

August 2, 2013

Re: Proposed Debarment of: (Respondent), DOI Case No. 12-0040-00; and (Respondent), DOI Case No. 12-0041-00

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 (Respondent) and (Respondent). The (Respondents) have to date been preliminarily excluded from Federal procurement and non-procurement awards for seven months. I conclude that, as explained below, imposition of a further period of award ineligibility through debarment is not warranted.

#### I. Brief Procedural History.

DOI proposed to debar (Respondents) by Notices dated December 21, 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. The (Respondents) received the notices in early 2013 following forwarded mail delivery.

By email correspondence dated February 14, 2013, on behalf of the (Respondents), 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 March 1, 2013. Mr. Stanley Stocker, the DOI Office of Inspector General (OIG) case representative, provided a written reply to your information by memorandum dated April 26, 2013. We held the PMIO on Thursday, May 2, 2013. Mr. Stocker provided a post PMIO written submission by memorandum dated May 17, 2013. You replied by letter dated June 3, 2013.

In the course of the PMIO reference was made to certain emails correspondence between (Respondent) and the J. Craig Ventner Institute (JCVI) Human Resources Department. Mr. Stocker agreed to provide a copy for the record if he was able to secure them. In your letter of June 3rd you noted that as of that time Mr. Stocker had not submitted the documents and asked that an adverse inference be drawn that had JCVI produced the emails they would have shown that JCVI was aware of (Respondent) doctoral work when JCVI instructed her to bill her time to the Government contract.

By email dated July 17, 2013, Mr. Stocker provided for the record a copy of the referenced email chain between Ms. \_\_\_\_\_ of JCVI Human Resources and (Respondent). Mr. Stocker also included a copy of a document captioned "Cyber Recruiter" referred to in the email chain and an email response from Ms. \_\_\_\_ to Mr. Stocker regarding the question of whether there were other JCVI employees who billed non-contract time to a Government contract.

By response letter dated July 22, 2013, you then objected to the inclusion of the emails in the administrative record. The (Respondents) cannot have it both ways. These debarment proceedings are informal in nature. Since the documents in question are submitted by Mr. Stocker as requested at the PMIO they are accepted into the record. They do not, however, raise issues requiring a further response by the (Respondents) prior to resolution of these debarment proceedings.

Upon review of the record, 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. As a matter of regulation at 48 C.F.R. § 9.402(b), as well as case law, 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. The essential information in this matter can be distilled from the record presented as follows. (Respondent) at relevant times was employed by JCVI and assigned as a Co-Principal Investigator on a U.S. Department of Homeland Security (DHS) funded bio-threats research cost no fee type contract, #D11PC20077, awarded by the U.S. Department of the Interior's National Business Center (DOI). JCVI also at relevant times employed (Respondent), the spouse of (Respondent). (Respondent) at the time was working on her doctoral degree. (Respondent) was ultimately assigned at JCVI to work as a research assistant under the Federal bio-threats research contract. However, while she charged her time, for at least nine months, to the contract she in fact used the time to work on her personal doctoral degree. Both (Respondents) were aware at the time that (Respondent) was billing 100% of her time at JCVI to the DHS contract but using the time to work on her degree. It appears that JCVI billed the Federal Government approximately \$135,000 for the time (Respondent) charged to the Government contract.

The (Respondents) argue that they understand and acknowledge in retrospect that the billing was improper. However, they contend through counsel that the conduct was not a knowing or willful failure to avoid performance of the contract so as to constitute cause for debarment under 48 C.F.R. § 9.406-2(b).

The (Respondents) contend that billing of the time to the contract was done per the instruction of JCVI. There is a question whether JCVI, not a party to this proceeding, did or did not instruct (Respondent) to bill to the federal contract the time spent working on her doctoral degree. The (Respondents) point out that they do not have access to documents or emails generated at JCVI. It is, however, not necessary to resolve that question in order to reach a determination regarding whether cause for debarment exists. The (Respondents) acknowledge that they knew the time (Respondent's) work was billed to the federal contract. The time cards (Respondent) entered in the JCVI "Deltek" system displayed the following contract charge identification "Department of Interior/Biothreat Bacteria". The (Respondents) also, of course, both knew that (Respondent) was working exclusively on her doctoral degree. She did not perform tasks called for under the scope of the federal contract. The record does not show any effort on the part of the (Respondents) to question or decline to participate in charging the time to the Government contract. The Government was billed for services not provided.

Possession of a detailed or even rudimentary knowledge of the Federal Acquisition Regulation (FAR) or federal cost principles is not necessary here to understand the conduct in question was improper. By basic analogy, if a person contracts to repair another person's house, but instead repairs their own house they are not entitled to bill the other person and be paid for contracted work they did not perform. Even assuming arguendo that (Respondent) coded and entered her time at the instruction of JCVI, a willingness of an individual to engage in improper conduct at the direction of an employer evidences conduct inconsistent with the standard of business honesty and integrity expected of a Government contractor. As Mr. Stocker notes in his memorandum of April 26, 2013, at page 1, "...not only must the Government be a fair and rational shopper, it may also insist on capable, impeccably honest vendors and top quality goods and services...." *Frequency Electronics, Inc. v. United States*, Civ Action No. 97-230A (E.D. Va. 1997), *aff'd*, 151 F.3d 1029 (4th Cir. 1998).

The facts of record regarding the (Respondents) past conduct indicate, without question, a carelessness or reckless disregard for proper standards of business honesty and integrity sufficient to establish the existence of cause for debarment under 48 C.F.R. § 9.406-2(b)(1), (i)(A). Alternatively, the (Respondents) improper actions demonstrate conduct of so serious a nature as to adversely affect present responsibility and constitute cause for debarment under 48 C.F.R. § 9.406-2(c).

#### B. Mitigation Factors and Remedial Measures 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 non-procurement program interests only where truly warranted. The Debarring Official considers

the seriousness of the past misconduct. But, most importantly, in reaching a decision the Debarring Official assesses information presented by a contractor that may persuasively indicate mitigating factors, altered circumstances, remedial measures, or other actions that address present responsibility.

The information provided in the (Respondents) 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 length 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).

A key factor in deciding whether to impose the protection of debarment is whether a contractor recognizes and understands the seriousness of the conduct giving rise to the cause for debarment and truly accepts responsibility. It is evident from the statements of both (Respondents) both in their written submissions in this proceeding and at the PMIO that albeit, with the benefit of hindsight, they now acknowledge that their actions were improper as well as understand the seriousness of the misconduct and accept responsibility for it.

(Respondent) stated at the PMIO that "this has been an eye opening experience and one that has taught me very dramatically where I have culpability and I can assure everyone here that this will not happen again". Both (Respondents) by their statements evidenced remorse and regret.

It appears that the (Respondents) were forthright and cooperative with JCVI when questioned about the charging practice. In these debarment proceedings, (Respondent) participated in person at the PMIO and (Respondents) participated by telephone conference call. Both were directly forthcoming and responsive to questions posed. They and did not convey a sense of evasiveness. Indeed, the (Respondents) conveyed a strong sense that based on their experience and consequences incurred there would be no future repeat of the kind of practices which gave rise to these debarment proceedings.

The (Respondents) state that they have undertaken independent reading of the FAR. (Respondents) reports that he particularly focused on the portions dealing with codes of conduct and cost billing. They also document that they have taken and completed a FAR introduction course following the PMIO. These unilateral actions on their part further document an effort to learn from the past and inform themselves against future missteps in federal contracting.

The billing practice extended over at least a nine month period. However, it appears to be an isolated instance of ethical lapse in otherwise unblemished scientific careers. The record contains no indication that either (Respondents) has otherwise ever been subject to allegations of unethical or improper conduct.

Debarment protects Government program award integrity, rather than as punishment. For the errant contractor or assistance participant debarment is to serve as a "cooling off" or reflective period on the need for conformance with proper business ethics and integrity standards. The (Respondents) have to date been award ineligible for seven months by effect of the December

21, 2012, Notices of Proposed Debarment issued by DOI under 48 C.F.R. Subpart 9.4. The ameliorative value of this exclusion is considered, particularly in light of the actions they have taken during the proceedings, in reaching a determination that a period of debarment beyond the award ineligibility experienced by the (Respondents) to date is not warranted to protect the integrity of federal procurement and nonprocurement award program activities.

### 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 regarding mitigating factors and remedial measures undertaken 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,

*/s/* **JAMES G. MCCAFFERY**

*for*

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)