

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: John Roberts[JRoberts@aandmengineering.com]
From: John Roberts
Sent: Fri 10/6/2017 6:44:21 PM
Subject: FW: Our October 5, 2017 phone call on your CPARs review of EPS71311

Ryan,

My summary of my conversation with Mr Donald Denno follows. Mr Denno is the Regional Acquisition Manager for Region VII. When we appealed the performance rating, Mr Denno reviewed and made the final decision.

I appreciate any assistance you can give in assuring that we get fair consideration of the performance rating.

John Roberts, P.E.

President

A&M ENGINEERING AND ENVIRONMENTAL SERVICES, INC.

MOHAWK DRILLING, INC.

TEL: (918)665-6575

FAX: (918)665-6576

CELL: (918)991-0444

Jroberts@aandmengineering.com

From: John Roberts
Sent: Friday, October 06, 2017 1:35 PM
To: denno.donald@epa.gov
Cc: John Roberts
Subject: Our October 5, 2017 phone call on your CPARs review of EPS71311

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. These incidents are particularly insignificant when considering that this was a \$20,000,000 project for a complex yard remediation project.

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 received 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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