



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22203-3258

Office of the Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE PROPOSED DEBARMENT OF:

BRAD A. EDWARDS

DEC 14 2011

Effective this date, the Air Force has proposed the debarment of Brad A. Edwards (Mr. Edwards) from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. This action is initiated pursuant to Federal Acquisition Regulation (FAR) Subpart 9.4.

INFORMATION IN THE RECORD

A preponderance of evidence in the administrative record establishes that at all times relevant hereto:

1. Mr. Edwards was an employee of a large, global defense government contractor (contractor).<sup>1</sup>
2. The contractor disclosed to the Government that Mr. Edwards, from June 2006 to December 2010, submitted numerous false expense reports, which resulted in \$42,741.16 in overpayment to Mr. Edwards.
3. Specifically, among other improper conduct, Mr. Edwards falsely represented that he lodged in locations that had higher per diem rates than those allowed at the locations where he actually stayed, and expensed airfare costs for flights he did not take.
4. Although Mr. Edwards had left the contractor's employment before it learned of his improper conduct, the contractor amended Mr. Edwards' personnel records to reflect that his termination was due to misconduct.
5. Mr. Edwards is currently employed by another defense contractor.

---

<sup>1</sup> Contractor refers to a company that is not a party to this action.

BASES FOR THE PROPOSED DEBARMENT

The improper conduct of Mr. Edwards is of so serious or compelling a nature that it affects his present responsibility to be a Government contractor or subcontractor and provides a separate independent basis for his debarment pursuant to FAR 9.406-2(c).

  
STEVEN A. SHAW  
Deputy General Counsel  
(Contractor Responsibility)



## DEPARTMENT OF THE AIR FORCE

Arlington, VA 22202-3528

DEC 20 2011

Office of the Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE PROPOSED DEBARMENT OF:

TOMMY WILLIAMS

Effective this date, the Air Force has proposed the debarment of Tommy Williams (Mr. Williams) from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. This action is initiated pursuant to Federal Acquisition Regulation (FAR) Subpart 9.4

### INFORMATION IN THE RECORD

Information in the record establishes by a preponderance of evidence that at all times relevant hereto:

1. Mr. Williams was an employee of a large, global defense government contractor (contractor).<sup>1</sup>
2. In a recent mandatory disclosure, the contractor revealed that Mr. Williams improperly charged a total of 89.6 hours to the Government, including 50 hours during a one-month period, where Mr. Williams had viewed a significant amount of inappropriate material on the Internet.
3. Mr. Williams admitted to mischarging his time for an extended period of time.
4. The contractor terminated Mr. Williams' employment as a result of this improper conduct.

### BASIS FOR THE PROPOSED DEBARMENT

The improper conduct of Mr. Williams is of so serious or compelling a nature that it affects his present responsibility to be a government contractor or subcontractor and provides a basis for his debarment pursuant to FAR 9.406-2(c).

STEVEN A. SHAW  
Deputy General Counsel  
(Contractor Responsibility)

---

<sup>1</sup> Contractor refers to an entity that is not a party to this action.



DEPARTMENT OF THE AIR FORCE

WASHINGTON DC 20330-1740

Office of the Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE PROPOSED DEBARMENT OF:

JUN 30 2011

GLENN DALE CRAWFORD

Effective this date, the Air Force has proposed the debarment of Glenn Dale Crawford ("Crawford") from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. This action is initiated pursuant to Federal Acquisition Regulation ("FAR") Subpart 9.4

INFORMATION IN THE RECORD

Information in the record establishes by a preponderance of evidence that at all times relevant hereto:

1. Crawford was an employee of a large, global defense contractor ("contractor") that performed services for the federal Government.
2. In a recent mandatory disclosure, contractor revealed that Crawford improperly charged his time to a Government contract, and was paid for substantially more hours than he worked. The total mischarging for a 90 day review amounted to 74.2 hours, or approximately two weeks out of three months of employment.
3. In addition, the internal investigation revealed that Crawford had been inappropriately using the internet at work, which included viewing pornography. Contractor terminated Crawford's employment upon discovery of the overcharging and misconduct.

BASIS FOR THE PROPOSED DEBARMENT

The improper conduct of Crawford is of so serious or compelling a nature that it affects his present responsibility to be a government contractor or subcontractor and provides a basis for his debarment pursuant to FAR 9.406-2(c).

STEVEN A. SHAW  
Deputy General Counsel  
(Contractor Responsibility)



DEFENSE LOGISTICS AGENCY  
HEADQUARTERS  
8725 JOHN J. KINGMAN ROAD  
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY  
REFER TO

DG

JUN 14 2011

MEMORANDUM CONCERNING THE PROPOSED DEBARMENTS OF EMERSON  
COMPANY; DANIEL NORTON AND TIMOTHY KELLY

The Defense Logistics Agency (DLA) this day has issued Notices of Proposed Debarment to Emerson Company, Daniel Norton and Timothy Kelly (Respondents). The proposed actions are taken pursuant to the debarment procedures contained in the Federal Acquisition Regulation (FAR) Subpart 9.4, and the Defense FAR Supplement (DFARS) Subpart 209.4, and pursuant to the authority of the Federal Property Management Regulations (FPMR), 41 CFR 101-45.6 as reflected in DoD 4160.21-M, Chapter XVII.

The DLA actions are based on information in a report from DLA Troop Support. Information contained in the DLA Troop Support report indicates that Respondents lack the present responsibility to be Government contractors.

INFORMATION IN THE RECORD

A summary of the information upon which the proposed debarments are based appears below:

1. Emerson Company (CAGE 4BUR2) (DUNS 189613446), Daniel Norton and Timothy Kelly list their address as 2367 West 208<sup>th</sup> Street, Unit 6, Torrance CA, 90501.
2. DCMA found no manufacturing facilities or capabilities for this company.
3. During all or part of the time of the conduct described below, Daniel Norton is owner and operator of Emerson Company. Timothy Kelly listed as the Government Business Alternate POC, the Past Performance Alternate POC, and the Electronic Business Alternate POC in CCR. Both men participate personally and substantially in its day to day operations.
4. Specific Tabs referenced in the following discussion are contained in the DLA Troop Support Administrative Debarment Report on Emerson Company. This company has an unsatisfactory history of performance on numerous contracts spanning multiple DLA activities and commodities.
5. Emerson Company is a firm which repeatedly accepts awards and fails to deliver. Of 335 DLA contract line items awarded to Emerson in the current Automated Best Value System (ABVS) reporting period, 96 have been cancelled, a cancellation rate of 29 percent (See ABVS report at Exhibit 3). Each of these line items is coded as contractor caused cancellation in the



MEMORANDUM CONCERNING THE PROPOSED DEBARMENTS OF EMERSON COMPANY, DANIEL NORTON & TIMOTHY KELLY

ABVS system. This demonstrates a pattern of Emerson submitting quotes without the ability to adequately perform.

6. In the cases where its contracts have not been cancelled, Emerson has often been delinquent in its performance. Emerson has a current ABVS delivery score of 42.5, based not only on its high rate of cancellations, but on 81 additional negative delivery lines. This is a total of 177 CLINs out of 335 that were cancelled or delinquent, a 52 percent cancellation/delinquency rate.

7. The ABVS system also shows 11 negative quality lines in the current rating period for a quality score of 98. In addition to the negative ABVS lines, DCMA has provided DLA Troop Support with a list of 10 Corrective Action Reports that have been issued to Emerson based on inadequate performance (See list of DCMA CARs at Exhibit 4).

8. Emerson has quoted as a manufacturer on a wide variety of items, including mattresses, plastic sheets, heraldry medals, knee pads, linens, sandbags, and fuel cans. However, attempts to determine Emerson to be a responsible contractor with manufacturing capabilities have not been successful. In a recent attempt to assess Emerson's manufacturing capabilities, DLA Troop Support requested that DCMA perform a capability study of Emerson. In an e-mail submitted by Emerson employee Tim Kelly, the contractor declined to participate in the January 2011 DCMA Capability Survey (See DCMA survey at Exhibit 5). This survey gave Emerson a risk rating of HIGH, and identified the company as not technically capable to perform on contracts based on lack of past performance. Despite Emerson's frequent representations as a manufacturer, the survey noted that Emerson had no manufacturing capability at its Rolling Hill Estates facility (715 Silver Spur Road, Suite 207, Rolling Hills Estates, CA). Emerson has recently moved into its current location in Torrance, CA; however discussions with DCMA have uncovered that while Emerson has obtained additional storage space in this move, it still does not have manufacturing space or capabilities.

9. This January 2011 DCMA survey is part of a pattern in which DCMA has been unable to determine Emerson responsible. DCMA surveys from both 2008 and 2009 have given Emerson a production risk rating of HIGH (See surveys attached at Exhibits 6 and 7).

10. In addition to failing to cooperate in this DCMA survey, Emerson has also repeatedly declined to participate in Small Business Administration Certificate of Competency reviews (See SBA letters at Exhibit 8). Emerson has quoted in response to several solicitations set aside for small business. The inability to confirm that Emerson is a responsible manufacturer makes it difficult for DLA Troop Support to ensure that orders set aside for small business are awarded in accordance with applicable regulations. Rather than assisting the Government to determine if a responsible contractor, Emerson has refused to participate, even referring to the process as an example of waste and abuse (See letter signed by Daniel Norton at Exhibit 9).

MEMORANDUM CONCERNING THE PROPOSED DEBARMENTS OF EMERSON COMPANY, DANIEL NORTON & TIMOTHY KELLY

11. Emerson has misrepresented its qualifications as a manufacturer of critical application items. As evidenced by its high cancellation rate, Emerson has repeatedly accepted awards that it did not have the capacity to perform, resulting in delay and cancellation of these orders. In one of the most serious examples of Emerson's failure to perform, in March of 2010, Emerson submitted a quote in response to a DLA solicitation (SPM7M2-09-Q-3663) for a critical component of Aircraft Launch and Recovery Equipment (ALRE). ALRE is a critical naval aviation program managed by Naval Air Warfare Center, Lakehurst New Jersey. This item was identified in the solicitation as a critical application item, and included several higher level quality requirements including those established by the International Organization for Standardization (ISO) (See RFQ and Purchase Order at Exhibits 10 and 11). It also included a priced contract line item 9999 requiring delivery of a certificate of quality compliance (COQC) to NAWC Lakehurst. In submitting a quote for this item, Emerson identified itself as a manufacturer, and indicated that its manufacturing facility met ISO 9001:2000 quality standards (See Emerson quote at Exhibit 13); however, following award to Emerson (SPM7M2-10-M-3708), the DCMA Quality Assurance Representative informed the contracting officer that Emerson was not capable of meeting the requirements of this contract, and advised that the contract be cancelled (See attached e-mail at Exhibit 12). The QAR noted that the site could not meet mercury free requirements, ALRE level inspections, ISO requirements, FAR 52.246-11 requirements, or specific quality assurance letter of instruction guidance. This order was cancelled

12. Damages to the Government consist of reprocurement costs and the investigation costs of the Government in these matters, which include the labor expenses for contracting officers, technical advisors, and quality assurance specialists. Additionally there is the disruption to the supply system by quoting and receiving awards and then not delivering the required items. Finally, there are the not readily determinable damages suffered by military customers who did not receive parts on time.

BASIS FOR THE PROPOSED DEBARMENT

Based on the summary of facts above, it appears that:

1. Emerson has demonstrated a willful failure to perform in accordance with the terms of one or more contracts; or, Emerson has a history of failure to perform, or of unsatisfactory performance of, one or more contracts with the Government. The violations of the terms of a Government contract or subcontract are so serious as to justify debarment, pursuant to FAR 9.406-2(b)(1)(i) and (c).

MEMORANDUM CONCERNING THE PROPOSED DEBARMENTS OF EMERSON COMPANY, DANIEL NORTON & TIMOTHY KELLY

2. Pursuant to FAR 9.406-5(b), the fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct. Pursuant to FAR 9.406-5(b), the seriously improper conduct of Emerson Company in its history of failure to perform or of unsatisfactory performance may be imputed to Daniel Norton and Timothy Kelly because as an officer, director, shareholder, partner, employee, or other individual associated with these companies, he participated in, knew of, or had reason to know of the company's seriously improper conduct. The imputation of the seriously improper conduct to Daniel Norton and Timothy Kelly provides a cause for debarment, pursuant to FAR 9.406-2(c).

3. Pursuant to FAR 9.406-1(b), debarment may be extended to affiliates of a contractor. FAR 9.403 ("Affiliates") states that, "Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other or, (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership or principal employees as the contractor that was debarred, suspended, or proposed for debarment." Emerson Company, Daniel Norton and Timothy Kelly are affiliates because, directly or indirectly Daniel Norton and Timothy Kelly controls Emerson Company. The affiliation of the parties provides a separate and independent cause for debarment, pursuant to FAR 9.406-2 (c).



M. SUSAN CHADICK  
Special Assistant for  
Contracting Integrity

MEMORANDUM CONCERNING THE PROPOSED DEBARMENTS OF GRANCO INDUSTRIES INC.; DRW TOOLS LLC; AMERICAN HEARTLAND INDUSTRIES, LLC; C&C RESOURCES, LLC; MIDWEST DEFENSE CONSULTING, LLC; MILZHAN ENTERPRISES, LLC; AND DENNIS WALDO

The Defense Logistics Agency (DLA) this day has issued Notices of Proposed Debarment to GRANCO Industries Inc (hereinafter GRANCO), DRW Tools LLC; American Heartland Industries LLC; C&C Resources, LLC; Midwest Defense Consulting, LLC; Milzhan Enterprises, LLC; and Dennis Waldo (Respondents). The proposed actions are taken pursuant to the debarment procedures contained in the Federal Acquisition Regulation (FAR) Subpart 9.4, and the Defense FAR Supplement (DFARS) Subpart 209.4, and pursuant to the authority of the Federal Property Management Regulations (FPMR), 41 CFR 101-45.6 as reflected in DoD 4160.21-M, Chapter XVII.

The DLA actions are based on information in a report from Defense Contract Management Agency St Louis. Information contained in the DCMA report indicates that Respondents lack the present responsibility to be Government contractors.

INFORMATION IN THE RECORD

A summary of the information upon which the proposed debarments are based appears below:

1. GRANCO Industries (CAGE 63704) (DUNS 084886795), DRW Tools LLC (CAGE 5ZNH6) (DUNS 962416041) and their owner, Dennis Waldo list their address as 4493 S.W. Raintree Ridge Drive, Lee's Summit, Missouri, 64082-4895.
2. American Heartland Industries, LLC (CAGE 57ZC3) (DUNS 828450952) lists its address as 1931 S.W. US HWY 40, Blue Springs, MO 64015. Dun & Bradstreet lists Gail Hull, the wife of a machinist who works for GRANCO as the point of contact. A DCMA visit to the address revealed no manufacturing facilities for this company and the facilities appear to be an office set up as a distributorship.
3. C&C Resources, LLC (CAGE 50F49) (DUNS 809640506) and point of contact is Amie Waldo, daughter of Dennis Waldo. It lists its address as 414 S.E. Crescent St., Lee's Summit, MO 64063, a home in a residential neighborhood.

MEMORANDUM CONCERNING THE PROPOSED DEBARMENTS OF GRANCO & AFFILIATES

4. Midwest Defense Consulting, LLC (CAGE 58MZ3) (DUNS 828293402) lists its address at 6 SW 2<sup>nd</sup> Street STE 103, Lees Summit, MO 64063 and lists its point of contact as Vicki Waldo, wife of Dennis Waldo.

5. Milzan Enterprises, LLC (CAGE 52YB0) (DUNS 826160124) lists its address as 112 Spruce Street, Garden City, MO 64747, a home in a residential neighborhood with no apparent manufacturing capabilities.

6. During all or part of the time of the conduct described below, Dennis Waldo is owner of GRANCO Industries and DRW Tools LLC.

7. During all or part of the time of the conduct described below, DLA awarded 131 purchases orders to the above companies that DCMA administered the contract. Of those, 104 were cancelled (79%), 24 were delivered late (18%) with an average of 142 days late and three contracts (2%) were delivered on time. Attachment 1. In addition, Attachment 2 lists other non-DCMA administered contracts awarded by GRANCO and its affiliates that were cancelled due to the contractor's inability to perform.

8. During all or part of the time of the conduct described below, Dennis Waldo had the ability to control the operations of GRANCO, DRW Tools, American Heartland Industries LLC, C&C Resources, LLC, Midwest Defense Consulting, LLC, and Milzhan Enterprises thus establishing that they are affiliates.

9. Specific Attachments referenced are contained in the DCMA Administrative Debarment Report on Respondents.

10. Additionally, based upon a General Services Administration investigation, three GRANCO NSN stock items in GSA depots failed independent testing due to the use of nonconforming steel.

11. NSN 5120-01-347-1884 – Round Removal Tool, the Item Purchase Description (IPD) of the Collar requires 4140 or 4340 steel be used. Test results dated October 4, 2006 indicate that out of five separate samples of the Collar, all were manufactured with 1045 steel, which does not meet the specified hardness requirements. Between Fiscal Year 2005 and Fiscal Year 2006 GRANCO sold 8726 units to the federal Government totaling \$427,162.

12. NSN 5120-00-895-9566 – Combination Flare Nut and Box Wrench Set (contains 11 Wrenches), the IPD requires hardness to be 40 minimum to 55 maximum on the Rockwell "C" scale. Test results dated February 22, 2007, showed that two of the eleven wrenches, 5120-00-895-9575 (15/16") and 5120-00-895-9576(1") did not have the necessary hardness. Between FY 2005- FY 2006 GRANCO sold 1778 units of NSNs of 5120-00-895-9575 and 5120-00-895-9576

MEMORANDUM CONCERNING THE PROPOSED DEBARMENTS OF GRANCO & AFFILIATES

13. NSN 5120-01-070-8386 –Wrench Socket, the IPD required sockets shall be hardened to 24-28 HRC. Test results dated December 6, 2006 showed that out of the five separate samples, two of the five wrenches did not have the necessary hardness as required, with hardness at 21.0 and 23.0 respectively. Between FY 2005-FY2006 GRANCO sold 2581 units of these wrench sockets totaling \$185, 832.

14. On April 4, 2011, DCMA St. Louis issued a Corrective Action Report to Dennis Waldo and DRW Tools documenting a contract noncompliance under contract SPM5L2-11-M-0031. The CAR identified several nonconformances to the contract, but specifically stated that the contractor substituted grade 70 Duro Neoprene on a Certificate of Conformance from Abbott Rubber Company while DRW's contract specified Flouro Eastomer. Further, the Certificate of Conformance states the material was shipped to "Midwest Defense Con", not DRW Tools, which is a failure of DRW to maintain traceability in documentation in accordance with FAR 52.211-9004. DRW did not supply any purchase orders between supplier Abbott and Midwest Defense Con or between DRW and Midwest Defense Con.

15. At a minimum, the Government has been damaged in the amount of \$657,024, which is the sum of the NSNs that failed GSA testing. There is also the administrative cost of reprocurring all the cancelled orders, investigating these matters, which includes the labor expenses for contracting officers, technical advisors, and quality assurance specialists. Finally, there are the not readily determinable damages suffered by military customers who did not receive parts on time or received nonconforming parts.

BASIS FOR THE PROPOSED DEBARMENT

Based on the summary of facts above, it appears that:

1. GRANCO, DRW Tools LLC, American Heartland Industries, LLC, C&C Resources, LLC, Midwest Defense Consulting, LLC and Milzhan Enterprises LLC have demonstrated a willful failure to perform in accordance with the terms of one or more contracts; or, the companies have a history of failure to perform, or of unsatisfactory performance of, one or more contracts with the Government. The violations of the terms of a Government contract or subcontract are so serious as to justify debarment, pursuant to FAR 9.406-2(b)(1)(i) and (c).

2. Pursuant to FAR 9.406-5(b), the fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct. Pursuant to FAR 9.406-5(b), the seriously improper conduct of GRANCO, DRW Tools LLC, American Heartland Industries, LLC, C&C Resources, LLC, Midwest Defense Consulting, LLC and Milzhan Enterprises, LLC in their history of failure to

perform or of unsatisfactory performance may be imputed to Dennis Waldo because as an officer, director, shareholder, partner, employee, or other individual associated with these companies, he participated in, knew of, or had reason to know of the company's seriously improper conduct. The imputation of the seriously improper conduct to Dennis Waldo provides a cause for debarment, pursuant to FAR 9.406-2(c).

3. Pursuant to FAR 9.406-1(b), debarment may be extended to affiliates of a contractor. FAR 9.403 ("Affiliates") states that, "Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other or, (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership or principal employees as the contractor that was debarred, suspended, or proposed for debarment." GRANCO, DRW Tools LLC, American Heartland Industries, LLC, C&C Resources, LLC, Midwest Defense Consulting, LLC, Milzhan Enterprises and Dennis Waldo are affiliates because, directly or indirectly he controls the companies. The affiliation of the parties provides a separate and independent cause for debarment, pursuant to FAR 9.406-2 (c).

M. SUSAN CHADICK  
Special Assistant for  
Contracting Integrity

DG

## MEMORANDUM OF DECISION ON THE DEBARMENTS OF GRANCO, DRW TOOLS, MIDWEST DEFENSE CONSULTING AND DENNIS WALDO

On May 9, 2011, the Defense Logistics Agency (DLA) issued a Notice of Proposed Debarment to Granco, DRW Tools, Midwest Defense and Dennis Waldo (Respondents). The Notice of Proposed Debarment stated that the DLA action was based on information in a report from the Defense Contract Management Agency (DCMA), St Louis. Information contained in the report indicates that the Respondents lack the present responsibility to be Government contractors.

The Respondents submitted written matters in opposition, which have been incorporated into the administrative record. Before making a decision in this matter, I carefully considered the entire administrative record, including the Respondents' written submissions.

### INFORMATION IN THE RECORD

The administrative record shows that:

1. Granco Industries (CAGE 63704) (DUNS 084886795), DRW Tools LLC (CAGE 5ZNH6) (DUNS 962416041) and their owner, Dennis Waldo list their address as 4493 S.W. Raintree Ridge Drive, Lee's Summit, Missouri, 64082-4895. Midwest Defense Consulting, LLC (CAGE 58MZ3) (DUNS 828293402) lists its address at 6 SW 2<sup>nd</sup> Street STE 103, Lees Summit, MO 64063 and is owned by Vicki Waldo, wife of Dennis Waldo.

2. During all or part of the time of the conduct described below, Dennis Waldo was the owner of Granco and DRW Tools. As the owner, Mr. Waldo participates personally and substantially in its day to day operations.

3. Specific Tabs referenced in the following discussion are contained in the DCMA St Louis Administrative Debarment. Granco, DRW Tools and Midwest Consulting are corporations which repeatedly accept awards and fail to deliver the required parts on time.

4. In Tab1 of the Administrative Debarment Report, GRANCO 2006, shows of the 48 contracts managed by DCMA, there was one contract with on time delivery, eight contracts with delinquent delivery averaging 150 days late and thirty nine terminated contracts for a failure rate for 81 percent. These represent the contracts in which Granco was the prime contractor.

5. For DCMA administered contracts where Granco was the subcontractor and listed as the place of performance, there were 84 DCMA managed contract awards between 1 Jan 2009 and Sep 2010. Only two contracts were delivered on time, sixteen were delinquent delivery, (averaging well over 120 days late) and sixty five were terminated. See TAB 1.

5. Midwest Consulting Company had one DCMA managed contract and 55 managed by other agencies with the one DCMA managed contract terminated and fifteen of the other managed contracts terminated for a failure rate of 27 percent. See Tab 1.

6. A GSA investigation found three Granco NSN stock items (round removal tool, combinations flare nut and box wrench set, and the wrench socket) in the GSA depots failed testing due to the use of nonconforming steel.

7. On April 4, 2011, DCMA St. Louis issued a Corrective Action Report (CAR) to Dennis Waldo and DRW Tools documenting a contract noncompliance under contract SPM5L2-11-M-0031. The CAR identified several nonconformances to the contract, but specifically stated that the contractor substituted grade 70 Duro Neoprene on a Certificate of Conformance from Abbott Rubber Company while DRW's contract specified Flouro Eastomer. Further, the Certificate of Conformance states the material was shipped to "Midwest Defense Con", not DRW Tools, which is a failure of DRW to maintain traceability in documentation in accordance with FAR 52.211-9004. DRW did not supply any purchase orders between supplier Abbott and Midwest Defense Con or between DRW and Midwest Defense Con.

8. At a minimum, the Government has been damaged in the amount of \$657,024, which is the sum of the NSNs that failed GSA testing. There is also the administrative cost of re-procuring all the cancelled orders, investigating these matters, which includes the labor expenses for contracting officers, technical advisors, and quality assurance specialists. Finally, there are the not readily determinable damages suffered by military customers who did not receive parts on time or received nonconforming parts.

## RESPONDENTS' SUBMISSIONS

On July 22, 2011, the Respondents submitted written matters in opposition to the proposed debarments. These documents have been incorporated into the administrative record. The Respondents contends (1) the Granco prime contracts are too remote to rely upon as a basis for debarment; (2) the GSA investigation is flawed; and (3) DRW Tools complied with the terms of its contract by submitting product for acceptance with substitute grade 70 Dure Neoprene for Flour-Eastomer. Respondents also claim that Granco is defunct and Mr. and Mrs. Waldo are penniless.

The U.S. Government's allegations and the Respondents' submissions are discussed more fully below.

## DISCUSSION AND ANALYSIS

## Remoteness

Respondent states that he can only relate his circumstances of the last five years and requests consideration of *mitigating circumstances which were outside his control, or at least without the intent to harm the Government*. The Respondent then relates the history of bad luck or unfortunate circumstances back to 2006 when Granco's forging hammer went down, then in April 2007 Granco's bank placed the company in receivership and subsequently the company went in bankruptcy in July 2007, Mr. Waldo made a poor choice in his financial consultant in 2008, the death of his father in 2009, a sale of Granco's assets in September 2009 and Waldo's firing by the new owner, Gros and a 2010 fire of remaining records. Respondent contends that *most of the late deliveries, cancellations and terminations between 2006 and present, for Granco, were caused by financial circumstances, legal circumstances and events beyond Mr. Waldo's control. Quite certainly, Mr. Waldo never intended to defraud the Government, or intentionally fail to perform contracted work* and states *Mr. Waldo has performed very well under DRW Tools*. During this time, Mr. Waldo and Granco continued to accept orders either as a prime or subcontractor that he knew he did not have the resources, either the financial resources or the necessary technical equipment to perform the contracts.

Respondent contends that Mr. Waldo's performance history is too remote to be considered for debarment. The DCMA contract counts were based upon two date ranges: for the Granco affiliates where Granco was the subcontractor, there were 84 DCMA managed contract awards between 1 Jan 2009 and September 2010. For the Granco as a prime contractor, there were an additional group of 48 contracts awarded from 2006. The combined cancellation rate of those two groups was 79 % with only three contracts during the entire period delivered and time and an additional 24 contracts were delivered late. Review of the cancellation modification summary reveals that over one third of the cancellations explicitly state cancelled because of failure to deliver the required part on time. I note nowhere in the Respondent's response is there any acknowledgement or acceptance of responsibility for the actions in the debarment report, nor are there any remedial steps proposed to ensure on-time deliveries of conforming product in the future.

## GSA Investigation

Respondents contend that the GSA investigation was flawed as it was too remote; disputes that Mr. Waldo instructed employees to use nonconforming steel and provides purchase orders for conforming steel and takes issue with the sample size used to test the product. First, the GSA investigation concluded in September 2010 and the conduct at issue, the product substitution, was a continuing practice until the time of Mr. Waldo's proposed debarment as shown by Mr. Waldo's submission of nonconforming product in April 2011. Secondly, the fact is that nonconforming steel was used and that Mr. Waldo purchased the required material does not show that there was any intent to use the required material for that specific product. Lastly, regardless of the sample size protocol, the fact at issue and undisputed, is the substitution of inferior raw material for the contract requirements. Testing verified these nonconformances.

## DRW Tools Product Substitution

Respondent contends that DRW Tools complied with contract terms by submitting product for acceptance with substituted grade 70 Duro Neoprene for Fluoro-Elastomer because: 1) Fluoro-elastomer has the same salient characteristics as neoprene; 2) the two are equal in price; 3) Waldo was too rushed by DCMA to provide adequate traceability documents. First, note that Fluoro-elastomer is not a brand name material but a class of rubber. The industry published standards show that the composition, operating range, general properties and chemical resistance are all different between the neoprene utilized and the contract required material fluoro-elastomer. While Waldo provides no supporting documentation to show the two are equal in price as claimed, research shows that neoprene is \$3.06 per foot while a brand of fluoro-elastomer is \$29.96 per foot, which comes out to nearly 10 times the cost of neoprene. The bottom line is the contract required Waldo to produce a part that complies with the drawing and he chose to use an alternate material. This is product substitution. Respondent's Exhibit D makes this point, clearly showing in Zone 3A that the material is to be "FLUORO ELASTOMER" and the Abbot certification clearly shows that Neoprene was provided.

I have considered the information and argument raised in the Respondents' submissions as it relates to the mitigating factors set forth in the FAR 9.406-1(a). The ten mitigating factors and their relevance to the Respondents' submissions are as follows:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as cause for debarment.

The Respondents did not have effective standards of conduct or internal control systems in place at the time of the activity as they admitted. Nor did they adopt any such procedures prior to the Government's investigation. The lack of effective controls contributed to the nonconformances and the Respondents' failure to timely identify and respond to the problems.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

The Respondents did not bring the activities cited as the causes for debarment to the attention of the Government.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

There is no indication in the submission that the contractor investigated circumstances surrounding the cause for debarment. No formal audit or investigation by the contractor was not provided.

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

The Respondents have been cooperative during the debarment process.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has not made or agreed to make full restitution.

The Respondents have not paid nor agreed to pay the Government's administrative costs or restitution. The Government has paid well over \$657,024 for defective parts identified to date and incurred the cost of investigation and testing.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

No disciplinary action has been taken.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

The Respondents have not outlined any remedial measures, only promising to not bid large contracts or ones he cannot perform. However, based on the information provided, this measure is inadequate to protect the Government's interests.

(8) Whether the contractor has instituted or agreed to institute new or revised control procedures and ethics training programs.

The contractor did not institute or agree to any new or revised control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

The Respondents have had adequate time to eliminate the circumstances within their organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

Respondent does not recognize the seriousness of the misconduct that led to the cited cancellations and nonconformances, but only claims not to have "intentionally failed to perform contracted work." Mr. Waldo ignores the consequences of his actions, namely that the Government was required to deal with the operational and administrative effects of the numerous cancellations, late deliveries, nonconformances and the subsequent reprocurement. The cancelled purchase orders and terminated orders constitute historical evidence of unsatisfactory performance and failure to perform contracts.

By virtue of his position as officer, director, shareholder, and/or employee of Granco,

Dennis Waldo participated in, knew of, or had reason to know of the late deliveries, cancellations and terminations. Therefore Granco's serious misconduct can be imputed to him. In addition, based on his position and duties within the company, he is an affiliate of Granco.

By virtue of his position as officer, director, shareholder, and/or employee of DRW Tools, Dennis Waldo participated in, knew of, or had reason to know of the nonconformances. Therefore, DRW Tools's serious misconduct can be imputed to him. In addition, based on his position and duties within the company, he is an affiliate of DRW Tools.

By virtue of his wife's ownership of Midwest Defense Consulting, Dennis Waldo is an affiliate of Midwest Defense Consulting.

I have carefully considered the administrative record. The administrative record supports debarments based on the history of poor performance and nonconformances. The information and argument advanced in opposition to the proposed debarments are not sufficient to persuade me that a period of debarment is not necessary to protect the Government's business interests. I have determined that the Respondents do not possess the level of responsibility required of those who do business with the Government and that a period of debarment is necessary to ensure the full protection of the Government's business interests.

## FINDINGS

Based on the administrative record and the summary of facts above, I find that:

1. Granco, DRW Tools and Midwest Consulting have demonstrated a willful failure to perform in accordance with the terms of one or more contracts; or, the companies have a history of failure to perform, or of unsatisfactory performance of, one or more contracts with the Government. Each company's violation of the terms of a Government contract or subcontract is so serious as to justify debarment, pursuant to FAR 9.406-2(b)(1)(i).
2. Pursuant to FAR 9.406-5(b), the fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct. The seriously improper conduct of Granco and DRW Tools in their history of failure to perform or of unsatisfactory performance may be imputed to Dennis Waldo because as an officer, director, shareholder, partner, employee, or other individual associated with Granco and DRW Tools, Dennis Waldo participated in, knew of, or had reason to know of Granco's and DRW Tool's seriously improper conduct. The imputation of the seriously improper conduct to Dennis Waldo provides a cause for his debarment, pursuant to FAR 9.406-2(c).
3. Pursuant to FAR 9.406-1(b), debarment may be extended to affiliates of a contractor. FAR 9.403 ("Affiliates.") states that, "Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other or, (b) a third party controls or has the power to control both. Indicia of control include, but are

not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership or principal employees as the contractor that was debarred, suspended, or proposed for debarment.” Dennis Waldo and Midwest Defense Consulting are affiliates because of the shared interests with his wife’s company. Dennis Waldo and Granco and DRW Tools are affiliates , directly or indirectly, Dennis Waldo controls or can control these companies. The affiliation of Midwest Defense Consulting, DRW Tools, Granco and Dennis Waldo provides a separate and independent cause for debarment, pursuant to FAR 9.406-2 (c).

## DECISION

Pursuant to the authority contained in Federal Acquisition Regulation (FAR) Subpart 9.4, the Defense FAR Supplement (DFARS) Subpart 209.4, and based upon the administrative record and the findings set forth above, Granco, DRW Tools, Midwest Defense Consulting and Dennis Waldo are debarred effective this date.

The debarments are to remain in effect for three years from the date Granco, DRW Tools, Midwest Defense Consulting and Dennis Waldo were first proposed for debarment from Government contracting. The debarments apply to procurement, nonprocurement, and sales contracting and are effective throughout the executive branch of the Federal Government unless the head of the agency taking the contracting action or a designee states in writing the compelling reason for continued business dealings between the agency and the parties.

M. SUSAN CHADICK  
Special Assistant for  
Contracting Integrity

## Where's Waldo?: Dealing with Delinquents

As contract management delegations for non-critical items become fewer and far between, problems with non-performing contractors seem to multiply for buying commands. That is especially true when a contractor continually re-invents itself using different names and family members to create affiliated companies to keep receiving awards. After years of being asked the question, where's Waldo, or more specifically, where are the goods that any of Kansas City contractor Dennis Waldo's non-performing companies were supposed to supply to DLA, the DCMA Kansas City contracting team had enough.

Led by Team Chief John Burke, the DCMA team detailed on spreadsheets the delinquencies of Waldo's companies that showed the contractor and its affiliates repeatedly accepted awards without the capability to perform and failed to deliver timely. Over 75 percent of DCMA administered contracts awarded by DLA were cancelled by the buying commands due to the contractors' and its affiliates' inability to perform and only 2% in total delivered on time with the average delinquency rate on the remainder at 145 days late.

DCMA consistently took action to advise buying commands of the contractor's poor performance history on a case by case basis, but due to the large number and variety of items from numerous government agencies for which the contractor continued to bid and the designation of destination acceptance on the majority of contracts with no oversight, a better remedy was needed to ensure an effective supply chain. Add in a highly thorough GSA IG investigation that established that Waldo's first company had submitted invoices and been paid on orders from GSA where goods were never received, as well as other integrity issues, and the result was the remedy of a DLA debarment of Dennis Waldo and affiliates until May 8, 2014.

The FAR authorizes debarment for two categories of misconduct related to the performance of government contracts: (i) willful failure to perform in accordance with contract terms; and, (ii) a history of failure to perform, or unsatisfactory performance on one or more Government contracts. Debarment may be imposed based upon a finding as to either of these categories, by a preponderance of the evidence. The debarment result in this case excluded Dennis Waldo and his affiliated companies who lacked present responsibility to perform on contracts from continuing to under-bid legitimate contractors for the same items, so critical supplies can reach the war fighter.

What were the fraud indicators that began this journey to finding Waldo and a remedy? First and foremost, are the contract delinquencies themselves for all the affiliates that spoke volumes once they were identified in total. Add in complaints from

competitors who were willing and able to perform but underbid by Waldo and the fact that some affiliates operated out of the same residence without any manufacturing capability for the items awarded and you find a sea of red flags waving.

Those red flags did not go un-noticed by DCMA Kansas City QAR Ken Coverdell, whose keen eye and vigilance discovered Waldo's most recent company, DRW Tools, operated out of a residence without manufacturing capability. When Ken discovered over 95% of the awards to DRW were destination acceptance, he quickly pointed out the red flags for action. DCMA Kansas City Industrial Specialist Michael Shugrue was likewise diligent in tracking the different tentacles of affiliated companies as they cropped up.

Kudos to the DCMA Kansas City Team including Burke, Shugrue and Coverdell for their tenacious efforts to ensure an effective supply chain of critical military items to the warfighter. Also special thanks to Michele Pavlak, DLA Office of General Counsel, and to GSA Special Agent Wendy Rowan for their outstanding support in this matter.



**DEFENSE CONTRACT MANAGEMENT AGENCY**  
CONTRACT INTEGRITY CENTER  
18901 SOUTH WILMINGTON AVENUE, BUILDING DH-2  
CARSON, CALIFORNIA 90746-2856

IN REPLY

REFER TO DCMAN-Y

September 6, 2012

MEMORANDUM FOR THE PFB, CONTRACT & FISCAL LAW DIVISION,  
DEPARTMENT OF ARMY

SUBJECT: DFARS 209.406-3 Report and Recommendation for Debarment: Electronic Combat Test & Evaluation Company, Inc. (ECTEC), William Fitzhugh, Nancy Fitzhugh, 632 East Ave. P, Suite A, Palmdale, CA 93550-3001

This report is submitted in accordance with the requirements of Federal Acquisition Regulation 9.406-3 and Department of Defense FAR Supplement 209.406-3.

A. Point of contact for this report is:

Robert Vogt  
Associate Counsel  
Contract Integrity Center  
Defense Contract Management Agency  
18901 So. Wilmington Ave, Bldg. DH-2  
Carson, California 90746-2856  
(310) 900-6661  
DSN 929-6661  
[Robert.Vogt@dcma.mil](mailto:Robert.Vogt@dcma.mil)

B. Contractor:

Electronic Combat Test & Evaluation Company,  
Inc. (ECTEC)  
CAGE Code 1PA02  
DUNS # 859077034  
632 East Ave. P, Suite A  
Palmdale, CA 93550-3001  
[ectec@ectecinc.com](mailto:ectec@ectecinc.com)

C. Contractor Officials:

William Fitzhugh  
Vice President/Manager  
ECTEC, Inc.  
632 East Ave. P, Suite A  
Palmdale, CA 93550-3001  
[bill@ectecinc.com](mailto:bill@ectecinc.com)

Nancy Fitzhugh  
Owner  
ECTEC, Inc.  
632 East Ave. P, Suite A  
Palmdale, CA 93550-3001

D. Known Affiliates:

NA

E. Contracts Affected:

A Firm Fixed Price Contract, Army Test & Evaluation Command (ATEC) contract no. W9115U-08-C-0004, was awarded by ATEC Mission Support Contracting Activity to ECTEC (Cage Code 1PA02) for production of a first article of a Radio Frequency Monitoring and Data Analysis System (RFMDAS) plus three production RFMDAS systems.

F. Other Contracts:

There appears to be one prime contract (N00178-05-D-4306) awarded to ECTEC that DCMA is administering at this time. However, they have also been awarded a subcontract to perform work by Scientific Research Company. SRC was awarded a contract by the U.S. Navy, SPAWAR in Charleston, SC. The purchase order from SRC for services to ECTEC is SR20121307.

G. Summary of Pertinent Evidence:

Mr. William Fitzhugh, Vice-President of ECTEC, Inc., entered into a Firm-Fixed-Price (FFP) contract on August 22, 2008 with Patricia Cuff, the Procurement Contracting Officer (PCO) for the Dept. of the Army, ATEC Mission Support Contracting Activity, Fort Hood, Texas, to provide supplies and services in conjunction with the Radio Frequency Monitoring and Data Analysis Systems (RFMDAS).

The contract provided for four complete systems, consisting of a First Article RFMDAS unit and 3 production units integrated onto their host trailers with all associated payload bays, antenna systems, mast subsystems, power generation, data networking and environmental control systems. It also provided for Progress Reports, an Acceptance Test Plan, Operator's Manual, Maintenance Manual, and Training for up to 12 technicians covering detailed operations, and maintenance on the associated hardware and software components of RFMDAS, and granted full Government Data Rights to all contractor developed hardware and software on the contract

including diagrams, Bills of Material, circuit schematic diagrams and source code developed by the contractor.

All systems were to be completed and delivered to Contracting Officer's Technical Representative (COTR) at Fort Huachuca, Arizona. In addition, the systems had to pass all Customer Acceptance testing by 180 days ARO (After Receipt of Order) though system training for operators and maintainers could be provided after this period if necessary.

The RFMDAS is essential for advanced capabilities in verifying the sense signal environment presented to the various systems under test for Tactical Unmanned Aerial Vehicle, Aerial Common Sensor, and the U.S. Army's Prophet System Operational Tests.

ECTEC was to deliver the first article system and three production systems to the U.S. Army at Fort Huachuca, AZ by February 27, 2009 and March 27, 2009, respectively. No delivery was made. As a result, on May 5, 2010, a modification to the contract was issued by the U.S. Army Test and Evaluation Command in Fort Hood, TX extending the date of delivery for the production of all four RFMDAS to November 30, 2010.

The contractor subsequently informed the PCO that he did not have the financial resources to complete the contract even though he had already billed the Government for, and received \$1,245,751 of the \$1,311,712 contract price in the form of progress payments, between November 2008 and May 2009. These progress payments represented 95% of the total contracted price. None of the contracted items were ever completed or delivered to the Army in accordance with the terms of the contract.

On February 1, 2011, after the contractor failed to meet the conditions of the contract extensions, ATEC PCO Patricia Cuff "issued a Show Cause Notice notifying ECTEC, Inc. that the Government was considering terminating the contract under the provisions for default. The Show Cause Notice allowed ECTEC, Inc. a period of 10 working days from the receipt of the notice for ECTEC, Inc. to provide any facts bearing on whether failure to perform arose from causes beyond ECTEC, Inc.'s control and without fault, or negligence. The notice also informed ECTEC, Inc. that failure to present any excuses within the specified timeframe would be considered an admission that none exists. ECTEC, Inc. received the Show Cause Notice on 7 February 2011 via certified, return-receipt USPS mail." No response was provided or received from ECTEC, Inc. (Attachment 1)

On March 11, 2011, ATEC PCO Patricia Cuff sent a letter to Mr. Fitzhugh and ECTEC notifying ECTEC of her "decision to terminate Contract W9115U-08-C-0004, dated August 23, 2008, in its entirety for default for failure to make delivery and failure to make adequate progress." (Attachment 1)

On January 31, 2012, DCMA ACO sent a demand letter to Mr. Fitzhugh and ECTEC, stating ECTEC is "indebted to the United States Government in the amount of \$ 1,245,751.00 on Contract No. W9115U-08-C-0004. This debt resulted from your failure to deliver the contracted items under the terms of the contract before being officially Terminated for Default on March 11,

2011; and represents the sum total of the six Progress Payments you received under the contract during the period November 2008 through May 2009.” (Attachment 2)

H. Estimate of Damages: ECTEC billed and received from the Government, \$1,245,751 of the \$1,311,712 contract price in the form of progress payments, between November 2008 and November 2009. These progress payments represented 95% of the total contracted price. None of the contracted items were ever completed or delivered to the U.S. Army in accordance with the terms of the contract.

DCMA relies upon the integrity of the contractor and the reliability and accuracy of inspection and quality system documentation. The impact of debarment for ECTEC, William Fitzhugh and Nancy Fitzhugh on Government programs is likely to be minimal as there are other potential contractors that could be utilized.

I. DCMA Palmdale ACO Lynda Goins concurs with this recommendation. Ms. Goins is the DCMA ACO currently assigned to ETEC.

J. The relevant documentation is attached.

The information provided indicates a serious lack of business integrity and warrants debarment of ECTEC, Inc., William Fitzhugh and Nancy Fitzhugh from Government contracting pursuant to FAR 9.406-2(b)(1).

Respectfully submitted,

/s/

ROBERT VOGT  
Associate Counsel  
Contract Integrity Center  
Defense Contract Management Agency

Attachment to be sent by email

cc via email w/o attachments:

Russell Geoffrey, Director, DCMAC-Y  
Lynda Goins, DCMA Palmdale  
Randy Bunn, DCMA Palmdale  
Sunny Lim, DCIS



**DEFENSE LOGISTICS AGENCY  
HEADQUARTERS  
8725 JOHN J. KINGMAN ROAD  
FORT BELVOIR, VIRGINIA 22060-6221**

IN REPLY  
REFER TO

**SEP 26 2012**

MEMORANDUM CONCERNING PROPOSED DEBARMENTS of Allanas Engineering (CAGE 5KBD7); Severino Perez; and Tony Casillas

The Defense Logistics Agency (DLA) this day has issued Notices of Proposed Debarment to Allanas Engineering (CAGE 5KBD7); Severino Perez; and Tony Casillas (Respondents). The proposed actions are taken pursuant to the debarment procedures contained in the Federal Acquisition Regulation (FAR) Subpart 9.4, and the Defense FAR Supplement (DFARS) Subpart 209.4, and pursuant to the authority of the Federal Property Management Regulations (FPMR), 41 CFR 101-45.6 as reflected in DoD 4160.21-M, Chapter XVII.

The DLA actions are based on a Quality Management System Review issued July 6, 2012 by the Defense Contract Management Agency (DCMA), which documented a total of 23 deficiencies in a level III Corrective Action Request (CAR). Allanas Engineering failed to adequately respond to the level III CAR on three different occasions and 27 of 28 of its schedules are delinquent, making its on-time rate only 34%. Allanas Engineering and Severino Perez employed Tony Casillas as its Senior Field Engineer to respond to DCMA on its behalf. Accordingly, Tony Casillas is affiliated with Allanas Engineering and Severino Perez. DCMA is seeking termination of all pending contracts, and respondents lack the trustworthiness, commitment, and capability to themselves successfully perform Government contracts.

INFORMATION IN THE RECORD

A summary of the information upon which the proposed debarments are based appears below:

1. Allana's Engineering (CAGE 5KBD7)(DUNS 795646375) lists its address as 9710 Owensmouth Avenue Lbby, Chatsworth, CA 91311-8074, and its point of contact is Severino Perez, who is Allana's Engineering's sole proprietor.
2. Tony Casillas lists himself as Senior Field Engineer (CAGE FKBD7) (Cell direct: 614-567-8666 Fax: 614-540-7442), c/o Severino Perez ([allanasengineer@yahoo.com](mailto:allanasengineer@yahoo.com)), Allanas Engineer 9710-A Owensmouth Avenue, Chatsworth, CA 91311. The "Cell direct" phone and fax number that Tony Casillas provide are the same phone and fax numbers as for MTC Engineering (CAGE 3BTS1) (DUNS 118034656), 747 Carle Avenue, Lewis Center, OH 43035, which shares an address with Industrial Welding and Engineering Co. (CAGE 3NBK9) (DUNS141241385).



3. Of the 67 contracts awarded to Allanas, 19 (28%) were canceled at the request of the contractor or terminated by the government; 21 (31%) were inspected and accepted at MTC Engineering; and 18 (27%) have been recommended by DCMA for cancellation.

4. Allana's Engineering, Mr. Perez, and Mr. Casillas have caused a disruption to the supply system by quoting and receiving contracts and then not having the capability to perform those contracts. This has led to a waste of Government resources, re-procurement costs, excessive backorders, and delays in supplying items to the Warfighter. Their behavior has created an administrative burden and has wasted Government resources and the time of many DCMA and DLA employees.

#### BASIS FOR PROPOSED DEBARMENT

Based upon the information contained in this report, it appears that:

1. Allana's Engineering, Mr. Perez, and Mr. Casillas have demonstrated a willful failure to perform in accordance with the terms of one or more contracts; or, the company has a history of failure to perform, or of unsatisfactory performance of, one or more contracts with the Government. The violations of the terms of a Government contract or subcontract are so serious as to justify debarment, pursuant to FAR 9406-2(b)(1)(i) and (c).

2. Pursuant to FAR 9.406-5(b), the fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct. Pursuant to FAR 9.406-5(b), the seriously improper conduct of Allana's Engineering may be imputed to Severino Perez and Tony Casillas because as an officer, director, shareholder, partner, employee or other individual associated with the company, they participated in, knew of, or had reason to know of the seriously improper conduct. The imputation of the company's conduct to Severino Perez and Tony Casillas provides a cause for debarment, pursuant to FAR 9.406-2(c).

3. Pursuant to FAR 9.406-1(b), debarment may be extended to affiliates of a contractor. FAR 9.403 ("Affiliates") states that, "Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment." Allana's Engineering, Severino Perez, and Tony Casillas are affiliates because Severino Perez and Tony Casillas directly or indirectly

control the company. The affiliation of the parties provides a separate and independent cause for debarment, pursuant to FAR 9.406-2(c).

A handwritten signature in black ink, appearing to read "Walter Thomas". The signature is written in a cursive style with a prominent initial "W".

Walter Thomas  
Special Assistant for  
Contracting Integrity

MEMORANDUM FOR THE DEPARTMENT OF THE NAVY  
SUSPENDING AND DEBARRING OFFICIAL

Subj: PROPOSED DEBARMENT OF \_\_\_\_\_

BACKGROUND:

\_\_\_\_\_ owns and operates four companies that receive Department of Defense contracts: \_\_\_\_\_

\_\_\_\_\_ companies are small businesses located in the same facility at \_\_\_\_\_. These companies all operate under the same quality manual and utilize the same personnel.

\_\_\_\_\_ companies supply critical application item parts (CAI) and critical safety item parts (CSI) such as bomb rack adapters, missile cradle slings, guided missile launchers, and various electrical parts for incorporation into Department of Defense weapons systems and military aircraft. A significant portion of the work consists of small dollar purchase orders for critical application items, many with first article testing (FAT) requirements. Failure of a CAI part could impact the ability or performance of a weapon system to carry out a required mission. Failure of a CSI part would likely result in loss of life, serious personal injury, and/or aircraft.

INFORMATION IN THE RECORD:

*Level III & IV Corrective Actions*

According to the Defense Contract Management Agency (DCMA), \_\_\_\_\_ has a lengthy and documented history of failing to correct deficiencies identified by DCMA quality assurance specialists, and in many cases will not acknowledge their contractual validity. On 12 March 2004, as a result of the escalating number of problems, DCMA placed \_\_\_\_\_ companies on Level III Corrective Action Status<sup>1</sup>. The

<sup>1</sup> A Corrective Action Status/Request (CAR) is a request for the root cause remedy of a contractual noncompliance. CARs are issued for the following reasons: on time delivery rate is less than 90%; data analysis indicates contractual noncompliance trend; root cause analysis identifies processes contributing to

DCMA Springfield Administrative Contracting Officer (ACO), Legal Representative and Technical Team Leader met with the contractor on 13 April 2004 to address the situation. However, [redacted] refused to take any corrective action, stating that he was awaiting a response from Naval Inventory Control Point (NAVICP) relative to correspondence provided to that activity from his legal counsel concerning the Navy's structure for first article requirements.<sup>2</sup>

Between July 2003 and July 2004, DCMA Springfield issued a total of 54 corrective action requests for [redacted]. In numerous instances, contractually required testing and the associated documentation is not provided with material tendered for source inspection. A continuous cycle of unnecessary delay and subsequent order cancellation has adversely impacted Navy customers. At that time, DCMA calculated that [redacted] on-time delivery rate amounted to 24%, 31% and 47% for [redacted] respectively.

By letter dated 22 February 2005, DCMA notified [redacted] that Level IV Corrective Action would be reinstated unless the contractor took positive action to preclude the submittal of items that had not been tested as required by the contracts and applicable drawings and specifications. During a February 2005 meeting, [redacted] made commitments for comply with various corrective action requests (CARs) and indicated his commitment to comply with the following procedures:

- (1) Submission of the contract review sheet prior to the product being submitted to the DCMA Quality Assurance Representative (QAR) for inspection. Upon the contract review sheet being reviewed by the QAR and depending on the response, which may necessitate correspondence with the PCO, the contractor will initiate such correspondence and wait for the PCO's response;
- (2) The contractor will review the contracts and the contractor's understanding will be stated on the contract review sheet which will be submitted to the QAR;
- (3) Where it is applicable, the contractor will continue to submit two

---

poor delivery rates; and contractor is non-responsive to previous CARs. CARs are not issued for each delinquency. There are four levels of CARs. A Level I CAR is issued for contractual noncompliance, may be verbal or written, is directed at working level personnel, and requires no special attention. If the noncompliance is systemic, a Level II CAR is issued in writing and directed to the contractor's management personnel. Prior to issuing a Level III CAR, DCMA coordinates with the Administrative Contracting Officer. A Level III CAR is issued for serious non-compliances and directed to the contractor's top management. Additional elements of a Level III CAR are: Government may pursue contractual remedies; a copy of the Level III CAR is sent to the buying activity and other Government offices as appropriate. A Level IV CAR involves contractual remedies and must be issued by the ACO and co-signed by the DCMA Team Chief of higher. The contractor is immediately placed on the Contractor Alert List (CAL). A copy of the Level IV CAR and all correspondence is forwarded to the buying activities.

<sup>2</sup> DCMA Springfield agreed to postpone the implementation of Level IV action until a response from NAVICP was received, as first article interpretation was a major discrepancy impacting these companies. NAVICP responded and concurred with the interpretation of the contracts as rendered by DCMA Springfield.

prices on its bids; one price without environmental testing and one price with environmental testing; and

- (4) Personnel having the knowledge of a question are instructed to respond to the QAR.

For the 2006 calendar year, [redacted] has submitted material for final inspection to the QARs without performing required testing that he failed to identify and that the QARs had notified him was required. [redacted] refusal to comply with his commitments has led to the cancellation of eight contracts this year (N00383-03-P-P779, SPM4A6-06-M-B990, SPM7M9-06-M-0250, SP0407-06-M-9469, N00383-03-P-LS81, SP0406-06-M-D614, SP0406-06-M-D317, N00383-06-C-P121) and the pending cancellation of six more. (SPM4A6-06-M-0915, SP0407-06-M-9469, SPM4A6-06-M-5511, SPM4A6-06-M-2715, SPM4A6-06-M-3546, SPM4A6-04-M-3622). This brings the total of contracts cancelled/terminated to eighty-nine since 2003.

During a meeting with [redacted] and DCMA on 3 May 2006, [redacted] again made a commitment and "agreed to perform a thorough technical review of contracts/purchase orders upon receipt and to document requirements identifying environmental testing". 29 September 2006 DCMA Letter to [redacted]. He also agreed that "If the contractor(s) represents that his price does not include this testing, he will immediately notify the PCO, with a copy to the ACO and QAR, requesting that the requirement be waived or the contract/purchase order be cancelled." *Id.* At that meeting, DCMA stated at that meeting that "The contractor(s) will be evaluated for compliance to this agreement over the next 60 days. If improvement is not forthcoming, escalation of corrective action is anticipated." *Id.*

Since 3 May 2006 meeting, [redacted] has submitted two contract review sheets that checked "no," indicating that environmental testing was not required when, in fact, it was required<sup>3</sup>, one contract review sheet that was not checked at all when environmental testing was required<sup>4</sup>, and two contract review sheets where he failed to identify other requirements<sup>5</sup>. [redacted] has repeatedly failed to fulfill the commitments he made to have his companies perform a thorough contract review and to request clarification or cancellation of the contract from the PCO when it is identified that testing is required by contract, drawing or specification. [redacted] has discontinued following his adopted procedure to bid separate prices for performing the contractually required testing verses supplying the item without the testing. DCMA reported that [redacted] commented that he stopped this practice because his companies did not receive awards when he submitted the higher price that included testing. [redacted] disregarded the customers' testing requirements (testing performed) and attempted to circumvent the established rules and practices of the competitive procurement process because his quoted price with testing was higher than the other bidder.

<sup>3</sup> (1) SPM4A6-06-M-5511, pending cancellation and (2) W15P7T-06-H406, shipment was delayed because testing was not performed.

<sup>4</sup> SPM4M1-06-M-5354, pending technical conformation of environmental testing.

<sup>5</sup> SPM7M9-06-M-0250, cancelled 9/12/2006 and SPM7A4-06-M-1517, submission was rejected, WCAR issued, parts not resubmitted.

On 29 September 2006, DCMA determined that, for the reasons stated above, it was in the best interest of the Government to institute Level III CAR. This Level III CAR applies to all four of [redacted] companies with DoD contracts [redacted] because this issue is persistent across all companies. If the situation is not corrected by 28 November 2006, DCMA will escalate the Level III CAR to a Level IV CAR.

### *False Testing Certification (Handling Cases)*

NAVICP Philadelphia, PA issued a purchase order (N00383-06-P-G065) to [redacted] for fourteen handling cases (NSN: 6KH 8145-01-143-5648) under two contract line item numbers (CLIN) for a total price of \$35,000.00. CLIN 0001AA called for the purchase of seven cases to be delivered to the Defense Distribution Depot, Naval Air Station, Jacksonville, Florida by 10 July 2006. CLIN 0001AB called for the purchase of seven cases to be delivered to the Defense Distribution Depot, Naval Air Station, San Diego, California by 10 July 2006. The contract required that the contractor perform 100% Production Leak Testing in accordance with page 9, Paragraph 4.4 of the contract and Drawing 240678-2 note #6. The contract required that the handling cases undergo this production leak testing for thirty minutes.

On 26 September 2006, QARs interviewed a [redacted] employee who purportedly performed the contractually required Production Leak Testing. The [redacted] employee admitted to the DCMA QARs that he had tested most of the containers for only ten to fifteen minutes. Yet, the [redacted] employee and [redacted] quality assurance representative, [redacted], signed a test data sheet, dated 15 September 2006, certifying that the tests had been conducted under the contractually required pressure setting of 1.0, plus or minus .01, PSI for thirty minutes. According to the DCMA QARs, the [redacted] employee advised that he did not have enough time to test most containers for the full thirty minutes. On 27 September 2006, DCMA issue a CAR for (1) failure to perform the 100% Production Leak Testing in accordance with drawing number 240678-2, note 6 and (2) failure to mark the handling containers in accordance with 17805 Rev. A.

[redacted] wrote two letters, dated 2 and 3 October 2006, attempting to justify performing the pressure test for only twelve to fifteen minutes and failing to mark the containers in accordance with the corresponding drawing. By letter dated 2 October 2006, [redacted] wrote, "We understand that the drawing calls for 30 minutes and we are taking responsibility for that. Bear in mind that our first contract on this item was received in 1993 and we have gone through [first article testing] and approval was received on that contract. Subsequent to that we received four (4) additional contracts for a total of 208 units, not including the subject contract for 14 units. Out of the 208 units we delivered we never had a single rejection from the field or from the QAR's who performed the inspections." By letter dated 3 October 2006 [redacted] writes, "...the case is sealed very tightly when ten (10) good size latches which really prevent any leakage in the case. The other thing I would like to emphasize is that the fact that the

equipment itself is quite rigid and would survive any kind of conditions. I would say the equipment is sitting very comfortably in the case with all that cushioning around it." Instead of assuring DCMA and NAVICP that he will impose greater or more effective quality controls, [redacted] challenges the legitimacy of the testing requirements.

***Failure to Perform a Contractually Required Test (Cable Assemblies)***

Defense Supply Center Columbus (DSCC) issued purchase order SP0750-050M-B990 to [redacted] for the procurement of thirty-eight Cable assemblies, Motor, National Stock Number (NSN) 1010-01-394-1789, a CAI, for a total amount of \$28,416.00. The cable assembly is part of a weapons system on a U.S. Marine Corps amphibious vehicle. The contract is origin inspection/acceptance and required that first article testing (FAT) be conducted in accordance with several drawing specifications, including Naval Sea Systems Command drawing numbers 6227699 and 6289101.

On 28 April 2006, DCMA determined that [redacted] failed to perform the contractually required pull (tensile strength) test on a sample FAT cable. This test was required to be performed on a sample cable using the same tools and methods as would be utilized in the manufacture of the production units to ensure the crimped connector is secure to the cable. DCMA provided [redacted] with the opportunity to perform the pull test; however, when the part was placed under load, it failed at approximately sixty-five pounds rather than the 220 pounds stipulated in the contract for silver tin-plated eight gauge copper wire. DCMA reported that subsequent research revealed that [redacted] failed to use the appropriate crimping tool designated in the contract. According to DCMA, [redacted] offered to make the part pass FAT by crimping the cable with a different tool. However, the DCMA QARs declined [redacted] request as he already failed FAT. DCMA advised that even if [redacted] had been able to crimp the connector to withstand the requisite load, the part would still fail FAT because the crimping tool specified in the contract was not used.

On 11 April 2006, DCMA issued a corrective action request (CAR) to [redacted]. [redacted] wrote letters to the Procurement Contracting Officer (PCO), DSCC and to DCMA disagreeing with the conclusions recited in the CAR and requesting that DCMA re-evaluate the FAT to the specifications. DCMA re-evaluated the FAT to the specifications and confirmed that [redacted] had failed to meet the requirements. Consequently, DSCC issued modification P00001 terminating the contract for default.

***Recent Quality Control Issue (Welding Procedures)***

On 23 February 2005, [redacted] submitted welding procedures from [redacted] per requirements DD1423, Data Item No. A003 and B003 of contract N00383-03-C-P124. The NAVICP contracting officer approved the weld samples and procedures prepared by [redacted] on 20 April 2005 and subsequently issued modification P00001 approving and incorporating the weld procedures. During

the inspection of the FAT Report, Naval Air Warfare Center Aircraft Division Quality Assurance Specialist and DCMA QAR found that the welding certificate of compliance (COC) was issued by [REDACTED]. However, NAVICP approved the welding procedures for [REDACTED] and not [REDACTED]. Since [REDACTED] did not use the approved welder, [REDACTED] failed to produce the item in accordance with the contract requirements and approved welding procedures. As a result of this deficiency and others identified during inspection, DCMA issued a CAR for this item to [REDACTED] on 2 May 2006.

### ***Unjustifiable Waste of Government Personnel's Time and Government Resources***

According to the DCMA Quality Assurance Team Leader, [REDACTED] persistent and willful failure to perform in accordance with contract requirements has resulted in an unprecedented waste of DCMA personnel's time and DCMA resources. For the past three years, DCMA has maintained two full-time resident QARs at [REDACTED] facility. DCMA determined that two QAR's were necessary so that [REDACTED] conduct could be witnessed by at least two people because of [REDACTED] frequent gripes about the QARs technical qualifications and expertise and for reinforcement purposes due to [REDACTED] habitual verbal abuse of the QARs. [REDACTED] companies carry approximately eighty government contracts per year. DCMA Team Leader advised that a similar contractor that specializes in similar parts and with approximately eighty contracts per year would typically have one QAR assigned to the contractor's facility. In addition, this QAR would carry three or four contractors that each average approximately twenty contracts per year and ten contractors that get one contract per year. Moreover, the DCMA Team Leader estimated that he devotes approximately 40% of his time on issues arising out of [REDACTED] contracts.

### **ANALYSIS:**

The Federal Acquisition Regulation (FAR) provides, in pertinent part, that “[a]gencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only.” FAR 9.402(a). The FAR further provides that “[d]ebarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.” *Id.* The FAR also mandates that in order to “be determined responsible, a prospective contractor must...[h]ave a satisfactory performance records.” FAR 9.104-1(c).

In order to effectuate these policies, the FAR provides that a contractor may be debarred for any of those causes stated in the FAR at Subpart 9.406-2. That regulation provides, in pertinent part, as follows:

- (b)(1) The debarring official may debar a contractor, based upon a preponderance of the evidence for -

- (i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as -
  - (A) Willful failure to perform in accordance with the terms of one or more contracts; or
  - (B) A history of failure to perform, or unsatisfactory performance of, one or more contracts. FAR 9.406-2(b)(1)(i)(A) and (B).

\_\_\_\_\_ has been aware of his companies' persistent unsatisfactory performance for years and should have corrected their quality system to prevent any further deficiencies. The information contained in the Administrative Record provides the requisite evidence to debar for the causes stated in FAR 9.406-2(b). The documents therein serve as adequate evidence of this contractor's persistent failure to perform in accordance with Government contracts and a history of unsatisfactory performance that harmed the Department of the Navy and caused excessive and avoidable interference with the procurement process. \_\_\_\_\_ conduct demonstrates a willingness to disregard contractually required obligations and established practices in furtherance of personal objectives and unsatisfactory performance history directly affects the present responsibility of \_\_\_\_\_ to participate in the United States Government procurement process. These causes are serious enough to warrant debarment because they are based upon the willingness of \_\_\_\_\_ to consume unprecedented and unjustifiable amounts of Government resources and interference with the procurement process in connection with performing a contract or subcontract with the Department of the Navy.

Pursuant to FAR 9.406-5(b), the fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct. The seriously improper conduct of \_\_\_\_\_ may be imputed to \_\_\_\_\_ because as an officer, director, shareholder, partner, employee, or other individual associated with the companies, \_\_\_\_\_ participated in, knew of, or had reason to know of the companies' persistent unsatisfactory performance and improper conduct. The imputation of \_\_\_\_\_ persistent unsatisfactory performance to \_\_\_\_\_ provides a cause to debar him, pursuant to FAR 9.406-2(b).

#### CONCLUSION:

The Administrative Record contains adequate evidence to support the debarment of \_\_\_\_\_ under FAR 9.406-2(b). The evidence of persistent failure to perform in accordance with Government contracts and history of unsatisfactory performance by \_\_\_\_\_ demonstrates a lack of the responsibility necessary to do business with the Government. Pursuant to 9.406-5(b), the seriously improper conduct of \_\_\_\_\_ may be imputed to \_\_\_\_\_ because, as an officer, he participated in, knew of, or had reason to know of their seriously

improper conduct. Therefore, [redacted] and his companies should be debarred to protect the interests of Government. The causes for debarment of [redacted] and his companies illustrated in this Memorandum, presented by the documents contained in the Administrative Record, and relied upon to debar them, are FAR 9.406-2(c).

RECOMMENDATION:

That you sign the enclosed letter notifying [redacted] that the Department of the Navy is placing his name and the name of his companies on the "Excluded Parties List System" as being proposed for debarment.

ELIZABETH G. RIESCH  
Assistant Counsel,  
Contractor Responsibility Division  
Office of the Assistant General Counsel (Acquisition Integrity)



## DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22202-3258

Office Of The Deputy General Counsel

### MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

TTF, L.L.C. a/k/a  
TTF  
DODS, INC. OF OKLAHOMA a/k/a  
DODS, INC.  
DAVID STOREY

MAY 08 2012

On November 18, 2011, the Air Force proposed for debarment TTF, L.L.C. a/k/a TTF (TTF), DODS, Inc. of Oklahoma a/k/a DODS, Inc. (DODS), and David Storey (Mr. Storey) (collectively Respondents) from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. On February 15, 2012, the Air Force superseded Respondents' proposed debarments based on allegations that they engaged in additional improper conduct after being proposed for debarment.

I have carefully considered all information contained in the Administrative Record, including Respondents' submissions, and determined that a preponderance of the evidence establishes the existence of a cause for debarment, and Respondents have failed to demonstrate their present responsibility. Based on the Administrative Record and the findings made herein, I have concluded that debarment is in the public interest and necessary to protect the Government's interests. This action is initiated pursuant to Federal Acquisition Regulation (FAR) Subpart 9.4, Defense FAR Supplement 209.4 and Appendix H, and 2 C.F.R. Part 1125.

### INFORMATION IN THE RECORD

#### Parties

1. TTF, a Louisiana corporation, manufactures aircraft equipment and services aircraft components. Mr. Storey owns TTF and serves as its President.
2. DODS, a Louisiana corporation, is in the business of heat treating and bonding aircraft components. Mr. Storey owns DODS, serves as its President, and on its Board of Directors.

#### Background

3. On February 26, 2008, the Air Force awarded Indefinite Delivery Contract No. FA8103-08-D-0038 (Contract) to TTF for the manufacture of engine-wiring harnesses (harnesses) for KC-135 aircraft.
4. Mr. Storey executed the Contract as President of TTF and was the company's representative throughout performance.

5. The Defense Contract Management Agency (DCMA) administered the Contract.
6. Among other requirements, in relevant part, the Contract required compliance with the following:
  - a. Technical requirements, including engineering drawing No. 458-58422-595 Wire Harness – KC-135 (drawing), which set forth the specifications for the harnesses;
  - b. FAR 52.246-11, Higher-Level Contract Quality Requirement, which provides, in relevant part, “[t]he Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements” and “*shall, without charge, replace or correct work found by the Government not to conform to contract requirements....*”
  - c. The implementation of a documented Quality Control System in full compliance with International Standardization Organization (ISO) 9001-2000 E, Section 7, Control Product Realization Planning, which, in relevant part, states in planning product realization, the organization shall determine quality objectives and requirements for the product with records to provide evidence that the realization process and resulting product meet requirements.
7. The Air Force determined that the harnesses supplied by TTF failed to comply with the Contract requirements, including the technical specifications, for a number of reasons, including but not limited to:
  - a. insufficient harness length;
  - b. wrong connectors;
  - c. un-insulated grounding straps;
  - d. not employing filler rods during connector assembly to prevent empty cavities;
  - e. failure to properly identify wires; and
  - f. failure to crimp the shield terminations.
8. DCMA, on behalf of the Air Force, issued to TTF a series of requests to correct the alleged deficiencies in the harnesses and to make changes to its quality control system to prevent reoccurrence of such deficiencies.
  - a. In July 2010, DCMA issued TTF a Product Quality Deficiency Report, confirming the deficiencies identified above, and noting that “the contractor’s work instructions, used in the manufacturing of the wiring harness, were severely insufficient in assuring the

applicable contractual, engineering and specification requirements were fully satisfied.”

- b. In August 2010, DCMA issued TTF a Level II Corrective Action Request (CAR).
  - c. In September 2010, DCMA issued TTF a Level III CAR after determining that TTF, in relevant part, has not developed the processes required in ISO Paragraph 7.1. Additionally, DCMA found that TTF’s nonconformance represents a significant risk to the Government in awarding future contracts to TTF given the Critical Safety Items and other complex critical applications associated with such contracts.
9. Mr. Storey, on behalf of TTF, disputed many of DCMA’s findings with regard to the harnesses, allegedly declined to implement the corrective action requested as to the harnesses, and allegedly failed to demonstrate that it implemented sufficient remedial measures to its quality control system to prevent the reoccurrence of such issues.
10. DCMA rejected TTF’s corrective action plans.
11. On November 18, 2011, the Air Force proposed Respondents for debarment based on the allegations set forth above, which immediately excluded them from participating in government contracting.
12. Respondents were each issued a notice of proposed debarment, which explicitly identified the effects of their proposed debarment under FAR Subpart 9.4, including the fact that they were ineligible for government contracts, among other effects.
13. On November 29, 2011, Mr. Storey, on behalf of Respondents, confirmed receipt of the notices of proposed debarment.
14. On January 5, 2012, Mr. Storey, on behalf of Respondents, provided a written submission to the Air Force in response to the proposed debarments.

### **Improper Conduct**

15. From November 18, 2011, through February 15, 2012, while ineligible for government contracts, TTF and DODS submitted more than fifty (50) proposals to federal agencies seeking government contracts.
16. From November 18, 2011, to February 26, 2012, neither TTF nor DODS updated their existing Online Representations and Certifications Application (ORCA) dated March 9, 2011, to reflect that they were proposed for debarment and, thus, during this period of time, they falsely certified their eligibility for government contracting.

17. From November 18, 2011, to February 26, 2012, TTF and DODS did not notify the Contracting Officers to whom they had submitted proposals of their ineligibility for government contracting.

18. On January 3, 2012, Mr. Storey, on behalf of DODS and TTF, updated each company's ORCA and, in response to FAR 52.209-5 Certification Regarding Responsibility Matters (FAR 52.209-5), falsely certified that both TTF and DODS are not "presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency."

19. For each ORCA, Mr. Storey represented: "By submitting this certification, I, David W. Storey, am attesting to the accuracy of the representations and certification contained herein. I understand that I may be subject to penalties if I misrepresent TTF, LLC [DODS, INC. of Oklahoma] in any of the above representations or certifications to the government."

## DISCUSSION

### Procedural History & Related Findings

The Air Force proposed Respondents for debarment on November 18, 2011, based on the alleged improper conduct described in Paragraphs 7 through 10 above. In response, Respondents made multiple submissions that, in large part, disputed the allegations, although they acknowledged the deficiencies identified in Paragraph 7(e) through (f) above and agreed to correct those deficiencies. I have determined that Respondents have raised genuine disputes of material fact as to certain allegations underlying the Air Force's Notices of Proposed Debarment dated November 18, 2011, and that it is not in the Government's interests to engage in fact-finding. Therefore, those allegations play no role in the Air Force's final decision to debar Respondents, which is based exclusively on Respondents' conduct after being proposed for debarment; specifically, the allegations set forth in Paragraphs 15 through 19 above.

## ANALYSIS

FAR Subpart 9.402(a) provides that "[a]gencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with [FAR Subpart 9.4], are appropriate means to effectuate this policy." FAR 9.406-1 provides: "It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3." Where "the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence." FAR 9.406-3.

### **ORCAs dated March 9, 2011 and January 3, 2012**

From November 18, 2011, the date Respondents were proposed for debarment, through February 26, 2012, neither DODS nor TTF updated its ORCA dated March 9, 2011, to reflect its ineligibility for government contracting. Consequentially, during this time period, DODS and TTF were falsely certifying that they were not “presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.” On January 3, 2012, Mr. Storey, on behalf of TTF and DODS, updated the companies’ ORCAs and continued the false certification. The ORCAs expressly stated that the certification is “a material representation of fact upon which reliance was placed when making award,” and further that false statements are subject to prosecution. FAR 52.209-5(e); FAR 52.209-5(a). In each ORCA, Mr. Storey stated that he was “attesting to the accuracy of the representations and certification contained herein. I understand that I may be subject to penalties ....”

During the period of time in which TTF and DODS were falsely representing and certifying their eligibility for government contracting, Mr. Storey and/or other personnel working under his direction submitted more than fifty (50) proposals to federal agencies seeking new government contracts on behalf of TTF and DODS. In making award determinations, Contracting Officers, throughout the Government, rely upon the offeror’s ORCA for its representations and certifications. *See* FAR 52.209-5(e); FAR 4.1201(c) (describing the responsibilities of a Contracting Officer as they relate to reviewing the ORCA). While FAR Subpart 9.4 does not expressly prohibit ineligible offerors from submitting proposals, it is improper to submit proposals while falsely representing one’s eligibility for government contracting.

### **Respondents’ Position**

Respondents do not dispute the core facts underlying their debarments. Specifically, Respondents were aware of their proposed debarments as of November 29, 2011, and TTF and DODS submitted many proposals to federal agencies after learning of their proposed debarments. On January 3, 2012, TTF and DODS updated their ORCAs, certified their eligibility for government contracting, and continued to certify their eligibility for government contracting until February 27, 2012.

Respondents do assert, however, that they had no obligation to update their ORCAs before January 3, 2012, claiming that “ORCA renewal was not due at this time.” Although unclear, Respondents presumably believe that they were only required to update their ORCAs annually, regardless of whether events transpired in the interim rendering prior representations and certifications false. Respondents also explain, as to both ORCAs dated March 9, 2011, and January 3, 2012, that they “erroneously” assumed their ORCAs would be automatically updated to reflect their ineligibility because their Central Contractor Registry (CCR) was updated automatically. Notably, Respondents did not provide to the Air Force copies of TTF’s or DODS’ CCRs. Respondents characterize their actions as an “oversight and clerical error.”

Respondents are correct that the representations and certifications contained in an ORCA are generally effective for one year. This is clear from the face of the ORCAs in question, which state “Certification Validity,” and then identify the one-year period of validity based on the date

of the certification. Here, Respondents' March 9, 2011, ORCAs were valid through March 9, 2012.

The one-year period of validity, however, assumes no change in the offeror's circumstances that would render prior representations and certifications false. "Prospective contractors *shall update* the representations and certifications submitted to ORCA *as necessary*, but at least annually, *to ensure they are kept current, accurate, and complete.*" FAR 4.1201(b)(1) (emphases added). An offeror, therefore, is required to update its ORCA as is "necessary" to ensure it is "kept current, accurate, and complete" and must recertify its ORCA at least annually, regardless of whether any changes occur during the year.

Additionally, FAR 52.209-5(b), the clause contained in the ORCAs, expressly provides that: "The Offeror shall provide *immediate written notice* to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification *was erroneous when submitted or has become erroneous* by reason of changed circumstances." (Emphases added). Offerors, therefore, are to ensure their certification is accurate *before* submitting proposals, but where they fail to update their ORCA prior to submitting proposals or where their circumstances change post-proposal submission, at a minimum, they are to immediately notify, in writing, the Contracting Officer to whom they have submitted proposals of their ineligibility. This principle is echoed throughout the FAR. *See* FAR 52.204-8 Annual Representations and Certifications (requiring offerors to verify *as of the date of their offer* that their ORCA is "current, accurate, and complete" with the exception of changes set forth in writing).

The Administrative Record establishes that, prior to learning of the Air Force's superseding proposed debarments, neither TTF nor DODS updated its ORCA to reflect its ineligibility for government contracting, and similarly, that neither TTF nor DODS provided written notice of their ineligibility to Contracting Officers to whom they had submitted proposals.

The Air Force is surprised that it must educate Respondents on the importance of keeping one's representations and certifications current, accurate, and complete. Not only is this logical and something a responsible contractor would want to do, but the ORCA, itself, makes clear that this is required. Further, the ORCA notifies offerors of the seriousness of their representations and certifications and further warns them of the consequences and penalties for non-compliance, including criminal prosecution and/or the termination for default of any contracts received. *See* FAR 52.209-5(e) (certification is "*a material representation of fact* upon which reliance was placed when making award) (emphasis added); FAR 52.205-9(a) (*false statements are subject to "Prosecution* Under Section 1001, Title 18, United States Code") (emphasis added); FAR 52.209-5(e) ("the Contracting Officer *may terminate the contract ...* for default") (emphasis added).

In reviewing the Administrative Record, which includes Respondents' submissions, I have determined that a preponderance of the evidence establishes the existence of causes for debarment based on the following findings: (1) Respondents were aware of their proposed debarments as of November 29, 2011; (2) TTF and DODS submitted many proposals to federal agencies after learning of their proposed debarments; (3) TTF and DODS did not update their ORCAs promptly after learning of their proposed debarments or notify Contracting Officers to

Officers to whom they had submitted proposals of their ineligibility; (4) Mr. Storey, on behalf of TTF and DODS, updated each company's ORCA on January 3, 2012, and falsely certified their eligibility; and (5) the separate bases for affiliation and imputation as set forth below.

### **Mitigating Factors and Remedial Measures**

“[T]he contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary” where a preponderance of the evidence establishes the existence of a cause for debarment. FAR 9.406-1. In assessing a contractor's present responsibility, FAR Subpart 9.406-1 instructs agencies to consider the presence of any remedial measures or mitigating factors. “The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision.”

In their submissions, Respondents present several mitigating facts and remedial measures. Respondents contend that they did not willfully submit false ORCAs to the Government, and that such conduct was the byproduct of “erroneous” assumptions; specifically, Respondents believed the ORCAs would be automatically updated to reflect their ineligibility without any action from them. Additionally, Respondents do not believe they had a legal obligation to update their ORCAs prior to January 3, 2012, or the end of the one-year period of validity set forth in the ORCAs. For the limited purposes of this administrative proceeding, the Air Force will accept Respondents' contentions that they did not act willfully, and will further assume that Respondents were unaware of the minimum requirement to notify Contracting Officers to whom they had submitted proposals of their ineligibility.

Respondents have accepted responsibility for their actions and have further demonstrated they take the Air Force's concerns seriously. After learning of the Air Force's superseding proposed debarments, TTF and DODS updated their ORCAs to certify their ineligibility for government contracting and further represented that they withdrew all outstanding proposals pending before federal agencies.

These facts mitigate against the seriousness of Respondents' improper conduct but do not alleviate the serious concerns the Air Force has concerning Respondents' present responsibility. Even accepting Respondents' contentions as true, and assuming, for purposes of this proceeding, that their actions were not willful, Respondents' conduct, nonetheless, casts a heavy shadow over their responsibility. The ORCA is a serious and important matter to the Government, and Respondents' actions demonstrate that they completed their ORCAs in a careless manner, to say the least, and did not recognize the significance of what they were representing and certifying.

Respondents clearly did not test the veracity of their assumption that the ORCA would be automatically updated. Had they even reviewed the ORCAs, Respondents would have discovered that the ORCAs were not automatically updated. The fact that Respondents recertified the ORCAs on January 3, 2012, and continued their false certifications, further evidences their gross negligence. Additionally, it is disconcerting that Respondents saw no problem with submitting many, many proposals to federal agencies seeking government contracts but did not apprise the Contracting Officers to whom they had submitted proposals of

their ineligibility. Overall, Respondents' actions, at a minimum, call into question their sophistication and competency to serve as government contractors, including their ability to understand and comply with the regulatory requirements applicable to government contracting, as well as to understand the importance of making representations and certifications to the Government that are current, accurate, and complete.

Furthermore, absent from the record is any indication that Respondents have, on their own volition and without prompting from the Air Force, recognized the importance of avoiding such compliance failures in the future by committing themselves to undergoing education and training on government contracting compliance, including the critical importance of making truthful and complete representations and certifications.

In light of Respondents' improper conduct, the Air Force could impose a three-year period of debarment for each of their improper acts, including: Respondents' failure to update each of the ORCAs dated March 9, 2011, or to, at a minimum, notify Contracting Officers to whom they had submitted proposals of their ineligibility; and Respondents' false certifications in each of the ORCAs dated January 3, 2012. However, the Air Force will treat these instances of improper conduct as a single continuing event. The Air Force would normally impose a three-year period of debarment consistent with FAR 9.406-4(a). However, in consideration of the mitigating facts and remedial measures presented by the Respondents in their submissions, including those identified herein, Respondents' period of debarment will be reduced to 18-months. I find that this period is necessary and sufficient to protect the Government's interests and is in the public interest.

## **FINDINGS**

I have carefully considered all information contained in the Administrative Record, including Respondents' submissions, and determined that a preponderance of the evidence establishes the existence of a cause for debarment, and Respondents have failed to demonstrate their present responsibility. Debarment of Respondents is in the public interest and necessary to protect the Government's interests. Below are my findings:

1. Respondents' improper conduct is of so serious or compelling a nature that it affects their present responsibility to be government contractors or subcontractors and provides a separate independent basis for each of their debarments pursuant to FAR 9.406-2(c).

### **Imputation**

2. Pursuant to FAR 9.406-5(a), the seriously improper conduct of Mr. Storey is imputed to TTF and DODS because his improper conduct occurred in connection with the performance of his duties for or on behalf of TTF and DODS, or with the knowledge, approval, or acquiescence of TTF and DODS. The imputation of Mr. Storey's conduct to TTF and DODS provides a separate independent basis for the debarments of TTF and DODS.

3. Pursuant to FAR 9.406-5(b), the seriously improper conduct of TTF and DODS is imputed to Mr. Storey because as an officer, director, shareholder, partner, employee or other person associated with TTF and DODS, he participated in, knew of, or had reason to know of TTF's and

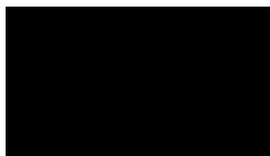
DODS' improper conduct. The imputation of TTF's and DODS' conduct to Mr. Storey provides a separate independent basis for his debarment.

**Affiliation**

4. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates of a contractor. Mr. Storey, TTF, and DODS are affiliates, as defined at FAR 9.403 (Affiliates), because directly or indirectly, each one has the power to control the other or a third party has the power to control them all. The affiliation of Mr. Storey, TTF, and DODS provides a separate independent basis for each of their debarments.

**DECISION**

Pursuant to the authority granted by FAR Subpart 9.4, Defense FAR Supplement Subpart 209.4, and 2 C.F.R. Part 1125, and based on the evidence contained in the Administrative Record and the findings herein, Respondents are debarred for a period of 18-months, which shall run from the date of their proposed debarments, November 18, 2011, and, thus, shall terminate on May 17, 2013.



STEVEN A. SHAW  
Deputy General Counsel  
(Contractor Responsibility)



DEFENSE LOGISTICS AGENCY  
HEADQUARTERS  
8725 JOHN J. KINGMAN ROAD  
FORT BELVOIR, VIRGINIA 22060-6221

JAN 09 2012

IN REPLY  
REFER TO

DG

MEMORANDUM OF DECISION ON THE DEBARMENTS OF KEYSTONE ADVISORS OF ILLINOIS LLC dba BEST FOAM FABRICATORS; KEYSTONE ADVISORS OF ILLINOIS LLC; Keith Hasty; Diane Hasty; Jabrea Hasty (aka Jabrea Parham); Jazmine Hasty; Aquathago Hasty (aka AQUI HASTY); KASSANDRA HASTY; and PACKAGING RECOVERY COMPANY, LLC.

On September 8, 2011, the Defense Logistics Agency (DLA) issued Notices of Proposed Debarment to Keystone Advisors of Illinois LLC dba Best Foam Fabricators (2V686); Keystone Advisors of Illinois, LLC; Keith Hasty; Diane Hasty; Jabrea Hasty (aka Jabrea Parham); Jazmine Hasty; Aquathago Hasty (aka AQUI HASTY); KASSANDRA HASTY and Packaging Recovery Company, LLC (Respondents). The proposed actions were taken pursuant to the debarment procedures contained in the Federal Acquisition Regulation (FAR) Subpart 9.4, and the Defense FAR Supplement (DFARS) Subpart 209.4, and pursuant to the authority of the Federal Property Management Regulations (FPMR), 41 CFR 101-45.6 as reflected in DoD 4160.21-M, chapter XVII.

The Notices of Proposed Debarment stated that the DLA actions were based on information in a report from DLA Aviation. Information contained in that report indicates facts indicating a lack of business integrity and/or business honesty on the part of the above-referenced company and individuals (Hasty family) that seriously and directly affects their present responsibility as government contractors. Their material misrepresentations during contract formation compelled DLA Aviation to void two contracts and withdraw two purchase orders. After contract formation, the Hasty family continued to misrepresent the nature and status of their company in an effort to maintain their relationship with the Government. This pattern of conduct establishes that they lack the trustworthiness necessary to successfully perform government contracts.

#### INFORMATION IN THE RECORD

The administrative record shows that:

1. Keystone Advisors of Illinois, LLC dba Best Foam Fabricators 2V686 (CAGE 2V686) (DUNS 965325215) [hereinafter referred to as Best Foam]; Keystone Advisors of Illinois, LLC (CAGE 5P6Z2)(DUNS 831761957); Jazmine Hasty, Diane Hasty; Keith A. Hasty; KASSANDRA HASTY; Aquathago C. Hasty aka AQUI HASTY; and Jabrea Hasty aka Jabrea Parham all list their address as 137 West 154<sup>th</sup> Street, South Holland, IL 60473.

2. During all or part of the time of the conduct described below, Jazmine Hasty is Keystone's CEO. Diane Hasty and Keith Hasty are listed as principals, and KASSANDRA HASTY is listed as a member. Jabrea Parham is identified in the CCR as the Government Business Primary Point of Contact (POC); Diane Hasty is listed as the Government Business Alternate POC and Electronic Business Primary POC. AQUI HASTY submitted quotations and proposals, on

Keystone's behalf, on three of the four contracts and purchase orders detailed in the debarment report.

3. Packaging Recovery Company, LLC (CAGE 3FTQ6) (DUNS132045332), lists its address as 604 Highway 8 N, Linden, TX 75563-5019.

4. Keith Hasty is the CEO of Packaging Recovery Company, LLC. Aqiu Hasty is the Government Business Primary Point of Contact.

5. During all or part of the time of the conduct described below, the Hasty family members had the ability to control Best Foam, and all reside at the same address, thus establishing they are all affiliates. Keith Hasty can directly or indirectly control Packaging Recovery Company along with Best Foam, thereby establishing their affiliation.

6. The facts and timeline of events relating to the involuntary dissolution of Best Foam Fabricators is outlined in the DLA Aviation Report. In short, Best Foam was involuntarily dissolved in late 2009. Counsel explained that there are three distinct operations of Best Foam—the Fuel Cell Foam Division with CAGE Code 2V686 in Chicago Illinois and the Metal Can Operating Division in Rogerville, Alabama with CAGE Code 46G39, Best Foam Fabricators Inc., Div Genessee Tristar Inc. and Packaging Recovery Company with CAGE code 3FTQ6 in Jefferson, Texas. The Hasty family no longer controls the Genessee Tristar company.

7. In late November or early December 2009, there was a sale of certain assets of the Foam Division to Mr. Donnell Montgomery for \$9,000 and then Mr. Montgomery sold these assets back to Mr. Hasty on December 8, 2009 for \$11,000. The assets were listed as "all of the seller's rights and entitlements arising out of contract SPM4A7-09-D-0113; 56 sets of kits and 8 buns of reticulated foam, government cage code 2v686." Harris Bank sold the remaining Best Foam assets of its Metal Can Division to Genessee on January 6, 2010. That sale included "any rights to and interest in the name "Best Foam Fabricators." The debarment is based upon the Hastys' continued misrepresentations as to the nature and status of their company in order to maintain their relationship with the Government after the sale and dissolution of Best Foam Fabricators.

#### RESPONDENTS' SUBMISSION

On October 26, 2011, Respondents through their counsel submitted arguments in opposition to the proposed debarments and requested a meeting with the Suspension and Debarment Official (SDO). Respondents contend that the sale of Best Foam assets was *neither contrived nor carried out to avoid creditors and it was not motivated by any desire to deceive the Government*. Counsel admitted that the Hastys transferred one contract in violation of the Anti-Assignment Act, but concluded that while *the Hastys were not disciplined in their use of corporate names or communications regarding corporate ownership, this lack of legal specificity*

*by laypersons under the circumstances here cannot reasonably be interpreted as conduct amounting to a lack of integrity.*

The essence of Respondents' written submission is that (1) the Harris Bank agreed to the sale to Mr. Donnell Montgomery, and the sale was not done to avoid creditors; (2) Respondents relied on the advice of their counsel and business advisor that it was permissible to purchase and subsequently use the CAGE code as part of the asset purchase agreement; (3) Respondents question why the present responsibility of other parties, Harris Bank and Genessee, is not being questioned because of their violations of the Anti-Assignment Act; (4) the Respondents held a good faith belief that they could use the Best Foam name and made no attempt to deceive the Government by maintaining the appearance of uninterrupted, ongoing operations at Best Foam, because they had nothing to gain by carrying out such a deception; (5) the scope of the proposed debarments is inappropriately extended to individuals without involvement in material matters herein; and (6) the administrative errors in the assignment of a contract and use of the CAGE code does not provide a basis for debarment. On December 5, 2011, Respondents and their counsel met with the SDO to further discuss their written submission and the proposed debarments.

#### DISCUSSION AND ANALYSIS

First, regarding the Respondent's contention that the sale of Best Foam assets was disclosed to and approved by Harris Bank, the Respondent's submission of various emails are not conclusive because these emails do not show what exactly was disclosed to Harris Bank. So while a sale of some assets was disclosed to Harris Bank, it has not been shown exactly what the terms of that sale were. It is clear that whatever was disclosed, Harris Bank surely did not understand that Mr. Montgomery (and then Mr. Hasty) was purchasing the rights to the name "Best Foam Fabricators" as Harris Bank subsequently sold that asset to Genessee.

Next, counsel explained that his clients relied on legal counsel throughout the dissolution process and the Best Foam and Harris Bank legal counsel authorized the sale of the CAGE Code as part of the asset purchase agreement. Counsel provided the webpages and lawyer biographies of the Best Foam's attorneys. There is nothing in these pages that would lead one to believe these bankruptcy and asset reorganization specialists had government contract expertise, despite counsel's note that *the Stahl Cowen law firm notes its ability to advise clients in "strategically planning and structuring transactions to insure that environmental, governmental regulation and other requirements are met.* I question whether it was reasonable for the Respondents, *individuals who have successfully provided products to the Government for over 30 years* to look for advice on a government contracting issue from a bankruptcy law firm. Second, I note that Mr. Rudnicki, the Best Foam liquidation representative, raised his concerns that the asset purchase agreement might not include the right to use Best Foam's name. In two emails to Mr. Hasty on November 25, 2009, Mr. Rudnicki wrote, *I don't follow. Scott's office drafted the Montgomery agreement. Further, I see nothing in it about him acquiring any ability to use the Best Foam name* and then again later in the day in a second email to Keith Hasty, Mr. Rudnicki again wrote, *Yes, the fuel cell APA specifically says Montgomery is buying the one CAGE code.*

*It does not say anything about him buying the name. My assumption is that buying the CAGE code is not equivalent to buying the name, however I'm copying the lawyers on this to ensure they understand your concern.* Lastly, even if early on in the dissolution process the Respondents did not know CAGE Codes could not be transferred, their submission omitted the very specific advice to submit a novation agreement that Respondents received from DLIS and later from DCMA. The submission does not offer any reason why the Respondents ignored this advice and assumed use of Best Foam's CAGE code in the CCR on November 7, 2010.

As to counsel's suggestion that the Respondents are being unfairly singled out for their neglect to adhere to the Anti-Assignment Act in the transfer of a contract and question why Harris Bank and Genesee were not proposed for debarment on this same basis, counsel ignores that both Harris Bank and Genesee sought and obtained a valid novation agreement on May 7, 2010. Moreover, neither Harris Bank nor Genesee misrepresented themselves. Finally, even if this cause for debarment existed, neither Harris Bank nor Genesee held contracts with DLA.

Counsel argues that Respondents had no reason to deceive the Government, e.g., awards were based solely on pricing, and nothing was sole-sourced to Best Foam or required sources to "pre-qualified". The record does not support the argument. As long time suppliers of DLA, the Respondents should be aware that DLA Aviation awards are best value awards where past performance is always a factor, and awards are not based solely on price. DLA was relying on the past performance of Best Foam, not the new entity Keystone Advisors. The record shows that Keystone benefitted from its deception. By bidding as Best Foam, Keystone improperly availed itself of Best Foam's past performance record and prior certifications. Had Keystone submitted an offer in its own name, using its own CAGE code, it would have been required to obtain new certifications. Keystone's lack of performance history would have resulted in a "neutral" rating for purposes of evaluation. The \$3.3 million contract "Best Foam" won was based on its past performance rating. The contracting officer justified the award of the higher priced Best Foam offer upon its better past performance rating. At the time, had DLA Aviation known it was dealing with Keystone and not Best Foam, Keystone's past performance would have been neutral. In fact, this buy was protested by a lower-priced vendor, and DLA Aviation denied this protest based on its best value determination considering Best Foam's better past performance. Counsel misquoted the FAR provision 15.305(a)(iii) which allows, not mandates, contracting officers to consider past performance of predecessor companies and key personnel. Finally, while there is no pre-qualification requirement, "Best Foam" could have been granted a waiver of first article test (FAT) requirement on items previously supplied while Keystone, as a new entity, would have been required to submit FATs.

In support of the argument that there was no intent to deceive the Government, Counsel points to emails by the Hasty family to the Government, specifically, Jabrea Parham's February 21, 2011 email to a procurement specialist at DLA Aviation and Diane Hasty's March 2010 email to DLIS. While it is true that Jabrea Parham identified herself as a contract administrator for Keystone Advisors of Illinois dba Best Foam Fabricators (cage code 2V686), she went on to state, *We are very pleased that DSCR has opted to extend the term of the contract for another 12*

*months and look forward to working with you again.* Jabrea Parham then noted the (improper) name change in the CCR, thus creating the impression that the same entity that was awarded the contract was continuing to perform the contract. The contract at issue in the email is the one Keystone now admits was transferred in violation of the Anti-Assignment Act. Diane Hasty emailed an inquiry to DLIS in March 2010, and again to DCMA in November 2010, seeking to *add the name of [Best Foam's] parent company so that we are now listed as Keystone Advisors of Illinois DBA Best Foam Fabricators 2V686.* As noted above, she gave no reason why she ignored the advice she was given by DLIS and DCMA. In October 2010, DLIS twice advised Diane Hasty to contact the Administrative Contracting Officer to execute the proper documentation to modify any existing contract. After improperly assuming Best Foam's CAGE code in the CCR earlier in November 2010, on the 23<sup>rd</sup> of that same month, Ms. Hasty e-mailed DCMA asking for modifications to all of Best Foam's contracts to *add the name of [Best Foam's] parent company so that we are now listed as Keystone Advisors of Illinois DBA Best Foam Fabricators 2V686.* In support of her request, she noted the name change in CCR. On November 24, 2010, DCMA replied, *41 USC 15 prohibits the transfer of government contracts. These contracts were awarded to Best Foam, and only Best Foam can deliver and be paid for performance. If Best Foam has changed its name, please provide the documentation from the State of Incorporation to support the change of name. This documentation must indicate that there has been no transfer of assets, and that this is merely a change of name. . . . Without this documentation, you have no authority to change the CCR, and it should be immediately changed back. For more information on change of name agreements, please refer to FAR 42.12.* Thus, at all times, both before Keystone assumed Best Foam's CAGE code in CCR on November 8, 2010 and after that date, Respondents knew Keystone was not entitled to use Best Foam's CAGE code and name for purposes of government contracts, but they did so anyway.

Finally, as to the Respondents' contention that the scope of the debarments is too broad, the evidence supports the scope. Specifically, the emails cited above show Diane Hasty's active involvement in the continued use of Best Foam's name and CAGE code. The Hasty daughters, Jazmine, age 24 and Cassandra, age 22, are the only two members of the Keystone Advisors LLC and thus, by definition, they retain all control over the company. The submission by counsel states that Keystone Advisors LLC is an accounting and engineering professional services company that was incorporated in 2009 as a business Keith and Diane Hasty could pass on to their daughters. Aquí Hasty submitted proposals and quotes in Best Foam's name on behalf of Keystone. Jabrea Parham is Keystone's primary point of contact and on February 21, 2011, she misrepresented Keystone as Best Foam simply operating under a different name. However, I do not find the protection of the Government's interests requires the continued ineligibility of the Hasty family members or Keystone Advisors LLC (CAGE 5P6Z2).

Agencies shall accept offers from, award contracts to, and consent to subcontracts with responsible contractors. FAR 9.402(a). To ensure that federal agencies contract only with responsible parties, agencies can debar contractors, as well as individuals, when it is in the public interest based on any of the causes set forth at FAR 9.406-2. Where there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information

in the administrative record, provided the cause for debarment is established by a preponderance of the evidence, and debarment is in the public interest.

In determining whether the Parties should be debarred, I have specifically considered the information and argument raised in the Parties' submissions as it relates to the mitigating factors set forth in the FAR 9.406-1(a). The ten mitigating factors and their relevance to the Parties' submissions are as follows:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as the cause for debarment.

The administrative record does not reflect a standard of conduct, policy, or internal control system during the time of the activity which constitutes cause for debarment.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in the matter.

Respondents did not bring the activity cited as a cause for debarment to the attention of the Government. Respondents' conduct was uncovered by the Government. Respondent's behavior after the involuntary dissolution of their company shows that they repeatedly misled the government into thinking the government was dealing with Best Foam Fabricators.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

The administrative record does not reflect an internal investigation conducted by Respondents.

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

Respondents did not cooperate with Government agencies during this action, because they neglected to follow DLIS and DCMA advice to novate any existing contracts.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative cost incurred by the Government, and has made or agreed to make full restitution.

The contractor has not paid or agreed to pay all criminal, civil, and administrative liability for the improper activity nor has there been any offer of restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

The administrative record does not indicate discipline.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

No offer to implement remedial measures was made by any of the Respondents. At the meeting with the SDO, Respondents offered to remove the CAGE reference from the official name, Keystone Business Advisors of Illinois dba Best Foam 2V686 that is on file with the Illinois Secretary of State.

(8) Whether the contractor has instituted or agreed to institute new or revised control procedures and ethics training programs.

The administrative record does not indicate new or revised control procedures, and contains no information regarding an ethics training program.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

Respondents have had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause of the debarment and has implemented programs to prevent recurrence.

I will grant that the contractor's management now understands the seriousness of the misconduct giving rise to the proposal for debarment. However, Respondents seek to avoid the consequences of their actions by blaming Harris Bank, their bankruptcy law firm, and, to some extent, the Government for Respondents' failure to comply with the Anti-Assignment Act and improper CAGE code transfer.

I have carefully considered the administrative record. The information and argument advanced by Respondents in opposition to the proposed debarment is not sufficient to persuade me that a period of debarment is not necessary to protect the Government. I have determined that the Best Foam companies (CAGE codes 2V686 and 3FTQ6) do not possess the level of responsibility required of those who do business with the Government and that a period of debarment of these two entities is necessary to ensure the full protection of the Government's business interests.

#### FINDINGS

Based on the summary of facts above, I find that:

1. Keystone Advisors of Illinois, LLC dba Best Foam Fabricators 2V686 exhibited a lack of business integrity or business honesty on the part of the company that is so serious and compelling in nature that it affects its present responsibility and provides a cause for debarment, pursuant to FAR 9.406-2(c).

2. Pursuant to FAR 9.406-1(b), debarment may be extended to affiliates of a contractor. FAR 9.403 ("Affiliates.") states that, "Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other or, (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership or principal employees as the contractor that was debarred, suspended, or proposed for debarment." Packaging Recovery LLC is an affiliate of Keystone Advisors. The affiliation of the parties provides a separate and independent cause for debarment, pursuant to FAR 9.406-2 (c).

#### DECISION

Pursuant to the authority contained in Federal Acquisition Regulation (FAR) Subpart 9.4, the Defense FAR Supplement (DFARS) Subpart 209.4, and based upon the administrative record and the findings set forth above, . Keystone Advisors of Illinois, LLC dba Best Foam Fabricators 2V686 (CAGE 2V686) and Packaging Recovery Company (CAGE 3FTQ6) are debarred effective this date. The proposed debarments of the Hasty family members and Keystone Advisors of Illinois, LLC (CAGE 5P6Z2) are terminated. My decision applies to procurement, nonprocurement, and sales contracting and is effective throughout the executive branch of the Federal Government unless the head of the agency taking the contracting action or a designee states in writing the compelling reason for continued business dealings between the agency and Keystone Advisors of Illinois, LLC dba Best Foam Fabricators 2V686 (CAGE 2V686) and Packaging Recovery Company (CAGE 3FTQ6).



WALTER THOMAS  
Special Assistant for  
Contracting Integrity