



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22202-3258

MAY 30 2012

Office of the Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

SCOTT A. POSPISHIL
RANDALL LEE DEVALINGER

Effective this date, the Air Force has debarred Scott A. Pospishil (Mr. Pospishil) and Randall Lee DeValinger (Mr. DeValinger) (collectively Respondents) 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 November 17, 2011, the Air Force proposed Respondents for debarment and afforded them the opportunity to submit information and argument in opposition.¹ Respondents, each, have made multiple submissions to the Air Force, and Mr. Pospishil has supported his submissions with three affidavits, each of which have been added to the Administrative Record. 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 Respondents have failed to demonstrate their present responsibility. I have, therefore, concluded that debarment is in the public interest and necessary to protect the Government's interests.

INFORMATION IN THE RECORD

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

1. M Contractor² served as a subcontractor to Prime Contractor under Government contracts, including Air Force contracts, wherein it provided manufacturing support, assembly support, and testing services for microwave components.
2. Mr. DeValinger was a testing supervisor for M Contractor.
3. Mr. Pospishil was a junior tester working under the supervision of Mr. DeValinger.

¹ On December 20, 2011, based on the Administrative Record, the Air Force debarred Mr. DeValinger for a period of three years after not receiving a submission from him. On January 3, 2012, Mr. DeValinger notified the Air Force that he did not receive the notice of proposed debarment and requested the opportunity to make a submission in opposition to his debarment. The Air Force granted Mr. DeValinger's request and reviews the matter *de novo*.

² M Contractor refers to a contractor that is not a party to this action.

4. From approximately December 2009 to September 2010, Mr. DeValinger and Mr. Pospishil falsified test reports relating to microwave components by duplicating the testing data from previously performed tests.
5. Mr. DeValinger knew it was improper to falsify the test reports but rationalized his actions to himself and to Mr. Pospishil and directed Mr. Pospishil to falsify the test reports.
6. Mr. Pospishil accepted Mr. DeValinger's rationalization and followed his direction to falsify test reports.
7. Mr. Pospishil knew it was improper to falsify the test reports but did not notify anyone within the company of his concerns.
8. In light of Respondents' improper conduct, M Contractor terminated their employment.

ANALYSIS

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.

Respondents admit to knowingly falsifying test reports on multiple occasions during an extended period of time. Mr. Pospishil asserts that "while he was working for [M Contractor] as a tester, he falsified test reports regarding the Switch Combiner at the direction of his supervisor, Mr. DeValinger, and that he did not inform anyone of the falsified reports." Mr. DeValinger asserts that "I accept that I did wrong, made the wrong decision in regards to the return loss on the combiners and will have to live with the damage that it caused for the rest of my life." Respondents' knowing falsification of test reports over an extended period of time provides a cause for debarment and is undisputed and, therefore, is established by a preponderance of the evidence.

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."

Respondents offer mitigating factors and remedial measures for consideration.

Mr. Pospishil

Mr. Pospishil accepts responsibility for his improper actions and recognizes and understands the seriousness of his conduct. In his submissions, Mr. Pospishil describes the circumstances underlying his decision to falsify test reports in order to place his conduct in context, including that: he was a junior tester and lacked experience; he relied upon Mr. DeValinger and trusted him and accepted his rationale for why the tests were not critical and would not have an impact on the quality of the products; he did not understand the consequences of his actions; he felt pressure to produce and keep things on schedule; no harm was caused by his actions; he cooperated fully with the Government's investigation; and he has implemented remedial measures designed to prevent reoccurrence of these events, including compliance and ethics training. Although stated numerous times and in varying ways, Mr. Pospishil offers the following mitigating facts:

- (1) "Mr. Pospishil accepts responsibility for his actions," acknowledges he "exercised bad judgment," and "has learned from his mistakes;"
- (2) "He had no prior experience" with radio frequency engineering, "was an inexperienced college student who was learning on the job and trying to comply with his supervisor's direction;"
- (3) "I did not have an understanding of the consequences of certain test results;"
- (4) "Mr. DeValinger provided a logical explanation to Mr. Pospishil to support his assertion that no harm would come from skipping the Switch Combiner tests in question Mr. DeValinger "explained that these tests were unnecessary for several reasons; namely, a) that these tests were re-accomplished at the purchasers' facilities as well and their test requirements were much more lenient than the specifications that we were given, and b) that some of the other tests that we were doing proved that the specific tests would pass and therefore they were a formality;"
- (5) "Mr. Pospishil questioned Mr. DeValinger several times, but eventually chose to trust him and followed his orders;"
- (6) "[H]e did not think that these actions would have any impact on the overall quality of the project because of the explanation given to him by Mr. DeValinger;"
- (7) "He did not tell anyone because he did not want to do anything to get them in trouble and also because he admits to just not thinking clearly about the consequences of his actions;"
- (8) "[T]he product was stacked so high that he started to feel the pressure of keeping up;"
- (9) "Mr. Pospishil had become so embarrassed and ashamed that he further distanced himself away from the Switch Combiner project;"

- (10) “The feelings of being embarrassed and ashamed plagued my decisions and caused me to keep quiet instead of addressing the issues;”
- (11) “[N]o harm has resulted from the falsified test results;”
- (12) He did not want to report Mr. DeValinger because “disappointing his father would be worse than any punishment he could think of,” had “concern about getting his father in trouble,” and wanted “to show his independence from his father ...;”
- (13) “There is no pattern of misdeeds by Mr. Pospishil;”
- (14) “Mr. Pospishil has met and cooperated with the Air Force ...;”
- (15) “Now that I have had time to reflect and fully understand the situation I realize how wrong my actions truly were.... I failed to think about where the product would end up and the impact that my actions could have had;”
- (16) “I realize, now that everything is out in the open, that the easiest thing would have been to speak up when I was first approached about copying old test data;”
- (17) “Since becoming aware of the investigations into his action, Mr. Pospishil [working as a Principal Investigator] has not acted in any manner that would raise a question regarding his responsibility.”

Mr. Pospishil also offers remedial measures. Specifically, in recognition of “the seriousness of his actions and the need to comply with all requirements and regulations when working with the Government,” he enrolled in and completed an ethics and compliance course focused on government contracting. After taking this course, Mr. Pospishil notified the Air Force that: “The course helped me to really understand ... how ethics is a very big issue This gave me an even better appreciation for always doing the right thing ethically”

The Air Force has considered each of the mitigating facts and remedial measures offered by Mr. Pospishil and accepts them as true for purposes of this proceeding. The Air Force is sympathetic to the fact that Mr. Pospishil was junior to Mr. DeValinger, was supposed to be learning from him, trusted him, and, as a result, accepted Mr. DeValinger’s explanation and rationale and followed his direction. While the mitigating factors and remedial measures presented by Mr. Pospishil mitigate against the seriousness of Mr. Pospishil’s improper conduct, they do not alleviate, entirely, the serious concerns the Air Force has concerning Mr. Pospishil’s present responsibility.

While Mr. Pospishil may not have understood what value or impact the testing he was performing actually had and the technical consequences for failing to conduct them, he knew it was improper to lie about conducting the tests. The decision to falsify anything, let alone a test of product destined for the Government, is wrong in and of itself and that Mr. Pospishil knew. Additionally, Mr. Pospishil admitted that he was not forced to falsify tests, and that Mr. DeValinger “said he would do it and that Mr. Pospishil did not have to.” Ultimately, Mr.

Pospishil succumbed to the “pressure of keeping up” with the workload and continued falsifying the tests despite knowing it was improper and unethical. Mr. Pospishil did not act improperly on one occasion and then report his actions and those of Mr. DeValinger to the company. To the contrary, he knowingly falsified test data over an extended period of time. These multiple decisions to act improperly evidence a core ethical void and deficiency and a serious lack of judgment.

While Mr. Pospishil has clearly made strides since these events and now promises to always do the right thing, I have serious concerns as to whether he is presently responsible and continue to question whether his internal ethical compass will fail him again in the presence of pressure, direction from supervisors, or some other set of unique and challenging circumstances. Moreover, the improper unethical acts occurred as recently as September 2010 and Mr. Pospishil has only recently begun to appreciate the importance of ethics in every-day decision-making and the critical importance of always doing the right thing. Given his improper conduct was the direct byproduct of serious core failures in his ethical decision-making, I question whether sufficient time has passed to eliminate the flaws in his integrity, judgment, and decision-making that led him to make the very bad decisions underlying this matter.

In light of Mr. Pospishil’s improper conduct, the Air Force could impose a three-year period of debarment for each instance where he falsified test data. Here, however, the circumstances do not warrant such and, accordingly, the Air Force will treat these multiple instances of improper conduct as a single continuing event. Normally, the Air Force would impose a three-year period of debarment consistent with FAR 9.406-4(a), but in consideration of the mitigating facts and remedial measures presented, including those identified herein, Mr. Pospishil’s period of debarment will be reduced to a period of 10-months running from the date of his proposed debarment. I find that this period is necessary and sufficient to protect the Government’s interests and is in the public interest.

Mr. DeValinger

Mr. DeValinger also accepts responsibility for his improper actions and recognizes and understands the seriousness of his conduct. In his submissions, Mr. DeValinger describes the circumstances underlying his decision to falsify test reports in order to place his conduct in context, including that: he felt pressure and stress to deliver the product on time and on schedule; he did not feel that he could fail to do so without suffering some adverse impact concerning his employment; and that he cooperated fully with the Government’s investigation. Although stated numerous times and in varying ways, Mr. DeValinger offers the following mitigating facts:

- (1) “I accept that I did wrong, made the wrong decision in regards to the return loss on the combiners and will have to live with the damage that it caused for the rest of my life.” “I have acknowledged my part and have suffered consequently for it. This is something I never want to go through again and a mistake I will never repeat regardless of the circumstances;”
- (2) There was “pressure and stress” associated with working for Tony and the “high turnover rate is proof in and of itself that Tony was at a minimum a difficult individual to work with and

for.” “Tony expected his employees to work more than 45 hours a week.” “Subsequently if an employee was in danger of not meeting a specific deadline Tony’s temperament would become cross and forceful if he did not feel you had spent enough time at work;”

(3) “It was not uncommon for employees with deadlines to work consequently for weeks, even months without a day off, working through the weekends and holidays;”

(4) “During the last 2-3 years of my employment with [M Contractor] on average I worked between 55 to 75 hours per week. The last week of each Quarter was always particularly daunting, because in order to achieve the goals for product shipment it was more effective for me to spend the entire week at work, sleeping wherever I could find a place to lay down bubble wrap and a sleeping bag...;”

(5) “I went to these extremes because more requirements were being made for increased production. Resources both in personnel and equipment became more difficult to maintain and manage in a normal operating schedule. I also felt that if I did not achieve those goals my position within the company was certainly on the line, and possibly my livelihood at risk. More than once as I voiced my opposition to shipment deadlines and/or the quantity of units promised to customers I was told these goals will be met or the company will find someone that could achieve them.” “[V]oicing my concerns ... was only hurting my worth in the company and my professional relationship with Tony;”

(6) “I had been directed more than once by Tony & Jim that we could not keep slipping on deliveries;”

(7) “Hindsight is 20/20 and I truly regret putting myself in this position. I lost my job, I burned through my savings, and I had to pull my wife and kids away from their grandparents and the only environment they ever knew. I worked ridiculously long hours, dealt with enormous stress and lost a job with a company that I helped grow and expand. I have no doubt that my reputation and work ethic has been severely tarnished, both within [M Contractor] and ITT;”

(8) “I can’t help feeling that the reports, interviews and information you have been shown paints a much darker image of me than what is warranted;” and

(9) Mr. DeValinger has cooperated with the Air Force.

The Air Force has considered each of the mitigating facts offered by Mr. DeValinger and accepts them as true for purposes of this proceeding. The Air Force appreciates that Mr. DeValinger felt intense pressure to perform on schedule, had a family to support, and feared losing his job or harming his career with M Contractor if he did not falsify the tests. However, while these factors place Mr. DeValinger’s conduct in context and mitigate, to an extent, against the seriousness of his improper conduct, they do not alleviate the serious concerns the Air Force has concerning his present responsibility.

Poor decisions, often, are made in the face of pressure or difficult circumstances. It is how an individual confronts such challenges and overcomes them that defines a person and their

integrity. Mr. DeValinger clearly felt pressure to perform and meet expectations. However, he was not directed to falsify the test reports and never informed his employer that this was the only way he could meet the schedule. Even had Mr. DeValinger been directed to falsify tests, he could have reported the matter within the company to senior leadership within M Contractor or its parent company or, at a minimum, resigned his employment. Mr. DeValinger consciously and knowingly decided to engage in conduct that he knew was improper. He falsified test reports, rationalized his actions, and directed his subordinate, Mr. Pospishil, to do the same because this improper conduct secured his position with the company and he, admittedly, “was rewarded financially with raises, extra bonus shares and even stock options.”

Mr. DeValinger knowingly falsified test data over an extended period of time and, to make matters worse, enlisted the assistance of a subordinate, Mr. Pospishil, someone whom he was supposed to supervise and ensure learned the proper procedures for completing his assigned testing responsibilities. Instead, Mr. DeValinger corrupted himself and Mr. Pospishil. Mr. DeValinger’s improper actions evidence a core ethical void and deficiency and a serious lack of judgment and leadership.

Mr. DeValinger has represented that he has learned a tremendous lesson from these events and the consequences of which have been devastating to him and to his family. The Air Force appreciates that the consequences of his termination, damage to his reputation, and proposed debarment have impacted him in a negative manner and have disrupted the lives of his family. However, all of these consequences were foreseeable had Mr. DeValinger simply taken the time to think through his actions.

Mr. DeValinger’s submissions demonstrate that he has learned from these events but his stated motivation to avoid such improper actions in the future appears to be guided largely by the potential consequences as opposed to any genuine desire to live an ethical life and to always do the right thing. Given that his improper conduct was the direct byproduct of serious core failures in his ethical decision-making and he was able to rationalize and justify his improper actions, consequence-driven decision-making is unlikely to prevent reoccurrence of such issues. While understanding the consequences of one’s actions is important, it cannot be the core motivating factor. Ultimately, ethical decision-making must take the driver’s seat. In this regard, Mr. DeValinger has not, on his own initiative, pursued ethics education and training or even expressed a desire to do so in the future.

In light of Mr. DeValinger’s improper conduct, the Air Force could impose a three-year period of debarment for each instance where he falsified test data. Here, however, the circumstances do not warrant such and, accordingly, the Air Force will treat these multiple instances of improper conduct as a single continuing event. Normally, the Air Force would impose a three-year period of debarment consistent with FAR 9.406-4(a) but in consideration of the mitigating facts presented, including those identified herein, Mr. DeValinger’s period of debarment will be reduced to 15-months. In reaching this decision, I note that Mr. DeValinger has offered no remedial measures. I find that this period is necessary and sufficient to protect the Government’s interests and is in the public interest.

FINDINGS

The improper conduct of Mr. Pospishil and Mr. DeValinger is of so serious or compelling a nature that it affects their present responsibility to be Government contractors or subcontractors and provides a basis for each of their debarments pursuant to FAR 9.406-2(c).

DECISION

Pursuant to the authority granted by FAR Subpart 9.4, Defense FAR Supplement Subpart 209.4, and 2 C.F.R., Section 1125, and based on the evidence contained in the Administrative Record and findings herein, Scott A. Pospishil and Randall Lee DeValinger are hereby debarred. Mr. DeValinger is debarred for a period of 15-months, which shall run from the date of his proposed debarment, November 17, 2011, and thus, shall terminate on February 16, 2013. Mr. Pospishil is debarred for a period of 10-months, which shall run from the date of his proposed debarment, November 17, 2011, and thus, shall terminate on September 16, 2012.



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22202-3258

Office of the Deputy General Counsel

VIA FEDEX

SAF/GCR
1235 S. Clark Street
Suite 301
Arlington, VA 22202

MAY 30 2012

Mr. Randall Lee DeValinger


Re: Notice of Debarment

Mr. DeValinger,

On November 17, 2011, the Air Force proposed that you, Randall Lee DeValinger, be debarred from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. You were 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 your debarment 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/gcr1/index.asp>.

Your debarment is for the period of 15-months and effective immediately. Your debarment will run from the date of your proposed debarment, November 17, 2011, and thus, shall terminate on February 16, 2013.

Sincerely,

STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)

Encl.1
a/s



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22202-3258

Office of the Deputy General Counsel

VIA FEDEX

SAF/GCR
1235 S. Clark Street
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MAY 30 2012

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Your debarment is effective immediately and will run from the date of your proposed debarment, November 17, 2011, and thus, shall terminate on September 16, 2012.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Shaw".

STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)

Encl.1
a/s