

ADMINISTRATIVE AGREEMENT

This Administrative Agreement (Agreement) dated 9-2-11, is made between ComCon Technologies, Inc. (ComCon or Company) and the United States Department of the Air Force.

PREAMBLE

1. ComCon is a business incorporated in the State of Delaware with its principal executive office located in Mililani, Hawaii.
2. On March 10, 2011, the Air Force proposed for debarment ComCon and Rojelio Herrera, Jr., one of its owners and Executive Vice President of the Company. The proposed debarments were based on the improper conduct described in the Memorandum In Support of the Proposed Debarments, which included but is not limited to:
 - a. ComCon misinterpreted an Air Force employee's post-Government employment clearance letter, which authorized him to accept employment with ComCon following his separation from the Air Force, as authorizing the employee to assist ComCon in preparing its proposal for an Air Force program while he was employed with the Air Force;
 - b. ComCon, in its efforts to prepare a successful proposal in response to an Air Force contract solicitation, collaborated with an Air Force employee regarding the employee's prior work on the program subject to the solicitation, obtained non-public information from the employee regarding the program, and permitted the employee to assist it in preparing its proposal;
 - c. ComCon hired another individual to serve as its representative to Government customers and provided the individual with a false title in order to mislead its Government customers into believing the individual played a larger role within ComCon and had greater authority; and
 - d. ComCon employed an individual that was proposed for debarment and ultimately debarred by the Air Force as its representative to Government customers in direct violation of Federal Acquisition Regulation (FAR) Subpart 9.4.

(The Notices of Proposed Debarment and Memorandum In Support of the Proposed Debarments are incorporated herein by reference and attached as Exhibit A.)
3. ComCon has admitted to engaging in the improper conduct described above and further acknowledged that there are multiple bases for its proposed debarment under the standards of FAR Subpart 9.4.
4. ComCon has requested that the Air Force enter into an Administrative Agreement with it and, in furtherance thereof, expressed an interest in

demonstrating that it is presently responsible and has the honesty and integrity required of a Government contractor. This Agreement is intended to provide assurances to the Government that ComCon is presently responsible and that, notwithstanding there being bases for its proposed debarment, ComCon can be trusted to deal fairly and honestly with the Government and that debarring it from Government contracting is not necessary to protect the Government's interest.

5. Subject to the terms and conditions included herein and based upon the facts currently known to the Air Force, the Air Force agrees to terminate the proposed debarments of ComCon and Mr. Herrera.

ARTICLES

6. **PERIOD:** The period of this Agreement shall be three years from the date of the execution of this Agreement by the Air Force, or if the Air Force in its sole discretion determines at any time during the term of this Agreement that ComCon has ceased to be in full compliance with this Agreement for a period of three years following reestablishment of full compliance as determined by the Air Force.

7. **EMPLOYEES:** The word employee(s) in this Agreement includes ComCon's officers, contract employees, consultants, full-time and part-time employees, and members of its Board of Directors.

8. **SELF-GOVERNANCE PROGRAM:** ComCon has in place and agrees to maintain a self-governance program that includes an Ethics and Business Conduct Program (Program) that covers all employees. The Program shall be maintained so as to ensure that ComCon and all of its employees maintain the honesty and integrity required of a Government contractor, and that ComCon operates in strict compliance with all applicable laws, regulations and the terms of any contract. ComCon's Program shall include the following components:

a. **OWNERSHIP:** Mr. James C. Lewis, President, shall immediately become 51-percent majority owner of ComCon and this change shall be memorialized and effectuated within 10 days of execution of this Agreement.

b. **MANAGEMENT:** Mr. Lewis, in addition to his current responsibilities, shall serve as ComCon's Ethics Officer and is responsible for managing all aspects of the Program. Mr. Lewis shall be responsible for reporting immediately to the Air Force any and all ethical disagreements that he has with any ComCon officer or manager.

c. **CODE OF ETHICS AND BUSINESS CONDUCT:** ComCon maintains a written Code of Ethics and Business Conduct (Code), which is attached hereto as Exhibit B. Within 30 days of execution of this Agreement, each employee will

receive a copy of the Code and be required to certify that he or she has read and understands the Code on an annual basis. ComCon shall maintain the certifications and make them available upon request by the Air Force. All new employees shall be required to complete the certification within 30 days of starting employment.

d. **INFORMATION AND EDUCATION PROGRAM:** ComCon will institute an information and education effort to ensure that all employees are aware of all laws, regulations, and standards of business conduct that they are expected to follow and the consequences for any violation. Additionally, ComCon's officers shall attend, at least annually, a formal, in-person, ethics or Government contracts compliance-related course offered by an independent company and retain documentation of their attendance in the event such documentation is requested by the Air Force.

e. **ETHICS & GOVERNMENT CONTRACTS COMPLIANCE EXPERT:** ComCon shall retain an expert to assist it in developing a values-based ethics program. Additionally, such expert shall further ensure ComCon has in place sufficient internal controls to ensure Government contracts compliance generally and to prevent the reoccurrence of the issues underlying its proposed debarment.

- i. ComCon shall select an expert and submit his/her qualifications to the Air Force for its approval within 30 days of the execution of this Agreement;
- ii. Within three months of the Air Force's approval of an expert, the expert shall submit a report to the Air Force certifying that ComCon has in place an effective ethics and compliance program; and
- iii. Thereafter, annually, beginning on the first anniversary of this Agreement, the expert shall submit a report certifying that ComCon's ethics and compliance programs remain in place and are at least as effective as they were at the time of the initial certification.

9. **ADMINISTRATIVE COSTS:** ComCon shall provide the Government with \$5,000.00 in recognition of the time the Air Force will expend in administering this Agreement. The payment may be made in full within 10 days of execution of this Agreement or may be paid in two installments of \$2,500.00; \$2,500.00 within 10 days of execution of this Agreement and \$2,500.00 by the first year anniversary of this Agreement.

10. **PERFORMANCE STANDARDS:** Adherence to the Program is a requirement for each officer and manager and ComCon shall evaluate each individual annually in writing on his or her promotion of and adherence to the Program.

11. **REPORTS:** By the first day of each quarter, the President and Ethics Officer, Mr. Lewis, shall submit a written report to the Air Force describing measures taken by ComCon during the preceding quarter to ensure compliance with this Agreement. Among any other information Mr. Lewis wishes to include, the reports shall include:

- a. Training provided to employees, including the subject matter, number of attendees, name of the instructor, and a copy of any training materials used;
- b. A description of any improvements, changes, or other relevant information pertaining to this Program;
- c. A statement of any identified problems or weaknesses associated with the Program and any corrective action taken or proposed;
- d. Status of any investigation of or legal proceedings by the Government involving ComCon or any of its employees; and
- e. Information required by other Articles in this Agreement.

12. **MANAGEMENT:** ComCon shall notify the Air Force within one week of any principal leaving the Company or if a new principal is installed either through a hiring action or promotion.

13. **LEGAL PROCEEDINGS:** Within 30 days of discovery, ComCon shall disclose in writing to the Air Force all criminal or civil investigations of ComCon by a Government entity, including but not limited to: investigation by federal, state or a local government entity; service of subpoenas or search warrants; and criminal charges against ComCon or its officers. ComCon shall cooperate fully with all Government agencies and keep the Air Force apprised of all developments.

14. **MEETING:** Six months after the effective date of the Agreement and again four months prior to its termination, Mr. Lewis, as President and Ethics Officer, will meet with the Air Force Deputy General Counsel for Contractor Responsibility or a designee to discuss the status of compliance with the Agreement and the implementation of the Program. The meeting may be conducted telephonically if both parties agree.

15. **REPORTS OF MISCONDUCT:** In addition to any disclosure to an agency Office of the Inspector General and the contracting officer required by FAR 52.203-13 (Contractor Code of Business Ethics and Conduct), copies of which ComCon shall provide simultaneously to the Air Force, ComCon shall report to the Air Force within 15 days of discovery by management, any suspected misconduct that management has reasonable grounds to believe may constitute a violation of U.S. criminal or civil law. ComCon will investigate all reports of such misconduct and notify the Air Force of the outcome of such investigation, impact on ComCon, and any corrective actions. ComCon will keep the Air Force apprised of the status of all investigations until each matter is resolved.

16. NOTIFICATION OF SUPPLIERS AND SUBCONTRACTORS: Within 15 days of the effective date of this Agreement, ComCon will send a letter to all suppliers, subcontractors, and prime contractors with whom it works emphasizing ComCon's commitment to ethics and compliance and asking suppliers/subcontractors to report to ComCon's Ethics Officer any improper or illegal activity relating to ComCon. ComCon shall provide the Air Force with copies of such correspondence within 30 days of the execution of this Agreement.

17. EMPLOYMENT OF SUSPENDED OR DEBARRED INDIVIDUALS: ComCon has a written policy stating that it will not knowingly employ an individual who is listed as proposed for debarment, debarred, or suspended. ComCon will verify the status of all current employees and all potential employees or consultants by reviewing the Excluded Parties List System (EPLS). ComCon also will require all employees to notify it of any change in their status. If ComCon subsequently discovers that an employee or consultant has been proposed for debarment, debarred, or suspended, ComCon will terminate them immediately and notify the Air Force within 5 days of the action taken and reasons therefore.

18. BUSINESS RELATIONS WITH SUSPENDED OR DEBARRED ENTITIES: ComCon has a written policy stating it will not knowingly form a contract with or enter into business relationship with an individual or business entity that is debarred, suspended or proposed for debarment. To affect this policy, ComCon will review the EPLS before entering into any such arrangement.

19. PROPOSED CHANGES: ComCon shall notify the Air Force of any proposed changes to relevant instructions, directives, or procedures implemented in furtherance of ComCon's Program and compliance with this Agreement. The Air Force retains the right to verify, approve, or reject such changes. No changes will be implemented without prior approval of the Air Force.

20. ACCESS TO RECORDS AND INFORMATION: The Air Force or its duly authorized representative may examine ComCon's books, records and other company supporting materials for the purpose of verifying and evaluating ComCon's compliance with this Agreement, ComCon's business conduct in its dealings with all of its customers, including the Government, ComCon's compliance with federal laws, regulations, and procurement policies, and ComCon's compliance with the requirements of Government contracts or subcontracts. The Government may interview any employee during normal business hours without a ComCon representative being present. However, the employee may be represented by his own attorney, if so requested by the employee.

21. UNALLOWABLE COSTS: ComCon agrees that all costs, as defined in FAR 31.205-47, will be expressed as unallowable costs. ComCon's cost of performing and administering this Agreement are unallowable costs; however, future costs for

ComCon's self-governance and ethics and compliance program are allowable costs.

22. ADVERSE ACTIONS: ComCon avers that adverse actions taken or to be taken by ComCon against any employee or other individual associated with ComCon arising out of or relating to the wrongdoing at issue here were solely the result of ComCon's initiatives and decisions and were not the result of any action by or on behalf of agents or employees of the United States.

23. NO SUSPENSION OR DEBARMENT: Provided the terms and conditions of this Agreement are fulfilled, the Air Force will not suspend or debar ComCon based upon the facts and circumstances set forth; however, this does not restrict the Air Force or any other agency of the Government from instituting administrative actions, including without limitation, suspension or debarment should other information indicating the propriety of such action come to the attention of the Air Force or such other agency or additional information concerning the facts at issue here is discovered by the Government, which facts were not disclosed by ComCon or by the exercise of reasonable diligence would not have been discovered by the Government as of the date of the Agreement.

24. PRESENT RESPONSIBILITY: ComCon's compliance with the terms and conditions of this Agreement constitutes an element of its present responsibility for Government contracting. ComCon's failure to meet any obligations pursuant to the terms and conditions of this Agreement as determined by the Air Force constitutes a separate cause for suspension or debarment. By entering into this Agreement, the Air Force is not determining that ComCon is presently responsible for any specific Government contract.

25. NOTIFY EMPLOYEES: ComCon will notify all employees of the fact and substance of this Agreement, the nature of the wrongdoing leading to this Agreement, and importance of each employee abiding by the terms of this Agreement and all law, regulations and ComCon's policies and procedures.

26. SALE OF BUSINESS: In the event ComCon sells or in any way transfers ownership of any part of its business, ComCon will notify the Air Force in advance and require the acquiring entity as a condition of the sale to remain bound by the terms of this Agreement for the duration of this Agreement including but not limited to all reporting requirements.

27. PURCHASE OF BUSINESS: In the event ComCon purchases or establishes new business units after the effective date of this Agreement, ComCon will implement all provisions of this Agreement with respect to the new unit within 60 days following such purchase or establishment.

28. **WAIVER:** ComCon waives all claims, demands or requests for monies from the Government or any kind of relief (judicial or administrative) as a result of these proceedings.

29. **RELEASE:** ComCon and Mr. Herrera hereby release the United States, its instrumentalities, agents and employees in their official and personal capacities of any and all liability or claims arising out of or related to the investigation, their proposed debarments, or the discussions leading to this Agreement.

30. **COUNTERPARTS:** This Agreement may be executed in one or more counterparts, which take together, will constitute one and the same agreement.

31. **AIR FORCE RELIANCE:** ComCon represents that all written materials and other information supplied to the Air Force by its authorized representative(s) during the course of discussions with the Air Force preceding this Agreement are true and accurate, to the best information and belief of ComCon. Further, ComCon understands that this Agreement is executed on behalf of the Air Force in reliance upon the truth, accuracy, and completeness of all such representations.

32. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between parties and supersedes all prior agreements and understandings, whether oral or written, relating to the subject matter herein. This Agreement is binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

33. **RESTRICTION OF USE:** ComCon shall not use this Agreement or the fact of the existence of this Agreement for any purpose related to the defense or litigation of, or in mitigation of any criminal Civil or administrative investigation or proceedings.

34. **BANKRUPTCY:** Bankruptcy will not affect the enforcement of this Agreement in the interest of the Government.

35. **AUTHORIZED REPRESENTATIVE:** Mr. Lewis and Mr. Herrera are authorized to execute this Agreement and represent that they have the authority to bind ComCon.

36. **SEVERABILITY:** In the event that any of the provisions contained in the Agreement are held to be invalid, illegal or unenforceable, they will not affect other provisions in this Agreement.

37. **NOTICES:** Any notices, reports, or information required hereunder shall be mailed by registered or certified mail and e-mailed as follows:

IF to ComCon:

Mr. James C. Lewis
President & Ethics Officer
ComCon Technologies, Inc.



IF to the Air Force:

Deputy General Counsel for
Contractor Responsibility (SAF/GCR)
Department of the Air Force
Attention: Todd J. Canni
1235 South Clark Street, Suite 301
Arlington, VA 22202-3258
Todd.Canni@pentagon.af.mil

38. PUBLIC DOCUMENT: This Agreement, including all attachments and reports submitted pursuant to this Agreement, are public documents and may be distributed by the Air Force as appropriate.

39. MODIFICATION: This Agreement may be amended or modified only by a written document signed by both parties.

DEPARTMENT OF THE AIR FORCE

[REDACTED]

BY: Mr. Steven A. Shaw / DATE
Deputy General Counsel
(Contractor Responsibility)

COMCON TECHNOLOGIES, INC.

[REDACTED]

BY: Mr. James C. Lewis / DATE
President & Ethics Officer

[REDACTED]

BY: Mr. Rojello Herrera, Jr. / DATE
Individually & as Executive Vice President

EXHIBIT A



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1740

Office of the Deputy General Counsel

MAR 10 2011

VIA FEDERAL EXPRESS

ComCon Technologies, Inc.
Attention: Rojelio Herrera, Jr., President

Re: Notice of Proposed Debarment

Mr. Herrera:

You are hereby notified that the Air Force has proposed that ComCon Technologies, Inc. (DUNS No. 13-562-9686; Cage Code 1VH71), (hereinafter Company) be debarred from federal Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. This action is initiated pursuant to the authority and the procedures contained in the Federal Acquisition Regulation (FAR) Subpart 9.4. Copies of FAR 9.4, Defense FAR Supplement 209.4 and Appendix H, and 2 C.F.R. Part 1125 are provided on our website at <http://www.safgc.hq.af.mil/organizations/gcr/index.asp>. 2 C.F.R. Part 1125 is the Defense Department's implementation of the Nonprocurement Common Rule referenced in FAR 9.401. If you do not have access to the Internet and wish to receive a hardcopy of the aforementioned regulations, please submit a written request to my counsel as designated below.

The proposed debarment is based upon the information in the attached Memorandum in Support of the Proposed Debarment(s) (Encl. 1).

The proposed debarment is effective this day and has the following consequences during the period of proposed debarment:

1. The Company name will be published in the Excluded Parties List System, available at <https://www.epils.gov/>, a publication of the General Services Administration that contains the names of contractors debarred, suspended, proposed for debarment, or declared ineligible by any agency of the Federal Government. Proposed debarment is effective throughout the executive branch of the Federal Government and applies to procurement and nonprocurement programs.
2. Offers will not be solicited from, contracts will not be awarded to, existing contracts will not be renewed or otherwise extended for, and subcontracts requiring Government approval will not be approved for the Company by any agency in 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 Company and the agency.

3. The Company may not conduct business with the Federal Government as an agent or representative of other contractors.

4. No Government contractor may award a subcontract equal to or in excess of \$30,000 to the Company unless there is a compelling reason to do so and the contractor first notifies the contracting officer and further complies with the provisions of FAR 9.405-2(b).

5. No agency in the executive branch shall enter into, renew, or extend primary or lower-tier covered transactions in which the Company is either a participant or principal, unless the head of the agency grants an exception in writing. (Covered transactions are defined at 2 C.F.R. Section 1125.30).

6. The Company may not act as an agent or representative of other participants in federal assistance programs.

7. The Company's affiliation with or relationship to any organization doing business with the Government will be carefully examined to determine the impact of those ties on the responsibility of that organization to be a Government contractor or to receive federal assistance.

Within 30 calendar days after receipt of this notice, the Company may submit, either in person or in writing, or both, information and argument in opposition to the proposed debarment. If the Company provides a written response, an original and one hardcopy must be submitted and an electronic copy is appreciated. The Company is encouraged to Bates number its submission, including attachments thereto.

If the Company designates a representative to respond on its behalf, please notify my counsel in writing of the identity of the representative. The designation should specifically state the names and addresses of all individuals or companies the designee has the authority to represent in this matter.

The Company's submission, if any, should include any specific information that may raise a genuine dispute over material facts. If it is found that the information submitted raises a genuine dispute over material facts, fact-finding may be conducted to determine the disputed facts. Facts proved by conviction or civil judgment, however, are not subject to dispute in this proceeding.

This debarment proceeding has been initiated on the basis of an administrative record. A copy of the record will be furnished upon request. Any written information submitted by the Company will be added to the administrative record.

The determination whether or not to debar the Company is discretionary and will be made on the basis of the administrative record, together with any written materials submitted for the record by the Government or the Company during the period of proposed debarment.

If debarment is imposed, the limitations described in Paragraphs 1 through 7 above will continue to apply and the Company's name will continue to be published in the Excluded Parties List System, available at: <https://www.epls.gov/>. The status, however, will be changed to reflect that the Company is debarred.

Any communications regarding this matter should be directed to my counsel, whose contact information is provided below: Todd J. Canni, SAF/GCR, 4040 N. Fairfax Drive, Suite 204, Arlington, VA 22203, (703) 588-0049, and Todd.Canni@pentagon.af.mil.

Sincerely,



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)

Encl. 1

Cc:

Mr. Terry E. Thomason
Alston Hunt Floyd & ING Lawyers





DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1740

Office of the Deputy General Counsel

MAR 10 2011

VIA FEDERAL EXPRESS

Rojelio Herrera, Jr.
ComCon Technologies, Inc.



Re: Notice of Proposed Debarment

Mr. Herrera:

You are hereby notified that the Air Force has proposed that you, Rojelio Herrera, Jr., be debarred from federal Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. This action is initiated pursuant to the authority and the procedures of the Federal Acquisition Regulation (FAR) Subpart 9.4. Copies of FAR 9.4, Defense FAR Supplement 209.4 and Appendix H, and 2 C.F.R. Part 1125 are provided on our website at <http://www.safgc.hq.af.mil/organizations/gcr/index.asp>. 2 C.F.R. Part 1125 is the Defense Department's implementation of the Nonprocurement Common Rule referenced in FAR 9.401. If you do not have access to the Internet and wish to receive a hardcopy of the aforementioned regulations, please submit a written request to my counsel as designated below.

The proposed debarment is based upon the information in the attached Memorandum In Support of the Proposed Debarment(s) (Encl. 1).

The proposed debarment is effective this day and has the following consequences during the period of proposed debarment:

1. Your name will be published in Excluded Parties List System, available at <https://www.epls.gov/>, a publication of the General Services Administration that contains the names of contractors debarred, suspended, proposed for debarment, or declared ineligible by any agency of the Federal Government. Proposed debarment is effective throughout the executive branch of the Federal Government and applies to procurement and nonprocurement programs.
2. Offers will not be solicited from, contracts will not be awarded to, existing contracts will not be renewed or otherwise extended for, and subcontracts requiring Government approval will not be approved for you by any agency in 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 you and the agency.

3. You may not conduct business with the Federal Government as an agent or representative of other contractors, nor may you act as an individual surety for other contractors.

4. No Government contractor may award you a subcontract equal to or in excess of \$30,000 unless there is a compelling reason to do so and the contractor first notifies the contracting officer and further complies with the provisions of FAR 9.405-2(b).

5. No agency in the executive branch shall enter into, renew, or extend primary or lower-tier covered transactions in which you are either a participant or principal, unless the head of the agency grants an exception in writing. (Covered transactions are defined at 2 C.F.R. Section 1125.30).

6. You may not act as an agent or representative of other participants in federal assistance programs.

7. Your affiliation with or relationship to any organization doing business with the Government will be carefully examined to determine the impact of those ties on the responsibility of that organization to be a Government contractor or to receive federal assistance.

Within 30 calendar days after receipt of this notice, you may submit, either in person or in writing, or both, information and argument in opposition to the proposed debarment. If you provide a written response, an original and one hardcopy must be submitted and an electronic copy is appreciated. You are encouraged to Bates number your submission, including attachments thereto.

If you designate a representative to respond on your behalf, please notify my counsel in writing of the identity of the representative. The designation should specifically state the names and addresses of all individuals or companies the designee has the authority to represent in this matter.

Your submission, if any, should include any specific information that may raise a genuine dispute over material facts. If it is found that the information submitted raises a genuine dispute over material facts, fact-finding may be conducted to determine the disputed facts. Facts proved by conviction or civil judgment, however, are not subject to dispute in this proceeding.

This debarment proceeding has been initiated on the basis of an administrative record. A copy of the record will be furnished upon request. Any written information submitted by you will be added to the administrative record.

The determination whether or not to debar you is discretionary and will be made on the basis of the administrative record, together with any written materials submitted for the record by the Government or you during the period of proposed debarment.

If debarment is imposed, the limitations described in Paragraphs 1 through 7 above will continue to apply and your name will continue to be published in the List of Parties Excluded

From Federal Procurement and Nonprocurement Programs. Your status, however, will be changed to reflect that you are debarred.

Any communications regarding this matter should be directed to my counsel, whose contact information is provided below: Todd J. Canni, SAF/GCR, 4040 N. Fairfax Drive, Suite 204, Arlington, VA 22203-1613, (703) 588-0049, and Todd.Canni@pentagon.af.mil.

Sincerely,



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)

Encl. 1

Cc:

Mr. Terry E. Thomason
Alston Hunt Floyd & ING Lawyers





DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

MAR 10 2011

Office Of The Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE PROPOSED DEBARMENTS OF:

COMCON TECHNOLOGIES, INC.
ROJELIO HERRERA, JR.
GREGORY G. SPRANG

Effective this date the Air Force has proposed the debarment of ComCon Technologies, Inc. (ComCon), Rojelio Herrera, Jr. (Mr. Herrera), and Gregory G. Sprang (Mr. Sprang) 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.

MEMORANDUM IN SUPPORT OF THE PROPOSED EXTENSION TO CURRENT DEBARMENT PERIOD OF:

TIMOTHY SLATER

Effective this date the Air Force has proposed that the current debarment period of Timothy Slater (Mr. Slater) be extended. This action is initiated pursuant to FAR Subpart 9.4.

INFORMATION IN THE RECORD

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

Parties

1. Mr. Sprang is an Air Force employee who worked previously for 13th Air Force, Pacific Command (PACAF) as a Quality Assurance Representative (QA).
2. ComCon is incorporated in Delaware and is headquartered in Hawaii. ComCon is a Government contractor that provides training services to the Government.
3. Mr. Herrera serves as ComCon's President and Chief Executive Officer.
4. From April 2010 through February 18, 2011, Mr. Slater served as ComCon's Vice President, and ComCon referenced Mr. Slater on its Company website and in its Central Contractor Registry listing.

5. Notably, on October 15, 2010, the Air Force proposed Mr. Slater for debarment from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs, and on December 16, 2010, Mr. Slater was debarred.
6. Per the terms of Mr. Slater's proposed debarment and debarment, Mr. Slater was prohibited from conducting business with the Government as an agent or representative of a contractor.
7. In ComCon's Online Representations and Certifications Application (ORCA), which is effective from October 27, 2010 through October 27, 2011, Mr. Herrera certified that, "to the best of its knowledge and belief," none of ComCon's principals were presently debarred or proposed for debarment.

Background

8. From approximately 2003 through June 2009, PACAF contracted for Exercise Planner Support Services (EPSS) from a contractor(s) other than ComCon.
9. From approximately March 2007 through March 2008, Mr. Sprang served as a QA for PACAF for the EPSS. In this role, Mr. Sprang oversaw aspects of the contractor's performance.
10. In September 2008, Mr. Sprang stopped working for PACAF but continued working for the Air Force at Nellis Air Force Base (AFB) in Nevada.
11. In March 2009, PACAF issued a solicitation for a new EPSS contract (2009 EPSS Contract), and in May 2009, PACAF announced that the 2009 EPSS Contract would be awarded to ComCon.
12. After learning that ComCon would be awarded the 2009 EPSS Contract, on May 20, 2009, Mr. Sprang contacted ComCon's President, Mr. Herrera, via e-mail and expressed interest in working for ComCon on its performance of the 2009 EPSS Contract.
13. Between May 20, 2009 and early June 2009, Mr. Sprang communicated with and assisted ComCon in preparing to begin performance of the 2009 EPSS contract, including providing ComCon with non-public information that he was in a position to provide based on his prior position and experience with PACAF.
14. In approximately June 2009, Mr. Sprang accepted an offer of employment with ComCon.
15. On June 5, 2009, a losing offeror competing for the 2009 EPSS Contract filed a bid protest with the U.S. Government Accountability Office (GAO), alleging, among other things, that ComCon had an unfair competitive advantage in competing for the 2009 EPSS Contract because an organizational conflict of interest (OCI) existed due to Mr. Sprang's involvement with ComCon. The protest stayed the award and performance of the 2009 EPSS Contract.
16. Following the bid protest, PACAF learned of Mr. Sprang's conduct with regard to ComCon and notified GAO that it would take corrective action and re-compete the 2009 EPSS Contract. PACAF subsequently issued a new solicitation for EPSS (2010 EPSS Contract).

17. PACAF also referred the allegations regarding Mr. Sprang to Lieutenant (Lt.) Colonel (Col.) Richard Carlile for an ethics determination. Lt. Col. Carlile's ethics determination included an assessment of whether Mr. Sprang violated the Procurement Integrity Act, the post-Government employment restrictions, and restrictions regarding the use of non-public information.

18. In a memorandum dated October 2, 2009, Lt. Col. Carlile concluded that Mr. Sprang improperly disclosed non-public information to ComCon but did not violate the other legal restrictions considered. Lt. Col. Carlile recommended that the Air Force take no disciplinary action against Mr. Sprang despite his improper conduct because Lt. Col. Carlile concluded that Mr. Sprang's actions were the byproduct of a lack of ethics and compliance training.

19. On June 24, 2009, Lt. Col. Carlile provided Mr. Sprang with ethics and compliance training, including training on post-Government employment restrictions and the use of non-public information.

20. Following his training, Mr. Sprang, who remained interested in joining ComCon's employment, requested a post-Government employment determination from the Air Force. Mr. Sprang did not request approval to work for ComCon or any other contractor while being employed by the Air Force.

21. Chief Richard R. Kolkoski reviewed and analyzed Mr. Sprang's prior duties at PACAF as a QA for the EPSS program in 2007-2008, which included analyzing, developing, and evaluating various training systems, training methods, and the incumbent contractor's work.

22. In a memorandum dated August 10, 2009 (Kolkoski Memorandum), Chief Kolkoski concluded, in relevant part, that Mr. Sprang was not prohibited from working for ComCon after his employment with the Air Force ended. The Kolkoski Memorandum did not authorize Mr. Sprang to work for or assist ComCon while he was employed by the Air Force.

23. On August 17, 2009, Mr. Sprang e-mailed Mr. Herrera the Kolkoski Memorandum.

Improper Conduct

24. From approximately August 17, 2009, to April 26, 2010, the date proposals were due for the 2010 EPSS, Mr. Sprang and Mr. Herrera communicated extensively via e-mail regarding ComCon's proposal for the 2010 EPSS Contract.

25. Notably, Mr. Sprang utilized his Air Force e-mail account to communicate with Mr. Herrera.

26. Mr. Sprang provided Mr. Herrera with information and documents to assist ComCon in preparing its proposal for the 2010 EPSS Contract, including slides, spreadsheets, tables, and other documents.

27. Mr. Sprang's improper conduct resulted in him having a personal conflict of interest during the period of time in which he was working for the Air Force and assisting ComCon in preparing its proposal for the 2010 EPSS Contract.

28. On July 1, 2010, PACAF awarded the 2010 EPSS Contract to ComCon.
29. Following the award of the 2010 EPSS Contract, Mr. Herrera and Mr. Sprang discussed the compensation to be paid Mr. Sprang upon the start of performance of the 2010 EPSS Contract but were not able to agree upon terms.
30. On July 12, 2010, a losing offeror filed a bid protest with GAO concerning the award of the 2010 EPSS Contract, alleging similarly to the prior 2009 EPSS protest, that ComCon had an unfair competitive advantage because an OCI existed due to Mr. Sprang's involvement with ComCon in competing for the 2010 EPSS Contract.
31. After PACAF represented to GAO that it would take corrective action in light of the allegations, GAO dismissed the bid protest.
32. In a Memorandum for Record dated July 28, 2010, which Mr. Sprang signed, Mr. Sprang downplayed the assistance he provided to ComCon but, nonetheless, admitted to assisting ComCon in preparing its proposal for the 2010 EPSS Contract. "My participation in preparing the [ComCon] proposal is limited to providing draft inputs in the form of slides/bullets for the two example scenarios listed on the solicitation, which took about two hours to draft up."
33. On February 11, 2011, the Air Force issued a Show Cause letter to ComCon and Mr. Herrera wherein it expressed its concerns regarding ComCon and Mr. Herrera's business integrity and overall responsibility to be Government contractors. The Show Cause letter indicated that of particular concern to the Air Force was ComCon's and Mr. Herrera's belief that it was appropriate to collaborate with and use the services of a current Air Force employee, Mr. Sprang, in ComCon's efforts to compete for and secure the 2010 EPSS Contract.
34. On February 18, 2011, the Air Force notified ComCon and Mr. Herrera, through their counsel, that information had come to light indicating that ComCon was employing in the role of Vice President, Timothy Slater, an individual debarred by the Air Force on December 16, 2010.
35. On March 2, 2011, ComCon and Mr. Herrera, through their counsel, made a submission in response to the Air Force's Show Cause letter and correspondence dated February 18, 2011 (Submission). The Submission, however, did not address all the concerns identified by the Air Force and raised a number of additional concerns.
36. The Submission focused on the communications between Mr. Sprang and Mr. Herrera during the period of May 14, 2009 through June 5, 2009, which related to the 2009 EPSS Contract. However, both the Air Force's Show Cause letter and correspondence dated February 18, 2011, emphasized that the core concern to the Air Force was the communications between Mr. Herrera and Mr. Sprang with regard to the 2010 EPSS Contract.
37. In this regard, the Submission included, among others, Exhibits E through N, which reflected e-mail correspondence between Mr. Herrera and Mr. Sprang from May 20, 2009, through June 5, 2009, but omitted and failed to address the extensive communications that occurred between Mr. Herrera and Mr. Sprang with regard to the 2010 EPSS Contract, communications that continued from approximately August 17, 2009, and continued past ComCon's submission of its proposal for the 2010 EPSS Contract on April 26, 2010.

38. The Submission indicated that ComCon and Mr. Herrera, relying upon the Kolkoski Memorandum, “reasonably and justifiably believed that a Federal employee could work for other employers so long as such employment was approved by the command.” Their submission did not, however, explain how the Kolkoski Memorandum, which addressed Mr. Sprang’s “Post-Government Employment,” led Mr. Herrera to believe that Mr. Sprang could provide services to ComCon while continuing to work for the Air Force.

39. The Submission responded to the Air Force’s inquiry regarding ComCon’s employment of Mr. Slater in the role of Vice President. At the outset, the Submission indicated that neither ComCon, nor Mr. Herrera were aware that Mr. Slater was debarred but upon learning of his debarment, ComCon terminated Mr. Slater’s employment.

40. The Submission did not specify what procedures, if any, are utilized to screen newly hired employees, especially those occupying officer roles within the Company. Nor did the Submission identify what procedures, if any, are in place to ensure that the Company monitors whether employees, including officers, are proposed for debarment, suspended, or debarred during their employment with the Company.

41. The submission further indicated that Mr. Slater was an independent contractor, not an employee, and that ComCon made Mr. Slater Vice President to “lend him credibility when engaging in his business development efforts and presenting himself to potential customers . . .” such as the Air Force.

42. Both ComCon and Mr. Herrera apparently believed it was appropriate to mislead Government customers into believing that Mr. Slater was an employee and Vice President of ComCon, a title typically given to an officer and principal within a Company.

43. The Submission indicated that Mr. Slater, in his role as Vice President, served as ComCon’s representative to certain Government customers and that, in this role, Mr. Slater assisted ComCon with its business development efforts, marketed ComCon to various Government customers, including customers in the area of Scott AFB, and assisted in the preparation of ComCon’s proposals.

44. Per the terms of Mr. Slater’s debarment, Mr. Slater was prohibited from conducting business with the Government as an agent or representative of a contractor.

45. According to ComCon, Mr. Slater did not inform it of his proposed debarment or his debarment and continued to represent ComCon before the Government, including the Air Force, after being proposed for debarment.

46. Mr. Slater violated the terms of his proposed debarment and debarment.

BASES FOR THE PROPOSED DEBARMENTS

1. The improper conduct of ComCon, Mr. Herrera, Mr. Slater, and Mr. Sprang 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

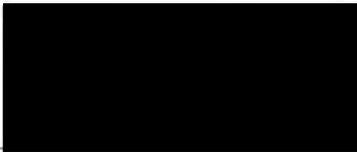
2. Pursuant to FAR 9.406-5(a), the seriously improper conduct of Mr. Herrera is imputed to ComCon because his improper conduct occurred in connection with the performance of his duties for or on behalf of ComCon, or with the knowledge, approval, or acquiescence of ComCon. The imputation of Mr. Herrera's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

3. Pursuant to FAR 9.406-5(b), the seriously improper conduct of ComCon is imputed to Mr. Herrera because as an officer, director, shareholder, partner, employee or other person associated with ComCon, he participated in, knew of, or had reason to know of ComCon's improper conduct. The imputation of ComCon's conduct to Mr. Herrera provides a separate independent basis for his debarment.

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

Affiliation

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



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