



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

SEP 20 2012

**CERTIFIED MAIL**  
**RETURN RECEIPT**

Mr. Abel Martin Carreon, Jr.  
Chief Executive Officer  
Tripartite Escrow Corporation

Fresno, California 93721-2435

Re: Suspension of Tripartite Escrow Corporation (12-0009-00); and  
Abel Martin Carreon, Jr. (12-0009-01)

Dear Mr. Carreon:

This is to provide you with my written determination under 48 C.F.R. Subpart 9.4, as the U.S. Department of the Interior (DOI) Debarbing Official, to continue the suspension of Tripartite Escrow Corporation (TEC), and yourself from Federal non-procurement and procurement activities.

## I. Brief Procedural History.

By Notice dated January 31, 2012, DOI suspended TEC and you individually for a temporary period pending completion of investigation and legal proceedings. The Notices transmitted an Action Referral Memorandum (ARM) dated December 30, 2011, from the DOI Office of Inspector General, Recovery and Oversight Office. The ARM set forth the bases for the action. The Notice further informed Respondents that pursuant to 48 C.F.R. § 9.407-3 (b) (2) at the request of the Department of Justice (DOJ) no additional fact finding proceedings with regard to the material facts presented for the record in support of cause will be conducted as substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced. See ARM Exhibit No. 19, and letter dated June 25, 2008. DOJ's request is based on the ongoing criminal investigation. The Notice also advised Respondents that four of the twenty attachments of the ARM were held "in camera" by the Suspending Official and accordingly not provided to Respondents.

You contested your individual suspension by letter dated March 1, 2012. Your letter asserted arguments in opposition to the suspension. By letter dated April 13, 2012, in response to an April 3, 2012, inquiry letter from David M. Sims, DOI Debarment Program Manager, you clarified that TEC also contests its suspension and further advised that Respondents declined the opportunity for an oral presentation of matters in opposition (PMIO) meeting with the Suspending Official as part of the contest proceedings.

Mr. Sims' April 3rd letter established a case schedule for the suspension proceeding based on submission of written information. The schedule accorded Respondents the opportunity to submit supplemental written information in opposition to suspension, by close of business April 30, 2012. Mr. Stanley Stocker, the DOI OIG action representative, was given the opportunity to submit a memorandum response to any supplemental information from Respondents, by close of business, Friday, May 31, 2012. By letter dated April 25, 2012, Respondents submitted a stock certificate representing that you are the sole owner of TEC. On July 11, 2012, Mr. Stocker submitted for the record a brief memorandum in reply to your submissions, recommending continuation of the suspensions.

## II. Discussion.

Suspension and Debarment are administrative remedies used 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. Suspension and Debarment are not to be used as punishment. Rather, the remedies focus on risk posed by a Respondent as a potential business partner to the Government under Federal procurement and nonprocurement program activities. Suspension is a preliminary action to protect Government award interests pending outcome of investigation and completion of the record regarding the alleged misconduct in a judicial or other appropriate forum, and/or debarment action.

### A. Preliminary Matters.

#### 1. The Nature of the Proceeding:

Respondents' March 1, 2012, contest letter refers to these proceedings as debarment proceedings, citing to the debarment provisions of 48 C.F.R. § 9.406 et. seq., and the "preponderance of the evidence" standard. As stated in the DOI notices, both by narrative and by citation, these proceedings are suspension actions under the provisions of 48 C.F.R. § 9.407 et. seq. Suspension is an initial preliminary action to protect government award interests pending completion of investigation and, if any, ensuing legal proceedings including debarment action. Debarment action if ultimately warranted will initiate through a separate notice of proposed debarment under the provisions of 48 C.F.R. § 9.406 et. seq.

#### 2. The Nature of TEC's business.

Respondents' contest letter dated March 1, 2012, asserts that TEC is not "a bonding company". Respondents then go on to state that "TEC sells surety bonds to small companies that contract with the Federal Government..." The purpose of bonding, as TEC acknowledges, is to protect both the Government and the contractor in the event that a contractor defaults in its performance or fails to pay its subcontractors for work performed under the Government contract. It is clear that regardless of how TEC characterizes its activities, it is in the surety bond business and may reasonably be expected to seek federal funded work as a participant within the meaning of 2 C.F.R. Part 180 or a contractor within the meaning of 48 C.F.R. Subpart 9.4.

## B. Cause for Suspension.

### The TEC Action Basis.

Suspension by its nature is an action which routinely occurs at an early stage in an investigation or proceedings when an investigation is ongoing and may lead to additional disclosures or before completion of adjudication. A suspending official may impose suspension where adequate evidence exists to suspect commission of an offense or other conduct which upon completion of investigation and ensuing legal proceedings would constitute cause for debarment at 48 C.F.R. § 9.407-2. The Suspending Official must also conclude that immediate action is necessary to protect the public interest. See 48 C.F.R. § 9.407-1(b).

The rule, at 2 C.F.R. § 180.905, defines "adequate evidence" as "information sufficient to support the reasonable belief that a particular act or omission has occurred." The adequate evidence standard is analogous to a finding of probable cause. See, *Leon Sloan, Sr., v. Department of Housing and Urban Development*, 231 F. 3d 10 (D.C. Cir. 2000). Suspension occurs at the preliminary investigation stage. Adequate evidence can take the form of a criminal charging document such as an indictment, or a conviction, or other factual information meeting the test.

Respondents by way of opposition essentially offer two contentions in their March 1, 2012, written information submission in opposition to the action. Respondents challenge the suspension "due to the disallowance of fact finding in this proceeding and considering certain documents are only viewed by the government."

#### a. Proceedings Without Fact Finding.

Under the suspension rules the process does not include the opportunity for fact finding where the action is based on indictment or other charging document, or where, as in the instant action as authorized by Section 9.407-3(b) (2) of the rule, fact finding is precluded due to written advice from DOJ that to do so could jeopardize substantial interests of the government in pending or contemplated legal proceedings based on the same facts. In such actions, denial of a trial type fact-finding hearing which could interfere with an ongoing criminal investigation does not violate the Constitution. See, *Transco Security, Inc. v. Freeman*, 639 F. 2d 318 (6th Cir. 1981).

In actions based on indictment or where fact finding is precluded the focus of inquiry is on whether a respondent can demonstrate that notwithstanding the ongoing investigation or legal proceedings suspension continuation is not necessary to protect the Government's procurement and nonprocurement program integrity interests.

Consequently, there are two kinds of oral presentations under the suspension rules. A respondent may in contesting a notice request a meeting with the Suspending Official to make an oral presentation of matters in opposition (PMIO). This is an informal meeting conducted in a business meeting format which accords a respondent the opportunity to discuss with the Suspending Official why the Respondent believes continuation of suspension is unnecessary. A PMIO will always be held where requested.

A fact finding proceeding, where authorized, only occurs if the Suspending Official first determines that a Respondent has demonstrated by its reply to the notice that facts material to cause are genuinely in dispute. The fact finding is a more formal, transcribed proceeding with presentation of witnesses, cross examination.

Even in suspension actions where fact finding is authorized and undertaken, a suspending official does not render a determination on the ultimate truth or falseness of the allegations of misconduct at issue. The Suspending Official must only be satisfied that the limited evidentiary standard of "adequate evidence" is met. An ultimate finding of improper conduct is premature until completion of investigation and ensuing debarment action based upon the "preponderance of the evidence" standard.

b. The Sufficiency of the Information Provided To Respondents.

Respondents broadly assert in their March 1, 2012 submission that "...TEC has several pieces of information to dispute the facts stated in the ARM..." Respondents do not, however, expressly deny the alleged misconduct or otherwise identify particular statements of factual misconduct in the ARM believed to be inaccurate. Respondents contend instead that they are unable to adequately and completely respond to the notices without those documents, because the action referral memorandum contains certain documents for "in camera" review by the Suspending Official.

With respect to the action bases for the TEC notice, four ARM attachments out of twenty (consisting of three agent investigative activity reports and one interview memorandum, Attachments 11, 13, 15, and 16) are withheld from release. Due process for suspension purposes requires only that the suspension notice provide a respondent with enough information regarding the alleged misconduct, such as the time, place, involved contract number(s), and nature of the alleged misconduct, to enable the respondent to "get its ducks in a row" in order to make a meaningful opposition. See, *ATL, Inc. v. United States*, 736 F.2d 677, 686 (Fed. Cir. 1984). A respondent is not entitled to discover information not otherwise accorded by the criminal justice process. See, *Electro Methods, Inc., v. United States*, 728 F.2d 1471 (Fed. Cir. 1984).

The ARM and attachments sent to Respondents more than amply describes the alleged misconduct providing the action basis. As described in the ARM, TEC, operating as an escrow and bonding business, sells contract surety bonds to small companies that contract with the Federal government. TEC utilizes private investors' stock as collateral behind its surety bonds. The bonds are usually paid for by the Government as part of the construction contract, pursuant to 48 C.F.R. § 28.203.

On May 5, 2010, the DOI Bureau of Land Management (BLM) awarded L&I Fence Company (L&I) American Recovery and Reinvestment Act (ARRA) contract INL10PX03075 in the amount of \$91,611.50. L&I selected TEC for bonding. The BLM contracting officer, relying upon the TEC representations, accepted the assets identified by TEC as collateral for the bond. It is alleged that TEC either made fraudulent representations, or was seriously negligent in its

representations, to L&I regarding the number and value of the stocks constituting the bond collateral. The information presented indicates that TEC represented it backed the bond with stocks of Motorola, Tiffany & Company, Home Depot, Microsoft, Caterpillar, Boston Beer, and Yahoo, collectively totally 850, 000 shares, whereas, TEC appeared to hold only one share of each of the named stocks.

While the three investigative reports and one interview memorandum attachments marked in the ARM as "in camera" are withheld from the Respondents, the information provided to them through the ARM and transmitted attachments very specifically identifies the nature of the asserted improper conduct, and identifies the DOI contract by award number and date and name of the contractor that utilized TEC for bond purposes. The attachments provided to Respondents includes the BLM contract award document, the bond escrow agreement, and documents identifying specific stock names, purported owners, registration numbers and the bank name and safety deposit box numbers associated with the stocks TEC represented it held as surety collateral. The information transmitted to Respondents is more than amply specific to place Respondents on sufficient notice of the action basis and enable them to respond to the notice with information in opposition to suspension continuation.

Based upon the information presently of record, TEC's conduct, whether ultimately found to be overt fraud or a serious failure of due diligence to detect fraud by the individuals purportedly providing the stocks identified as the collateral, constitutes adequate evidence that cause for suspension exists, which upon completion of investigation and legal proceedings would constitute cause of debarment under 48 C.F.R. § 9.407-2(a) (1), (a) (3), (a) (4), and/or (c).

## 2. The Abel Martin Carreon, Jr., Action Basis.

DOI suspended you as an individual based upon your affiliate relationship with TEC. As stated in the Notice, under 48 C.F.R. §§ 9.403 and 9.407-1(c), suspension may be extended to affiliates of the primary suspended entity. The test for affiliation under § 9.403 is control. As Section 9.403 states in part pertinent to this proceeding, "[b]usiness concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other..." As part of these proceedings you acknowledge, and provide documentation, that you are the sole owner and operator of TEC. As the sole owner and operator of TEC you unquestionably have the ability to, and do, exercise control over TEC. You and TEC are affiliates within the meaning of 48 C.F.R. 9.403. Accordingly, continuing your suspension as an affiliate of TEC is appropriate.

## C. Continuation of the Suspensions is Warranted.

The administrative remedy of suspension and debarment focuses on responsibility and prudent stewardship to protect the integrity of the procurement and nonprocurement award process and the proper use of taxpayer dollars. The remedy focuses on present and prospective business risk. The record presented in this matter provides adequate evidence of the existence of cause for suspension. The Suspending Official also considers whether continuance of suspension is necessary to protect the public interest. See 48 C.F.R. § 9.407-1(b) (1).

Respondents decline the opportunity for a PMIO meeting with the Suspending Official. Respondents state in their letter of March 1, 2012, that they do so "...due to the disallowance of fact finding in this proceeding and considering certain documents are only viewed by the government." As explained above, regardless of the type of suspension action, a respondent always has the opportunity to request a PMIO meeting with the Suspending Official to discuss why the Respondent believes that notwithstanding the existence of an ongoing investigation, suspension continuation is unnecessary.

A respondent's election to decline the opportunity for a PMIO does not necessarily require a suspending official to draw an adverse inference against the respondent. Indeed, reluctance to speak on the record is understandable in light of the ongoing criminal investigation. The fact remains, however, that suspension is a business decision which involves an assessment of trustworthiness.

Considering the nature of the inquiry, particularly with respect to suspension of an individual, as a matter of common sense, direct information from the person is of paramount interest and concern to the Suspending Official in making a business risk decision. Direct in-person presentations allows a suspending official to hear directly from a respondent and assess his or her demeanor and credibility. If the circumstances leading to the instant suspensions have caused you, Mr. Carreon, to reflect on how to prevent similar situations from arising in the future, your perspective would have been enlightening.

A bond backed by nonexistent or insufficient assets renders its very purpose meaningless and places the Government and the taxpayers in a position of uninsured loss in the event of contractor performance failure. Presented with information posing a direct threat to the integrity of the procurement award process and public confidence in such programs, the initial imposition of suspension was appropriate. Respondents offer no information to show measures or actions taken which could persuasively demonstrate that notwithstanding the ongoing investigation, pending its completion and any ensuing proceedings, they do not pose a present continuing risk to the integrity of the federal award process.

### III. Conclusion.

Based on the information presented in this matter, adequate evidence in support of suspension of TEC and yourself exists. The nature of the alleged misconduct presents an obvious and egregious threat to the procurement interests of the Government. Respondents' opposition submissions do not present for consideration any business safeguards or other measures undertaken or put in place which could provide assurance that continuation of the suspension pending completion of the investigation is unnecessary.

Respondents' business activities indicate a focus on the Federal award community. At the time of the suspension notice issuance, TEC was actively engaged in seeking surety transaction work under federally funded projects. Respondents state in their March 1, 2012, letter that they are