



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

DEC 13 2010

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Brian W. Stolarz
K&L Gates, LLP

Washington, D.C. 20006

Re: Proposed Debarment of James Steven Griles, DOI Case No. 10-0006-00.

Dear Mr. Stolarz:

This is to provide you with my written determination as the U.S. Department of the Interior (DOI) Debaring Official, regarding the proposed debarment of James Steven Griles (Respondent). Based upon the information presented, on balance, imposition of a one year period of debarment provides the appropriate protection for Federal procurement and nonprocurement program award activities.

I. Brief Procedural History.

DOI proposed to debar Respondent by Notice dated July 28, 2010. The Notice proposed debarment from Federal procurement and non-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 Acquisition Integrity Unit (AIU) regarding Respondent's 2007 criminal conviction by the United States District Court for the District of Columbia on a charge of Obstruction of Proceedings before the United States Senate in violation of 18 U.S.C. §1505.

Respondent, through counsel, timely contested the July 28th Notice by letter dated August 16, 2010. The letter provided written information in opposition to the notice and requested the opportunity to also make an oral presentation of matters in opposition (PMIO).

DOI issued an amended Notice of Proposed Debarment on August 24, 2010. That Notice clarified that, as stated in the ARM relied upon by the original Notice, the criminal conduct for which Respondent was convicted occurred after, rather than during, his tenure as Deputy Secretary of the Interior.

Subsequent to issuance of the amended Notice, David Sims, DOI Debarment Program Manager, established a schedule for the debarment proceeding, with an agreed upon date for the requested PMIO of October 18, 2010. The PMIO was held as scheduled. Counsel presented information on behalf of Respondent. Respondent did not appear in person at the PMIO, but did participate directly in a portion of the PMIO by telephone conference connection. Participating with me on behalf of DOI were Mr. Sims and the case representative, Stanley Stocker, of the AIU. Following the PMIO, Respondent, by letter dated October 22, 2010, provided additional information consisting of copies of testimonial letters submitted by numerous individuals to the court on his behalf in the sentencing phase of his criminal case. Mr. Stocker provided written observations on Respondent's written submissions and PMIO information by memorandum dated November 5, 2010.

By email dated November 17, 2010, Mr. Sims advised counsel for Respondent that it appeared that written documentation to support information regarding Respondent post incarceration activities with the Prison Fellowship offered at the PMIO to be provided, and agreed to be accepted, had not yet been received. Mr. Sims' November 17th email set a final receipt date for this documentation, and also documentation regarding Respondent's probation work with "Christmas in April", of November 22, 2010. By e-mail dated November 18, 2010, Respondent provided for the record documentation of completion of the court ordered 100 hours of community service, but advised that as to description of the community service work in both instances he would rely upon the information given during the PMIO. With receipt by DOI of that communication, the record closed.

Upon review of the record, the information does not raise a genuine dispute over facts material to the existence of 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 is not employed as punishment for misdeeds. That is the purview of other forums. Rather, debarment addresses present responsibility with regard to participation in federally funded work.

A. Contractor Status.

Respondent, in his August 16th letter and at the PMIO, makes several arguments in opposition to the proposed debarment under 48 C.F.R. Subpart 9.4. Respondent preliminarily asserts that the debarment rule at 48 C.F.R. 9.4 applies only to contractors and that Respondent is not a past or present government contractor. Respondent urges in his August 16th letter, at page 3, that consequently, "the proposed debarment is inapplicable to [his] work in his public sector business, has no relation to the government's proprietary interest, and poses no potential harm to that interest."

Under the definition of "contractor" at 48 C.F.R. § 9.403, a person falls within the definition either where business is directly conducted under a government contract or subcontract, or where the person "may reasonably be expected" to conduct such business. Considering

Respondent's many years of experience in the area of resource program management it is reasonable to anticipate that he may seek to participate in federally funded work, directly or indirectly, or as an agent or representative of another contractor or assistance recipient.

Respondent's August 16th letter, at page 2, states that he has been periodically employed as a consultant since his release from incarceration, working with several States on first responder issues and working to facilitate economic opportunities and energy sovereignty for Native American tribes. Respondent also acknowledged at the PMIO that in addition to current work as a consultant, he desired to be able to help people administer, or assist in securing, Federal contracts. Accordingly, Respondent properly falls within the regulatory definition of "contractor" at 48 C.F.R. § 9.403. It is also noted that based upon this information, Respondent also may reasonably be expected to be a "participant" in Federal assistance, loan and benefit award programs, under the nonprocurement debarment rule at 2 C.F.R. §§ 180.820 and 180.980.

B. Cause for Debarment.

The existence of cause for debarment is the requisite starting point for evaluation. On June 29, 2007, the United States District Court for the District of Columbia convicted Respondent, upon a guilty plea, on one count of Obstruction of Proceedings before the United States Senate in violation of 18 U.S.C. §1505. Respondent's criminal conduct occurred in the course of his questioning in 2005 by United States Senate Committee on Indian Affairs representatives and members regarding personal relationships during the period between 2001 and January 31, 2005, during which he served as the Deputy Secretary of the Department of the Interior.

The questioning occurred as a part of the Senate Committee's investigation into misconduct by Jack Abramoff, a lobbyist for Native American tribes. DOI responsibilities include Native American issues such as tribal recognition, gaming compacts, and applications to place land in trust for gaming purposes. The Committee sought to discern, among other matters, the level of Abramoff's access to Respondent and other DOI officials.

Questioning focused on the nature and extent of Respondent's relationship and dealings with Abramoff; and whether Abramoff had special access to Respondent to improperly seek and receive advice and intervention on issues directly affecting Mr. Abramoff and his clients. Respondent made materially false and misleading statements to the Committee investigators and members. Respondent through his responses sought to conceal the true origin and nature of his relationship with Mr. Abramoff and Mr. Abramoff's access to him.

The DOI Notice of Proposed Debarment states that cause for debarment exists under 48 C.F.R. §§ 9.406-2(a) (3), and/or (a) (5). Respondent argues that his conviction does not provide cause for debarment under the offense based action sections cited by the Notice.

Respondent first asserts that his conviction does not fall within the ambit of §§ 9.406-2(a) (3). That Section states that a debaring official may debar a contractor for a conviction of or civil judgment for "commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal laws, or receiving stolen property." Respondent contends that this subsection does not apply because he was not convicted for the specific offense of making a false statement under 18 U.S.C. § 1001.

The cause section of Subpart 9.4 is crafted to broadly encompass the range of conduct evidencing a lack of business honesty and integrity or poor performance providing a basis for debarment. Section 9.406-2(a) includes a wide range of offense based misconduct constituting cause for debarment. Consistent with the purpose of the rule, the section is broadly keyed to categories of misconduct rather than itemized violations of specific statutes.

Respondent was convicted of the offense of Obstruction of Proceedings before the United States Senate," in violation of 18 U.S.C. § 1505. The charging Criminal Information against Respondent, to which he pled guilty, clearly establishes that the nature of the obstruction included the making of false statements. In the course of his October 20, 2005, interview with Congressional investigators, and his November 2, 2005, public testimony at a Senate hearing, Respondent "knowingly and intentionally made a series of materially false and fictitious declarations to, and withheld material information from, Senators and Senate investigators...." Without question, the conduct for which Respondent is convicted readily falls within the ambit of cause for debarment at Section 9.406-2(a) (3).

Respondent next contends that his offense does not fall within the offense based cause at 48 C.F.R. § 9.406-2(a) (5) also cited in the Notice as an action basis. That subsection provides that the debaring official may debar for a conviction of any other offense indicating a serious lack of business integrity or business honesty. This subsection is designed to serve as a catch-all provision to ensure inclusion for cause purposes of any types of misconduct showing a lack of business honesty or integrity, which may not fall within the generic categories set forth at § 9.406-2(a) (1) through (a)(4).

Respondent, as a former high ranking Government official, knowingly made false or otherwise misleading statements to Congressional investigators. His statements to Congress effectively headed off lines of questioning seeking to ascertain the existence of illegal influence peddling by a Washington, DC lobbyist.

Respondent contends that his criminal conduct pertained to a unique and limited set of facts not occurring in the context of performing a government contract. Respondent argues that as the misconduct did not occur in the course of contract performance it has no bearing on potential present responsibility and the offense does not fall within the scope of § 9.406-2(a) (5).

Simply put, Respondent advances an untenable argument. Such conduct by one formerly holding a high level position of public responsibility clearly and seriously calls into question both individual and business honesty and integrity.

Debarment is a prospective remedy to avoid future business risk by precluding eligibility for future awards. The misconduct need not arise in performance under a Federal award. It is well established that when presented with information indicating a lack of business honesty or integrity, the government need not wait until it is actually harmed in the course of performance of a Federal contract or assistance award before acting to exclude a person from future award eligibility. It is incumbent on the debarring official when presented with information indicating the presence of past conduct indicating a lack of business integrity, honesty or poor performance to evaluate the necessity for protection of Federal procurement and nonprocurement award program activities. The offense of obstruction of Congressional proceedings, and the underlying misconduct that it evidences, readily constitutes cause for debarment under the broad ambit of § 9.406-2(a) (5), as well as under § 9.406-2(a) (1).

The ARM's information presents a clear and rational basis for concern regarding conduct by Respondent indicating a lack of business honesty and integrity. Respondent's conviction is a fact of record. The conviction establishes the existence of cause for debarment under FAR § 9.406-2 (a) (3) and (a) (5).

B. Mitigation Factors and Remedial Measures.

Debarment, both by its remedy nature and as a matter of regulation, is not an automatic result of establishing the existence of cause for debarment. Debarment is first and foremost about the present rather than the past. It well established that it is a remedy for use to protect government procurement and nonprocurement program interests only where truly warranted. It is not punishment. The seriousness of the past misconduct and any information presented by a contractor that persuasively indicates mitigating factors, altered circumstances, remedial measures, or other actions taken that address present responsibility is evaluated in reaching a decision on debarment.

The focus in this proceeding is on the business honesty and integrity of Respondent as an individual. The information provided for the record by AIU and Respondent, is considered in reaching a decision on debarment. The information received careful review and evaluation against criteria at 48 C.F.R § 9.406-1(a) where dealing with an individual rather than organization.

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

Respondent's level of relative culpability, based upon the record, is given consideration in reaching the decision on debarment. The record contains no evidence of any previous civil or criminal prosecutions of Respondent. Similarly, there is no information showing previous exclusions or disqualifications from Federal non-procurement or procurement programs, or any administrative agreements with conduct similar to that underlying this debarment action. On the record presented, it appears that events underlying the prosecution may constitute an isolated episode in a public service career spanning 24 years. However, Respondent stands convicted of a felony, and therefore serious, offense.

Respondent's sentence by the District Court indicates a significant level of relative culpability. The Court sentenced Respondent to ten months incarceration, followed by three years of supervised release, payment of a \$30,000 fine, and performance of 100 hours of community service. Respondent was the initiator of the criminal conduct. As a former high level Federal official testifying before Congress he had a higher duty to the public trust than an ordinary citizen. While Respondent was not the immediate target of investigation, the impact of Respondent's offense was to impede a high profile Congressional inquiry into lobbying corruption, which ultimately did result in multiple criminal convictions. The Senate Committee's September 5, 2006, Final Report concluded that, "Based on the information in its possession, the Committee cannot definitely conclude what, if anything, Griles did to assist Abramoff's clients on matters then pending at Interior."

2. Voluntary Disclosure and Level of Cooperation with Investigating Authorities.

The actions of voluntary self-disclosure of misconduct and, or, the degree of cooperation with an investigation and legal proceedings can speak to a contractor or individual's present conformance to ethical standards of business conduct. Here, there is no evidence of self disclosure of misconduct or the presence of a high degree of cooperation with the investigation. To the contrary, Respondent's offense arises from criminal conduct impeding an investigation.

3. Fulfilling Court Imposed Sanctions.

Whether a respondent has fulfilled court imposed sanctions is a factor considered in reaching a determination on debarment. The Court sentenced Respondent to ten months incarceration, followed by three years of supervised release, payment of a \$30,000 fine, and performance of 100 hours of community service. Information provided in Respondent's written submissions and at the PMIO indicates that Respondent paid his full fine prior to his imprisonment, and will complete his three years of supervised probation in July 2011. The record also shows that Respondent has completed his mandatory 100 hours of community service with a volunteer group repairing homes of senior citizens and the physically challenged. While this information is considered, it does not of itself speak definitively to Respondent's current business honesty and integrity as fulfillment of the court imposed sanctions is compulsory rather than voluntary.

The record further indicates that beyond the judicially imposed requirements, Respondent, of his own volition, volunteered additional time to work with the Prison Fellowship organization to assist released prisoners to readjust to society. As a part of this work, Respondent has offered prisoner audiences his own experience of criminal prosecution as an object lesson. Respondent's willingness to volunteer his services and to use his past experience as a life lesson reflects an affirmative personal trait. It is uncertain whether such traits would effectively preclude future occurrence of the kind of misconduct that led to the conviction such that debarment is unnecessary. However, this information is given weight in reaching a decision on the period of debarment to be imposed.

4. Passage of Time since the Offense.

Respondent urges that debarment is presently unwarranted because no proceedings were initiated at the time of his misconduct and subsequent conviction. However, the mere passage of time from the date the cause for debarment arose does not moot the question as to present responsibility or otherwise bar debarment consideration. As Mr. Stocker points out, in his November 5, 2010, memorandum, in *Shane Meat Co., Inc., and H. Roland Shane v. United States Department of Defense and Defense Logistics*, 800 F.2d 334 (3rd Cir. 1986), the court upheld a three year debarment of the company even though the offenses were then over five years old. In that debarment action, the Government imposed debarment notwithstanding the passage of time because the company failed to persuasively demonstrate that it had implemented operational changes that would preclude recurrence of the criminal conduct. *See Id., at 337.*

The nature of Respondent's criminal conviction clearly reflects adversely upon business honesty and integrity. Respondent's conviction, establishing the existence of cause for debarment, occurred on June 29, 2007. Respondent subsequently was incarcerated until July 12, 2008. The July 28, 2010, Notice of Proposed Debarment issued promptly following receipt of the July 8, 2010, Action Referral Memorandum which first presented the matter for debarment consideration. Respondent acknowledges that he now seeks to be award eligible. He does not contend that he has received federally funded work from DOI or other agencies subsequent to his offense and conviction. Consideration of the question of whether the essential kind of past criminal conduct, i.e., false statements, may recur in the context of performance under a Federal contract or assistance award is presently appropriate.

5. Recognition of the Seriousness of the Misconduct and Acceptance of Responsibility.

The record shows that Respondent consented to enter a guilty plea to resolve the criminal case without trial. The fact Respondent 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. Accordingly, limited weight attaches to the fact itself.

Respondent offers for mitigation consideration a large number of character testimonials presented to the court as part of the sentencing process. The testimonials include letters from three former DOI Secretaries and a Member of the United States Congress. The letters speak eloquently regarding Respondent's organizational loyalty and perceived personal attributes. But, such testimonials are ultimately of limited value with regard to the assessment of present responsibility as the described character traits did not preclude occurrence of criminal conduct. Consideration is, however, given regarding the decision on the length of debarment time to impose.

Respondent elected to make his PMIO presentation through counsel. However, in the course of the PMIO Respondent was contacted by counsel and did consent to participate directly in a portion of it by telephone conference call. During the call Respondent expressed remorse for the conduct which led to his criminal conviction and stated "I've learned a big lesson." However, Respondent also sought to explain the motivation for his criminal conduct as an effort to avoid embarrassment of either himself or the DOI. This explanation does not ring true considering that Respondent's concealment of key information frustrated the investigating committee efforts to proceed with meaningful and serious lines of inquiry and in light of Respondent's opening comments at the November 5, 2005 Senate hearing. As Mr. Stocker points out in his November 5th memorandum, Respondent stated at that hearing that with regard to lobbying issues involving Indian tribes: "I am appearing today voluntarily. I believe the Committee's work is very, very important. What I have heard today... is extremely disheartening."

Respondent urges in his written arguments in this debarment proceeding that the nature of his past misconduct should have no serious or direct bearing on present responsibility. A personal willingness or ability to make false and misleading statements to the Congress of the United States in an inquiry into public corruption is inherently intertwined with individual attitude towards business honesty and integrity. Respondent's argumentative tact, which appears to seek to minimize the nature of his offense and culpability, leaves a remaining question as to whether he truly acknowledges the seriousness of the essential nature of his criminal conduct and consequently at a fundamental level fully accepts responsibility.

In these proceedings it is the Respondent's obligation to persuasively demonstrate to the Debarring Official the presence of effective mitigating factors or remedial measures to establish that debarment is unnecessary to protect the government's procurement and nonprocurement program interests. Respondent's information leaves a lingering doubt. Consequently, prudent stewardship of the public fisc dictates imposition of a period of debarment, an action that protects the public interest in the integrity of Federal procurement and nonprocurement program award activities.

III. Conclusion.

The 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 also contains the mitigation information discussed previously. Based on the information presented, imposition of a period of debarment is warranted.

Prescribing the appropriate length of time of that debarment is not a precise science. Balancing the information presented for the record, as discussed above, a one year period of debarment for Respondent provides the appropriate degree of remedial protection for the government's procurement and non-procurement program interests. Under the FAR at 48 C.F.R. § 9.405(a), award ineligibility is effective upon the date of the Notice of Proposed Debarment. Consistent

with 48 C.F.R. §§ 9.405(a) and 9.406-4(a) (2), the period of debarment imposed measures from that date of initial ineligibility. Accordingly, the one year debarment measures from July 28, 2010, the date of the Notice of Proposed Debarment, and terminates close of business, July 27, 2011.

As stated earlier 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 48 C.F.R. § 9.406-4(c).

Sincerely,



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

cc: David M. Sims, PAM
Jim Weiner, SOL
James Smith, OIG/AIU
Stanley Stocker, OIG/AIU
Official Case File