



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22203-1613

Office of the Deputy General Counsel

VIA FEDERAL EXPRESS

APR 18 2011

SAF/GCR  
4040 N. Fairfax Drive  
Suite 204  
Arlington, VA 22203

Michael Smith  
[REDACTED]

Re: Notice of Debarment

Dear Mr. Smith,

Effective this date the Air Force has debarred you, Michael Smith, 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, Defense FAR Supplement 209.4 and Appendix H, and 2 C.F.R. Part 1125.

On March 2, 2011, the Air Force proposed that you be debarred from Government contracting and from directly or indirectly receiving the benefits of Government assistance programs and afforded you the opportunity to submit information and argument in opposition to your proposed debarment. You were issued a Notice of Proposed Debarment and a Memorandum in Support of the Proposed Debarment. To date, you have not responded.

I have carefully considered all information contained in the Administrative Record and determined that a preponderance of the evidence establishes the existence of a cause for debarment, and that you have failed to demonstrate your present responsibility. I have, therefore, concluded that debarment is in the public interest and necessary to protect the Government's interests. How the Air Force arrived at the determination of your debarment period is explained in the enclosed Memorandum in Support of Debarment. The effects of debarment are set forth in the Notice of Proposed Debarment issued to you, as well as in FAR Subpart 9.4, Defense FAR Supplement 209.4 and Appendix H, and 2 C.F.R. Part 1125, which are provided on our website at: <http://www.safgc.hq.af.mil/organizations/gcr/index.asp>.



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VIA FEDERAL EXPRESS

APR 18 2011

SAF/GCR  
4040 N. Fairfax Drive  
Suite 204  
Arlington, VA 22203

Rich Virag  
[REDACTED]

Re: Notice of Debarment

Dear Mr. Virag,

Effective this date the Air Force has debarred you, Rich Virag, 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, Defense FAR Supplement 209.4 and Appendix H, and 2 C.F.R. Part 1125.

On March 2, 2011, the Air Force proposed that you be debarred from Government contracting and from directly or indirectly receiving the benefits of Government assistance programs and afforded you the opportunity to submit information and argument in opposition to your proposed debarment. You were issued a Notice of Proposed Debarment and a Memorandum in Support of the Proposed Debarment. To date, you have not responded.

I have carefully considered all information contained in the Administrative Record and determined that a preponderance of the evidence establishes the existence of a cause for debarment, and that you have failed to demonstrate your present responsibility. I have, therefore, concluded that debarment is in the public interest and necessary to protect the Government's interests. How the Air Force arrived at the determination of your debarment period is explained in the enclosed Memorandum in Support of Debarment. The effects of debarment are set forth in the Notice of Proposed Debarment issued to you, as well as in FAR Subpart 9.4, Defense FAR Supplement 209.4 and Appendix H, and 2 C.F.R. Part 1125, which are provided on our website at: <http://www.safgc.hq.af.mil/organizations/gcr/index.asp>.

Your debarment is effective immediately and will terminate on March 3, 2013.

Sincerely,



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STEVEN A. SHAW  
Deputy General Counsel  
(Contractor Responsibility)

Enclosure a/s



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22203-1613

Office of the Deputy General Counsel

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

APR 18 2011

SAF/GCR  
4040 N. Fairfax Drive  
Suite 204  
Arlington, VA 22203

Golden West Imaging

[REDACTED]

Toner Cart USA

[REDACTED]

G.W.I.S. Corp d/b/a Golden West  
Industrial Supply

[REDACTED]

Golden West Hose & Coupling

[REDACTED]

Greenskeeper

[REDACTED]

Marvin Riley Smith

[REDACTED]

Patricia Gail Smith

[REDACTED]

Re: Notice of Debarment

Dear Ladies and Gentlemen,

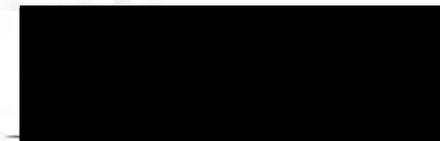
On March 2, 2011, the Air Force proposed that Golden West Imaging, G.W.I.S. Corp d/b/a Golden West Industrial Supply, Greenskeeper, Golden West Hose & Coupling, Marvin Riley Smith, Jr., Patricia Gail Smith, Rich Virag and Toner Cart USA (together "Respondents") (known DUNS No. 099012635 for the corporate entities; known Cage Code 0EH73) be debarred from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. These proposed debarments followed suspensions issued by the Air Force

on March 4, 2010. Each Respondent was provided with a Notice of Proposed Debarment (Notice) and a Memorandum in Support of the Proposed Debarments. The Notice afforded you the opportunity to submit information and argument in opposition to the proposed debarments. Your submissions were added to the Administrative Record in this matter.

Based upon the information in the Administrative Record, I have determined that debarment of Respondents is in the public interest and necessary to protect the Government's interests. The basis for my decision is set forth in the attached Memorandum in Support of the Debarments. The effects of debarment are set forth in the Notice issued to you, as well as Federal Acquisition Regulation (FAR) Subpart 9.4, Defense FAR Supplement 209.4 and Appendix H, and 2 C.F.R. Part 1125, which are provided on our website at: <http://www.safgc.hq.af.mil/organizations/gcr/index.asp>.

The debarments are effective immediately and will continue for three years from the date Respondents were suspended, March 4, 2010. Therefore, the debarments will terminate on March 3, 2013.

Sincerely,

A large black rectangular redaction box covering the signature of Steven A. Shaw.

STEVEN A. SHAW  
Deputy General Counsel  
(Contractor Responsibility)

Encl. a/s



## DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22203-1613

APR 18 2011

Office of the Deputy General Counsel

### MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

GOLDEN WEST IMAGING  
G.W.I.S. CORP d/b/a GOLDEN WEST INDUSTRIAL SUPPLY  
GREENSKEEPER  
GOLDEN WEST HOSE & COUPLING  
MARVIN RILEY SMITH, JR.  
MICHAEL SMITH  
PATRICIA GAIL SMITH  
RICH VIRAG  
TONER CART USA

On March 4, 2010, the Air Force suspended Golden West Imaging, G.W.I.S. Corp d/b/a Golden West Industrial Supply, Greenskeeper, Golden West Hose & Coupling, Marvin Riley Smith, Jr., Michael Smith, Patricia Gail Smith, Rich Virag and Toner Cart USA (together, "Respondents"), and others, from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. Respondents submitted information and argument in opposition to the suspensions. The submission was insufficient to demonstrate present responsibility. On March 2, 2011, 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 March 16, 2011, and March 24, 2011, all Respondents except Michael Smith and Rich Virag presented information and argument in opposition to the proposed debarments through legal counsel. The record closed on April 1, 2011. I have read and carefully considered all information in the Administrative Record, including all prior submissions by the Respondents since their suspensions dated March 4, 2010.

### INFORMATION IN THE RECORD

A preponderance of evidence in the Administrative Record establishes that at all times relevant hereto:

#### Relevant Companies

1. Golden West Imaging is a California-based contractor with a GSA Schedule contract for office products and also engages in direct telemarketing to U.S. Government employees (including all branches of the Department of Defense) to sell office products, including toner, for purchase using individual Government Purchase Cards.

a. Golden West Imaging's sales practices include sending U.S. Government purchasers unlawful gratuities in the form of American Express Gift Cards (which are the functional equivalent of cash), gift cards to leading retailers, and electronics in order to "look the other way" and ignore that items not ordered were provided, at significantly higher costs than agreed, along with a substantial number of undisclosed, and largely fictitious, fees. Golden West Imaging's sales practices also involve continuing to ship additional orders at increasingly higher per unit prices with increasingly valuable bribes and/or gratuities in the hopes that the Government Purchase Card holder would continue to "look the other way."

b. When U.S. Government employees call to complain about the gratuities and about the additional, unordered, or overly expensive, goods and fees, Golden West Imaging refuses the return of the items, obfuscates the means of return, or bills the employee again after the return.

2. G.W.I.S. Corp d/b/a Golden West Industrial Supply (GWIS) is the parent company for Golden West Imaging and is itself a U.S. Government contractor. For the purposes of selling office products to the U.S. Government, GWIS and Golden West Imaging operate collectively as a single entity.

3. Toner Cart, Greenskeeper and Golden West Hose & Coupling are additional operating divisions of GWIS.

#### Relevant Individuals

4. Marvin Riley Smith, Jr. (Marvin Smith) owns GWIS. Marvin Smith has admitted to investigators his knowledge that GWIS sends cash equivalents in the form of gift cards to Government employees and his knowledge that giving gifts to Government employees is improper.

5. Michael Smith, son of Marvin Smith, is a senior officer of GWIS and Golden West Imaging and owns and operates Toner Cart. Michael Smith has admitted to investigators his knowledge that GWIS's sales tactics are unlawful. Michael Smith makes the decisions regarding the dollar amounts of the gift cards sent to Government employees. Michael Smith pled guilty to six counts of violating 18 U.S.C. § 201(c)(1)(a), Payment of Gratuity to a Public Official for his role in GWIS's misconduct.

6. Marvin Smith and Michael Smith operate GWIS and Toner Cart jointly as a team, and each is aware of, and approves of, the other's management decisions.

7. Rich Virag is a GWIS employee who participated in the misconduct by soliciting and closing sales of office products to the U.S. Government, including the direct telemarketing efforts to solicit U.S. Government employees to accept gratuities and sending gratuities along with shipments of office products.

8. Patricia Gail Smith is the wife of Marvin Smith and serves as Secretary (a corporate officer) of GWIS.

### RESPONDENTS' SUBMISSION

Through counsel, all Respondents except Michael Smith and Rich Virag made two submissions of information and argument in opposition to their proposed debarments (the "submissions"). The submissions: (1) represented that the United States Attorney concluded that Marvin Smith, Patricia Gail Smith, Toner Cart USA or GWIS Corp d/b/a Golden West Industrial Supply did not "engage[ ] in any wrongdoing whatsoever;" (2) challenged the sufficiency of the information in the administrative record to support the debarments of Toner Cart USA, Greenskeeper, and Golden West Hose and Coupling; (3) challenged that the information in the record is sufficient to debar Marvin Smith; (4) represented that Patricia Gail Smith is not an employee of Toner Cart or GWIS, but rather the wife of Marvin Smith and a corporate officer (Secretary) of GWIS Corp; and, (5) argued that the mitigating factors of FAR Subpart 9.406-1(a) weigh against debarment.

### ANALYSIS

At its core, this case involves a contractor, Michael Smith, who provided cash equivalents—specifically, American Express Gift Cards—to individual holders of U.S. government purchase cards "in exchange for those customers agreeing to let their [government purchase cards to] be charged for larger quantities of toner cartridges and/or those cartridges at a progressively higher price" than they ordered.<sup>1</sup> These facts are undisputed. Although Respondents claim that every time a gift card was sent to a customer the customer also received a letter instructing the customer only to use the gift card for future toner purchases, Michael Smith admitted knowledge that the gift cards would be used for the government recipient's personal use, that they were sent as a "*quid pro quo*," of "you scratch my back, and I'll scratch yours," and could be characterized as a "bribe."<sup>2</sup> Indeed, Michael Smith has pled guilty to six counts of violating 18 U.S.C. § 201(c)(1)(a), Payment of Gratuity to a Public Official. On the basis of these undisputed facts in the Administrative Record, Michael Smith's debarment is appropriate and necessary to protect the U.S. Government.

At the time of the misconduct, Michael Smith was a corporate officer of GWIS (Treasurer) and the President of Toner Cart USA. Michael Smith and his father, Marvin Smith were on notice of the Government's concern about their business practices from at least the April 2006 Defense Criminal Investigative Service interviews, yet Respondents offered no evidence of any changes in corporate behavior until after March 4, 2010, when Respondents were suspended from Government contracting. On the basis of these undisputed facts in the Administrative Record, imputation of Michael Smith's conduct to his father and business partner, Marvin Smith, the corporate entities owned and managed by the two (Golden West Imaging, GWIS, Greenskeeper and Golden West Hose & Coupling), and the other relevant corporate executive at the companies (Patricia Gail Smith) is appropriate and each of their debarments are necessary to protect the U.S. Government. Rich Virag's debarment is appropriate and necessary to protect the

<sup>1</sup> April 28, 2006, Defense Criminal Investigative Service Interview of Michael Wayne "Mike" Smith, p. 5.

<sup>2</sup> *Id.* at p. 6.

Government because of his active role in the scheme to supply gratuities to Government officials.

FAR Subpart 9.406-1(a) states that “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.” Respondents have failed to meet their burden, and their debarments are necessary to protect the U.S. Government.

Turning to the arguments in opposition to debarment raised by counsel in the order they were raised:

- 1) The United States Attorney concluded that Marvin Smith, Patricia Gail Smith, Toner Cart USA or GWIS Corp d/b/a Golden West Industrial Supply did not “engage[ ] in any wrongdoing whatsoever.”

Michael Smith pled guilty to six counts of violating 18 U.S.C. § 201(c)(1)(a), Payment of Gratuity to a Public Official. Michael Smith’s misconduct occurred while he worked as a “Vice President and General Manager of Golden West Imaging.” Respondents provided no evidence of the conclusions of the United States Attorney concerning any individual other than Michael Smith or any corporate entity. Whether the United States Attorney’s office reached any such conclusions is irrelevant to the underlying misconduct in this case and its imputation to the other Respondents.

- 2) There is insufficient information in the administrative record to support the debarments of Toner Cart USA, Greenskeeper and Golden West Hose and Coupling.

Michael Smith pled guilty to six counts of violating 18 U.S.C. § 201(c)(1)(a), Payment of Gratuity to a Public Official, and his misconduct occurred while he worked as “Vice President and General Manager of Golden West Imaging.” Golden West Imaging is a subsidiary of Golden West Industrial Supply, a/k/a G.W.I.S. Corp, which is operated jointly by Marvin Smith and Michael Smith. G.W.I.S. Corp. owns Greenskeeper, Golden West Hose & Coupling and TonerUSA.com (which also is the website and corporate alter ego for Toner Cart USA). Further, Michael Smith is the President of Toner Cart USA. By the imputation and affiliation provisions of FAR Subparts 9.403 and 9.406, the debarments of Toner Cart USA, Greenskeeper, and Golden West Hose and Coupling are appropriate, and necessary to protect the U.S. Government.<sup>3</sup>

- 3) There is insufficient information in the record to debar Marvin Smith.

Through counsel, Marvin Smith makes much of his 2006 statement to investigators that giving cash equivalents (specifically, American Express Gift Cards) to Government customers was appropriate as long as the gift cards were accompanied by letters saying that the checks “could be applied to their current invoices or future purchases.” The opposition also suggests that Marvin Smith is an unwitting victim of the misconduct of his son, Michael Smith. Both the

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<sup>3</sup> Respondents are correct that the Administrative Record does not establish by a preponderance of the evidence that Golden West Business Group is affiliated with the remainder of the Respondents. Accordingly, by separate letter, the proposed debarment of Golden West Business Group is terminated.

2006 statement and the characterization of Marvin Smith as a victim defy logic. Marvin Smith was actively involved with Michael Smith in the business in areas including sales to repeat customers, invoicing and product returns. As such, Marvin Smith was not a distant corporate official so removed from his son so as to be ignorant of his misconduct. There is also uncontested evidence in the Administrative Record that Michael Smith discussed the gift card scheme with Marvin Smith.

Given the evidence in the Administrative Record, it would have been helpful to hear directly from Marvin Smith during these proceedings in order to be able to fully evaluate his present responsibility. For example, Marvin Smith's approved policy of requiring employees to purchase cash equivalent gift cards, send them to Government customers, and admonish the Government customers in writing only to use the cash equivalent gift cards on future products from GWIS does not make sense. A far simpler system of providing discounts to Government customers (if that was the intention of the gift cards) would be to note the customer's file and apply a credit for future purchases. At a minimum, Marvin Smith could have helped the Air Force understand the rationale behind this business practice. As the record stands, Marvin Smith has not met his burden of demonstrating that he is a responsible Government contractor.

- 4) Patricia Gail Smith is not an employee of Toner Cart or GWIS, but rather the wife of Marvin Smith and a corporate officer (Secretary) of GWIS Corp.

The Air Force accepts as true the representation that Patricia Gail Smith is not an employee of Toner Cart USA or GWIS. However, given the facts of this case, her status as a senior corporate officer of GWIS Corp and her familial relationship with Marvin Smith and Michael Smith are sufficient to support her debarment by the FAR imputation and affiliation provisions. Her debarment is necessary to protect the U.S. Government.

- 5) The mitigating factors of FAR Subpart 9.406-1(a) weigh against debarment.

An analysis of the mitigating factors of FAR Subpart 9.406-1(a) does not alter the necessity of Respondents' debarments in order to protect the U.S. Government.

**FAR Subpart 9.406-1(a)(1):** Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as cause for debarment.

Respondents represent that this mitigating factor is satisfied by Marvin Smith's specific instructions to Michael Smith to include a letter to Government customers informing them that they should use the cash equivalent gift card on current or future orders, and the recent termination of Michael Smith from employment with G.W.I.S. Corp. For the reasons discussed above, the letter to Government customers purporting to restrict their use of a cash equivalent is illogical and cannot mitigate the underlying misconduct. Nor can Michael Smith's recent termination from employment with G.W.I.S. Corp, which occurred long after the underlying misconduct, be a mitigating factor against debarment.

**FAR Subpart 9.406-1(a)(2):** Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

Respondents do not meet this mitigating factor.

**FAR Subpart 9.406-1(a)(3):** Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

Respondents do not meet this mitigating factor. The only discussion of an internal investigation comprises seven (7) lines of text in a letter dated March 24, 2011. The text is conclusory in nature and there is no evidence in the Administrative Record supporting that an investigation occurred, or that the result was made available to the Debarring Official.

**FAR Subpart 9.406-1(a)(4):** Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

Respondents cite their production of documents, return of phone calls, and Michael Smith's guilty plea as meeting this mitigating factor. There is no evidence of full cooperation other than these conclusory statements.

**FAR Subpart 9.406-1(a)(5):** Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has agreed to make full restitution.

Respondent Michael Smith's plea agreement requires that he pay restitution up to \$30,000 for six counts of violating 18 U.S.C. § 201(c)(1)(a), Payment of Gratuity to a Public Official. He is given credit for this mitigating factor.

**FAR Subpart 9.406-1(a)(6):** Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

Respondents represent that G.W.I.S. Corp has fired Michael Smith. That termination occurred after Respondents were suspended and, at a minimum, four years after Respondents were on notice of the Government's concern about the underlying misconduct. Although Respondents are to be applauded for engaging in disciplinary action, the action comes too late to afford Respondents credit for this mitigating factor.

**FAR Subpart 9.406-1(a)(7):** Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

Respondents represent that: (a) Michael Smith has been discharged; (b) Golden West Imaging has been disbanded and no longer exists; (c) GWIS Corp employees no longer solicit government employees by phone; (d) no American Express Checks or gifts of any kind are sent; (e) Toner Cart USA has been set up as a web site only for any willing purchaser to visit, learn about products and prices and to place an order if the purchaser so desires. There is no evidence

in the Administrative Record to support these statements by counsel, and TonerCarUSA.com returns a blank page. While these representations, if true and supported by corporate policies, are important steps to take in order to begin to demonstrate present responsibility, standing alone they are insufficient to mitigate against debarment. The Air Force notes that the cause of Respondents' inability to solicit Government customers by phone and inability to provide gift cards may have as much to do with Respondents' exclusions from Government contracting (and the resulting inability to execute any sales) as with any internal policies.

**FAR Subpart 9.406-1(a)(8):** Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

There is no evidence in the Administrative Record that Respondents have met this mitigating factor beyond a one sentence assertion that the factor is met. That is insufficient to afford credit for this mitigating factor.

**FAR Subpart 9.406-1(a)(9):** Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

Respondents have had adequate time to meet this mitigating factor. However, as with the analysis of FAR 9.406-1(a)(7), while counsel's representations concerning this mitigating factor, if true and supported by corporate policies, are important first steps to demonstrating present responsibility, standing alone these representations are insufficient to mitigate against debarment.

**FAR Subpart 9.406-1(a)(10):** Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

Michael Smith's plea agreement and Respondents' representations of his separation from employment with G.W.I.S. Corp are important steps to recognizing and understanding the seriousness of the misconduct. However, the Administrative Record contains no evidence supporting any of Respondents' counsel's other representations. Moreover, even if Respondents' counsel's representations were fully supported, they would be insufficient to mitigate against debarment. Michael Smith will receive credit for his plea agreement. No credit under this mitigating factor will be afforded to the other Respondents.

#### FINDINGS

1. Michael Smith's conviction for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract provides a basis for his debarment pursuant to FAR 9.406-2(a)(1).
2. A preponderance of evidence in the administrative record establishes that the conduct of Michael Smith and Rich Virag 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 Rich Virag's debarment and a separate and independent basis for Michael Smith's debarment pursuant to FAR 9.406-2(c).

3. Pursuant to FAR 9.406-5(a), the fraudulent, criminal, or seriously improper conduct of Michael Smith and Rich Virag is imputed to GWIS because the conduct occurred in connection with the performance of Michael Smith and Rich Virag's duties for or on behalf of GWIS, and with the knowledge, approval and acquiescence of GWIS. The imputation of the conduct of Michael Smith and Rich Virag to GWIS provides a separate and independent basis for each of their debarments by operation of FAR 9.406-5(a).

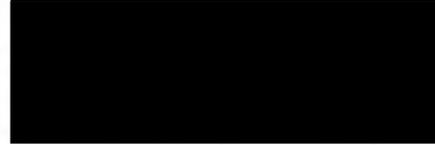
4. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates of a contractor. Marvin Smith, Michael Smith, Toner Cart, GWIS, Greenskeeper, and Golden West Hose & Coupling are affiliates, as defined by FAR 9.403 (Affiliates), because directly or indirectly, Marvin Smith, Michael Smith, and GWIS have the power to control Toner Cart, Greenskeeper, and Golden West Hose & Coupling. The affiliation of Marvin Smith, Michael Smith, Toner Cart, GWIS, Greenskeeper, and Golden West Hose & Coupling provides a separate and independent basis for each of their debarments.

5. Pursuant to FAR 9.403, an "identity of interest among family members" is an "indicia of control" so as to make one family member an affiliate of another. Marvin Smith, Michael Smith and Patricia Gail Smith are, therefore, affiliates of each other, as defined by FAR 9.403, because Marvin Smith and Patricia Gail Smith are married and Michel Smith is Marvin Smith's son, and at least indirectly each has the power to control the other, as evidenced by an identity of interests among family members. The affiliation provides a separate and independent basis for the debarments of Marvin Smith and Michael Smith, and a basis for the debarment of Patricia Gail Smith, pursuant to FAR 9.406-1(b).

6. Additionally, pursuant to FAR 9.403, interlocking management or ownership, shared facilities and equipment, and common use of employees are "indicia of control" so as to make entities affiliates of each other. Toner Cart, GWIS, Greenskeeper, and Golden West Hose & Coupling are affiliates of each other as evidenced by the use of shared facilities, and interlocking management and ownership. The affiliation of Toner Cart, GWIS, Greenskeeper, and Golden West Hose & Coupling provides a separate and independent basis for each of their debarments.

DECISION

Pursuant to the authority granted by FAR Subpart 9.4, Defense FAR Supplement Subpart 209.4, and 32 C.F.R. Section 25, and based on the evidence contained in the Administrative Record and the findings herein, Respondents are debarred for a period of three years from March 4, 2010, the date of their suspensions. Their debarments shall terminate on March 3, 2013.<sup>4</sup>



STEVEN A. SHAW  
Deputy General Counsel  
(Contractor Responsibility)

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<sup>4</sup> Although Michael Smith's conduct is egregious and merits a debarment term longer than the three years generally imposed by the FAR, because of his plea agreement and commitment to restitution, mitigating factors weigh in his favor. He is therefore debarred for three years.