



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22203-1813

JUN 16 2010

Office of the Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

HELIMED LIMITED
GERARD CHRISTOPHER SHIEL

On November 25, 2009, the Air Force proposed the debarments of Helimed Limited ("Helimed"), and Gerard Christopher Shiel ("Shiel", together "Respondents") from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. The actions were initiated pursuant to Federal Acquisition Regulation (FAR) Subpart 9.4.

By correspondence dated December 22, 2009, the Respondents submitted a general denial in opposition to the proposed debarments. By correspondence dated December 23, 2009, the Air Force requested that Helimed submit evidence that (1) Shiel was not asked by Hummingbird Aviation, LLC ("Hummingbird") CEO Charles Priestly ("Priestly") to enter into a backdated lease agreement; (2) that Shiel refused such a request; and (3) that the signature on the backdated lease agreement was not Shiel's. Helimed has not responded to that request.

All matters and arguments in opposition to the proposed debarments ("the Submission") on behalf of Respondents, and all information in the administrative record ("the Record"), have been read and carefully considered.

INFORMATION IN THE RECORD

Information in the record indicates that at all times relevant here:

1. Hummingbird is a limited liability corporation based in Connecticut, with its principal place of business in Hammond, Louisiana. The company offers a variety of helicopter services, including rentals and sales, and contracted with U.S. Transportation Command ("USTRANSCOM") to provide helicopter services in Afghanistan in 2007. Priestly is the CEO of Hummingbird.
2. Helimed is a foreign corporation based in Ireland and operating primarily in Galway that provides helicopter services, including helicopter storage space. Shiel is the CEO of Helimed.
3. USTRANSCOM contracted with Hummingbird for helicopter services in Afghanistan on October 1, 2007. To provide these services, Hummingbird subcontracted with Helimed to rent a Sikorsky S-61 helicopter ("the helicopter"). Hummingbird memorialized the terms of the subcontract in a Helicopter Lease Agreement ("the lease") with Helimed. The lease was initially signed by Priestly and Shiel on November 29, 2007, but was not shown to USTRANSCOM at this time. The lease stated that Hummingbird would pay Helimed \$150,000 per month for the helicopter rent.

4. Helimed performed its obligations under the lease, successfully acquiring and storing the helicopter. However, Hummingbird failed to complete its independent obligation to obtain the required FAA clearance to operate the helicopter in Afghanistan. As such, Hummingbird was unable to perform its contractual obligations for USTRANSCOM. USTRANSCOM terminated the contract for convenience. Formal notification of the termination was sent to Hummingbird on February 14, 2008, and final modification of the contract was effective April 9, 2008.

5. On December 11, 2007, Priestly emailed Shiel to request that they backdate their lease contract from November 29, 2007 to August 31, 2007. Priestly stated in this email that, “[t]his would help me and in a month, or so, might net us both a little extra cash.” Priestly also stated that he backdated the contract to encourage the FAA to approve their helicopters, as FAA tended to look favorably upon leases that had been in place longer and that backdating the lease would help Hummingbird “with getting up higher in the cue [sic] with the FAA to get a priority.”¹

6. During the course of contract termination, Hummingbird requested payments from USTRANSCOM to allow the small business to continue operating, in accordance with FAR 49.503. This request included reimbursement for the lease payments Priestly stated had been made to Helimed based on the backdated lease. USTRANSCOM asked that Priestly provide USTRANSCOM with receipts for the lease payments to Helimed. Priestly indicated by email that he did not “get receipts for making lease payments,” but that he would and did produce the August 31, 2007 backdated lease. The lease appeared to contain the signatures of both Priestly and Shiel. Unaware that the lease was backdated and relying on the lease as evidence of the duration of Hummingbird’s obligation to Helimed, USTRANSCOM overpaid Hummingbird by \$300,000 for rent for October and November 2007.

7. Helimed did not receive payment from Hummingbird for its services from December 2007 through April 2008, when Hummingbird’s contract was formally terminated for convenience. In December 2008, Helimed sued Hummingbird in the U.S. District Court for the Eastern District of Louisiana for breach of contract. This suit asks for the enforcement of the November 29, 2007 non-backdated lease agreement and does not include the \$300,000 for rent from October and November 2007 for which USTRANSCOM paid Hummingbird.

ANALYSIS

In their December 22, 2009 general denial, filed by counsel without a supporting declaration. Respondents raise five defenses to the proposed debarment. First, Respondents argue that neither Shiel nor Helimed were parties to a contract with the United States Government, thus invalidating the proposed debarment. This argument fails on the grounds that both Shiel and Helimed qualify as contractors under FAR 9.403, which defines a “Contractor” as “any individual or other legal entity that-

¹ Priestly made this statement in a deposition taken on March 31, 2009 in connection with the litigation between Hummingbird and Helimed in U.S. District Court for the Eastern District of Louisiana (Civil Action No. 08-5062-AJM-DEK).

- (1) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or
- (2) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

As contractors, Shiel and Helimed are subject to suspension and/or debarment under FAR Part 9.4.

Second, Respondents assert that the "true agreement" between Helimed and Hummingbird was dated November 29, 2007. However, the viability of their November 29, 2007 agreement is immaterial to the questions of whether Priestly requested that Shiel backdate their lease agreement to August 31, 2007, whether Shiel refused such a request, and whether Shiel executed a backdated agreement.

Third, Respondents argue that they were unaware that Hummingbird submitted a backdated lease agreement until September 23, 2009. As Respondents admit in the Submission, on December 11, 2007, Shiel received the aforementioned email request from Priestly that Helimed backdate its lease agreement with Hummingbird. Thus, not only does the administrative record demonstrate that Respondents should have been aware that a backdated lease agreement would be submitted, but, in addition, absent evidence to the contrary the Air Force can reasonably draw such an inference.

Fourth, Respondents assert that Shiel did not execute the backdated lease agreement. On December 23, 2009, this office requested via email that Respondents provide additional information to support this claim. Respondents have been silent since this request was made. Without the requested additional information, the Air Force has no choice but to draw the adverse inference that Shiel applied his signature to the backdated lease agreement.

Fifth, Respondents emphasize that Helimed did not invoice Hummingbird for the months of September 2007, October 2007, or November 2007, and that Helimed was never paid for any of the months during which the helicopter was under lease to Hummingbird. As with the foregoing arguments, neither of these assertions demonstrates that Shiel refused Priestly's request to enter into, and did not execute, a backdated lease agreement. Ultimately, Respondents have failed to demonstrate their present responsibility.

FINDINGS

1. The improper conduct of Helimed and Shiel is of so serious or compelling a nature that it affects their present responsibility to be Government contractors or subcontractors and provides a basis for their debarments pursuant to FAR 9.406-2(c).
2. The seriously improper conduct of Shiel may be imputed to Helimed, pursuant to FAR 9.406-5(a), because the seriously improper conduct occurred in connection with the performance of duties for or on behalf of Helimed or with the knowledge, approval, or acquiescence of

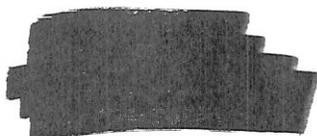
Helimed. The imputation of Shiel's seriously improper conduct to Helimed provides a separate and independent cause for its debarment.

3. The seriously improper conduct of Helimed may be imputed to Shiel pursuant to FAR 9.406-5(b), because as an officer, director, shareholder, partner, employee, or other individual associated with Helimed, Shiel participated in, knew of, or had reason to know of Helimed's seriously improper conduct. The imputation of Helimed's seriously improper conduct to Shiel provides a separate and independent cause for his debarment.

4. Helimed and Shiel are affiliates as defined by FAR 9.403, since Shiel either owns and/or controls Helimed. That affiliation provides a basis for the debarment of Helimed and Shiel, pursuant to FAR 9.406-1(b).

DECISION

Pursuant to the authority granted by FAR Subpart 9.4, Defense FAR Supplement, subpart 209.4, and 32 C.F.R., Section 25, and based on the evidence contained in the administrative record and findings herein, Shiel and Helimed are debarred for a period of three years from November 25, 2009, the date Shiel and Helimed were proposed for debarment. The debarments shall terminate on November 24, 2012.



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)