved with the company at all during the period of performance and are just hearing things from both sides.

I do not take my responsibility lightly regarding being the reviewing official for CPARS. I personally carefully reviewed the large amount of information that you provided as well as discussing the performance with my contracting officer, which is why I changed the Quality rating to Satisfactory.

Regarding the Management rating, I did not include every single issue that arose during contract performance (like the city police setting up a roadblock to prevent your company's trucks from entering town) I felt it was unnecessary and excessive to annotate all the issues encountered. Please know that my decision to omit these items does not mean they were not important.

As a side note, when my contracting officer witnessed the dust plume there was no attempts being made to mitigate it, hence the inclusion into the report. The trees you reference were marked and so there was no reason that they could not have been saved.

I understand that you're new to the company but as someone who directly supervised the contracting officers throughout the project, I can assure you the management oversight was indeed unsatisfactory. During the previous reporting period the company was rated as Marginal in this area so the company was aware that issues existed and this report should not have been a total surprise.

I do not issue Marginal or Unsatisfactory ratings lightly as I know it can have an effect on the company's ability to gain future contracts, but in this case it was warranted.

I am currently on leave but did not want your email to go unattended until my return.

Sincerely,

Don

Donald J. Denno

Regional Acquisition Manager

Regions 7 & 10

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On Oct 6, 2017, at 1:36 PM, John Roberts <JRoberts@aandmengineering.com> wrote:

Mr Denno,,

I just want to recap some of the primary points that I made during our phone call yesterday about your final determination on the ART-A&M JV CPAR evaluation

for contract EPS71311 for remediation of heavy metals contaminated mining wastes and soils at the Oronogo-Duenweg Mining Belt Site in Jasper County, Missouri.

The evaluation was for the period 09/30/2015 -12/13/2016 and our JV was initially given a “marginal” rating for Quality and an “unsuccessful” rating for Management. Based on our CPAR comments to the ratings and your review, the Quality rating was changed to “satisfactory”, but the Management rating remained “unsatisfactory”.

Your CPARS decision was “based on the information previous stated in the evaluation and the fact that the contracting officer personally witnessed at least two instances where management was severely lacking. In one instance a homeowner requested that specified trees remain only to come back a couple of days later to find them removed. The second instance involved work on a Sunday when the contracting officer witnessed the contractor crew working and creating a large dust plume despite specific requirements to mitigate excessive dust.”

I am still trying to verify that the contracting officer, Koni Fritz, actually witnessed these two events, but I am still waiting for her response to my telephone and email messages.

Regardless, concerning the first instance regarding the observed plume of dust, unfortunately, in spite of dust control measures, sometimes in construction a plume of dust will occur. The question should be whether the contractor was providing reasonable measures to control dust, per the contract requirements. Furthermore, a single instance of a dust plume should not be a reason for invoking such a severe performance rating. We talked more later about the FAR requirements for an unsatisfactory rating, and I will discuss more later in this email.

The second instance concerned the removal of the two trees. We weren't given surveyed property boundaries for the contract, just GPS coordinates. Defining property lines was very difficult. In any case, we made restitution with the land owner. We can, and will, get a letter from the land owner that no harm was done and the landowner is satisfied with the end result. As with the first instance cited

in the CPARS decision, this incident does not meet FAR requirements for an unsatisfactory rating, and I will discuss our conversation about the FAR later in this email. Regardless, the tree removal incident was prior to this rating period and should not have even been considered in this rating. This incident was addressed, resolved, and corrective measures put in place to avoid future incidents.

I spent 43 years with the federal government, retiring in January 2016 as the Deputy District Engineer of Tulsa District, U.S. Army Corps of Engineers. I was a Level III Acquisition Professional. Performance ratings are a very important responsibility of the federal government, and have great impact on contractors concerning the ability to obtain future federal government work. Abiding by the requirements of the FAR are critical, and subjective causes for ratings must be avoided.

We discussed the FAR definition of an Unsatisfactory rating which states: “Performances does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains a serious problem(s) for which the contractor’s corrective actions appear or were ineffective.”

We also discussed the “Note” that goes along with the definition: “To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency reports , or letters). “

You state in your CPARS decision that the two instances are minor. According to the FAR that governs the rating system, an unsatisfactory rating must be based on “ a serious problem” or “multiple significant events”. The dust plume or two trees that were removed hardly meet the FAR requirements for such a harsh rating.

An Unsatisfactory Rating also has to be of such significance that it impacted the Government. The rating provides no insight on how the referenced incidents had any impact on the Government. In fact, the minor incidents did not impact the Government.

Your decision states that these two minor incidents, “when combined with the communication issues that the Government experienced with this contractor throughout the reporting period” warrants the Unsatisfactory rating in Management. We discussed the communications in detail. And, we provided you reams of documentation of our communication with the COR, Mark Doolan. The discussion of communication is very subjective, and we agreed to disagree on whether our communication was satisfactory. But, I told you that while we provided evidence of our communication, the Government has no documentation to present on this subject concerning its communication.. Everything that the COR did was verbal, and he provided no written feedback. The FAR states that “An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor...” by means of “deficiency reports, or letters”. The Government did not reference any such tools used to notify the JV of any deficiencies, not do any of these reports or letters exist, to my knowledge.

It is unfair (and not in accordance with the FAR) to a contractor to provide an unsatisfactory rating when nothing has been done to notify the contractor during the course of the contract that performance is unsatisfactory and improvement needs to be made.

Furthermore, the Government does not take into account the management efforts that the JV made to go above and beyond to keep the project on schedule. We obtained access permits from the landowners because the property owners would not let the COR Mr Doolan on their properties. We also did design work to resolve issues because of the slowness in EPA in getting designs from their remedial design contractor.

In summary, the unsatisfactory rating for Management is baseless. I told you that I have no reason not to respect your credentials and integrity. But, I fear that you are unknowingly being swept into the Mark Doolan scandal. Mr Doolan is being investigated for criminal activity and has been removed from the project and reassigned to the Region VII office. Several of our employees were interviewed by the FBI concerning Mr Doolan’s integrity. Our firm is of the highest integrity

and is not susceptible to playing the Doolan game. Unfortunately, those companies that did receive favors, and those that did not are punished and subject to huge financial impacts. There must be a common standard that all companies are held to. Other companies had huge dust plumes and had a reputation of not paying their subcontractors, and were rewarded with more contracts. They must have had good performance ratings. Our JV was cited with a single dust plume and it gets noted in the performance evaluation as a cause for unsatisfactory rating. An unsatisfactory rating will have long lasting impacts to a company's ability to be able to successfully compete for federal contracts. I told you that I also fear that our rating is partially in retribution for filing a protest on another Region VII contract. Our employees were told by Mr Doolan that if we caused any delays to the contractor that was selected, he would see to it that our project is delayed by 2 days for every 1 day that we delayed the other contract. We did ultimately withdraw our protest, not because of the threats by Mr Doolan but because of the Government's response to our concerns. I believe that the information provided by a firm with the reputation for honesty and integrity should be considered at a level higher than that of a COR of questionable integrity when making a decision on performance that has such great impact on companies and its employees.

I am disheartened by the actions of EPA Region VII. I hoped and trusted that when the performance review came to your desk for a final decision, that you would make a fair and impartial decision. As in my past federal government position, there comes a time when the senior management has to stop and decide what is right, and not automatically support their employee's actions and recommendations.

I do thank you for your time in talking to me yesterday. We will continue to take actions available to us to get a fair rating, as the impacts of not doing so are just so devastating to a small business.

John Roberts, P.E.

President

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