



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22203-1613

DEC 16 2010

Office of the Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

ADVANCED BUSINESS MANAGEMENT SERVICES, INC. (a/k/a ABMS)
CRAIG JACKSON
SANDERS CONSTRUCTION, INC.
SANDERS ENGINEERING CO., INC.
SANDERS MANAGEMENT SERVICES (d.b.a. SMS)
SANDERS MANAGEMENT SERVICES CO., INC.
SM PARTNERSHIP

On September 23, 2009 the Air Force suspended Advanced Business Management Services, Inc. (a/k/a ABMS), Craig Jackson, Sanders Construction, Inc., Sanders Engineering Co., Inc., Sanders Management Services (d.b.a. SMS), Sanders Management Services Co., Inc., and SM Partnership (together, "Respondents"), and others, from Government contracting and from directly or indirectly receiving the benefits of Federal assistance programs. Respondents submitted arguments in opposition to the suspension. In order to provide credit to the Respondents for some of their arguments and to clarify the Air Force's concerns about Respondents' present responsibility, on November 24, 2009 the Air Force superseded Respondents' suspensions, along with several others. Respondents submitted arguments in opposition to the superseding suspensions. These arguments were insufficient to demonstrate present responsibility. On September 14, 2010, the Air Force terminated Respondents' suspensions and proposed them for debarment 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 October 27, 2010, Respondents presented information and argument in opposition to the proposed debarments through legal counsel. On December 1, 2010, the Administrative Record closed. I have read and carefully considered all information in the Administrative Record, including all prior submissions by the Respondents since their September 23, 2009, suspensions.

INFORMATION IN THE RECORD

The Administrative Record establishes by a preponderance of the evidence that at all times relevant hereto:

1. Craig Jackson is the President and Treasurer of Sanders Engineering Co., Inc., a Yorba Linda, California-based company, and held titles, positions of responsibility and/or had substantial influence with a number of additional companies including but not limited to Advanced Business Management Services, Inc. (a/k/a ABMS), Sanders Construction, Inc., Sanders Management Services (d.b.a. SMS), Sanders Management Services Co., Inc. and SM Partnership.

2. Advanced Business Management Services, Inc. (a/k/a ABMS), Sanders Construction, Inc., Sanders Engineering Co., Inc., Sanders Management Services (d.b.a SMS), Sanders Management Services Co., Inc. and SM Partnership (together, the "Corporate Respondents"), along with several other entities, provided extensive services to U.S. Small Business Administration (SBA) 8(a) Program company clients, including marketing, proposal development, accounting, bookkeeping, payroll services, complete financial management¹, bonding, financial support, customer relationship management, contract management, shared office space, staffing assistance, and leasing personnel. These services were provided pursuant to teaming agreements, business services agreements, management services agreements, and marketing agreements between the Respondents and their clients. Taken together, these standard form agreements had the effect of turning over substantially all operations of Respondents' 8(a) Program clients to the Respondents.

3. The agreements between the Respondents and their 8(a) Program clients were structured to conceal the Respondents' substantial and direct role in the daily operations of their 8(a) Program company clients. For example, many of the Respondents' employees were dual- or multiple-hatted so that they appeared to work for Alaska Native Corporation-owned entities rather than for the Respondents. The reasons for the use of the front companies and multiple-hatting of employees evidenced in the Administrative Record include, but are not limited to:

- a. actively concealing from the SBA relationships among the Respondents and their 8(a) Program company clients in order for the client companies to enjoy continued eligibility for hundreds of millions of dollars in 8(a) Program set-aside contracts when disclosing that information may have rendered Respondents ineligible for new awards²; and,
- b. structuring business relationships in order to appear to operate at the edges of permissible behavior under the 8(a) Program (e.g., making business relationships appear to be with ANC-owned entities in order to take advantage of special ANC-related rules for the 8(a) Program and then later instructing employees to deny ever having any association with an ANC-owned entity; or using semantic differences in agreement terminology to provide a rationale for failing to disclose the agreements to the SBA).

4. Craig Jackson established a bank account in the name of an 8(a) Program company client, called a "slush" account by at least one of the Respondents' prominent, former employees. For years, up to 2009, slush account bank statements were delivered to the owner of the 8(a) Program company client, who then delivered the unopened statements to Craig Jackson every month. The slush account was used in part to provide additional, unreported, monthly cash payments to

¹ The Administrative Record establishes the degree of financial control to include control over check-writing, control over bank accounts, and control over financial accounting and reporting functions to such a degree that, in certain cases, client companies had little visibility into their finances and were surprised by the unexplained sums of money flowing into and out of their bank accounts.

² Respondents benefitted from these contracts as well, including by receiving substantial portions of contract revenues, often up to and exceeding 50 percent.

Respondents' employees and to family members of Craig Jackson. These "under the table" payments evidence a lack of present responsibility.

5. Respondents would shift large sums – occasionally more than \$1 million – between bank accounts of various 8(a) Program client companies for short periods of time without any apparent explanation or business purpose and without the knowledge of the client company. These are significant sums of money for such small businesses which, when coupled with the client companies' lack of knowledge about the transactions, raise questions about the propriety of the transactions, Respondents' ability to safeguard or otherwise use their clients' funds, and Respondents' present responsibility.

RESPONDENTS' SUBMISSION

Through counsel, Respondents submitted information and argument in opposition to their proposed debarments. Respondents argued: (1) the proposed debarments are part of an "ongoing campaign" to malign Respondents; (2) Craig Jackson is a successful and nationally-recognized businessman focusing on helping disadvantaged businesses; (3) the relationship between one Respondent, Sanders Engineering, and one 8(a) Program client was disclosed to the SBA; (4) the Air Force's issuance of a superseding suspension in November 2009 after the initial suspension in September 2009 was improper, unfair and evidences "selective" treatment; (5) the Air Force suspension and proposed debarment actions usurp the SBA's authority; (6) the evidence in the record is insufficient to justify administrative action; and, (7) the Air Force has failed to consider mitigating factors. The Air Force reviewed and carefully considered this submission, along with all other submissions made by Respondents since their September 23, 2009 suspension.

ANALYSIS

Agencies 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 Subpart 9.402(a).

The primary focus of a present responsibility inquiry is to determine whether a contractor has the requisite honesty and business integrity to contract with the Government. Contractors provide vital services for the Government including, in this case, supporting the Department of Defense's mission. The Government must be able to trust that contractors will interact honestly and appropriately with their Government customers. Respondents have repeatedly failed to grasp this fundamental point.

In this case, a preponderance of the evidence establishes that Respondents engaged in conduct that ranges from seriously improper, to unquestionably displaying a lack of honesty and business integrity, to likely illegal. Respondents have repeatedly failed to offer any persuasive

evidence to support their arguments or refute the evidence in the Administrative Record.³ Respondents have also refused to engage in any direct communication with the Air Force concerning their present responsibility and have called Air Force invitations for their clients to engage in such a dialogue “highly inappropriate.”⁴ Respondents have also failed to offer any evidence concerning their present responsibility (*i.e.*, Respondents have not offered any evidence addressing the mitigating factors and remedial measures set forth at FAR 9.406-1(a)). In light of these substantial limitations, Respondents’ arguments are for the most part irrelevant, or, where relevant, miss the mark. The focus in a debarment action is whether there exists a need to protect the Government’s interests from non-responsible contractors. FAR 9.402(b). In this case, a preponderance of the evidence establishes a need to protect the Government from the Respondents who lack sufficient business integrity and honesty to be presently responsible business partners. This evidence remains un rebutted and, in many cases, unaddressed by the Respondents.

Respondents’ Conduct Reflects a Lack of Business Integrity

Notwithstanding Respondents’ repeated assertions that there is no basis for any administrative action by the Air Force, there are sufficient undisputed material facts with which to decide this action. Among them is that Craig Jackson established, received statements for, and used a “slush” account in part to provide additional, unreported, monthly cash payments to Respondents’ employees and to his family members. The evidence in the Administrative Record takes the form of summaries of federal law enforcement interviews with two separate Sanders Engineering employees and each corroborates the other.⁵ Respondents have not offered any evidence concerning a proper business purpose for this “slush” account. Respondents only challenge this evidence as uncorroborated hearsay, and insufficient to form a factual predicate for debarment. This argument lacks merit. Corroborating evidence, taken from two separate federal law enforcement interviews with two separate Sanders Engineering employees, exists in the record and that evidence is not countered by any evidence at all from Respondents. The interview summaries are more than enough to establish the fact of the “slush” account by a preponderance of the evidence. Assuming *arguendo* that every other fact in the Administrative Record had been effectively countered by Respondents (they have not been), this fact, standing alone, would evidence a lack of honesty and business integrity and would require Respondents’ debarment.

³ The only evidence submitted arrived in the form of a brief letter from the president of one of Respondents’ 8(a) Program company clients to Don Mitchell, the district Director for the SBA’s Santa Ana office, and a document that purports to be Mr. Mitchell’s response to that letter acknowledging awareness of a business relationship between that one client and one of the Respondents, Sanders Engineering. However, the purported response from Mr. Mitchell is not on SBA letterhead, which would have been required when the SBA issued any decisions or external correspondence, and there is no record of this purported response from Mr. Mitchell in SBA files regarding the 8(a) Program contractor involved. Accordingly, I find this letter to have minimal probative value and afford it minimal weight. Even if it is viewed in the light most favorable to the Respondents, it is evidence of unofficial acknowledgement by one SBA employee of one business relationship between one Respondent and one 8(a) Program company client. It is insufficient to counter the preponderance of evidence in the Administrative Record.

⁴ March 11, 2010 Letter at p. 2.

⁵ “In mid 2010, specific information provided by the former Sanders employee, above, was corroborated by a second former employee, who stated the following” August 11, 2010 email from a Department of Defense Inspector General investigator at p. 1.

Additional undisputed material facts sufficient to support debarments include an August 20, 2009 memorandum for AFMC/LO from Air Force Office of Special Investigations at Eglin AFB that stated that the evidence as of that date:

[R]evealed a . . . scheme to defraud the SBA/DoD using numerous companies set up by, and/or influenced by Craig Jackson. The evidence gathered to date reflects the following facts:

- 1) [Craig Jackson or an affiliate of his], through their conglomeration of associated 8(a) companies, have been awarded an estimated \$700 million in government contracts using the SBA program, while providing the SBA with a series of false statements, intentional omissions, hidden ownership interests, and illegal control of government certified minority owned small businesses;
- 2) Craig Jackson elicited the aid of family members, friends, and associated to set up 8(a) companies while maintaining active control over those business entities

As indicated in the Air Force's May 20, 2010 letter denying the request to terminate the suspensions, negating just the evidence in the August 20, 2009 memorandum from the Air Force Office of Special Investigations would require Respondents to submit evidence establishing that they did not make false statements and intentional omissions, or hide ownership interests or maintain illegal control of government certified minority owned small businesses. Respondents have done none of this, and have elected not to submit any evidence whatsoever. In making this choice, this evidence of misconduct remains uncontested.

Respondents' Arguments Concerning the Air Force Usurping the SBA's Power to Issue Size Determinations Miss the Point

As indicated in numerous communications to Respondents from the Air Force, Respondents' legal arguments concerning size determinations miss the point.⁶ As made abundantly clear in the November 24, 2009, superseding suspension (which issued to bring the Air Force's concerns into sharper focus and to give Respondents credit for demonstrating that at least one of the initial bases for their suspension was off the mark), Respondents and their clients:

deprived the SBA of affiliation and size information material to the 8(a) Program companies' eligibility for membership in the 8(a) Program. Had the SBA received proper information, it *could have concluded* that . . .

⁶ The prior correspondence from the Air Force is incorporated herein by reference.

[Respondents' clients] were no longer eligible [for 8(a) Program contract awards].⁷

The Air Force has not “attempted to deem 8(a) companies ineligible for award” or otherwise sought to “usurp the SBA’s sole and exclusive authority” in making size determinations.⁸ The point, which Respondents repeatedly, and perhaps conveniently, fail to address, is that Respondents and their clients failed to provide the SBA with the necessary – and required – information to make size determinations and that failure reflects a lack of business integrity impacting negatively the Respondents’ present responsibility. The suspension and debarment rubric unquestionably provides agencies with the discretion to make business judgments concerning the present responsibility of its contractors and doing so in no way usurps the authority of other agencies.⁹

Similarly, Respondents’ legal analysis of SBA case law does not address, much less defeat this fundamental point. Although the Respondents have cited SBA case law indicating that the SBA has refused to find affiliations where service providers offer administrative services, or shared office space, or bonding assistance, or business advice, or assistance in obtaining contracts, or signature authority over bank accounts, none of the cases address how the SBA has ruled when, as here, a service provider offers all of these services together. None of the case law is sufficient to overcome the evidence that the SBA could have found affiliations in this case had the relationships been properly disclosed. Furthermore, the case law analysis is irrelevant. Without successfully refuting the evidence of a concerted effort to conceal these business arrangements from the SBA, an analysis of the effects of such disclosure is premature.¹⁰

⁷ November 24, 2009 Superseding Suspension Memo at para. 15 (emphasis added).

⁸ October 27, 2010 Response, p. 5.

⁹ Respondents point to a 1979 GAO decision, Opalack & Co., B-193634 (May 8, 1979), in an attempt to argue that the Air Force does not have the power to suspend or debar Respondents. October 27, 2010 response at p. 6. This argument fails for a multitude of reasons, including the following. First, Respondents have repeatedly argued that, during the time at issue, they were not “small” or otherwise competing for 8(a) Program contract awards and had no duty to engage with or disclose information to the SBA. Respondents cannot now claim that only the SBA – the very agency with which Respondents claim to have no involvement and no engagement – may suspend or debar them. This argument is disingenuous, could be considered an attempt to “game the system,” and could in itself be considered evidence of a lack of present responsibility. Second, Opalack deals with responsibility determinations made under the rubric of FAR Subpart 9.1 (pre-award, contracting officer responsibility determinations) where this case deals with suspension and debarment under FAR Subpart 9.4. Third, although the Air Force in no way concedes that the SBA has sole suspension and debarment authority over small disadvantaged businesses, the Air Force did present its concerns to the SBA through the Interagency Suspension and Debarment Committee lead agency process. Through that process, the SBA deferred lead agency for suspension and debarment to the Air Force.

¹⁰ See November 24, 2010 superseding suspension memorandum, page 3, para. 11, for a discussion of the SBA’s totality of the circumstances approach to assessing size.

Respondents' Arguments Concerning the Weight and Sufficiency of the Evidence in the Administrative Record Similarly Miss the Point

Respondents spend significant time and energy attacking the weight and sufficiency of the evidence in the Administrative Record.¹¹ Respondents press this point with a near complete lack of supporting evidence of their own. By way of example, the Administrative Record in this case is inches thick and demonstrates the facts by a preponderance of the evidence, while Respondents' only evidence, when considered in the light most favorable to them, is a single, unofficial acknowledgement by one SBA employee of one business relationship between one Respondent and one 8(a) Program client. That is substantially too narrow to refute the Air Force's present responsibility concerns and is insufficient to counter the preponderance of evidence in the Administrative Record.

Respondents Have Been Given Credit for Arguments That Were or Could Be Adequately Supported

Contrary to Respondents' arguments that they are being treated unfairly, throughout the suspension and proposed debarment processes they have been provided credit for legally sound arguments or for facts that could be verified. For one recent example, although Respondents do not support their representation that Sanders Engineering's relationship with a Colorado-based provider of contract evaluation and analysis software is not a conflict of interest¹², the Air Force received substantial documentation from that software provider in response to a Show Cause Letter that demonstrated that an apparent, rather than an actual, conflict of interest existed. Accordingly, although Respondents did not meet their burden on this point, the Air Force nonetheless accepts Respondents' representations and finds that no actual conflict of interest existed with the Colorado-based contractor. However, this is merely one fact and one basis for Respondents' proposed debarments. The Air Force's concerns regarding the Respondents' present responsibility are substantially more broad.

Additionally, the Air Force has credited the Respondents for their argument that the evidence in the Administrative Record that "under the table" payments from a "slush fund" established by Craig Jackson constitute undeclared tax liabilities.¹³ Accordingly, the existence or non-existence of a tax liability, declared or otherwise, is not considered as evidence in support of debarment.

The Air Force also credited some of Respondents' early arguments, including the legal arguments concerning control of Alaska Native Corporations, and superseded the September 23, 2009 suspension in part to reflect that credit.

There is simply no support for Respondents' arguments regarding their perceived unfair treatment.

¹¹ See October 27, 2010 response pp. 8 – 12, 13 – 15.

¹² See October 27, 2010 response pp. 12 – 13.

¹³ See para. 4, above.

Mitigating Factors

FAR Subpart 9.4 requires that the mitigating factors and remedial measures be considered during the debarment phase and not before, and places the burden of demonstrating present responsibility after a proposed debarment on the Respondents.¹⁴ Accordingly:

- The Respondents have not presented any evidence establishing that they had effective standards of conduct and internal control systems in place at the time of the activity that is the cause for debarment, or that Respondents have ever adopted such systems.
- The Respondents have not presented any evidence that they timely disclosed the activity forming the basis for the debarment to appropriate Government officials.¹⁵
- The Respondents have not presented any evidence that they have fully investigated the circumstances surrounding the cause for debarment, notwithstanding the fact that they were on notice of the Government investigation at the very latest in September 2009.
- The Respondents have not presented any evidence that they cooperated fully with the Government agencies during the investigation.
- The Respondents have not presented any evidence that they have considered making restitution to the Government.
- The Respondents have not presented any evidence that they disciplined the individuals responsible for the activity that is the cause of the debarment.
- The Respondents have not presented any evidence that they have instituted or will institute remedial measures to prevent a recurrence of the conduct forming the basis for the debarment.
- The Respondents have not presented any evidence that they have instituted or agreed to institute new or revised internal control procedures or ethics training programs.
- The Respondents have not presented any evidence that they have had sufficient time to eliminate the circumstances that led to the cause of the debarment.

¹⁴ Compare FAR Subparts 9.406-1(a) (“should consider” remedial measures during debarment analysis) and FAR Subpart 9.407-1(b)(2) (“may, but is not required to, consider remedial measures or mitigating factors” during suspension analysis); FAR 9.406-1(a) (“if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.”)

¹⁵ As indicated at note 3, supra, the only evidence presented by Respondents is unpersuasive on this point.

- The Respondents have not presented any evidence that their management, including Craig Jackson, recognizes and understands the seriousness of the misconduct giving rise to the debarment.

In summary, Respondents have not met their burden, and indeed have presented no evidence demonstrating their present responsibility. Their counsel only claims, without supporting why these claims are relevant to the misconduct at issue, that Respondents have strong histories of civic involvement, community development awards, and assistance to small businesses and native peoples.¹⁶ While these are laudable standing alone, they do not in any way address the misconduct at issue here. Therefore, they cannot be considered “mitigating” or “remedial” and I do not find that they impact this debarment analysis.¹⁷

FINDINGS

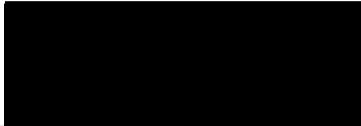
1. Respondents’ improper conduct is of so serious or compelling a nature that it affects their present responsibility to be Government contractors or subcontractors and provides a basis for each of their debarments pursuant to FAR 9.406-2(c).
2. Pursuant to FAR 9.406-5(a), the improper conduct of Craig Jackson may be imputed to the Corporate Respondents because his improper conduct occurred in connection with the performance of his duties for or on behalf of the Corporate Respondents, or with the knowledge, approval, or acquiescence of the Corporate Respondents. The imputation of Craig Jackson’s conduct provides a separate independent basis for the debarments of the Corporate Respondents.
3. Pursuant to FAR 9.406-5(b), the improper conduct of the Corporate Respondents is imputed to Craig Jackson because as an officer, director, shareholder, partner, employee or other person associated with the Corporate Respondents, Craig Jackson knew or had reason to know of the Corporate Respondents’ improper conduct. The imputation of the Corporate Respondents’ improper conduct to Craig Jackson provides a separate independent basis for his debarment.
4. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates of a contractor. Craig Jackson is an affiliate of the Corporate Respondents as defined at FAR 9.403 (Affiliates), because directly or indirectly, Craig Jackson has power to control the Corporate Respondents. The affiliation of Craig Jackson and the Corporate Respondents provides a separate independent basis for each of their debarments.

¹⁶ See October 27, 2010 submission, p. 15.

¹⁷ Additionally, although Respondents caption their displeasure that the Air Force issued a superseding suspension in November 2009 as a mitigating factor, it is neither mitigating nor remedial in nature and has no bearing on the present responsibility analysis. See October 27, 2010 submission, pp. 17 – 18. The reason for the superseding suspension is provided on page 4.

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 the findings herein, Respondents are debarred. Respondents' misconduct is egregious, as is the persistent failure to engage in any mitigating or remedial actions and the complete refusal to engage with the Air Force in any discussion of their present responsibility. Therefore, Respondents' suspension terms will not be credited towards their debarment periods. Accordingly Respondents are debarred for a period of three years from September 14, 2010, the date of their proposed debarments. Their debarments shall terminate on September 13, 2013.



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)