



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Campbell Industries

File: B-238871

Date: July 3, 1990

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DIGEST

1. Contracting officer properly may base a nonresponsibility determination on a negative preaward survey, so long as it is based upon accurate information and conclusions.
2. Contracting officer properly determined protester nonresponsible where he had a reasonable basis for concluding that, based upon protester's history of poor performance, there was a high risk that the protester might not be able to perform the contract in a timely manner in accordance with the required performance schedule.
3. Nonresponsibility determination does not constitute a de facto debarment from government contracting where the record indicates that the determination was based upon the protester's current lack of capability, not a lack of integrity or honesty, and there is no indication that future determinations will not be based upon the protester's capability at the time of the procurement involved.

DECISION

Campbell Industries protests its rejection as nonresponsible and the award of a contract to Southwest Marine, Inc., under invitation for bids (IFB) No. N62791-90-B-0022, issued by the Navy's Supervisor of Shipbuilding, Conversion and Repair, San Diego, California, for alterations and repairs on the USS HEWITT. Campbell contends that the

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nonresponsibility determination lacked a reasonable basis, was made in bad faith, and constituted a de facto debarment.

We deny the protest.

The IFB, issued on December 26, 1989, contemplated the award of a job order to San Diego area holders of a Master Ship Repair Agreement (MSRA), under a Master Agreement for Repair and Alteration of Vessels (MARAV).^{1/} The work called for by the IFB is designated as a "selected restricted availability" (SRA) with drydocking for rudder repairs, and involves major alterations and repairs on the USS HEWITT. The IFB required that all work be completed and the vessel redelivered to the Navy by June 15, 1990, as the ship's homeport will change from San Diego to Yokosuka, Japan, effective July 1.

The Navy received two bids by the amended bid opening date of January 30, 1990; Campbell submitted the apparent low bid. The Navy conducted a preaward survey (PAS) of Campbell during the week of February 5, resulting in a recommendation that award not be made to that firm. On February 26, based on the PAS, the contracting officer determined that Campbell lacked the necessary tenacity and perseverance to perform the work required by the IFB and rejected Campbell as nonresponsible pursuant to Federal Acquisition Regulation (FAR) § 14.404-2(h).^{2/}

The contracting officer based his determination primarily on the PAS's summary of Campbell's unsatisfactory performance under three recent SRAs on the USS ALAMO, USS BOLSTER and

^{1/} A MARAV sets out certain clauses and conditions applicable to ship repair contracts under which a contractor is required to perform pursuant to subsequently issued job orders. There are two types of MARAVs, MSRAs, such as here, and Agreements for Boat Repairs, which differ according to the nature and complexity of the work the contractor is qualified to perform. See generally Fischer Marine Repair Corp., B-228297, Nov. 20, 1987, 87-2 CPD ¶ 497.

^{2/} On February 26, the Navy awarded the job order to Southwest Marine, Inc., the only other bidder. Since Campbell did not file its protest in our Office until March 9, more than 10 days after award, the Navy did not suspend performance of the contract. See 4 C.F.R. § 21.4(b) (1990).

USS ENGLAND.^{3/} The contracting officer specifically cited Campbell's poor management; lack of adequate production and technical capability; lack of adequate quality control; noncompliance with schedules and untimely deliveries; lack of adequate subcontractor control; and the cumulative number of unsatisfactory safety practices and concern regarding the safety of Campbell's pier.^{4/}

Campbell disputes all of the major findings of the PAS, and contends that the Navy mischaracterizes its satisfactory performance of the three SRAs which formed the basis of the nonresponsibility determination. Campbell further contends that the determination lacked a reasonable basis and was made in bad faith. Campbell also alleges that the nonresponsibility determination constituted a de facto debarment.

A contracting officer may rely on the results of preaward surveys in making responsibility determinations, but such a determination must be based on accurate information and conclusions from the PAS team. BMV, Division of Harsco Corp., B-233081; B-233081.2, Jan. 24, 1989, 89-1 CPD ¶ 67. Our Office will consider the accuracy of the PAS information relied upon in judging whether a negative determination of responsibility was reasonable. Decker and Co. et al., B-220807 et al., Jan. 28, 1986, 86-1 CPD ¶ 100.

After reviewing the PAS relied upon in this case as well as Campbell's submissions, we find that the contracting officer's determination was reasonable. Campbell received a rating of "high risk" in seven of the eight areas considered by the PAS; discussed in detail below are the PAS's findings

^{3/} In arriving at its recommendation, the preaward survey team assigned ratings ranging from "no risk" to "high risk" (to the government) in each of eight major categories assessed during the preaward survey: Management Capability, Technical/Facility Capability, Scheduling Systems/Manpower, Quality Assurance, Safety/Environmental, Contract Administration, Acquisition/Material Control, and Past Performance.

^{4/} Based upon an unfavorable Defense Contract Audit Agency audit of Campbell, the contracting officer initially also cited the protester's financial strength in support of the nonresponsibility determination. The Navy concedes, however, that Campbell's financial strength was ultimately not considered in determining its responsibility, and that it was inadvertently included in the contracting officer's February 26 letter. Accordingly, we will not consider this aspect of Campbell's protest.

in several areas which illustrate the reasonableness of the contracting officer's determination that Campbell is nonresponsible.

MANAGEMENT CAPABILITY

In support of its recommendation that Campbell not be awarded the contract, the PAS found that Campbell failed to demonstrate its ability to manage a complex availability such as the USS HEWITT SRA, and that due to its inadequate management of the three SRAs, Campbell produced ineffective schedules and lacked the ability to effectively adhere to its own production plan, resulting in missed milestones and late deliveries. Specifically, the PAS noted that due to Campbell's poor management capability, it missed seven out of nine key milestones on the USS ALAMO SRA, six out of eight key milestones on the USS BOLSTER SRA, and 14 out of 15 key milestones on the USS ENGLAND SRA.

The PAS also revealed unacceptable weaknesses in Campbell's management organization structure. Specifically, the PAS found that lines of authority were not clearly defined; that some of the management charts it submitted with its bid appeared inconsistent; and that random interviews with Campbell's management personnel failed to clarify the actual chain of command. The PAS additionally revealed that certain key positions, such as shipyard/ships force coordinator, night shift project manager, and paint inspector, which the Navy states are critical for the successful completion of the USS HEWITT SRA, remained vacant or had no clear lines of communication and authority.

The PAS also revealed that, despite the substantial amount of work proposed by Campbell to be performed by subcontractors,^{5/} it proposed only one manager to supervise subcontractors and, as mentioned earlier, had no project manager assigned to the night shift, when considerable subcontractor work was scheduled. Moreover, according to the PAS, neither Campbell's organizational chart nor discussions with the protester established that the subcontract manager it proposed had effective channels for receiving information from trade foremen, craft superintendents, or quality assurance personnel, related to subcontractor performance.

The PAS team also was concerned that despite previous assurances from Campbell that it planned to exercise close

^{5/} Campbell proposed to have approximately 65 percent of the work performed by ten different subcontractors.

supervisory control over all aspects of subcontractor work on the USS ENGLAND SRA, the protester's overall record of performance in the area of subcontractor control on that job order was unsatisfactory. As a result of Campbell's deficient organizational structure and lack of adequate subcontractor management and control, the PAS assigned a "high risk" rating to Campbell's management capability.

Campbell contends that the Navy has never questioned its Navy repair management team, and that the organizational chart it submitted, which includes a subcontractor manager, was adequate, as it had been approved by the Navy in 1989, in connection with Campbell's MSRA recertification.

With regard to Campbell's reliance on recertification of its MSRA, the Navy conducted a recertification survey of Campbell's facilities during September 1989; however, the Navy has not yet issued a decision on its findings and the parties have not entered into a new MSRA. Further, even if the Navy recertifies Campbell, such recertification does not establish that the PAS team's finding of poor management was unreasonable, since each survey is conducted under different criteria for different purposes. Surveys for the MSRA recertification evaluate a contractor's capacity to satisfactorily perform minimum requirements on an overhaul of a Mine Sweeper (Ocean) (MSO) class size vessel or larger. A preaward survey, on the other hand, evaluates a contractor's capabilities to perform specific requirements under a particular solicitation. Here, the USS HEWITT is a SPRUANCE class destroyer, the largest class destroyer in the Navy fleet. According to the Navy, the USS HEWITT is larger than an MSO, and the work called for on the ship is more complex than the requirements considered for an MSRA certification. Thus, the MSRA survey the Navy conducted did not eliminate the requirement to perform, nor does it affect the results of, the PAS for this particular procurement, an SRA more complex than the minimum requirements for MSRA certification, involving a significantly larger vessel.

Campbell's assertion that the personnel reflected in its organizational chart are adequate does not overcome the PAS team's valid concern over Campbell's deficient management capability and lack of subcontractor control at the time of the PAS. Furthermore, Campbell's mere disagreement with the agency on a technical issue as to what resources are required to adequately perform the contract does not itself establish that the agency's determination is unreasonable. American Sys. Corp., B-234449, June 8, 1989, 89-1 CPD ¶ 537. Consequently, it was reasonable for the contracting officer to rely on the PAS team's rating of "high risk" in this category as a basis for the nonresponsibility determination.

See Firm Erich Bernion GmbH, B-234680; B-234681, July 3, 1989, 89-2 CPD ¶ 1.

TECHNICAL AND FACILITY CAPABILITY

The PAS found that Campbell's performance history indicated that Campbell did not possess the technical skills necessary to perform the complex USS HEWITT SRA. The PAS found that during its recent performance of the SRAs on the USS ALAMO, USS BOLSTER, and USS ENGLAND, Campbell failed to resolve fundamental technical problems that often required completion by Navy personnel.

Campbell disputes the finding that it lacks adequate technical capability, arguing that as a result of its successful completion of the three SRAs, it now has a fully qualified, experienced staff, capable of performing the USS HEWITT SRA.

The PAS indicates, however, that even when Campbell proceeded without assistance from Navy personnel, Campbell exercised poor technical judgment, resulting in increased costs, damage to Navy equipment, and unnecessary delays. For example, during the USS ENGLAND SRA, Campbell's improper welding techniques resulted in warping and misalignment of the Forward Missile House Strike Down Hatch coaming. Campbell contends that it followed each step of the specification regarding the work item for the hatch coaming repairs, and argues that any misalignment was the result of faulty specifications, not the result of improper welding. The PAS found, however, that despite the Navy's providing Campbell with the casting machining drawing, casting alloy, and the proper welding guidelines, Campbell used improper welding sequences, procedures, and an unsuitable welding filler, resulting in the warping and misalignment.

Further, despite a Navy written request on January 5, 1990, informing Campbell of defective work on the USS ENGLAND's main engine attached lube oil pump and seeking correction, the work had not been corrected as of the date of the PAS. The PAS also noted that inadequate rigging practices during performance of the USS BOLSTER SRA caused government equipment to be dropped and damaged during its removal from the ship for repairs. Additionally, during the USS ENGLAND SRA, Campbell was unable to provide shore steam for approximately 20 hours due to equipment failure.

Finally, an inspection of Campbell's facilities conducted as part of the PAS revealed that Campbell's pier No. 5, apparently accidentally damaged in December 1989 by a 38-ton mobile crane, was inadequate to safely berth the USS

HEWITT, as Campbell proposed. Although requested to submit an independent engineering report attesting to the structural soundness of the pier, Campbell did not do so until after the PAS.

Accordingly, we find reasonable the contracting officer's reliance on the PAS team's "high risk" rating of Campbell in the area of Technical and Facility Capability.

SCHEDULING SYSTEMS AND MANPOWER

The Navy states that the completion date of June 15, 1990, had to remain intact, as the USS HEWITT had to be underway to Japan in order to meet its operational commitment immediately following the scheduled completion of the SRA. The PAS determined that by awarding the contract to Campbell, with its history of noncompliance with contract delivery dates and its failure to adhere to its own production schedules, the Navy would assume a high risk of jeopardizing the USS HEWITT's operational schedule.

Campbell does not dispute the finding that the USS ENGLAND, for example, was delivered 54 days after the original contract completion date, but argues that the SRA was completed pursuant to a mutually agreed upon contract extension. The Navy responds, however, that even as the revised completion date for the USS ENGLAND approached, less than 90 percent of the work requirements was completed. The Navy then determined that, as Campbell would not meet the revised delivery date, it was in the best interest of the government to provide technical and management support to Campbell so that the ship would be delivered in a timely manner.

With respect to the USS ALAMO and USS BOLSTER SRAs, the protester does not dispute that the contracts were extended beyond the original delivery dates for both vessels, after the agency waived its right to terminate the contracts for default. The fact that the Navy decided to allow Campbell to continue performance of the SRAs, however, does not indicate that its performance was satisfactory, nor overcome Campbell's original delinquency until the Navy extended the delivery dates. Numax Electronics Inc., B-227925, Oct. 22, 1987, 87-2 CPD ¶ 385.

The PAS further found that Campbell consistently undermanned critical work items on the USS ALAMO, USS BOLSTER, and USS ENGLAND, resulting in missed targeted production schedules and key milestones. A lack of adequate manning at key milestones on the USS ALAMO SRA, indicated by disparities found between proposed and observed manning, was verified by random counts of workers on board the ship. The PAS found

that although skilled journeymen were available in the local labor force, Campbell did not hire at levels proposed in the hiring plan submitted to the USS BOLSTER or USS ENGLAND PAS teams. Even more alarming to the PAS team was its finding that the manning profiles Campbell proposed for the USS HEWITT SRA were similar to those proposed for the USS ALAMO, USS BOLSTER, and USS ENGLAND SRAs, where manning below proposed levels was a significant factor contributing to Campbell's inability to meet key milestones.

While Campbell argues that the SRAs were not undermanned and the vessels were delivered in accordance with the extended delivery dates, Campbell has failed to provide any evidence to contradict the PAS team's finding in this regard. Accordingly, we find it reasonable for the contracting officer to have relied on the PAS team's determination that, because Campbell was either unable or unwilling to adhere to its own work schedules, it should receive a "high risk" rating in this category.

Contrary to Campbell's allegations that the nonresponsibility determination lacked a reasonable basis, all of the PAS team's findings are well supported by the record, which includes three extensive volumes of materials substantiating the ratings assigned to each of the eight major categories assessed by the PAS team. With the exception of a "no risk" rating under the category of Acquisition and Material Control, the PAS assigned a rating of "high risk" to the remaining categories it assessed, Quality Assurance (QA),^{6/} Safety/Environmental, Contracts Administration, and Past Performance.

As we read the contracting officer's February 26 nonresponsibility determination, which was based on the PAS, the

^{6/} Although the PAS determined that Campbell has a QA department as required by its MSRA, the high risk rating given to its QA system was based in part on the quantity and repetitive nature of violations on recent job orders; Campbell's lack of commitment to resolving the problems; and Campbell's failure to adhere to its own QA system. For instance, during the USS ENGLAND SRA alone, the Navy issued fifty Method B, one Method C, and three Method D corrective action requests, ranging from failure to comply with relevant specifications, to breakdown in Campbell's corrective action system. While the extent of corrective action requests depends on the nature of the deficiency and the contractor's history, corrective action requests range from Method A (least serious deficiency), to Method D (most serious deficiency).

primary concern underlying the reasons cited in support of the determination was that, based on its recent performance, there was a very high risk that Campbell would not deliver the ship to the Navy by the June 15 completion date. A prospective contractor that is or recently has been seriously deficient in contract performance must be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. FAR § 9.104-3(c); The Aeronetics Division of AAR Brooks & Perkins, B-222576; B-222791, Aug. 5, 1986, 86-2 CPD ¶ 151. Here, we find that the agency's nonresponsibility determination, principally based on Campbell's recent failures to meet key milestones and original delivery dates, was reasonable. Southwest Marine, Inc., B-225559 et al., Apr. 22, 1987, 87-1 CPD ¶ 431.

Campbell also alleges that the nonresponsibility determination was made in bad faith. Specifically, Campbell contends that the PAS team, which rated its Technical and Facility Capability as unsatisfactory, included individuals who made direct threats or were biased against Campbell. In support of its allegation, Campbell submitted a copy of a handwritten note purporting to document a conversation between a Navy surveyor and two Campbell employees. According to the note, the surveyor, apparently upset at Campbell's employees for their reluctance to perform certain work during the USS ENGLAND SRA, allegedly stated that he "could practically guarantee that Campbell would not get another Navy contract." The Navy responds that the surveyor was only one of numerous individuals questioned by the PAS team regarding Campbell's past performance; that the surveyor was not on the PAS team; and that he had no role in the PAS's ultimate findings or recommendations.

To show bad faith, a protester must submit convincing proof that the contracting agency directed its actions with the specific and malicious intent to injure the protester. WBM Maintenance, Inc., B-238049, Apr. 20, 1990, 90-1 CPD ¶ 405. While Campbell argues that the nonresponsibility determination had no reasonable basis and therefore must have been made in bad faith, nothing in the record supports this assertion. In fact, as the Navy states, any statements or actions by the surveyor are of little or no consequence regarding this, or any future procurement, since a surveyor has no authority to award contracts to Campbell or to any other contractor. Moreover, contrary to Campbell's allegations, a review of the record indicates that the Navy had numerous valid concerns regarding Campbell's ability to perform the USS HEWITT SRA in a timely manner.

Campbell also argues that the contracting officer's nonresponsibility determination is tantamount to a de facto debarment from future procurements. The contracting officer's determination, however, was based on Campbell's nonresponsibility at the time of the PAS, and not on a perception that it generally lacked honesty and integrity. The nonresponsibility determination pertains only to award of the job order on the USS HEWITT SRA, as future responsibility determinations will be based on the firm's capability at the time. Accurate Indus., B-232962, Jan. 23, 1989, 89-1 CPD ¶ 56. In fact, subsequent to the contracting officer's determination, the Navy awarded Campbell a job order for a restricted availability on the USS MARVIN K. SHIELDS, which belies Campbell's assertion of a de facto debarment.

The protest is denied. Since we find the protest without merit, we also deny Campbell's claim for reimbursement of bid preparation and protest costs. Schuerman Development Co., B-238464, Apr. 25, 1990, 90-1 CPD ¶ 423.



for
James F. Hinchman
General Counsel