



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 7 - 2014

DEBARMENT DETERMINATION

CERTIFIED MAIL RETURN RECEIPT

Ms. Cynthia De Castro

Tamuning, GU 96931-7021

Re: Proposed Debarment of Cynthia De Castro, DOI Case No. 13-0019-00

Dear Ms. De Castro:

This is to provide you with my written decision as Debarment Official for the U.S. Department of the Interior (DOI) regarding your proposed debarment. After considering the information provided for the official record, I conclude that your debarment from Federal nonprocurement and procurement activities for a three year period is presently warranted.

I. Brief Procedural History.

DOI proposed to debar you under the provisions of 2 C.F.R. Part 180, implemented by DOI through 2 C.F.R. Part 1400, by Notice dated April 12, 2013. The Notice proposed debarment from Federal non-procurement and procurement program activities for a three (3) year period. The Notice relied upon information provided in an Action Referral Memorandum (ARM) from the DOI Office of Inspector General (OIG). DOI based the action on the fact of your guilty plea to the felony offense charge of Wire Fraud entered with the United States District Court for the District of Guam.

You timely contested the DOI Notice of Proposed Debarment by letter, with documentary attachments, dated May 28, 2013. Your contest letter did not request the opportunity for an oral presentation of matters in opposition meeting (PMIO) as part of the proceedings. Accordingly, the matter proceeded on the basis of written submissions. By correspondence to you dated June 18, 2013, David Sims, the DOI Debarment Program Manager, established a case schedule in response to your contest letter. The schedule accorded you the opportunity to submit supplemental written information including any information addressing the mitigation and remedial factors considered in reaching a decision on imposition of debarment, found at 2 C.F.R. 180.860. Mr. Stanley Stocker, as DOI OIG debarment case representative, was accorded the opportunity to provide written observations regarding your submissions.

In response to the scheduling letter, you provided supplemental written information by correspondence dated July 27, 2013. Subsequently, at the request of Mr. Stocker further proceedings were placed in abeyance pending completion of your criminal sentencing. Following your sentencing, by memorandum dated April 10, 2014, copied to you, Mr. Stocker provided for the administrative record his written response to your submissions. With receipt of that submission the matter is ready for decision.

II. Discussion.

Debarment is an administrative action taken to shield the government from individuals and entities who, because of waste, fraud, abuse, noncompliance or poor performance, threaten the integrity of Federal funded procurement and non-procurement activities. The remedy focuses on a person's "present responsibility" to participate in federal funded procurement and nonprocurement program awards. To be presently responsible, among other factors, a person must have business honesty and integrity.

Debarment excludes from participation in new Federal awards a person who is or may reasonably be expected to be a participant or contractor. Under 2 C.F.R. § 180.980, "participant" is defined as "any person who submits a proposal for or enters into a covered transaction, including an agent or representative of a participant." The provisions of 2 C.F.R. § 180.120 make it clear that application is not limited to matters arising under an actual award. The scope of "participant" is also prospective. Section 180.120(a) states that the provisions of Part 180 are applicable if one is a "person who has been, is, *or may reasonably be expected to be*, a participant or principal in a covered transaction" (Italics added).

The government is a funder and consumer of an extremely broad range of goods and services. The record indicates that you have business managerial experience which includes work on a federal funded project. Considering your employment background it is reasonable to anticipate that you may seek to participate in federally funded work, directly or indirectly, or as an agent or representative of another contractor or assistance recipient. Accordingly, as a general matter you properly fall within the regulatory definition of "participant" at 2 C.F.R. §§ 180.820 and 180.980. It is also noted that based upon your work experience you also properly falls within the regulatory definition of "contractor" under Federal Acquisition Regulation debarment rules at 48 C.F.R. § 9.403.

B. Cause for Debarment.

The presence of past misconduct is the requisite starting point for evaluation. The ARM's information presents a clear and rational basis for concern. The record shows that you were an employee of CHB International, Inc. ("CHB"), a general contractor business operating in Guam. CHB, among other things, sells generators and air conditioning equipment and supplies, and provides repair and maintenance services. CHB employed you in two capacities. You served as CHB's Operations Manager and also as CHB's Responsible Management Employee. Your duties as Operations Manager included customer interaction, providing price quotes, ordering air

conditioning and refrigeration units from suppliers, and monitoring the status of orders. As the CHB Responsible Management Employee it appears that you had a range of responsibilities including construction site personnel supervision, conducting daily project progress inspections for compliance with plans, specifications, building codes, and Guam laws.

The Department of Public Works of the Territory of Guam ("DPW") received Federal assistance funds from DOI between, at least, 2006 and 2009. On or about September 21, 2006, DPW awarded to CHB a contract for "Construction of Emergency Generators/Shelters and Tank for Various School (Design-Build) Project No. 720-5-1-064-F-TER." The contract called for the construction of five emergency generators, shelters, and tanks for five elementary and middle schools. Contract terms required the generators to meet U.S. Environmental Protection Agency (EPA) standards.

Between June 2007 and February 2009, as stipulated in the plea agreement, you intentionally supplied DPW with generators manufactured in China that you knew did not meet contractually required EPA standards, as part of a scheme to defraud the governments of Guam and the United States. In furtherance of this scheme you caused numerous wire transmissions and communications in foreign and interstate commerce. You sought and received payments from GPW under the contract for the substandard generators and accessories.

On March 21, 2012, you were indicted in the U.S. District Court for the Territory of Guam on three counts of wire fraud, an offense under 18 U.S.C. § 1343; and three counts of fraud concerning a program receiving Federal funds, and the aiding and abetting thereof, offenses under 18 U.S.C. § 666(a)(2)(b) and 2. On January 29, 2013, you pled guilty to wire fraud as charged in Count Two of the Indictment. The Court accepted your guilty plea on February 19, 2013, and sentenced you on March 17, 2014.

Wire fraud is a serious offense and readily falls within the parameters of subsections (a)(1), (3), and the more generally worded provision of § 180.800(a) (4). The offense inherently reflects adversely on your honesty and integrity. The plea and conviction are a matter of record. The fact of your guilty plea establishes the existence of cause for debarment under 2 C.F.R. § 180.800(d). The fact of the conviction establishes the existence of cause for debarment under 2 C.F.R. §§ 180.800 (a)(1), (3), and (a) (4).

C. Mitigation Factors and Remedial Measures.

Debarment, both by its nature and as a matter of regulation, is not an automatic result of establishing the existence of cause for debarment. The remedy is used to protect government procurement and nonprocurement program interests only where truly warranted, rather than additional punishment for past misconduct. Consequently, in reaching a decision the Debarring Official considers along with the seriousness of the past misconduct any information presented by a Respondent persuasively indicating mitigating factors, altered circumstances, remedial measures, or other actions taken that address present responsibility. Mitigating factors and

remedial measures generally considered in reaching a decision on whether to debar under 2 C.F.R. Part 180 appear at § 180.860. It is the respondent's burden in these proceedings to persuasively demonstrate the presence of mitigating factors or remedial measures sufficient to show debarment is not presently appropriate. The information of record is given careful review and evaluation in connection with that provided by OIG against the criteria applicable here.

1. Acknowledgement of the Seriousness of the Misconduct and Acceptance of Responsibility.

Whether a person truly accepts responsibility for and acknowledges the seriousness of the misconduct which resulted in cause for debarment factors heavily into the decision on whether a potential business risk presently remains. This consideration is one of the most significant factors assessed with regard to whether imposition of debarment is warranted.

You consented to enter a guilty plea to resolve the criminal case without trial. The fact that you chose to plead guilty is considered with respect to its potential mitigation value in this debarment proceeding. Taken in context with other information of record, such an action can contribute to indices of acceptance of responsibility for illegal conduct and commitment to altered future conduct. However, without other persuasive supporting indicia of altered business attitude the action may reflect no more than self-interest in limiting the potential for significantly greater liability attendant on proceeding to trial.

Although you pled guilty to resolve the criminal prosecution, your written submissions in this debarment proceeding do not show a true acceptance of responsibility and recognition of the seriousness of the misconduct that led to the cause for debarment. As observed in the DOI OIG memorandum of April 10, 2014, you endeavor to explain away the misconduct rather than embrace responsibility for it. You state in your July 27th contest submission that you "...did not and do not intend to create any wrongdoing..." and did not "plan, initiate, or [carry] out any wrongdoing." In your contest letter of May 28, 2013, you characterize yourself "...as just a mere 'victim' of circumstances beyond [your] control." In that letter and in your subsequent July 27, 2013, submission you seem to assign blame to many except yourself. You entered a guilty plea in the criminal proceeding. The court may only accept a plea if evidence exists to support it. As part of the plea process you stipulated to the factual conduct establishing your guilt on the charge of wire fraud. That admission of guilt and conviction in the criminal case are facts of record. The debarment forum does not extend a respondent the opportunity to in effect re-litigate guilt or innocence in the absence of the prosecutors.

In your submission you offer for mitigation consideration alleged misconduct on the part of others involved in the underlying misconduct. I observe that you were the sole defendant under the Indictment. But even if your uncorroborated assertion were taken as true, as observed by the OIG April 10, 2014, memorandum, misconduct by others does not excuse your own misconduct or mitigate your apparent failure to truly accept responsibility. I also note that you state in your July 27, 2013, submission that neither you as a manager nor your company undertook to secure any business structural or practice and procedures changes in response to the criminal conduct other than to discontinue business with the government of Guam since "...this is the first time that our company encountered this kind of incident..."

I cannot satisfactorily conclude from your responses that you truly recognize the seriousness of your criminal conduct and the threat such conduct poses to the integrity of government program operation and public confidence in them so as to provide assurance of altered attitude and future conduct. This assessment factors heavily into the determination that debarment is warranted.

2. Fulfillment of the Court Imposed Sanctions.

An inherent degree of ameliorative impact may attach to the experience of criminal or civil prosecution and the fulfillment of court imposed sanctions. The record establishes that the Court imposed a sentence of five years' probation and restitution to the DOI Office of Insular Affairs of \$70,738.33. The sentencing is quite recent. The record contains no information to indicate that you are not now in the process of fulfilling the sentence. The limited information of record is considered and weighed for value in light of the overall information presented in this debarment proceeding. Generally, the mere fact of involuntary completion of a judicially imposed sentence, absent buttressing mitigation information, fails to provide persuasive evidence of an altered present attitude regarding business honesty and integrity.

3. Self-disclosure of Misconduct and the Level of Cooperation with the Prosecution.

The act of voluntary self-disclosure of misconduct and extraordinary cooperation with an ensuing investigation and legal proceedings can speak to a person's present conformance with ethical standards of business conduct. You acknowledge in your July 27, 2013, written submission that you did not self-disclose the misconduct. You assert that you cooperated fully with the prosecuting officials in your case. However, the record is devoid of information, such as a letter from the prosecutors, to indicate and corroborate an extraordinary level of cooperation with the investigative and prosecuting authorities once the investigation began that could be weighed in terms of evidencing an altered standard of business ethics.

4. The Seriousness of the Offense and Level of Relative Culpability.

The debarment remedy serves different objectives than that of the criminal justice process. Debarment, an administrative remedy, focuses on responsibility and accountability as to the potential for assessment of business risk to government transactions posed by potential award participants rather than liability and punishment for criminal conduct.

Wire Fraud is a felony. The offense is inherently serious in nature. The maximum penalty for Wire Fraud under 18 U.S.C § 1343, is 20 years imprisonment, a fine of \$250,000, or both. However, the Court, utilizing Federal criminal sentencing guidelines, imposed a sentence at the lower end of the penalty scale. The Court did not impose a jail term or a fine. Instead the Court sentenced you to probation for five years and to make restitution of over \$70,000.

The sentencing information may indicate an assessment by the Court under the Federal criminal law sentencing guidelines of a relatively lower level of culpability, at least for purposes of criminal liability. You also state in your written submission that you do not have a previous

history of wrongdoing, imposition of debarment or suspension, or entrance into an administrative agreement to avoid or resolve a debarment or suspension action. On the other hand, in terms of responsibility it appears that you as the Operations Manager knowingly ordered the Chinese made generators and thus played a key instrumental role in the criminal conduct. On balance this information about your offense and level of culpability presents a mixed picture. Some ameliorative value attaches here, but not enough to outweigh the most significant information addressed above, in reaching the decision to debar.

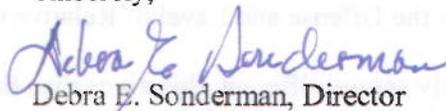
III. Conclusion.

The DOI action notice proposed a three (3) year debarment, the general time period provided under the rules. The record establishes the presence of cause for debarment. The record does not contain information to persuasively show the presence of sufficient mitigating factors or remedial measures. Imposition of debarment is warranted.

Prescribing the appropriate length of time of that debarment is not a precise science. Upon balancing the information presented, but most significantly the information indicating that you do not yet truly accept responsibility for and understand the seriousness of your misconduct, a three year period of debarment provides the appropriate degree of remedial protection for the government's non-procurement and procurement program interests. Under 2 C.F.R. § Part 180, the period of debarment imposed measures from the date of this determination.

As stated previously in this decision, debarment is a present, protective, remedy. In the event of changed circumstances, reversal of the criminal conviction upon which debarment is based, or other new relevant information about remedial or mitigation actions, Respondent may at any time petition in writing for reinstatement, as provided under 2 C.F.R. § 180.880.

Sincerely,



Debra E. Sonderman, Director
Office of Acquisition and Property Management

cc: David M. Sims, PAM
Jim Weiner, SOL
Lori Vassar, OIG
Stanley Stocker, OIG
Official Case File