



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



JUL 16 2013

CERTIFIED MAIL  
RETURN RECEIPT

John McKinley Hill  
c/o  
Patricia Witte, Esq.  
Witte, Letsche & Waldo, LLP

Washington, DC 20005

Re: Proposed Debarment of: John McKinley "Jack" Hill, DOI Case No. 12-0023-00; and  
BioSpec, LLC, DOI Case No. 12-0023-01

Dear Ms. Witte:

This is to provide you with my written decision as Debarring Official for the U.S. Department of the Interior (DOI) regarding the proposed debarment of Dr. John McKinley "Jack" Hill and of his company BioSpec, LLC (BIOSPEC). Dr. Hill and BIOSPEC have to date been excluded from Federal procurement and nonprocurement awards for seven months by effect of the DOI Notice of Proposed Debarment issued on November 29, 2012. I conclude that, as explained below, imposition of a further period of debarment of is not warranted.

I. Brief Procedural History.

DOI proposed to debar Mr. Hill and BIOSPEC by Notices dated November 29, 2012, under the provisions of 48 C.F.R. Subpart 9.4. The respective Notices proposed debarment from Federal procurement and non-procurement program activities for a three (3) year period. Each Notice relied upon information provided in an Action Referral Memorandum (ARM) from the DOI Office of Inspector General (OIG) appended to the Notice.

By email correspondence dated December 18, 2012, on behalf of Mr. Hill and BIOSPEC, you timely contested the DOI Notices. Your letter included a request as part of your contest of the notices, to meet with the Debarring Official for an oral presentation of matters in opposition (PMIO). David Sims, the DOI Debarment Program Manager, established a case schedule including a PMIO. Under the schedule you provided additional written information by submission dated February 7, 2013. Mr. Stanley Stocker, the DOI Office of Inspector General (OIG) case representative, provided a written reply to your information by memorandum dated February 22, 2013. We held the PMIO on Thursday, March 7, 2013, during which Dr. Hill submitted additional travel reservation forms, invoices and credit card authorization forms and billing statements in connection with the travel in question. By email dated April 20, 2013, you

confirmed that the Respondent's written submissions for the record were complete. Upon review of the record, it is apparent that sufficient information exists upon which to reach decision without further proceedings. The matter is therefore 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 to be used as punishment. Rather, debarment addresses present responsibility.

### A. Cause for Debarment.

The existence of past misconduct constituting cause for debarment is the requisite starting point for evaluation. BIOSPEC, LLC is a limited liability company. Dr. Hill is the owner, president and sole employee of BIOSPEC. Dr. Hill formed BIOSPEC in 2003 as a vehicle for his consulting business. Dr. Hill states that since 2011 BIOSPEC is inactive and has no revenues. However, the corporation remains viable as it is not dissolved.

Commencing in or about 2003, BIOSPEC was a subcontractor to a series of prime contractors - ultimately, COMSO, Inc. (COMSO), a Greenbelt, Maryland corporation, under DOI United States Geological Survey (USGS) contract no. GS35F0491M. At times relevant to the conduct giving rise to the debarment action, Dr. Hill through BIOSPEC was the COMSO subcontractor. Apparently, under the subcontract, Dr. Hill as a consultant served as the Director of the World Data Center for Biodiversity and Ecology within the Center for Biological Informatics at USGS.

The USGS Contract Statement of Work shows that USGS contracted for technical support related to implementation of the USGS National Biological Information Infrastructure (NBII) Program. The Statement of Work recites in pertinent part: "The [NBII] serves as an electronic gateway to biological data and information products maintained by Federal, State, and local government agencies; non-government institutions; and private sector organizations in the United States and around the world. Technical support is required related to information technology development, database design and development, portal technologies, biodiversity data management, geospatial technologies design and development, representation of NBII technical capabilities and requirements within International biodiversity initiatives, and supporting project management requirements."

The Contract Statement of Work defines "Informatics" as "Research on, development of, and use of technological, sociological, and organizational tools and approaches for the dynamic acquisition, indexing, dissemination, storage, querying, retrieval, visualization, integration, analysis, synthesis, sharing...and publication of data..." The Statement of Work defines "biological informatics" as referring "to the development and use of computer, statistical, and other tools in the collection, organization, dissemination, and use of information to solve problems in the life sciences."

The Statement of Work for the BIOSPEC subcontract with COMSO consists of one sentence. It states "Consultant will provide support as a Representative on International Biodiversity Initiatives". Irrespective of this very cursory work description, the boundaries of the overall scope of work to be performed are delineated by the scope statement in the USGS contract under which Dr. Hill performed as a subcontractor.

Between 2003 and 2010, Dr. Hill, for BIOSPEC, accompanied the USGS managers with whom he worked directly as a consultant on official trips to scientific technical conferences to give presentations, chair, or participate in meetings and workshops. In particular, between 2006 and 2010, Dr. Hill traveled to Africa with the USGS managers on four occasions to attend conferences. In each instance the conferences were followed by visits to African national parks, game preserves, or wildlife reserves. These visits were arranged through African Portfolio, a travel firm offering African safaris.

In April 2006, Dr. Hill traveled to South Africa to attend a Global Biodiversity Information Facility Science Symposium in Cape Town, South Africa. The conference ran from April 2 through April 6 of 2006. Thereafter, Dr. Hill traveled from Cape Town to Victoria Falls in Zimbabwe. Dr. Hill subsequently included the travel costs for the post-conference travel to Victoria Falls in billings to the government. The post conference travel extended over a five day period.

In June and July of 2008, Dr. Hill traveled to South Africa to attend two separate technical meetings, a World Data Centre for Biodiversity and Human Health (WDCBHH) planning meeting in Cape Town followed by a "Global Pollinator Summit" in Durban, South Africa. After the official meetings, Dr. Hill traveled from the conference venue to the Timbavati Nature Reserve and then to the Savanna Game Reserve, both near the Kruger National Park in South Africa. Dr. Hill subsequently included the travel costs for the game reserve visits in his travel charged to the government. The post-meeting travel in this instance extended over a seven day period.

In the fall of 2008, Dr. Hill again traveled to Africa. He attended the African WDCBHH Planning Meeting October 29 - 31 in Pretoria, South Africa; and the Global Diversity Information Facility (GBIF) Governing Board Meeting and Science Symposium, November 3 - 6, in Arusha, Tanzania. The stated purpose of the trip was to attend and make a presentation at the annual governing board meetings of the GBIF. During the trip, Dr. Hill accompanied three USGS officials on an 8 day safari to the Lake Manyara National Park, Serengeti National Park, and the Ngorongoro Conservation Area and World Heritage Site. In addition to the conference attendance costs, Dr. Hill again billed to the government the park visit travel costs.

Finally, in May of 2010, Dr. Hill traveled to Gaborone, Botswana to attend the Third African Digital Scholarship and Curation Conference, and African WDCBHH status and planning and partnership meetings. In this instance, a seven day post-conference excursion was planned, to the Central Kalahari Game Reserve, the Okavango Delta, and the Linyanti Wildlife Reserve.

This excursion was abruptly cancelled at USGS direction, upon DOI becoming aware of the nature of the series of post-conference excursions billed to the government. Travel cost reimbursement documents concealed the true personal nature of the travel and charged the safari costs to the Federal government.

The essential information in this matter can be distilled from the record presented as follows. Dr. Hill contends in essence that the four trips to African wildlife parks or reserves were field trips initiated and approved by USGS officials to whom he reported as the COMSO subcontracted consultant. He did not initiate or suggest the trips. He asserts that the trips to the parks were related to his work under the subcontract. He points out that the trips to the wildlife parks or reserves took place in connection with scientific conferences he was in any event scheduled to attend and he did not initiate or suggest the side trips. However, even if passive, a "just following orders" acquiescence in known or readily apparent improper conduct directed by an agency official is unacceptable conduct reflecting adversely on the business honesty and integrity standards of a government contractor. It is apparent from information provided by Dr. Hill in the course of the PMIO that prior to seeking government work he failed to inform himself as to the obligations of a government contractor under the FAR.

Dr. Hill characterizes the trips to the wildlife parks and game reserves as "field trips" relevant to his work. It is certainly possible that Dr. Hill may have derived some personal professional benefit from visiting the African wildlife parks and reserves. But, the USGS contract specifications clearly indicate that Dr. Hill was retained to provide information technology data base systems capacity and structure development services rather than to do basic research to develop biological or ecological data (or assist in taking wildlife photos) to be entered into such systems. He participated at conferences to assist USGS in that context. Dr. Hill does not offer any work notes, memoranda, agendas produced by the conference organizers, or other documents which could show the park visits were an actual, legitimate, part of the formal conferences or workshops attended in Africa, and therefore potentially proper to be charged to the government.

It is not questioned in this action that the actual scientific meetings attended in Africa were legitimate. It is also understood that Dr. Hill did not suggest or initiate the parks visits. However, it should have been clear to Dr. Hill as a government contractor, that the side bar trips to the wildlife parks, while they may have been interesting and even informative to him as an individual, were not within the scope of the work he was performing under the USGS contract. The separate trips to the wildlife parks and reserves do not appear to have been part of the official agendas of the scientific meetings. The trips occurred apart from the meeting dates.

It is clear from the documentation provided for the record that the wildlife park visits arranged by the firm "African Portfolio" were advertized and designed to be vacation type trips rather than research expeditions or "field trips." The company promotional literature clearly focuses on the recreational and adventure nature of the experience and utilizes the descriptive term "safari," "wilderness safari," and "African honeymoon safari." The OIG February 27, 2013, written

submission in this matter appends an August 10, 2010, report of interview of two representatives of African Portfolio conducted by agents of the DOI OIG. The document reports that owner of African Portfolio describing the company's business as providing clients with customized safari vacations.

Had Dr. Hill taken the safaris on his personal time and expense following official travel there would be no issue. Personal time travel costs, of course, are not proper charges to the contract. Dr. Hill as a government contractor, in this case as a subcontractor to COMSO, is charged with understanding the scope of work he is to perform and what activities and costs properly fall within that scope of work and are consequently chargeable to the contract.

Dr. Hill contends that he was unaware of the fact of the manipulation of certain invoicing, in particular, an itemized invoice submitted by Dr. Hill in connection with the 2008 Tanzania trip for a conference room rental. It appears that the invoice in question was created by a USGS individual and sent to him directly by his USGS manager rather than by African Portfolio. Dr. Hill acknowledges at page 17 of his February 5, 2013, written statement appended to his February 7, 2013, submission, that he was "oblivious to the altered invoices, although a number of clues were there for me to see if I had paid adequate attention..."

Dr. Hill also acknowledges at page 1 of his February 5th statement that he "forthrightly acknowledges that he should have been more conscious of the potential for an appearance of impropriety, and should have paid more attention to the details of the after-the-fact and altered African Portfolio invoice hand delivered to him by his USGS manager rather than directly from the travel company. He now recognizes that he did not pay adequate attention to those details, overlooking a number of clues that should have raised questions in his mind.

In light of the contact services he was to provide, and the irregularities of trips taken apart from the scientific conference days and non-routine invoicing practices such as invoice receipt from a USGS manager rather than directly from the billing business, Dr. Hill's conduct shows a either a willful failure to recognize, or a reckless disregard as to the impropriety of the safari portion of the four African trips and as to cost documentation sufficient to establish the existence of cause for debarment under 48 C.F.R. §§ 9.406-2(b) (1) (i), and/or (c).

Under 48 C.F.R. § 9.406-5(a), the fraudulent, criminal, or other seriously improper conduct of an officer, director, partner, employee or other individual associated with a contractor, may be imputed to a contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. A contractor's acceptance of benefits is evidence of knowledge, approval, or acquiescence. Dr. Hill's improper conduct occurred in the course of performance of BIOSPEC's business operations as the subcontractor on the USGS contract. Imputation of Dr. Hill's conduct to BIOSPEC is proper under § 9.406-5(a).

Additionally, under 48 C.F.R. § 9.406-1(b), the debarring official may extend debarment to include any affiliates of a contractor subject to debarment action. Dr. Hill acknowledges that he is the owner and sole employee of BIOSPEC. BIOSPEC is unquestionably his affiliate within the meaning of 48 C.F. R. § 9.403 and may properly be debarred based on its affiliate status.

B. Mitigation Factors Assessment.

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 is a remedy for use to protect government procurement and nonprocurement program interests only where truly warranted. 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 information provided in Dr. Hill's written submissions and statements during the PMIO is taken into consideration and weighed for its value in reaching a decision regarding the need for, and period of, debarment in this matter. This information, together with that provided by OIG, received careful review and evaluation under the relevant criteria at 48 C.F.R. § 9.406-1(a).

Dr. Hill urges that the charging of personal travel to the contract be viewed as isolated incident. Based upon the information presented in this proceeding, the actions in question do appear to be the only blemish of record in an approximately 38 year professional career. Balanced against that is the fact that the conduct in question occurred in connection with four trips over a multi-year period.

It is apparent from the record that Dr. Hill has government contractor experience extending over several years through his work under several prime contractors which culminated with COMSO. That experience should, if anything, have fostered knowledge and an awareness of the requirements and standards of proper business conduct attaching to performance of government contracts, including prompt payment of subcontractors and resolution of related disputes. However, it is also understood, although it does not excuse, that the trips in question and associated costs were initiated and arranged by certain USGS managers of the contract in question.

Debarment however as noted earlier is about the present more so than the past. Debarment protects government program award integrity, rather than as punishment. For the errant contractor it serves as a "cooling off" or reflective period regarding the need for conformance to proper standards of business ethics and integrity. Dr. Hill has to date been award ineligible for seven months by effect of the November 29, 2012, Notice of Proposed Debarment issued under 48 C.F.R. Subpart 9.4. The ameliorative value of that exclusion is considered in reaching a determination on debarment. Additionally, a factor to be given significant consideration is whether a contractor recognizes and understands the seriousness of the conduct giving rise to the

cause for debarment and accepts responsibility. It is evident from Dr. Hill's written statements, noted above, and his in person remarks at the PMIO, that, albeit, with the benefit of hindsight he now recognizes and understands that he should have been alert to the signs, including what he acknowledges in his February 7th written submission, were "unusual invoicing procedures," that he was being asked to, and did, participate in improper conduct.

### III. Conclusion.

The Notice proposed a three (3) year debarment, the general period under the rules. The information presented and discussed above supports imposition of a period of award ineligibility less than the proposed three year period. Prescribing the length of time is not a precise science. Balancing the information here, imposition of a seven month period of exclusion provides the appropriate degree of remedial protection for the government's procurement and non-procurement program interests.

Under 48 C.F.R. §§ 9.405(a) and 9.406-4, award ineligibility is effective upon the date of the Notice of Proposed Debarment. The period of debarment imposed runs from the date of initial award ineligibility. Accordingly, the seven month exclusion period measured from the November 29, 2012, date of the Notices of Proposed Debarment terminates effective the date of this determination.

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(s)

