



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

FEB 29 2012

CERTIFIED MAIL  
RETURN RECEIPT

Emery Nault

Box Elder, Montana 59521

Re: Proposed Debarment of Emery Nault, DOI Case No. 11-0025-00

Dear Mr. Nault:

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. Upon consideration of all information contained in the official record, I conclude that your debarment from Federal procurement and nonprocurement activities is presently unnecessary.

I. Brief Procedural History.

DOI proposed to debar you by Notice dated July 20, 2011, under the provisions of 2 C.F.R. Part 180, implemented by DOI through 2 C.F.R. Part 1400. 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 proposed debarment on the fact of your January 14, 2010, criminal conviction in the United States District Court for the District of Montana at Great Falls.

You timely contested the Notice of Proposed Debarment, by letter dated August 18, 2011. David Sims, DOI's Debarment Program Manager established a case schedule in response to your contest letter. By email to Mr. Sims, dated September 28, 2011, you requested the opportunity for an oral presentation of matters in opposition (PMIO) meeting as a part of your contest of the notice, under 2 C.F.R. § 180.815. In accordance with the case schedule for this matter you submitted supplemental written information by letter dated October 10, 2011. Mr. Stanley Stocker, as the case representative in this matter, then provided OIG written observations for the record, by memorandum dated December 9, 2011 and copied to you. A PMIO was held on December 16, 2011 in which you participated by telephone conference call. Upon review of the record, the information provided does not raise a genuine dispute over facts material to cause for debarment that would necessitate additional fact-finding proceedings. The matter is ready for final 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 Federally-funded procurement and non-procurement activities. Debarment addresses present responsibility.

A. 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. Your criminal conduct occurred between January of 2003 and June of 2006 in the course of your employment as a Fire Management Officer for the Natural Resources Department of the Chippewa Cree Tribe at the Rocky Boy's Reservation. You pled guilty to using an official tribal government credit card to purchase goods and services for your personal use and benefit, in the amount of at least \$6,357.80. You were subsequently convicted on one count of Theft from an Organization Receiving Federal Funds, in violation of 18 U.S.C § 666(a) (1) (A). This offense adversely reflects upon your business honesty and integrity as an individual. The fact of your conviction provides cause for debarment under 2 C.F.R. § 180.800 (a) (3) and/or (a) (4).

B. 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. Debarment 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. Your information provided for the record received careful review and evaluation in connection with that provided by OIG against the criteria at 2 C.F.R. §§ 180.860 and 180.865 pertinent to this analysis.

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

The criminal offense of theft of tribal funds is a serious one. The maximum statutory penalty under 18 U.S.C § 666(a) (1) is a fine of \$250,000 and ten years imprisonment. The conduct for which you were adjudicated, and consequently the illegal acts of record, extended over at least three years. The record indicates that you initiated and continued the illegal conduct. You were not an ancillary, or minor, participant in a scheme conceived and directed by others. I note, however, that the Court imposed a sentence at the lower end of the penalty scale, in ordering, along with restitution, only a nine month prison term and no fine.

I also consider in assessing whether a present debarment is necessary, that your offense ended in 2006, five and a half years ago. There is no indication of previous or subsequent civil or criminal prosecutions. Nor is there information showing previous or subsequent exclusions or disqualifications from Federal non-procurement or procurement programs, or any administrative agreements with the government based on conduct similar to that underlying your civil adjudication.

## 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 Court sentenced you to nine months of incarceration to be followed by three years of supervised release and ordered you to make restitution to the Tribe in the amount of \$6,357.80. The Court did not impose a fine. The record shows that you are fulfilling the court imposed sentence. You have completed your term of imprisonment and have to date repaid \$4,720 of the restitution amount owed to the Tribe. There is no indication from the record that you are other than timely in your payments. This information is considered and weighed for value in light of the information presented for the record.

Generally, the mere fact of proceeding towards involuntary completion of a court imposed judgment, without more buttressing mitigation information, does not provide persuasive evidence of an altered present attitude regarding business honesty and integrity to assure voluntary adherence to appropriate standards of business conduct. However, in this instance, as discussed below, additional information is present to support an affirmative conclusion regarding your present responsibility.

## 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 contractor or individual's present conformance with ethical standards of business conduct. Based upon your written submissions and statements during the PMIO, as well as information provided by the DOI case representative, it appears that you self reported your illegal credit card use to the tribe prior to commencement of the criminal investigation, sought and entered into a payback agreement with the Tribe, cooperated with the ensuing investigation, and freely and fully confessed the wrongdoing when interviewed. Based on the information presented, particularly your statements during the PMIO, it appears that your actions were prompted by remorse for the misconduct and a desire to atone rather than by fear of detection. This information is given significant weight in considering whether there exists on your part an altered attitude towards business honesty and integrity.

## 4. Acknowledgement of the Seriousness of the Misconduct and Acceptance of Responsibility.

Whether a contractor acknowledges the seriousness of past misconduct and truly accepts responsibility factors into the decision on whether a potential business risk presently remains. Your remarks during the December 16<sup>th</sup> PMIO and the evident sincerity with which you made

them, indicate an understanding of the seriousness of the misconduct and acceptance of responsibility for your prior actions. It also appears from the record that the Tribe supports your rehabilitation and currently employs you as its substance abuse Prevention and Recovery Support Specialist, in which capacity a supporting letter from the Tribe indicates you are making a positive contribution to your community.

The information evidencing acknowledgement on your part of the seriousness of the past misconduct and full acceptance of responsibility for it, together with that regarding your self-disclosure of the criminal conduct and ensuing level of cooperation with the investigators, factors heavily into the conclusion that your debarment is not presently necessary to protect the Government's nonprocurement and procurement award integrity program interests.

### III. Conclusion.

Considering the totality of information presented for the record, on balance, your debarment is not presently necessary to protect government procurement and nonprocurement program interests. Accordingly, the debarment action initiated by the DOI July 20, 2011 Notice is terminated.

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