



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22203-1613

NOV 10 2010

Office of the Deputy General Counsel

VIA FEDERAL EXPRESS

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

RNBS Inc. a/k/a Rugged Notebooks
[REDACTED]

Re: Notice of Debarment

Dear Ladies and Gentlemen:

By letter of June 23, 2010, the Air Force initiated proceedings to debar you, RNBS Inc. a/k/a Rugged Notebooks (D-U-N-S Number 03-077-9594) from contracting with the United States Government. That letter provided you with an opportunity to submit information and argument in opposition to the proposed debarment. By letter dated September 29, 2010, legal counsel responded on your behalf to the proposed debarment notice.

Based upon the information in the administrative record in this matter, I have determined that protection of the Government's interests requires that you be debarred from contracting with the United States Government. The basis for my decision is set forth in the attached Memorandum in Support of the Debarment (Encl. 1). The effects of debarment are those stated in the June 23, 2010 Notice of Proposed Debarment.

Because of the egregious nature of your conduct, I find that a period of debarment longer than generally imposed under the Federal Acquisition Regulation is necessary to protect the Government's interests. Your debarment is effective immediately and continues for five years from June 23, 2009, the date you were originally suspended. Your debarment will terminate on June 22, 2014.

Sincerely,
[REDACTED]

STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)

Encl. a/s

Cc: [REDACTED]



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

Mr. Alan Shad a/k/a Ali Shad
Rugged Notebooks



Re: Notice of Debarment

Dear Mr. Shad:

By letter of June 23, 2010, the Air Force initiated proceedings to debar you, Alan Shad a/k/a Ali Shad, from contracting with the United States Government. That letter provided you with an opportunity to submit information and argument in opposition to the proposed debarment. By letter dated September 29, 2010, legal counsel responded on your behalf to the proposed debarment notice.

Based upon the information in the administrative record in this matter, I have determined that protection of the Government's interests requires that you be debarred from contracting with the United States Government. The basis for my decision is set forth in the attached Memorandum in Support of the Debarment (Encl. 1). The effects of debarment are those stated in the June 23, 2010 Notice of Proposed Debarment.

Because of the egregious nature of your conduct, I find that a period of debarment longer than generally imposed under the Federal Acquisition Regulation is necessary to protect the Government's interests. Your debarment is effective immediately and continues for five years from June 23, 2009, the date you were originally suspended. Your debarment will terminate on June 22, 2014.

Sincerely,



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)

Encl. a/s

Cc:



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MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

RNBS INC. a/k/a
RUGGED NOTEBOOKS
ALAN SHAD a/k/a
ALI SHAD

On June 23, 2009, the Air Force suspended RNBS Inc. a/k/a Rugged Notebooks ("RNBS") and Alan Shad a/k/a Ali Shad ("Shad") (collectively, "Respondents") from Government contracting and from directly or indirectly receiving the benefits of Federal assistance programs. On June 23, 2010, the Air Force terminated the suspensions of the Respondents and proposed them for debarment. The actions were initiated pursuant to Federal Acquisition Regulation (FAR) Subpart 9.4.

By correspondence dated September 29, 2010, the designated counsel for the Respondents submitted matters and arguments in opposition to the proposed debarments. I have read and carefully considered all matters and arguments in opposition to the proposed debarments (the "submissions") on behalf of the Respondents, and all information in the administrative record (the "record").

INFORMATION IN THE RECORD

A preponderance of evidence in the record establishes that all times relevant hereto:

1. On September 1, 2000, RNBS was incorporated in the State of California. RNBS describes itself as a supplier of "ruggedized" computer notebooks and peripheral equipment. Since its incorporation, RNBS has been awarded nearly 3.5 million dollars in Department of Defense contracts. Shad is the president of RNBS and owns 100% of RNBS capital stock.
2. The General Services Administration ("GSA") serves as the acquisition and procurement arm of the federal government, offering equipment, supplies, telecommunications, and integrated information technology solutions to federal agencies. Under the GSA Schedule Program ("Schedule Program"), GSA enters into contracts with commercial vendors to provide products and services that can be ordered by federal agencies at stated prices for given periods of time.
3. The Trade Agreements Act of 1979 ("TAA") applies to all Schedule Program contracts because the estimated dollar value of contracts awarded to vendors under the Schedule Program exceeds the established TAA threshold. In accordance with the TAA, only United States-made or designated country end products shall be offered and sold to the Government under Schedule Program contracts.

4. In April 2004, Steven Newton (“Newton”), a private marketing consultant specializing in Schedule Programs for small businesses, began consulting for RNBS. Newton provided Shad with the requirements and parameters for being awarded a GSA contract, including the requirement that RNBS comply with the TAA. Through Newton’s assistance, RNBS applied for a GSA Schedule contract, and on February 9, 2005, RNBS was awarded a GSA Schedule contract (GS-35F-0322R) for technology related equipment, including rugged laptop computers. Newton’s consulting contract with RNBS ended in March 2005.

5. Between November 2006 and April 2007, Newton worked for RNBS a second time. During this period, Newton discovered that, in violation of its GSA Contract, RNBS was supplying the Government with rugged laptop computers that were not manufactured in accordance with TAA requirements. Rather, RNBS, which was awarded its GSA contract based upon representations that RNBS was a manufacturer of rugged laptop computers, was purchasing fully assembled computers which were actually manufactured in Taiwan and China, neither of which were designated countries for purposes of the TAA.

6. Newton informed Shad that in order to sell TAA compliant computers under the Schedule Program, RNBS would have to purchase components for assembly in the United States. However, in direct violation of RNBS’s GSA contract, RNBS continued to sell computers to the Government which were manufactured in Taiwan and China.

7. RNBS’s main supplier of rugged laptop computers was Getac, Inc. (“Getac”), a California company that sells computers manufactured in Taiwan and China by a Taiwan company called Mitac Technology Corp. (“Mitac”). Upon receipt of these Getac computers, Shad instructed RNBS employees to hide the origin of the computers by removing the Taiwanese company’s labels from the computer and replacing them with RNBS labels and labels bearing a “Made in the United States” inscription.

8. In addition to removing the Getac label from the laptop computers, RNBS engaged in other methods to hide the origin of the computers. These practices, which were performed without Getac’s authorization, included physically removing Getac’s nomenclature (identification) plates and replacing them with RNBS’s nomenclature plates, changing the Basic Input Output System on the laptops to reflect the RNBS logo, and exchanging the original owner’s manuals with a manual which bore the RNBS logo.

9. Shad instructed RNBS employees to misrepresent RNBS’s manufacturing capabilities and compliance with GSA requirements. Specifically, per Shad’s instructions, RNBS employees informed customers, including Government contractors such as Boeing and Raytheon, that RNBS’s computers were manufactured in the United States in compliance with U.S Military Standards (“MIL-STD”). Specifically, a MIL-STD-810 certification confirms that a particular computer is designed to meet the environmental conditions it is likely to encounter during its service life.

10. RNBS routinely modified ruggedized laptop computers sold to various government organizations by replacing the original Random Access Memory (“RAM”) equipment with a different brand RAM which RNBS procured at a lower price. In order to conceal the fact that

the original RAM was replaced, the original label on the RAM, which contained the laptop computer's serial number, was removed and re-affixed on the newly installed RAM. As modified, these computers were no longer MIL-STD-810 certified. Furthermore, these laptops were not retested or recertified under MIL-STD-810 after the modifications were performed by RNBS. However, RNBS misrepresented to its customers compliance with MIL-STD-810 by replacing the original Certificate of Conformance ("CoC") from Mitac with a RNBS CoC, despite the fact that RNBS did not perform any of the tests required for the MIL-STD-810 certification.

11. On July 1, 2010, a two-count criminal information was filed against Shad in the U.S. District Court, Central District of California. The criminal information alleged that on February 5, 2005, and March 26, 2009, Shad certified to the United States Government that Rugged Notebooks manufactured computers in the United States which were MIL-STD-810F certified. The information further alleged that at the time Shad made these statements, he knew that these statements were false.

12. On July 2, 2010, Shad entered into a plea agreement with the United States Attorney's Office ("the USAO") in which he pled guilty to both counts of making False Statements in violation of 18 U.S.C. § 1001. In his plea agreement, Shad specifically agrees that he is entering into the agreement willingly. On September 10, 2010, Shad's plea was accepted by the U.S. District Court, Central District of California. Shad is scheduled to be sentenced on January 10, 2011.

ANALYSIS

Respondents' submission admits that Respondents sold non-TAA compliant computers to the Government, and Respondents acknowledge that Shad pled guilty to two counts of making False Statements in violation of 18 U.S.C. § 1001. However, Respondents argue that their debarments are unwarranted. For the reasons summarized below, these arguments are not persuasive, and Respondents have failed to meet their burden of demonstrating that they are presently responsible and that their debarments are not in the Government's interest.

1. Respondents' submission fails to dispute facts material to the proposed debarments.

There is undisputed evidence in the record establishing that Shad pled guilty in a U.S. District Court for criminal offenses relating to his contractual relations with the Government. Nevertheless, Respondents dispute several of the facts alleged in the Memorandum in Support of the Proposed Debarments ("Memorandum").

First, Respondents contest that the record supports a finding that Newton, the consultant hired by Respondents, informed Shad that he should cease selling non-compliant computers to the Government. In his Affidavit, Shad states that Newton never advised him that what he was doing was illegal, and at no time did Newton suggest that Respondents cease selling computers to the Government. In fact, Respondents argue the record establishes that Newton worked actively on behalf of Respondents to secure additional Government contracts. Accepting as true that Newton did not expressly state that RNBS was engaging in "illegal conduct," the undisputed

fact remains that Newton advised RNBS of the need to comply with the TAA, and the means for doing so. The reasonable takeaway from Newton's communication to Shad was that RNBS was violating the law. Respondents' arguments on this point are without merit.

Second, Respondents state that while Shad did direct his employees to re-label Getac computers with an RNBS label, his purpose in doing so was not to thwart TAA compliance. Rather, Respondents argue that Shad's intentions were to deter customers from bypassing RNBS by purchasing directly from the manufacturer. Furthermore, Respondents allege that Getac was aware of this practice and approved of this procedure. The record, however, includes statements by former RNBS employees that describe how RNBS continued to re-label Getac computers despite "numerous occasions" in which personnel from Getac insisted that RNBS cease this unauthorized practice. More importantly, however, the record supports that Respondents engaged in these practices to conceal the fact that the computers sold by RNBS were not TAA compliant. As described in Shad's plea agreement, these practices included intentionally affixing labels bearing a "Made in the United States" inscription to the computers RNBS sold to the Government. These actions alone provide a sufficient basis for Respondents' debarments. FAR 9.406-2(b)(1)(iii). Whether or not Respondents engaged in these re-labeling practices with the manufacturer's authorization is ultimately irrelevant.

Third, Respondents argue that the record fails to support allegations that Respondents replaced original RAM equipment with "generic" or "non-brand" RAM. Respondents describe the RAM modifications performed by Rugged Notebooks as "upgrades" performed to reflect the specifications requested by customers. Respondents further deny that they attempted to conceal these modifications by removing the label on the original RAM and reaffixing it on the newly installed RAM. Finally, Respondents argue that the record fails to support that Respondents misrepresented MIL-STD compliance to the Government. In support of this argument, Respondents rely on the fact that the record does not include copies of the RNBS Certificates of Conformance which were substituted for the manufacturer's original Certificates of Conformance. Respondents' arguments are absurd. Without parsing the allegations, the undisputed fact remains that Respondents were modifying the computers they received from Taiwan by substituting a different RAM in computers sold to the Government, and by doing so, undermining the quality of certifications required by their GSA Contract. Moreover, both witness statements and Shad's plea agreement—both of which are part of the record—*do* support a finding that Respondents represented to the Government that RNBS laptops were MIL-STD-810 certified, when in fact, they were not. The specific practices in which Respondents engaged in their attempts to mislead the Government are irrelevant.

Finally, Respondents claim that Shad never made the misrepresentations alleged in his criminal information. Specifically, Respondents assert Shad was "pressured" into pleading guilty to two counts of False Statements. This claim after-the-fact that Shad was "pressured" into pleading guilty is not only irrelevant, but it is also unsupported by the record. In fact, Shad's plea agreement specifically states, "No one has threatened or forced me [Alan Shad] in any way to enter into this agreement." Respondents' argument suggests that Shad lied and perjured himself to the court, which, if true, creates an even greater need to conclude that Respondents lack present responsibility. Respondents' submission in opposition to the proposed debarments is not the time or place to re-litigate a guilty plea.

As a final consideration, even accepting Respondents' representations as true, Respondents' submission fails to raise a *genuine* dispute over facts *material* to the proposed debarment. FAR 9.406-3(b)(2). Respondents admit in their submission that they sold computers to the Government in violation of TAA requirements and the terms of their GSA Schedule contract. This misconduct alone provides a basis for their debarments. FAR 9.406(b)(1)(i). Moreover, the record reflects—and Respondents acknowledge—that Shad pled guilty in a U.S. District Court on two counts of making False Statements. Shad's guilty plea alone, being an admission of wrongdoing, coupled with his affiliation with RNBS, provides a sufficient basis for their debarments. FAR 9.406-2(b)(1)(i),(iii); FAR 9.406-5(a).

2. Respondents' submission fails to consider the mitigating factors relevant to determining a debarment decision.

FAR 9.406-1(a) describes the factors to be considered by the debarring official prior to arriving at any debarment decision. Although Respondents offer various reasons why their debarments are unwarranted, they fail to identify which of the factor(s) listed in the FAR 9.406-1(a) support their assertion that debarment is unjustified. Nevertheless, I have carefully reviewed the entire administrative record, including Respondents' submission, and I find that none of the mitigating factors described in the FAR apply here.

For example, there is no evidence in the record that Respondents cooperated with the Government during the course of its investigation or that Respondents brought the misconduct to the attention of the Government in a timely manner. FAR 9.406-1(a)(2),(3),(4). Additionally, there is no evidence in the record that effective standards of conduct and internal control systems were in place at the time of the misconduct, or that Respondents are willing to institute review and control procedures and ethics training programs to prevent misconduct recurrence. FAR 9.406-1(a)(1),(8),(10). Rather, Respondents simply claim that future TAA violations will not occur because Taiwan is now a "designated TAA provider." This assertion fails to address not only the underlying misconduct, but also the remedial measures necessary to ensure that future misconduct will be prevented.

Finally, Respondents have failed to acknowledge any wrong-doing on their part or willingness to take any responsibility for their misconduct. FAR 9.406-1(a)(10). Instead, Respondents offer that their TAA violations were merely "technical" rather than "serious" violations, and Respondents seek to escape responsibility by arguing that "virtually every other computer seller or reseller" engaged in the same misconduct. Simply put, Respondents have failed to make a case that they are presently responsible.

FINDINGS

1. RNBS' willful failure to perform and history of failure to perform one or more public contracts or subcontracts provides a separate independent basis for its debarment pursuant to FAR 9.406-2(b)(1)(i)(A),(B).

2. RNBS and Shad intentionally affixed labels bearing a "Made in America" or "Made in the United States" inscription to products sold in or shipped to the United States, when the products were not made in the United States. These actions provide a separate independent basis for each of their debarments pursuant to FAR 9.406-2(b)(1)(iii).

3. The improper conduct of Shad and RNBS 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).

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

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

6. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates of a contractor. Shad and RNBS are affiliates, as defined by FAR 9.403, because directly or indirectly, Shad has the power to control RNBS. The affiliation of Shad and RNBS provides a separate independent basis for each of their debarments.

7. The criminal conduct of RNBS and Shad was repeated and egregious. Because of the egregious nature of the conduct, I find that a period of debarment longer than generally imposed under the FAR is necessary to protect the Government's interests. Accordingly, I find that a debarment of five years is required.

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, RNBS Inc. a/k/a Rugged Notebooks and Alan Shad a/k/a Ali Shad are debarred for a period of five years from June 23, 2009, the date of their suspension. Their debarments shall terminate on June 22, 2014.



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)