



DEFENSE LOGISTICS AGENCY

HEADQUARTERS

8725 JOHN J. KINGMAN ROAD, SUITE 2533
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO DG

APR 20 2004

Crosby & Overton, Inc.
1610 E. 17th St.
Long Beach, CA 90813

Re: Notice of Debarment

Ladies & Gentlemen:

By letter dated November 13, 2003, Crosby & Overton was notified that the Defense Logistics Agency proposed the company for debarment from Government procurement, nonprocurement and sales programs. That letter provided an opportunity to submit information and argument in opposition to the proposed debarment.

Counsel for Crosby & Overton and named individuals responded by letters dated July 21, 2003, and December 22, 2003. On January 29, 2004, I terminated the proposed debarment of four named individuals. Counsel wrote again on February 12, 2004.

In determining whether Crosby & Overton should be debarred, I have specifically considered the information and argument raised in Counsel's submissions as it relates to the mitigating factors set forth in the FAR 9.406-1(a). The ten mitigating factors and their relevance to Respondents' submissions are as follows:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as cause for debarment. Crosby & Overton had internal control systems in place at the time of the questioned transactions. Additionally, Crosby & Overton had a full-time environmental affairs manager and employees who had received environmental compliance training.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner. Crosby & Overton did not bring the activity cited as a cause for debarment to the attention of the Government. The California Department of Toxic Substances Control (DTSC) and the Defense Criminal Investigative Service (DCIS) investigated the transactions with Aztec Environmental.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official. The administrative record does not reflect an internal investigation conducted by Crosby & Overton. Nonetheless, Crosby & Overton is fully aware of what happened in that they engaged in a business proposition based on incorrect environmental advice.

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(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action. Crosby & Overton cooperated fully with the investigation by DTSC and DCIS.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution. Crosby & Overton paid their criminal fines and made restitution, including full restitution for costs incurred in the investigation. The company also suffered harm to its commercial reputation.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment. Crosby & Overton removed the environmental affairs manager who provided the incorrect advice. Crosby & Overton retained the services of an environmental attorney and the services of an outside environmental consulting firm to review and advise the company regarding its various treatment and storage operations.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government. Crosby & Overton continues the services of the environmental attorney and the consulting firm. The company also continues its training and compliance program. Inasmuch as the conduct that led to the criminal plea was based on incorrect advice, discipline of the employees who engaged in the conduct is unnecessary and would be unwarranted.

(8) Whether the contractor has instituted or agreed to institute new or revised control procedures and ethics training programs. Crosby & Overton views changes to its established procedures and programs as unnecessary since it was bad advice and not a failure of process that led to the conviction.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment. Crosby & Overton has had time to take any necessary corrective steps. The company is committed to implementing and maintaining a strong compliance program to ensure there are no similar compliance issues with respect to future transactions.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence. Crosby & Overton states that they recognize and understand the seriousness of the misconduct giving rise to the cause for debarment and has programs and procedures designed to prevent a recurrence. Crosby & Overton takes responsibility for the conduct.

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On March 17, 2003, Crosby & Overton entered into a plea agreement in the United States District Court for the Central District of California for making a false statement in a hazardous waste manifest in violation of 42 U.S.C. §6928(d)(3). The conviction provides a cause for the debarment of Crosby & Overton pursuant to FAR 9.406-2(a)(5) and (c).

Crosby & Overton points out that although debarment may be based on the fact of a criminal conviction as evidence of a lack of honesty or integrity, a debarment proceeding addresses the present responsibility or fitness of an individual or firm to be a Government contractor. Crosby & Overton submits that it is presently responsible and that the facts and circumstances of the offense to which it pleaded no longer affects its present responsibility.

I have carefully considered the administrative record. The information and argument advanced by Crosby & Overton in opposition to the proposed debarment is not sufficient to persuade me that a period of debarment is not necessary to protect the Government. I have determined that Crosby & Overton does not possess the level of responsibility required of those who do business with the Government and that a period of debarment is necessary to ensure the full protection of the Government's business interests. Crosby & Overton considered the Aztec disposal offer and went forward with it, committing a criminal act since the company was not authorized to do it. At the time of the questioned transactions, Crosby & Overton had internal control systems in place, a full-time environmental affairs manager, and employees who had received environmental compliance training. None of it worked to preclude the conduct or to persuade the company to see a third party's advice.

Pursuant to the authority contained in Federal Acquisition Regulation (FAR) Subpart 9.4, the Defense FAR Supplement (DFARS) Subpart 209.4, and based upon the administrative record and the discussion above, Crosby & Overton is debarred effective this date. The debarment applies to both procurement, nonprocurement, and sales contracting and is effective throughout the executive branch of the Federal Government unless the head of the agency taking the contracting action or a designee states in writing the compelling reason for continued business dealings between the agency and Crosby & Overton.

The debarment continues for two years from November 13, 2003, the date the company was proposed for debarment in a letter which states the effects of the debarment. The debarment terminates on November 12, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Chadick". The signature is written in a cursive, flowing style.

M. SUSAN CHADICK
Special Assistant for
Contracting Integrity