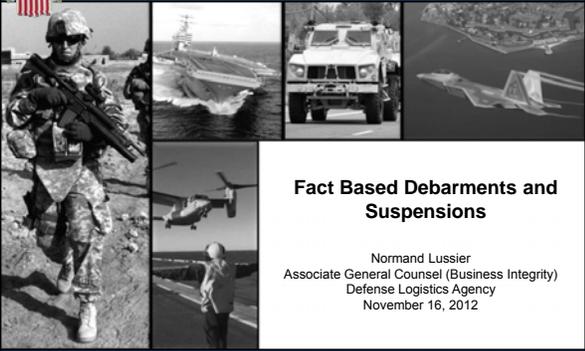


**DEFENSE LOGISTICS AGENCY**  
AMERICA'S COMBAT LOGISTICS SUPPORT AGENCY



**Fact Based Debarments and Suspensions**

Normand Lussier  
Associate General Counsel (Business Integrity)  
Defense Logistics Agency  
November 16, 2012

WARFIGHTER SUPPORT ENHANCEMENT    STEWARDSHIP EXCELLENCE    WORKFORCE DEVELOPMENT

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WARFIGHTER FOCUSED, GLOBALLY RESPONSIVE, FISCALLY RESPONSIBLE SUPPLY CHAIN LEADERSHIP

**Agenda**

- Purpose and Policy of Debarment and Suspension
- Causes for Debarment and Suspension
- Sources of Referral
- Matters in Opposition
- 10-Factor Memo
- Other Considerations
- Examples

WARFIGHTER SUPPORT ENHANCEMENT    STEWARDSHIP EXCELLENCE    WORKFORCE DEVELOPMENT 2

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**Purpose of Debarment and Suspension**

- To protect the Government's business interests and not for punishment
- The SDO evaluates the present responsibility of a contractor to do business with the Federal Government

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### Causes for Debarment (FAR 9.406-2)

- Conviction or Civil Judgment
- Preponderance of the Evidence for:
  - Willful failure to perform IAW the terms of one or more contracts
  - History of failure to perform on one or more contracts
  - Violation of Drug-Free Workplace, delinquent taxes, etc.
- Any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor

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### Causes for Suspension (FAR 9.407-2)

- Adequate Evidence of:
  - Commission of fraud or criminal offense
  - Violation of antitrust statute
  - Embezzlement, theft, forgery, etc.
  - Violation of Drug-Free Workplace
  - Lying about "Made in America"
  - Commission of unfair trade practice
  - Delinquent taxes
  - Knowing failure to disclose fraud, False Claims Act violation, or overpayment on a Government contract
  - Indictment
  - Any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor

WARFIGHTER SUPPORT ENHANCEMENT      STEWARDSHIP EXCELLENCE      WORKFORCE DEVELOPMENT 5

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### Sources of Referral

- Contracting and acquisition personnel
- Quality assurance representatives/specialists
- DCMA/Contract Administrators/CORs
- Law Enforcement and OIG personnel
- Contractors (competitors)
- Auditing personnel
- Mandatory Disclosure submissions
- DLA Product Test Center Reports
- Product Quality Deficiency Reports
- DOJ press releases
- Google searches
- Newspapers and magazines (the press)

WARFIGHTER SUPPORT ENHANCEMENT      STEWARDSHIP EXCELLENCE      WORKFORCE DEVELOPMENT 6

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### 10-Factor Memo (FAR 9.406-1(a))

- Address/discuss each factor
- Okay to say that the contractor has met the standard in the factor and still debar
- “Generally” debarment should not exceed 3 years
- The suspension period shall be considered in determining debarment term
- Reason(s) for a term longer than 3 years should be stated in the memo

WARFIGHTER SUPPORT ENHANCEMENT      STEWARDSHIP EXCELLENCE      WORKFORCE DEVELOPMENT 7

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### Other Considerations

- Suspensions without legal proceedings are limited to 12 months plus a 6 month extension (total of 18 months); additional facts needed to propose for debarment
- Fact-based debarments are easier to process for non-performance in purchase of “things” than the purchase of services
- Burden shifting
- Affiliation and “short-form” Notices of Proposed Debarments

WARFIGHTER SUPPORT ENHANCEMENT      STEWARDSHIP EXCELLENCE      WORKFORCE DEVELOPMENT 8

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WARFIGHTER-FOCUSED, GLOBALLY RESPONSIVE, FISCALLY RESPONSIBLE SUPPLY CHAIN LEADERSHIP



### Ineligibility Examples

- Non-OEM & Counterfeit Parts: Kustom Products (DLA Land & Maritime Columbus and DLA Aviation Richmond)
- Falsified Certifications: Global Engineering Exchange (DCMA)
- Nonperformance: Emerson Company (DLA Troop Support Philadelphia)
- Affiliation: American Grocers (DLA Troop Support Philadelphia)

WARFIGHTER SUPPORT ENHANCEMENT      STEWARDSHIP EXCELLENCE      WORKFORCE DEVELOPMENT 9

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### Non-OEM & Counterfeit Parts: Kustom Products

- March 2010 ~ Proposed for debarment for non-OEM truck filters – submitted generic vice brand name specified
- July 2010 ~ Company lawyered up, good presentation resulted in debarment for eighteen months; mitigated when company said it learned its lesson
- September 2010 ~ Search warrant executed based on DCIS special agent affidavit
- June 2011 ~ Company proposed for extension of debarment for counterfeit aviation rotor locknuts
- October 2011 ~ Different lawyers; debarred for 10 years
- December 2011 ~ DOJ indicted company and individuals

WARFIGHTER SUPPORT ENHANCEMENT      STEWARDSHIP EXCELLENCE      WORKFORCE DEVELOPMENT 10

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### Counterfeit Parts: Kustom Products visually almost identical



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### Global Engineering Exchange

- Global Engineering demonstrated a willful failure to perform in accordance with the terms of one or more contracts by submitting false certifications.
- Recycled old certifications by changing the dates to demonstrate heat treating was performed when it had not been performed.
- Debarred for three years.

WARFIGHTER SUPPORT ENHANCEMENT      STEWARDSHIP EXCELLENCE      WORKFORCE DEVELOPMENT 12

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WARFIGHTER-FOCUSED, GLOBALLY RESPONSIVE, FISCALLY RESPONSIBLE SUPPLY CHAIN LEADERSHIP



## American Grocers

- Employee filed False Claims Act case (qui tam) against American Grocers for selling expired food and other wrongdoing
- Company owner and other company principles (including wife) indicted

WARFIGHTER SUPPORT ENHANCEMENT      STEWARDSHIP EXCELLENCE      WORKFORCE DEVELOPMENT 16

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WARFIGHTER-FOCUSED, GLOBALLY RESPONSIVE, FISCALLY RESPONSIBLE SUPPLY CHAIN LEADERSHIP



## American Grocers: The Fraud

- American Grocers (AG) purchased food products at “deal price” if they were near or past the end of their shelf life and sold them to DLA/military customers at full price.
- When products arrived at AG’s warehouse, the owner instructed employees to check expiration dates, if any, located on products.
- The owner instructed employees to [eradicate and alter dates](#) to conceal the true expiration date of the product.
- Dating information was often printed in ink or embossed on the package or outer box; the date was then removed at the owner’s instruction with acetone, spray paint hand-held tool.

Photo of acetone taken at AG Warehouse.



WARFIGHTER SUPPORT ENHANCEMENT      STEWARDSHIP EXCELLENCE      WORKFORCE DEVELOPMENT 17

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WARFIGHTER-FOCUSED, GLOBALLY RESPONSIVE, FISCALLY RESPONSIBLE SUPPLY CHAIN LEADERSHIP



## American Grocers: The Fraud

Additionally, American Grocers:

- Falsified Kosher certifications
- Falsified Halal certifications
- Falsified USDA health certifications

WARFIGHTER SUPPORT ENHANCEMENT      STEWARDSHIP EXCELLENCE      WORKFORCE DEVELOPMENT 18

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### Eradicating Product Dates with Spray Paint

- AG used spray paint to eradicate [product dates](#) on outer packaging.

Photo of eradicated product date taken at AG warehouse.



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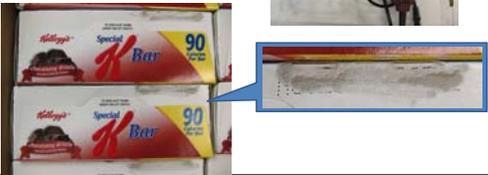
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### Eradicating Product Dates with Hand-Held Tools

- AG purchased and used specialized, hand-held tools to eradicate embossed product dates.



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### Smuckers Syrup – “ERASABLE”

“ERASABLE”



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### What DOJ Accomplished

- Pursuant to plea agreement, only husband convicted
- Samir Itani sentenced: 24 months; \$100,000 fine
- False Claims Act case settled for \$15 million
- Family kept \$1 million+ house in Texas
- Businesses kept operating

WARFIGHTER SUPPORT ENHANCEMENT    STEWARDSHIP EXCELLENCE    WORKFORCE DEVELOPMENT 25

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### Affiliation: American Grocers

- DLA considered changing the date on food for the warfighter as aggravation
- Debarment period of 15 years (until 2026)
- DLA affiliated all businesses, along with the wife and children serving as company officers
- The family still tries to do business with DoD; still applies to State for export licenses
- DLA shared all information with USDA

WARFIGHTER SUPPORT ENHANCEMENT    STEWARDSHIP EXCELLENCE    WORKFORCE DEVELOPMENT 26

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### Questions?

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WARFIGHTER-FOCUSED, GLOBALLY RESPONSIVE, FISCALLY RESPONSIBLE SUPPLY CHAIN LEADERSHIP



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WARFIGHTER SUPPORT ENHANCEMENT    STEWARDSHIP EXCELLENCE    WORKFORCE DEVELOPMENT 28

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