



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22202-3258

Office Of The Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

TTF, L.L.C. a/k/a
TTF
DODS, INC. OF OKLAHOMA a/k/a
DODS, INC.
DAVID STOREY

MAY 08 2012

On November 18, 2011, the Air Force proposed for debarment TTF, L.L.C. a/k/a TTF (TTF), DODS, Inc. of Oklahoma a/k/a DODS, Inc. (DODS), and David Storey (Mr. Storey) (collectively Respondents) from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. On February 15, 2012, the Air Force superseded Respondents' proposed debarments based on allegations that they engaged in additional improper conduct after being proposed for debarment.

I have carefully considered all information contained in the Administrative Record, including Respondents' submissions, and determined that a preponderance of the evidence establishes the existence of a cause for debarment, and Respondents have failed to demonstrate their present responsibility. Based on the Administrative Record and the findings made herein, I have concluded that debarment is in the public interest and necessary to protect the Government's interests. 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.

INFORMATION IN THE RECORD

Parties

1. TTF, a Louisiana corporation, manufactures aircraft equipment and services aircraft components. Mr. Storey owns TTF and serves as its President.
2. DODS, a Louisiana corporation, is in the business of heat treating and bonding aircraft components. Mr. Storey owns DODS, serves as its President, and on its Board of Directors.

Background

3. On February 26, 2008, the Air Force awarded Indefinite Delivery Contract No. FA8103-08-D-0038 (Contract) to TTF for the manufacture of engine-wiring harnesses (harnesses) for KC-135 aircraft.
4. Mr. Storey executed the Contract as President of TTF and was the company's representative throughout performance.

5. The Defense Contract Management Agency (DCMA) administered the Contract.
6. Among other requirements, in relevant part, the Contract required compliance with the following:
 - a. Technical requirements, including engineering drawing No. 458-58422-595 Wire Harness – KC-135 (drawing), which set forth the specifications for the harnesses;
 - b. FAR 52.246-11, Higher-Level Contract Quality Requirement, which provides, in relevant part, “[t]he Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements” and “*shall, without charge, replace or correct work found by the Government not to conform to contract requirements....*”
 - c. The implementation of a documented Quality Control System in full compliance with International Standardization Organization (ISO) 9001-2000 E, Section 7, Control Product Realization Planning, which, in relevant part, states in planning product realization, the organization shall determine quality objectives and requirements for the product with records to provide evidence that the realization process and resulting product meet requirements.
7. The Air Force determined that the harnesses supplied by TTF failed to comply with the Contract requirements, including the technical specifications, for a number of reasons, including but not limited to:
 - a. insufficient harness length;
 - b. wrong connectors;
 - c. un-insulated grounding straps;
 - d. not employing filler rods during connector assembly to prevent empty cavities;
 - e. failure to properly identify wires; and
 - f. failure to crimp the shield terminations.
8. DCMA, on behalf of the Air Force, issued to TTF a series of requests to correct the alleged deficiencies in the harnesses and to make changes to its quality control system to prevent reoccurrence of such deficiencies.
 - a. In July 2010, DCMA issued TTF a Product Quality Deficiency Report, confirming the deficiencies identified above, and noting that “the contractor’s work instructions, used in the manufacturing of the wiring harness, were severely insufficient in assuring the

applicable contractual, engineering and specification requirements were fully satisfied.”

- b. In August 2010, DCMA issued TTF a Level II Corrective Action Request (CAR).
 - c. In September 2010, DCMA issued TTF a Level III CAR after determining that TTF, in relevant part, has not developed the processes required in ISO Paragraph 7.1. Additionally, DCMA found that TTF’s nonconformance represents a significant risk to the Government in awarding future contracts to TTF given the Critical Safety Items and other complex critical applications associated with such contracts.
9. Mr. Storey, on behalf of TTF, disputed many of DCMA’s findings with regard to the harnesses, allegedly declined to implement the corrective action requested as to the harnesses, and allegedly failed to demonstrate that it implemented sufficient remedial measures to its quality control system to prevent the reoccurrence of such issues.
 10. DCMA rejected TTF’s corrective action plans.
 11. On November 18, 2011, the Air Force proposed Respondents for debarment based on the allegations set forth above, which immediately excluded them from participating in government contracting.
 12. Respondents were each issued a notice of proposed debarment, which explicitly identified the effects of their proposed debarment under FAR Subpart 9.4, including the fact that they were ineligible for government contracts, among other effects.
 13. On November 29, 2011, Mr. Storey, on behalf of Respondents, confirmed receipt of the notices of proposed debarment.
 14. On January 5, 2012, Mr. Storey, on behalf of Respondents, provided a written submission to the Air Force in response to the proposed debarments.

Improper Conduct

15. From November 18, 2011, through February 15, 2012, while ineligible for government contracts, TTF and DODS submitted more than fifty (50) proposals to federal agencies seeking government contracts.
16. From November 18, 2011, to February 26, 2012, neither TTF nor DODS updated their existing Online Representations and Certifications Application (ORCA) dated March 9, 2011, to reflect that they were proposed for debarment and, thus, during this period of time, they falsely certified their eligibility for government contracting.

17. From November 18, 2011, to February 26, 2012, TTF and DODS did not notify the Contracting Officers to whom they had submitted proposals of their ineligibility for government contracting.

18. On January 3, 2012, Mr. Storey, on behalf of DODS and TTF, updated each company's ORCA and, in response to FAR 52.209-5 Certification Regarding Responsibility Matters (FAR 52.209-5), falsely certified that both TTF and DODS are not "presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency."

19. For each ORCA, Mr. Storey represented: "By submitting this certification, I, David W. Storey, am attesting to the accuracy of the representations and certification contained herein. I understand that I may be subject to penalties if I misrepresent TTF, LLC [DODS, INC. of Oklahoma] in any of the above representations or certifications to the government."

DISCUSSION

Procedural History & Related Findings

The Air Force proposed Respondents for debarment on November 18, 2011, based on the alleged improper conduct described in Paragraphs 7 through 10 above. In response, Respondents made multiple submissions that, in large part, disputed the allegations, although they acknowledged the deficiencies identified in Paragraph 7(e) through (f) above and agreed to correct those deficiencies. I have determined that Respondents have raised genuine disputes of material fact as to certain allegations underlying the Air Force's Notices of Proposed Debarment dated November 18, 2011, and that it is not in the Government's interests to engage in fact-finding. Therefore, those allegations play no role in the Air Force's final decision to debar Respondents, which is based exclusively on Respondents' conduct after being proposed for debarment; specifically, the allegations set forth in Paragraphs 15 through 19 above.

ANALYSIS

FAR Subpart 9.402(a) provides that "[a]gencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with [FAR Subpart 9.4], are appropriate means to effectuate this policy." FAR 9.406-1 provides: "It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3." Where "the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence." FAR 9.406-3.

ORCAs dated March 9, 2011 and January 3, 2012

From November 18, 2011, the date Respondents were proposed for debarment, through February 26, 2012, neither DODS nor TTF updated its ORCA dated March 9, 2011, to reflect its ineligibility for government contracting. Consequentially, during this time period, DODS and TTF were falsely certifying that they were not “presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.” On January 3, 2012, Mr. Storey, on behalf of TTF and DODS, updated the companies’ ORCAs and continued the false certification. The ORCAs expressly stated that the certification is “a material representation of fact upon which reliance was placed when making award,” and further that false statements are subject to prosecution. FAR 52.209-5(e); FAR 52.209-5(a). In each ORCA, Mr. Storey stated that he was “attesting to the accuracy of the representations and certification contained herein. I understand that I may be subject to penalties”

During the period of time in which TTF and DODS were falsely representing and certifying their eligibility for government contracting, Mr. Storey and/or other personnel working under his direction submitted more than fifty (50) proposals to federal agencies seeking new government contracts on behalf of TTF and DODS. In making award determinations, Contracting Officers, throughout the Government, rely upon the offeror’s ORCA for its representations and certifications. *See* FAR 52.209-5(e); FAR 4.1201(c) (describing the responsibilities of a Contracting Officer as they relate to reviewing the ORCA). While FAR Subpart 9.4 does not expressly prohibit ineligible offerors from submitting proposals, it is improper to submit proposals while falsely representing one’s eligibility for government contracting.

Respondents’ Position

Respondents do not dispute the core facts underlying their debarments. Specifically, Respondents were aware of their proposed debarments as of November 29, 2011, and TTF and DODS submitted many proposals to federal agencies after learning of their proposed debarments. On January 3, 2012, TTF and DODS updated their ORCAs, certified their eligibility for government contracting, and continued to certify their eligibility for government contracting until February 27, 2012.

Respondents do assert, however, that they had no obligation to update their ORCAs before January 3, 2012, claiming that “ORCA renewal was not due at this time.” Although unclear, Respondents presumably believe that they were only required to update their ORCAs annually, regardless of whether events transpired in the interim rendering prior representations and certifications false. Respondents also explain, as to both ORCAs dated March 9, 2011, and January 3, 2012, that they “erroneously” assumed their ORCAs would be automatically updated to reflect their ineligibility because their Central Contractor Registry (CCR) was updated automatically. Notably, Respondents did not provide to the Air Force copies of TTF’s or DODS’ CCRs. Respondents characterize their actions as an “oversight and clerical error.”

Respondents are correct that the representations and certifications contained in an ORCA are generally effective for one year. This is clear from the face of the ORCAs in question, which state “Certification Validity,” and then identify the one-year period of validity based on the date

of the certification. Here, Respondents' March 9, 2011, ORCAs were valid through March 9, 2012.

The one-year period of validity, however, assumes no change in the offeror's circumstances that would render prior representations and certifications false. "Prospective contractors *shall update* the representations and certifications submitted to ORCA *as necessary*, but at least annually, *to ensure they are kept current, accurate, and complete.*" FAR 4.1201(b)(1) (emphases added). An offeror, therefore, is required to update its ORCA as is "necessary" to ensure it is "kept current, accurate, and complete" and must recertify its ORCA at least annually, regardless of whether any changes occur during the year.

Additionally, FAR 52.209-5(b), the clause contained in the ORCAs, expressly provides that: "The Offeror shall provide *immediate written notice* to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification *was erroneous when submitted or has become erroneous* by reason of changed circumstances." (Emphases added). Offerors, therefore, are to ensure their certification is accurate *before* submitting proposals, but where they fail to update their ORCA prior to submitting proposals or where their circumstances change post-proposal submission, at a minimum, they are to immediately notify, in writing, the Contracting Officer to whom they have submitted proposals of their ineligibility. This principle is echoed throughout the FAR. *See* FAR 52.204-8 Annual Representations and Certifications (requiring offerors to verify *as of the date of their offer* that their ORCA is "current, accurate, and complete" with the exception of changes set forth in writing).

The Administrative Record establishes that, prior to learning of the Air Force's superseding proposed debarments, neither TTF nor DODS updated its ORCA to reflect its ineligibility for government contracting, and similarly, that neither TTF nor DODS provided written notice of their ineligibility to Contracting Officers to whom they had submitted proposals.

The Air Force is surprised that it must educate Respondents on the importance of keeping one's representations and certifications current, accurate, and complete. Not only is this logical and something a responsible contractor would want to do, but the ORCA, itself, makes clear that this is required. Further, the ORCA notifies offerors of the seriousness of their representations and certifications and further warns them of the consequences and penalties for non-compliance, including criminal prosecution and/or the termination for default of any contracts received. *See* FAR 52.209-5(e) (certification is "*a material representation of fact* upon which reliance was placed when making award) (emphasis added); FAR 52.205-9(a) (*false statements are subject to "Prosecution* Under Section 1001, Title 18, United States Code") (emphasis added); FAR 52.209-5(e) ("the Contracting Officer *may terminate the contract ...* for default") (emphasis added).

In reviewing the Administrative Record, which includes Respondents' submissions, I have determined that a preponderance of the evidence establishes the existence of causes for debarment based on the following findings: (1) Respondents were aware of their proposed debarments as of November 29, 2011; (2) TTF and DODS submitted many proposals to federal agencies after learning of their proposed debarments; (3) TTF and DODS did not update their ORCAs promptly after learning of their proposed debarments or notify Contracting Officers to

Officers to whom they had submitted proposals of their ineligibility; (4) Mr. Storey, on behalf of TTF and DODS, updated each company's ORCA on January 3, 2012, and falsely certified their eligibility; and (5) the separate bases for affiliation and imputation as set forth below.

Mitigating Factors and Remedial Measures

“[T]he contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary” where a preponderance of the evidence establishes the existence of a cause for debarment. FAR 9.406-1. In assessing a contractor's present responsibility, FAR Subpart 9.406-1 instructs agencies to consider the presence of any remedial measures or mitigating factors. “The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision.”

In their submissions, Respondents present several mitigating facts and remedial measures. Respondents contend that they did not willfully submit false ORCAs to the Government, and that such conduct was the byproduct of “erroneous” assumptions; specifically, Respondents believed the ORCAs would be automatically updated to reflect their ineligibility without any action from them. Additionally, Respondents do not believe they had a legal obligation to update their ORCAs prior to January 3, 2012, or the end of the one-year period of validity set forth in the ORCAs. For the limited purposes of this administrative proceeding, the Air Force will accept Respondents' contentions that they did not act willfully, and will further assume that Respondents were unaware of the minimum requirement to notify Contracting Officers to whom they had submitted proposals of their ineligibility.

Respondents have accepted responsibility for their actions and have further demonstrated they take the Air Force's concerns seriously. After learning of the Air Force's superseding proposed debarments, TTF and DODS updated their ORCAs to certify their ineligibility for government contracting and further represented that they withdrew all outstanding proposals pending before federal agencies.

These facts mitigate against the seriousness of Respondents' improper conduct but do not alleviate the serious concerns the Air Force has concerning Respondents' present responsibility. Even accepting Respondents' contentions as true, and assuming, for purposes of this proceeding, that their actions were not willful, Respondents' conduct, nonetheless, casts a heavy shadow over their responsibility. The ORCA is a serious and important matter to the Government, and Respondents' actions demonstrate that they completed their ORCAs in a careless manner, to say the least, and did not recognize the significance of what they were representing and certifying.

Respondents clearly did not test the veracity of their assumption that the ORCA would be automatically updated. Had they even reviewed the ORCAs, Respondents would have discovered that the ORCAs were not automatically updated. The fact that Respondents recertified the ORCAs on January 3, 2012, and continued their false certifications, further evidences their gross negligence. Additionally, it is disconcerting that Respondents saw no problem with submitting many, many proposals to federal agencies seeking government contracts but did not apprise the Contracting Officers to whom they had submitted proposals of

their ineligibility. Overall, Respondents' actions, at a minimum, call into question their sophistication and competency to serve as government contractors, including their ability to understand and comply with the regulatory requirements applicable to government contracting, as well as to understand the importance of making representations and certifications to the Government that are current, accurate, and complete.

Furthermore, absent from the record is any indication that Respondents have, on their own volition and without prompting from the Air Force, recognized the importance of avoiding such compliance failures in the future by committing themselves to undergoing education and training on government contracting compliance, including the critical importance of making truthful and complete representations and certifications.

In light of Respondents' improper conduct, the Air Force could impose a three-year period of debarment for each of their improper acts, including: Respondents' failure to update each of the ORCAs dated March 9, 2011, or to, at a minimum, notify Contracting Officers to whom they had submitted proposals of their ineligibility; and Respondents' false certifications in each of the ORCAs dated January 3, 2012. However, the Air Force will treat these instances of improper conduct as a single continuing event. The Air Force would normally impose a three-year period of debarment consistent with FAR 9.406-4(a). However, in consideration of the mitigating facts and remedial measures presented by the Respondents in their submissions, including those identified herein, Respondents' period of debarment will be reduced to 18-months. I find that this period is necessary and sufficient to protect the Government's interests and is in the public interest.

FINDINGS

I have carefully considered all information contained in the Administrative Record, including Respondents' submissions, and determined that a preponderance of the evidence establishes the existence of a cause for debarment, and Respondents have failed to demonstrate their present responsibility. Debarment of Respondents is in the public interest and necessary to protect the Government's interests. Below are my findings:

1. Respondents' improper conduct is of so serious or compelling a nature that it affects their present responsibility to be government contractors or subcontractors and provides a 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. Storey is imputed to TTF and DODS because his improper conduct occurred in connection with the performance of his duties for or on behalf of TTF and DODS, or with the knowledge, approval, or acquiescence of TTF and DODS. The imputation of Mr. Storey's conduct to TTF and DODS provides a separate independent basis for the debarments of TTF and DODS.

3. Pursuant to FAR 9.406-5(b), the seriously improper conduct of TTF and DODS is imputed to Mr. Storey because as an officer, director, shareholder, partner, employee or other person associated with TTF and DODS, he participated in, knew of, or had reason to know of TTF's and

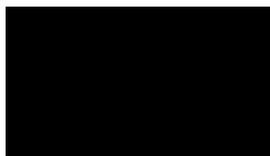
DODS' improper conduct. The imputation of TTF's and DODS' conduct to Mr. Storey provides a separate independent basis for his debarment.

Affiliation

4. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates of a contractor. Mr. Storey, TTF, and DODS are affiliates, as defined at FAR 9.403 (Affiliates), because directly or indirectly, each one has the power to control the other or a third party has the power to control them all. The affiliation of Mr. Storey, TTF, and DODS provides a separate 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 2 C.F.R. Part 1125, and based on the evidence contained in the Administrative Record and the findings herein, Respondents are debarred for a period of 18-months, which shall run from the date of their proposed debarments, November 18, 2011, and, thus, shall terminate on May 17, 2013.



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22202-3258

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MAY 08 2012

Mr. David Storey



TTF, L.L.C. a/k/a
TTF



DODS, Inc. of Oklahoma a/k/a
DODS, Inc.



Re: Notice of Debarment

Mr. Storey:

On November 18, 2011, the Air Force proposed that you, David Storey, and your companies, TTF, L.L.C. a/k/a TTF and DODS, Inc. of Oklahoma a/k/a DODS, Inc. (collectively Respondents), be debarred from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. On February 15, 2012, the Air Force superseded Respondents' proposed debarments. For each administrative action, Respondents were provided with a Notice of Proposed Debarment (Notice) and a Memorandum in Support of the Proposed Debarments. The Notices afforded Respondents the opportunity to submit information and argument in opposition to the proposed debarments. Respondents have made multiple submissions to our office, each of which has been added to the administrative record.

Based upon the Administrative Record, I have determined that the 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 Notices issued to Respondents, as well as in 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/gcr1/index.asp>.

Respondents' debarments are effective immediately and will run for a period of 18-months from the date of their proposed debarments, November 18, 2011. Respondents' debarments will terminate on May 17, 2013.

Sincerely,



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)

Encl.1
a/s