

Suspension and Debarment Breakout Session

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Greg Coss – Grant Specialist, OAM Grants Management Division

(202) 482-3134

gcoss1@doc.gov

Focus on Two Case Studies (With Two Additional Cases for Your Review)

In past sessions we've focused on:

- Defining suspension and debarment and the most common reasons to suspend or debar an individual or organization in pre-award, award and post-award phases (2016)
- The responsibilities of the contract and financial assistance communities in preventing award funding to excluded parties and attempting to unearth potential misconduct that would indicate a lack of present responsibility (recognizing any fraud indicators with a focus on fact-based, rather than conviction-based, cases) (2017)
- The steps involved in bringing forth a proposed debarment, whether it's fact or criminally-based case (2018)

This session:

- Discussion of two sample Suspension and Debarment Cases: one grant and one contract case.
- After reviewing the cases, determine which parties in the cases should have been debarred and the reasons why
- Open forum – general questions about S&D

Sample Case – ABC, Inc.

- ABC, Inc. was a sub-grantee of a \$10 million award and was allocated \$2.5 million of the grant
- The purpose of the grant was to establish and operate public computer centers (PCCs) in rural areas
- The prime recipient, Acme, disbursed \$400,000 of grant funds to ABC, Inc., which was terminated early from the grant due to performance reasons
- The Founder and CEO of ABC, Inc. was and remains Mr. John Davis

Sample Case Continued

- OIG discovered that a PCC named Harmony, Inc. was established inside ABC Inc.'s office
- The center was located down a dirt path off a highway service road that was not visible from the service road due to trees
- From September 2010 to August 2011, several ABC employees stated they never observed members from the public using the Harmony, Inc. center outside of Mr. Davis's friends and girlfriend, also employees of Harmony, Inc.
- A site visit in 2011 revealed an exterior sign that read "Unity, Inc."
- Mr. John Davis was listed as Executive Director of both Harmony, Inc. and Unity, Inc.

Sample Case Continued

- ABC, Inc. submitted monthly usage statistics for Harmony, Inc., Unity, Inc. and other PCCs to Acme
- Mr. Davis says his friends never used the PCCs to generate usage and that his statistics submitted to Acme were accurate
- However, an ABC, Inc. employee stated that Mr. Davis used three employees to increase statistics a couple of times each day
- The granting agency stated that intentionally boosting the usage statistics is improper

Aggravating Factors

- Mr. Davis, when interviewed by the OIG, gave inconsistent answers to questions
- Evidence from the OIG interview shows he terminated an ABC, Inc. employee in reprisal for whistleblowing regarding matters with Harmony, Inc. and Unity, Inc.
- Evidence shows that his girlfriend and friends often were witnessed at the Harmony, Inc. PCC

Mitigating Factors

- Mr. Davis consented to the interview with the OIG and voluntarily provided some documents
- SAM indicates that neither ABC, Inc., Mr. Davis nor any of his affiliates had any prior instances of suspension or debarment

Final Outcome - Companies

- Acme not considered for debarment - No reason to think they were aware of Harmony, Inc. or Unity, Inc. or knew of false usage statistics
- ABC, Inc., debarred for 3 years
 - 1) affiliation – Davis is the principal and Executive Director. He was never removed from the Company (slide 4, bullet 5). Entities or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other (2 C.F.R. § 180.905; FAR § 9.403 – definitions)
- Harmony, Inc. and Unity, Inc. debarred for 3 years
 - 1) affiliation with Davis (FAR §9.403)
 - 2) imputation (2 C.F.R. § 180; FAR 9.406-5, page 17 of Suspension and Debarment Handbook) through Davis's friends and girlfriend. In certain circumstances, improper conduct of one party may be imputed to another. An employee's actions may be imputed to his/her company and vice versa

Final Outcome - Individual

- Mr. Davis debarred for 2 years –
 - 1) “No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent **conflict of interest** would be involved.” (15 C.F.R. § 14.42) (slide 4, bullet 3 – girlfriend and friends inflated PCC statistics), (slide 4, bullet 5 – creation of shell companies)
 - 2) Davis’s self-dealing with creation of potential shell companies that we know inflated usage statistics is a cause “so serious or compelling of nature that it affects present responsibility.” (2 C.F.R § 180.800(d))
 - 3) Violation of Whistleblower Protection Act of 1989 (5 U.S.C. 2302(b)(8)-(9), Pub. L. 101-12) when authorities take (or threaten to take) retaliatory personnel action against any employee because of disclosure of information by that employee.
 - 4) Davis’s cooperation with the investigation (slide 7, bullet 1 – voluntarily handing over documents) lowered his debarment one year

Fraud Indicators?

- Grant was terminated early for poor performance (slide 3 bullet 3)
- Suspicious behavior at PCC with sign reading “Unity, Inc.” when company was Harmony, Inc. (slide 4 bullet 4 – proper site visit revealed this)
- Also, why wasn’t ABC, Inc. referenced anywhere?
- Why was an employee suddenly fired? What was the reason? (slide 6, bullet 2)
- Location of PCC – if it’s for the public, why is it so isolated? (slide 4 bullet 2)

Sample Case – National Contract Assistors (NCA), Inc.

- In November of 2010, the Department of Commerce solicited RFQs from potential contractors for contract work related to the mission of rehabilitating Afghanistan
- The mission of the contracts was to facilitate and coordinate activities designed to help Afghanistan develop a sustainable economy and create strong Afghan-American business partnerships
- NCA, Inc. was a company that specialized in acquisition administration and program management support
- NCA, Inc. submitted quotes for several available DOC contracts on the Afghan-rehabilitation project later that month and was awarded seven contracts for a total of \$4 million

Sample Case Continued

- The contracts were officially awarded on March 1, 2011
- In April of 2012, an individual inside of NCA, Inc. filed a complaint to the OIG
- The individual in the complaint alleged that the president and CEO of NCA, Inc. Nancy Dotson, had submitted false invoices and made erroneous claims on the past performance of NCA, Inc.
- The individual further clarified that there was potential double billing going on, and that often, the same supporting documentation was used for several invoices, particularly when it came to travel

Sample Case Continued

- The OIG begins reviewing the case in May 2012
- In one instance, Dotson submitted an invoice for travel expenses to Kabul, Afghanistan shown to be \$24,000, but then the supporting documentation provided for the trip only adds up to \$11,000
- In another instance, Dotson submitted two separate invoices for the same trip
- Although the invoices were billing to two separate task orders, the supporting documentation was for the same trip

Sample Case Continued

- As part of the application process, Dotson and NCA, Inc. were required to submit supporting documentation that demonstrated past performance
- As a result, they submitted past performance that did not occur
- Specifically, they claimed to have provided subcontractor support for Smart Systems, Inc.
- To demonstrate that they had performed as a subcontractor with Smart Systems, Inc. Dotson and NCA, Inc. submitted two invoices for a total of roughly \$200,000

Sample Case Continued

- However, when OIG investigators contacted Smart Systems, Inc. to verify the past performance, a representative from the company stated that neither Dotson nor NCA, Inc. had performed work for them
- To further confirm this point, a review of NCA, Inc.'s general ledger, which should have included all payments, showed no income paid in the amounts of the invoices
- The OIG believes, as a result of the investigation, that Dotson and NCA, Inc. have committed offenses that demonstrate a lack of business integrity and business honesty
- There were no aggravating or mitigating factors to add to the case

Final Outcome

- Dotson is debarred for 3 years
 - 1) falsification of records (48 C.F.R. § 9.406-2(a)(3)) (slide 14, bullets 2-4)
 - 2) commission of any other offense indicating a lack of business integrity or business honesty (48 C.F.R. § 9.406-2(a)(5)) (slide 15, bullet 3)
 - 3) a contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects present responsibility (48 C.F.R. § 9.406-2(c)),
 - 4) violation of False Claims Act (48 C.F.R. § 9.406-2(b)(vi)(B)) (slide 13, bullets 2-4, slide 14, bullet 4)
- NCA, Inc. is debarred for 3 years
 - 1) debarment through affiliation with Dotson (FAR §9.403)
 - 2) imputation (2 C.F.R. § 180; FAR 9.406-5, page 17 of Suspension and Debarment Handbook) through Dotson's actions. In certain circumstances, improper conduct of one party may be imputed to another. An employee's actions may be imputed to his/her company and vice versa

Fraud Indicators?

- Invoice amount doesn't match supporting documentation amount (slide 13, bullet 2)
- Two separate invoices for the same trip (slide 13, bullet 3)
- Same supporting documentation used for different invoices (slide 14, bullet 4)
- Submission of past performance for work that didn't occur (slide 14, bullet 2)
- Argument can be made that with any of these issues, a contract specialist and/or officer could review the documentation and see there were issues, and make corrections

Bureau Points of Contact

- NIST – Melissa Schroeder (melissa.schroeder@nist.gov) or Megan Boblitt (megan.boblitt@nist.gov)
- Census – Samantha Brady (samantha.brady@census.gov)
- PTO – Lisa Wade (lisa.wade@uspto.gov)
- NOAA – Justin Cofer (justin.l.cofer@noaa.gov) or Rebecca Pedroza (rebecca.pedroza@noaa.gov)
- *MBDA – Nakita Chambers (nchambers@mbda.gov)
- *ITA – Brad Hess (brad.hess@trade.gov)
- *NTIA – Michael Dame (mdame@ntia.doc.gov)
- EDA – William Bethel (wbethel@eda.gov)
- OGC – Wilmary Bernal (wbernal@doc.gov), *Sarah Schwartz (sschwartz@doc.gov)
- OAM – Greg Coss (gcoss1@doc.gov) – general questions
- OIG Hotline – 1-800-424-5197 or Hotline@oig.doc.gov
- MAX Website:
<https://community.max.gov/pages/viewpage.action?spaceKey=DOC&title=Suspension+and+Debarment+Office+of+Acquisition+Management>
- Contains **S&D handbook**, last three year's breakout sessions, S&D guidance, fraud indicators, ISDC meeting notes

* Grants Only

Sample Case – Acme Electronics

- Acme Electronics was a subcontractor to Neon Network
- Neon Network received a \$30 million contract which originated from a grant to enhance a state's economy by deploying a broadband internet infrastructure, improving internet service as well as stimulating economic growth and job creation
- Neon Networks had to ensure, under a Special Award Condition of the grant, that each subcontractor complied with all Federal, state, and local laws and regulations

Sample Case - Continued

- Acme Electronics was awarded a subcontract by Neon Network to construct fiber optic cable and mount hardware. Between March 2011 and December 2012 they receive in excess of \$1.7 million from Neon Network over 21 payments
- In November 2012 a lawsuit (Qui Tam Complaint) is filed in U.S. District court by a former employee of Acme Electronics against three parties
- The three parties are Acme Electronics, and employees by the names of John Smith and Dave Johnson
- John Smith is the former owner and President of Acme Electronics, but no longer holds his positions since the company was acquired by Aspire Technologies in January 2012
- Dave Johnson is a former marketing and operations manager with Acme Electronics. One of his responsibilities involved acquiring business clients for the company, including the subcontract with Neon Network. He, too, had left Acme Electronics by January of 2012, apparently for personal reasons, after Aspire Technologies acquired them
- Neither John Smith nor Dave Johnson were found to have received any other Federal assistance or grants outside of Acme Electronics

Sample Case - Continued

- In the Qui Tam Complaint, the relator claimed that Acme Electronics, John Smith and Dave Johnson knowingly submitted fake payroll records and false statements under the contract
- These false records and statements included the deliberate underpayment of certain workers by \$10 per hour
- This involved submitting fictitious payroll records disclosing the workers receipt of approximately \$10 an hour for training and uniforms which were never provided
- A joint DOC/DOL OIG investigation indicated that the evidence pointed to the respondents using their positions and authority to underpay individuals who worked on the project – in particular the electricians
- Neon Network requested supporting documentation from Acme Electronics to verify the company was in compliance with all laws and regulations under the subcontract, and John Smith and Dave Johnson did not comply

Sample Case - Continued

- Based upon the results of the OIG investigation, settlement agreements for Acme Electronics, John Smith and Dave Johnson were initiated in December 2013 and by June 2014 all parties agreed to settle the allegations in the case
- A total of \$780,000 were paid for the claims made against them
- No determination of liability was made by any party, yet Acme Electronics and John Smith paid a combined \$750,000 in restitution to the U.S. Government and Dave Johnson paid \$30,000

Aggravating Factors

- According to Dave Johnson (interviewed by DOL OIG), John Smith and Dave Johnson attended a pre-bid meeting with Neon Network officials, in which requirements were discussed. This included proper hourly rates to be paid on Federal contracts
- Acme Electronics was also at the meeting, and acknowledged wage laws and regulations
- The lawsuit said that the respondents still deliberately underpaid certain workers in order to increase their own profit margins, along with submitting fictitious payroll records to conceal the underpayments
- Dave Johnson says the employees were underpaid \$10 an hour and John Smith told him to “bury it in training”
- Between May 2011 and March 2012, Acme Electronics submitted approximately 99 false payroll certifications

Mitigating Factors

- The respondents settled the claims in the civil lawsuit and that involved no determination of liability
- Dave Johnson no longer works for John Smith or Acme Electronics – and his settlement was significantly lower than the other two respondents
- Dave Johnson also consented to be interviewed by the government (no criminal prosecution in exchange for his cooperation)
- Acme Electronics has been sold to Aspire Technologies
- Aspire Technologies proves that John Smith and Dave Johnson are no longer associated with Acme Electronics or their company

Final Outcome - Companies

- Neon Network not considered for debarment –
 - 1) Neon was not falsifying records or underpaying the employees – this was done on Acme's watch
 - 2) Neon had attended the pre-bid meeting, and was well aware of Davis-Bacon requirements. As a result, they requested notifications in their RFPs that subcontractors/subrecipients were aware of the need to comply with Davis-Bacon
- Acme Electronics not considered for debarment
 - 1) Acme's actions subsequent to discovery of the wrongdoing under the grant show that it has, in fact, acted responsibly (slide 23, bullet 2, slide 24)
 - 2) They took steps to ensure that the individuals engaging in poor behavior were removed from the company (slide 24, bullet 5)
- Aspire Technologies not considered for debarment
 - 1) By the time Aspire had acquired Acme, John Smith and Dave Johnson had been removed from the company (slide 24, bullet 5)

Final Outcome - Individuals

- Dave Johnson debarred for 2 years
 - 1) Failure to comply with Davis-Bacon wage laws (40 U.S.C. § 3141) (slide 23, bullet 4)
 - 2) willful violation of a statutory provision or requirement applicable to a public agreement or transaction (2 CFR § 180.800(b)(3)) (slide 23, bullet 1)
 - 3) 2 CFR § 180.800(d) – a cause so serious or compelling in nature that it affects your present responsibility
- John Smith debarred for 3 years
 - 1) Same reasons as Dave Johnson – John Smith got an additional year because didn't cooperate with the OIG (slide 23, bullet 1)

Fraud Indicators

- Payroll records are falsified but there's no real way to know that
- Only a site visit, and discussions with electricians, may have uncovered this case outside of a whistleblower filing a complaint
- However, they still underpaid the electricians by \$10 an hour – even if the other funds are buried in uniforms and training, that should be extra – it should not be deducted from the electricians pay.
- Therefore, a contract specialist could refer to Davis-Bacon and question the underpayment of the electricians.

Sample Case – David Watson

- In 2016, David Watson was a County Coordinator for Living Hope, Inc., which received a grant supporting orphans and vulnerable children (OVC) in Houston, Texas
- Main goals of the grant:
 1. Increase access to health and social services for OVC and their families
 2. Strengthen child welfare and protection systems at the national level
 3. Improve structures and services for effective responses
 4. Media campaigns for increased school attendance of OVCs
 5. Training health professionals to care for OVCs
 6. Improve the government's data management concerning OVCs, which would help the government provide better services

Sample Case Continued

- In January 2016 the OIG discovered that Mr. Watson sent an email entitled “GRANT” from his personal email address on Yahoo to a prospective sub-grantee (PSG) of Living Hope, Inc.’s grant
- Later, in March of 2016, Mr. Watson submitted to the PSG a final proposal, budget, and budget narrative for the sub-grant, essentially creating the proposal for the sub-grantee
- Unfortunately, as a County Coordinator for Living Hope, Inc., Mr. Watson was not a procurement official and wasn’t in a position to be reviewing or soliciting contract proposals
- Stop here....what would be the most likely reason Mr. Watson would put together a sub-grant proposal for another company?

Sample Case Continued

- In exchange for his work in developing the proposal, the PSG agreed to pay Mr. Watson \$5,000 a month for the length of the sub-grant (set for 3 years, but payments would include extensions)
- In a group chat entitled “Team Sub-Awardee”, there was a discussion involving 5 people (3 anonymous) on honoring the payments
- The texting began 2 days after the PSG officially received the sub-grant
- Stop here...what’s the likeliest reason the OIG would find out about this group chat?

Sample Case Continued

- The program administrator for the sub-grantee found out about the group text and the scheme to ensure receiving the sub-grant, and contacted the OIG
- In an interview with the OIG, the program administrator confirmed that the group chat (captured on a screen shot) indicated that the sub-grantee would pay monthly in return for help on the award proposal
- One factor comes into play, which could be considered both aggravating and mitigating: in late September of 2016, Living Hope, Inc. fired Mr. Watson, accusing him of assisting the sub-grantee with the development of its proposal
- Who do you feel should be debarred, and why?

Final Outcome

- Mr. Watson was debarred for three years based on:
 1. Bribery (2 CFR § 180.800 (3)) (slide 30, bullet 1)
 2. Conflict of Interest (2 CFR § 200.112) (slide 29, bullet 3)
 3. Any cause so serious or compelling in nature it affects present responsibility. (2 CFR § 180.800(d))
- Living Hope, Inc. was not considered for debarment based on their firing of Mr. Watson. This indicated an effort to become presently responsible
- No legal action was taken in the matter (U.S. Attorney's Office in Washington, DC felt the dollar amount wasn't high enough to pursue the case)

Fraud Indicators?

- Using a private email server (Yahoo) rather than a Government server
- Private group texting instead of open email forum
- Proposal likely tailored to meet exact specifications of sub-grant (because of inside information from County Coordinator of grantee)