



DEPARTMENT OF THE AIR FORCE

ARLINGTON, VA 22203-1613

Office Of The Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

DANIEL JOHNS
SPORTING GOODS WITH A TWIST a/k/a
SWAT LLC a/k/a
SWAT

JUN 2'0 2012

Effective this date, the Air Force has debarred Daniel Johns (Mr. Johns) and Sporting Goods with a Twist a/k/a SWAT LLC a/k/a SWAT (SWAT) (collectively Subjects) 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 October 27, 2011, the Air Force proposed Subjects, Pamela Johns,¹ William Wilkerson (Mr. Wilkerson), and Staff Sergeant Jonathan I. Harpole (SSgt Harpole) for debarment and afforded them the opportunity to submit information and argument in opposition to their proposed debarments. Subjects were each issued a Notice of Proposed Debarment and a Memorandum in Support of the Proposed Debarments.²

I have considered all information contained in the Administrative Record, including Subjects' submissions, and determined that a preponderance of the evidence establishes the existence of a cause for debarment, and Subjects 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 ADMINISTRATIVE RECORD

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

1. SWAT is a supplier of sporting goods, recreational equipment, office supplies, and other miscellaneous goods and is located near Malmstrom Air Force Base (MAFB).
2. SWAT has attempted to obtain Government contracts and has marketed its business to Air Force personnel working at MAFB.

¹ In a separate decision, the Air Force terminated the proposed debarment of Pamela Johns.

² Subjects did not make a submission prior to the due date, and on December 6, 2011, Subjects were debarred for a period of three years. Shortly thereafter, on December 8, 2011, the Air Force received a written submission from Mr. Johns on behalf of Subjects. The Air Force reviews the matter *de novo* and as though Subjects are currently proposed for debarment.

3. SWAT has done business with Air Force personnel working at MAFB, including personnel using a Government Purchase Card (GPC) to make purchases on behalf of the Air Force.
4. Mr. Johns owns SWAT and oversees its operations.
5. In July of 2007, Mr. Wilkerson, then a SWAT employee, and SSgt Harpole devised and carried out a scheme whereby Mr. Wilkerson and SSgt Harpole manufactured fictitious transactions purporting to sell SSgt Harpole various goods, created fictitious invoices to memorialize the transactions, charged SSgt Harpole's Air Force-issued GPC for such goods, and provided little or no supplies to the Air Force, the actual customer.
6. Mr. Johns authorized Mr. Wilkerson to enter into two phony transactions on behalf of SWAT on the condition that he receive a large portion of the funds from each transaction, including:
 - a. On or around July 19, 2007, \$650 was charged to SSgt Harpole's GPC, and he received \$400 while Mr. Johns received \$250 or over 38-percent of the funds. The Air Force received no supplies from SWAT; and
 - b. On or around August 15, 2007, \$1300 was charged to SSgt Harpole's GPC, and he received \$450 and approximately \$250 in office supplies while Mr. Johns received approximately \$600 or over 45-percent of the funds.
7. SSgt Harpole was tried by court martial and convicted for the aforementioned improper conduct and other improper conduct, including larceny, conspiracy to commit larceny, false official statements, and obtaining loans under false pretenses.
8. The Air Force has debarred Mr. Wilkerson and SSgt Harpole.

LEGAL STANDARD

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.

"[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. The focus of a present responsibility inquiry is to determine whether the contractor possesses the requisite business integrity and honesty necessary to be trusted to contract with the Government. The importance of business integrity and honesty cannot be overstated.

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."

ANALYSIS

Mr. Johns admits that he authorized Mr. Wilkerson, on behalf of SWAT, to enter into such phony transactions, to provide cash back to SSgt Harpole, and that he received funds from each transaction and little or no goods were provided to the Air Force. Mr. Johns, however, contends that he was not aware that a GPC was involved and, thus, did not know the Air Force would be harmed.

For purposes of this proceeding, the Air Force accepts Mr. Johns' representation that he did not know the Air Force would be victimized by this scheme. However, Mr. Johns, admittedly, authorized his employee to enter into and carry out phony transactions, whereby representations were being made that SWAT was selling goods to SSgt Harpole when little or no goods were provided. These transactions were effectuated solely to extract funds under false pretenses. These fraudulent acts, alone, provide a cause for debarment and raise serious concerns regarding Mr. Johns' present responsibility, including his ethics, integrity, and SWAT's business practices.

In an effort to explain why he did not realize the Air Force would be victimized, Mr. Johns represents that he does not actively manage SWAT's operations and relies heavily on his employees. Mr. Johns asserts: "I have never worked at SWAT full time. I have always had many other jobs. I have always had a manager to run the store. *I am rarely at the store.*" (Emphasis added). "I would guess *I have been in the store once every one to two weeks.*" (Emphasis added). "With the minimal amount of time I have for each business, *I have to rely on my employees. Sometimes it works and sometimes it does not.* In this case it did not." (Emphasis added).

Mr. Johns represents that upon learning of Mr. Wilkerson's improper conduct, Mr. Johns terminated Mr. Wilkerson and cooperated with the Air Force's investigation of this matter. Additionally, Mr. Johns asserts that: "[s]ince the time this has happened I and SWAT have distanced from any thing [sic] involving Malmstrom. I have learned from this when an employee asks for something out of the ordinary, I have to get many more details before approving it."

The explanation offered by Mr. Johns heightens the Air Force's present responsibility concerns because it indicates that Mr. Johns does not manage SWAT in a responsible manner and further indicates that he believes this approach to management is appropriate. Mr. Johns' failure to manage and oversee SWAT's operations in a responsible manner created an environment that enabled Mr. Wilkerson and SSgt Harpole to defraud and harm the Air Force. Mr. Johns was and continues to be an absentee owner and relies heavily on his employees to manage SWAT. He also does not appear to invest much time or energy in ensuring that his

operations are managed appropriately and embraces a cavalier attitude when it comes to hiring personnel. In this regard, and referring to his reliance on personnel, Mr. Johns asserts, "*Sometimes it works and sometimes it does not.*" (Emphasis added). Beyond stating that he has "distanced" himself and SWAT from working with MAFB and will ask SWAT employees for more details in the future before approving transactions, Mr. Johns has not provided any other evidence that he has instituted remedial measures, including internal controls, that are likely to mitigate significantly against the reoccurrence of these types of events.

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. For these reasons, I have concluded that debarment is in the public interest and necessary to protect the Government's interests.

While FAR 9.406-4(a) provides that the period of debarment generally shall not exceed three years, Mr. Johns' conduct here is particularly egregious and his response to the Air Force's concerns demonstrates that he does not understand the gravity of his actions or the importance of managing SWAT in a responsible manner. After considering the mitigating facts and remedial measures presented by Mr. Johns, and giving him due credit for his cooperation, the disciplinary action taken, and the minimal remedial measures offered, I have determined that a five-year period of debarment is appropriate. I find that this period is necessary and sufficient to protect the Government's interests and is in the public interest.

FINDINGS

Debarment of Subjects is in the public interest and necessary to protect the Government's interests. The Administrative Record establishes, by a preponderance of the evidence, that Mr. Johns engaged in improper conduct that provides a cause for debarment. Accordingly, based on my review and consideration of all the information contained in the Administrative Record, I make the following findings:

1. Mr. Johns' improper conduct is of so serious or compelling a nature that it affects his present responsibility to be a government contractor or subcontractor and provides a separate independent basis for his debarment pursuant to FAR 9.406-2(c).
2. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates of a contractor. Mr. Johns and SWAT are affiliates, as defined at FAR 9.403 (Affiliates), because directly or indirectly, either one has the power to control the other or a third party has the power to control both. The affiliation of Mr. Johns and SWAT provides a separate independent basis for the debarment of SWAT.
3. Pursuant to FAR 9.406-5(a), the seriously improper conduct of Mr. Johns is imputed to SWAT because his improper conduct occurred in connection with the performance of their duties for or on behalf of SWAT, or with the knowledge, approval, or acquiescence of SWAT. The imputation of Mr. Johns' conduct to SWAT provides a separate independent basis for the debarment of SWAT.

DECISION

Pursuant to the authority granted by FAR Subpart 9.4, Defense FAR Supplement Subpart 209.4 and Appendix H, and 2 C.F.R. Section 1125, and based on the evidence contained in the Administrative Record and the findings herein, Subjects are debarred for a period of five years, which will run from October 27, 2011, the date of their proposed debarments. Subjects' debarments shall terminate on October 26, 2016.

A handwritten signature in black ink, appearing to read 'S. Shaw', with a stylized, cursive script.

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

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1235 S. Clark Street
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JUN 20 2012

Mr. Daniel Johns
[REDACTED]

Sporting Goods with a Twist a/k/a
SWAT LLC a/k/a
SWAT
c/o Daniel Johns, Owner
[REDACTED]

Re: Notice of Debarment

Mr. Johns,

On October 27, 2011, the Air Force proposed that you, Daniel Johns, and your company, Sporting Goods with a Twist a/k/a SWAT LLC a/k/a SWAT (collectively Subjects) (DUNS No.: 78-116-6975), be debarred from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. Subjects were provided with a Notice of Proposed Debarment (Notice) and a Memorandum in Support of the Proposed Debarments. The Notice afforded Subjects the opportunity to submit information and argument in opposition to the proposed debarments. The submissions were added to the Administrative Record in this matter.

Based upon the information in the Administrative Record, I have determined that debarment of Subjects 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 the company, 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>.

Subjects' debarment is effective immediately and will run from the date of its proposed debarment, October 27, 2011. The debarment will terminate on October 26, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read 'S.A. Shaw', written in a cursive style.

STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)

Encl.1
a/s