



# ARMY PROCUREMENT FRAUD ADVISOR'S UPDATE



ISSUE 73 (JULY 2009)

Happy 234th Birthday to the Army



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### Mission of the Procurement Fraud Branch

The Procurement Fraud Branch (PFB) is part of the Contract and Fiscal Law Division, U.S. Army Legal Services Agency. PFB is the Army's single centralized organization with the mission to coordinate and monitor the status of all criminal, civil, contractual, and administrative remedies in cases of fraud or corruption relating to Army procurements. The Procurement Fraud Advisor's Newsletter has been published since September of 1989 on a quarterly basis to advise Army Procurement Fraud Advisors (PFAs) on the latest developments in procurement fraud and remedies coordination. The Update is also distributed electronically to other Government fraud counsel at their request.



## MESSAGE FROM CHIEF, PROCUREMENT FRAUD BRANCH



**New Fraud Legislation in FY 09:** During this past year, Congressional interest in fighting fraud, waste, and abuse in the federal contracting arena intensified due to the magnitude of federal spending on contracts and the increasing number of incidents of contractor misconduct. This article provides Procurement Fraud Advisors with a summary of legislation of the past year, not covered in recent PFA Updates, and a brief summary of the status of regulatory implementation by the FAR Councils. The 110<sup>th</sup> Congress, which ended in January of this year, enacted several bills in 2008 addressing suspension and debarment. Congress also considered other bills that would have created new statutory debarments, supplemented FAR provisions on contractor responsibility, or increased the information about contractors' responsibility available to contracting officers. The 111<sup>th</sup> Congress followed up by enacting legislation expanding the reach of the False Claims Act and addressing the need for additional guidelines for contractors to avoid organizational conflicts of interest (OCI).

The 110<sup>th</sup> Congress enacted the following fraud fighting legislation in 2008: a Supplemental Appropriations Act (P.L. 110-252, §§ 6101-03) (30 June 2008) (incorporating the "Close the Contractor Loophole Act"), the Duncan Hunter National Defense Authorization Act for FY 2009 (P.L. 110-417, §§871-73) (14

October 2008) (incorporating the "Clean Contracting Act"), and the Inspector General Reform Act of 2008 (P.L. 110-409) (14 October 2008).

The 111<sup>th</sup> Congress enacted the Fraud Enforcement and Recovery Act of 2009 (FERA) (P.L. 111-21) (20 May 2009) and the Weapon Systems Acquisition Reform Act (P.L. 111-23) (22 May 2009).

Close the Contractor Loophole Act required amending the FAR within 180 days to include provisions that require contractors to notify the Government of violations of federal criminal law and overpayments. The legislation made it clear that covered contracts are those that are greater than \$5 million in amount and more than 120 days in duration, regardless of whether they are performed outside the United States or include commercial items. On 12 November 2008, the FAR Councils issued the final rule on mandatory disclosure, (73 FR 67064) which was discussed in Update 71.

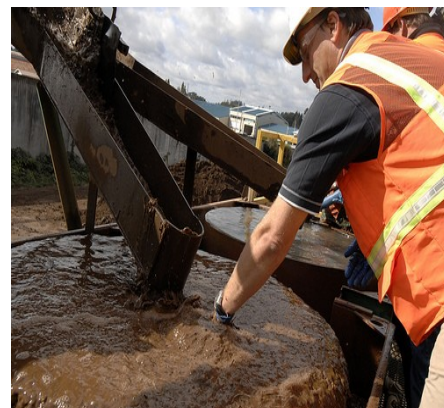
Clean Contracting Act of 2008 required creation of a database with more information than the Excluded Parties List System (EPLS) system for use by agency officials. The database covers all contractors that have at least one contract worth \$500,000 or more. The database will include a brief description of all civil, criminal, or administrative proceedings involving contracts with the federal Government that involve a finding of fault within the past five years. It will also include all terminations for default, administrative agreements, and nonresponsibility determinations within the past five years. Contractors with awards worth more than \$10 million are required to submit this information as part of the award process and update the information semiannually. The FAR Councils are currently working on implementing regulations for the new database. The Act also called for the Interagency Committee on Suspension and Debarment (ISDC) to resolve "lead agency" disputes

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for resolution of suspension and debarment matters. The Act required OFPP to develop standard personal conflict of interest (PCI) policies targeted to contractors who are working in areas that are closely associated with inherently governmental functions. The Inspector General Reform Act of 2008 strengthens the role of agency inspector generals offices’.

The Weapon Systems Acquisition Reform Act reforms the DoD acquisition process for major defense acquisition programs, by changing DoD management of cost and schedule growth. Section 207 requires revisions to the DoD’s FAR Supplement’s OCI rules within 270 days. The FAR Councils are in the process of revising the OCI rules created in the 1960s. The new rules will address potential OCIs arising from lead systems integrator contracts, from a contractor’s simultaneous ownership of business units performing systems engineering, professional services and prime contracts of a major subsystem, awards to affiliates, and contractor assistance in technical evaluations.

The Fraud Enforcement and Recovery Act of 2009 resulted from the recent Congressional effort to expand the False Claims Act, 31 USCA §§ 3729-3733, to broaden FCA coverage for whistleblowers and to extend its reach to recently enacted stimulus programs. The expansion of FCA coverage is outlined in the next article by Brian Persico. (Mrs. Christine McCommas)





## FRAUD COUNSEL'S CORNER—CASE STUDIES

### Liability under the False Claims Act Following the Fraud Enforcement and Recovery Act of 2009 by Brian Persico

On 20 May 2009, President Barak Obama signed into law the Fraud Enforcement and Recovery Act of 2009 (FERA), legislation that significantly amends the grounds for liability under the False Claims Act (FCA), 31 U.S.C. §§ 3729 et. al. The FERA's provisions are at least partially based on the determination by Congress that the 1986 amendments to the FCA were being narrowly interpreted by the courts, most notably the Supreme Court's holding in Allison Engine v. United States ex rel. Sanders, 128 S.Ct. 2123 (2008). In that case, the Supreme Court held that a subcontractor could not be held liable under the FCA because it had submitted a claim for payment to the prime contractor, rather than the Government and that the subcontractor did not intend the false record or statement to be material to the Government's decision to pay or approve the claim. In addition, a series of cases involving false claims associated with contracts awarded by the Coalition Provisional Authority, most notably United States ex. rel. DRC, Incorporated v. Custer Battles, LLC, 562 F.3d 295 (4th Cir., 2009), highlighted the problems involved in applying FCA liability in cases where appropriated funds were administered or distributed by persons not directly employed by the Government. This combination of perceived attacks on the FCA by the courts, combined with the massive Government expenditures via the Troubled Assets Relief Program and the American Recovery and Reinvestment Act of 2009 provided the impetus for the FCA revisions in the FERA.

As amended in 1986, the FCA provides a means for imposing civil liability on companies and individuals who submit fraudulent claims to the Government for payment as part of the procurement process. A FCA action can be initiated in two ways. First, the Government (through the Attorney General) may bring a civil action against a person. 31 U.S.C. § 3730(a). Alternatively, a private individual, known as a "relator," can bring a *qui tam* action for a violation of the FCA "for the person and for the United States . . . in the name of the United States." 31 U.S.C. § 3730 (b). In a *qui tam* action, the Government has the option of intervening and proceeding in the action. If it

chooses to intervene and proceed, the Government assumes primary responsibility for prosecuting the action. If the Government declines to intervene and proceed in the action, the relator has the right to conduct the action. Regardless of whether the Government intervenes, the relator, if he or she prevails, typically will receive a percentage of the proceeds from the action, plus attorney's fees and costs. Until the enactment of the FERA, this civil liability could be imposed on "[a]ny person" who: (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid; (4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt; (5) authorizes or makes or delivers a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true; (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

The FERA changes the FCA's liability provisions. First, it redefines the term "claim" and defines "materiality" as part of an elimination of the presentation requirement in the FCA. Second, it adds a formal definition for "obligation" to strengthen provisions against the retention of overpayments.

The first of these changes addresses the presentation requirement found in the 1986 version of the limited

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FCA. Prior to the FERA, FCA liability was limited to cases where a false or fraudulent claim was submitted to a Government officer or employee. Under the revised FCA, the definition of the term “claim” has been changed to include either a request for payment or property made to the Government or to a “contractor, grantee or recipient” where “the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest” and the Government provides some portion of the money or property involved or will reimburse any portion of the money or property. 31 U.S.C. § 3729(b)(2). This new language eliminates the requirement that a claim has to be presented to an officer or employee of the Government or a member of the Armed Forces. The only requirement for a claim to result in FCA liability is the presence of Government funds or a Government commitment to reimburse the organization making the payment to the claimant.

The addition of the “materiality definition” specifically incorporates into the FCA an element which was previously considered to be implicit in the statute. “Materiality” is now defined in the FCA as “having a natural tendency to influence, or be capable of influencing the payment or receipt of money or property.” 31 U.S.C. § 3729(b)(4).

These changes serve to legislatively overrule Allison Engine’s holding by extending liability under the FCA to subcontractors’ claims to prime contractors when the costs of those claims are passed on to the Government. They also extend liability to parties who receive payments for claims submitted to activities which are independent of the Government but receive Government funds to advance programs on the Government’s behalf (such as the Coalition Provisional Authority, as found in Custer Battles).

Government attorneys working with cases involving FCA issues should also be aware that the change eliminating the presentment requirement is retroactive to June 7, 2008, two days prior to the issue of the Supreme Court’s decision in Allison Engine. Allegations of fraud which may have been addressed under the old FCA and its interpretation in light of Allison Engine may therefore need to be reviewed to deter-

mine what, if any, new FCA liability exists.

Regarding the third change to contractor liability under the FCA, the addition of a definition for the term “obligation” significantly expands the so-called “reverse false claims” provisions when overpayments to contractors is at issue. Reverse false claims include instances where the Government overpays for goods or services and is therefore owed money by the contractor. Under the 1986 FCA, a claimant who “uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation” would be liable for a reverse false claims action. The new provisions make it a violation of the FCA to “knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the Government.” 31 U.S.C. § 3729(a)(1)(G). This new language does not require that a false record or statement be submitted to the Government, only that an “obligation” exists to pay the Government. “Obligation” is defined broadly to include an “established duty, whether or not fixed, arising from an express or implied . . . relationship, from statute or regulation, or from the retention of any overpayment.” 31 U.S.C. 3729(b)(3). Based on this change, instances involving the mere omission to return overpayments to the Government could result in FCA liability, regardless of whether or not a false record of statement exists.

Taken as a whole, these changes significantly improve the ability of the Government and *qui tam* relators to use the FCA. The clear resolution of the presentment questions found in Allison Engine and Custer Battles and the inclusion of changes to the reverse false claims provisions enhance the application of the FCA to fraudulent contractor conduct.

**Update on Army Compliance Agreements: Guidance to Contractors by Angelines McCaffrey**

Contractors placed on the GSA Excluded Parties List System (EPLS), by virtue of a suspension and/or debarment action initiated by the Army, can overcome the exclusion and be removed from the list if the contractor can demonstrate to the Army Suspension and Debarment Official (SDO) it is presently responsible. While there are a myriad of characteristics which de-

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fine a responsible contractor, demonstrating a working knowledge of and a prior implementation of an ethics and compliance program is a prerequisite to requesting and obtaining an administrative compliance agreement with the Army. From my work on a recent procurement fraud case, it is evident there are Government contractors currently doing business with the Government that have not created and incorporated an ethics and compliance program into their corporate structure and are unaware of the importance the Army places on these programs when evaluating a company's present responsibility. All companies doing business with the Government are now required to establish ethics and compliance programs pursuant to FAR 3.10.

Contracting with the Government is a privilege and not a right - a privilege reserved for entities characterized by the Federal Acquisition Regulation (FAR), Part 9.103, as responsible contractors. Before the award of a Government contract, a contracting officer must make an affirmative determination of the prospective contractor's present responsibility. Although Government purchases must be awarded to the lowest bidder, a contractor's present responsibility is an overarching concern which is addressed in the pre-award stage of the contracting process, and may remove even the lowest bidder from competing. In the event there is cause for concern and a contractor is deemed not responsible, the Army's Suspension and Debarment Official (SDO) may suspend and/or debar the prospective Government contractor from contracting with agencies within the Executive Branch of the Federal Government.

While an action to suspend and/or debar a prospective Government contractor is within the SDO's discretion, the Army SDO will more than likely take this step if the interests of the Government need to be protected. An entity served with a notice of suspension and/or debarment can take remedial steps toward having the suspension and/or debarment terminated.

The prospective contractor must request to meet with the Army SDO to present reasons why suspension and/or debarment is not necessary to protect the Government's interests and demonstrate it remains presently responsible. First and foremost, the contractor

must show a working knowledge and a willingness to implement an ethics and compliance program within its organization. When meeting with the SDO, it should highlight mitigating factors which argue against suspension and/or debarment, in order to demonstrate the Government's interests do not need to be protected. If the SDO is convinced the contractor remains presently responsible, the SDO may consider entering into an administrative compliance agreement with the company and terminate the suspension and/or debarment action. However, the company must be willing to remove or isolate the wrongdoer, demonstrate that the underlying cause behind the SDO's action has not affected the company's institutional culture or unjustly enriched it, establish a hotline, agree to periodic reporting requirements and monitoring by the Army, and accept and implement internal controls or remedial measures as crafted by the Army to ensure that the underlying cause of the misconduct does not reoccur.

While entering into an administrative compliance agreement with the Army will effectively terminate a company's suspension and/or debarment status under certain circumstances, it does not spare the actual wrongdoers from being excluded from contracting with the Government. Very often the wrongdoer will remain on the EPLS. The administrative compliance agreement will serve to protect the Government's interests and monitor the company's present responsibility while in effect.



**SIGNIFICANT ACTIONS****Suspensions (2nd QTR, FY 09)**

(1) Bribery and False Statements (ARCENT/Camp Arifjan, Kuwait). On 15 January 2009, the Army Suspension and Debarment Official (SDO) suspended Major Christopher H. Murray (Major Murray) based on the filing of a criminal information in the U.S. District Court for the Middle District of Georgia on 8 January 2008, charging him with four counts of bribery, in violation of 18 U.S.C. § 201, and one count of false statement, in violation of 18 U.S.C. § 1001. Prior to the filing of the criminal information against him, Major Murray entered into a plea agreement with the Department of Justice in which he admitted to awarding Government contracts valued at over \$4,200,000 in exchange for payments totaling approximately \$245,000 from at least four contractors during his deployment to Camp Arifjan, Kuwait. Major Murray is also accused of providing false statements to criminal investigators regarding the number of payments and the amount of money he received from contractors as a result of these contract awards. The case is awaiting trial. (Mr. Persico)

(2) Fraud and Tax Evasion (TACOM/Warren, Michigan). On 6 February 2009, the Army SDO suspended James McCarthy (Mr. McCarthy), Stavros Ganas (Mr. Ganas), American Boiler (AB) and Industrial Property Management (IPM) from Government contracting. On 31 October 2008, Mr. McCarthy and Mr. Ganas were indicted in the U.S. District Court of Connecticut for conspiracy to defraud the United States and tax evasion. Mr. McCarthy is a principal in AB and IPM. Mr. Ganas is the owner and operator of Taxes International (Taxes). Mr. Ganas kept the books of IPM and prepared IPM and AB's federal corporate income tax returns. Mr. McCarthy and Mr. Ganas devised a scheme wherein payments for services rendered by AB were deposited into the business checking account of IPM. The AB receipts deposited into the IPM business checking account were recorded as "Loan Payable – AB" on the books of IPM. Checks issued on the IPM account for the benefit of Mr. McCarthy, his family members and a Stavros Ganas Irrevocable Trust were recorded as reductions to "Loan Payable – AB" on IPM books. Business receipts totaling \$1,612,841 were omitted from the income reported on the federal corporate income tax

returns of AB for the years 1999 through 2002 prepared by Mr. Ganas. The AB receipts recorded in the IPM business checking account as loans were not reported as income on the federal corporate income tax returns of IPM nor were the monies directly paid to Mr. McCarthy or Mr. Ganas reported on their personal income tax returns. This case is pending. (MAJ McDonald)

(3) Larceny by False Pretense (DRFTA/Fort Devens, Massachusetts). On 20 February 2009, the Army SDO suspended Charles Truax (Truax) on the basis of the criminal complaint filed against him in the Ayer District Court of Massachusetts charging him with larceny of over \$250. From January of 2001 until December of 2003, Mr. Truax who was employed as an Army civilian at Devens Reserve Forces Training Area (DRFTA) in Devens, Massachusetts unlawfully expanded his Commercial Drivers License (CDL) training/testing operation and used Army vehicles and fuel to provide training and testing at the DRFTA to certain civilians employed outside the DoD. Mr. Truax worked as the Direct Support Function Foreman at an Equipment Concentration Site (ECS) located at DRFTA with duties that included the procurement of goods and services for the ECS. While employed in this capacity, Mr. Truax was also a Master Sergeant in the Army Reserve where he served as a Noncommissioned Officer in Charge (NCOIC) of a motor pool located at DRFTA. Mr. Truax's official duties eventually came to include the provision of CDL training and testing at DRFTA for members of his Army Reserve unit and other DoD employees. This case is pending. (MAJ McDonald)

(4) Theft/Embezzlement of Public Funds (USMA/West Point, New York). At all times relevant hereto, Ms. Bobbie C. Ryan (Ms. Ryan) was employed at the U.S. Military Academy at West Point (West Point) where she worked in the Information, Education and Technology Division in the Office of the Dean. On 8 January 2009, a criminal complaint was filed in the U.S. District Court for the District of Columbia alleging that Ms. Ryan, while doing business under the name of CWG Enterprises (CWG), embezzled/stole approximately \$2.9 million of public money in violation of 18 U.S.C. §§ 641 and 1343. Specifically, it was alleged that Ms. Ryan, who had certain contracting authority at West Point, used her Government



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Purchase Card (GPC), and the GPCs of some of her unknowing subordinates, to authorize payments to CWG for on-site training programs that were never conducted and reference materials that were never provided. Ms. Ryan began her above scheme in January of 2001 and continued until November of 2007 when a routine internal audit led to her discovery. This case is pending. (MAJ McDonald)

(5) Bribery, Receiving Illegal Gratuities, Wire Fraud, Mail Fraud, Theft, Receiving Confidential Information (Tobyhanna Army Depot/Tobyhanna, Pennsylvania). On 13 March 2009, the Army SDO suspended ComputerGiants.com (Computer Giants) and Dean Soukeras, former President of Computer Giants, from Government contracting. The suspensions are based on a 23 December 2008 indictment in the U.S. District Court for the Middle District of PA. Computer Giants is an information technology company that sells technology-related supplies and services. Between February 2001 and November 2005, Computer Giants was paid almost eight million dollars in Government funds for supplies and services allegedly provided to Tobyhanna Army Depot (TAD) based contracts negotiated by Kafu Chung (Mr. Chung), Computer Giants Sales Manager. Mr. Chung conspired with several Government employees to defraud the Government by bribing, receiving and giving illegal gratuities; wire fraud; mail fraud; theft, and receiving and disclosing confidential bid information. Sentencing is pending. (MAJ McDonald)

(6) Theft, Money Laundering, and Structuring (MNF-I/Muqdadiah, Iraq). On 13 March 2009, the Army SDO suspended CPT Michael Dung Nguyen (CPT Nguyen), USA, based on the filing of an indictment on 3 March 2009 in the U.S. District Court for the District of Oregon charging him with one count in violation of 18 U.S.C. § 341, Theft of Government Property, one count in violation of 31 U.S.C. § 5324 (a)(3), Structuring Financial Transactions and two counts in violation of 18 U.S.C. § 1957, Money Laundering. Specifically, it is alleged that CPT Nguyen, while assigned as a Civil Affairs officer for the 2d Battalion, 23d Infantry Regiment at Muqdadiah, Iraq, converted approximately \$690,000 in Government funds for his personal use, by mailing those funds to his residence in Oregon and attempting to hide the source of these funds through multiple bank

accounts and the purchase of vehicles and other items. During his deployment, CPT Nguyen was responsible for overseeing payments to indigenous Iraqi security personnel, known as the “Sons of Iraq,” as well as humanitarian relief and reconstruction programs in the local area using Commander’s Emergency Response Program funds. The case is awaiting trial. (Mr. Persico)

(7) Misprision of a Felony (ACOE/Florida). On 20 March 2009, the Army SDO suspended Gregory C. Wagner (Mr. Wagner) from Government contracting on the basis of a criminal information filed against him on 30 September 2008 in the U.S. District Court for the Southern District of Florida charging him with misprision of a felony. Mr. Wagner was employed by the U.S. Army Corps of Engineers (ACOE) as a Construction Representative and Construction Inspection Technician. He was responsible for supervising ACOE projects in the area of Homestead and Florida City related to the Comprehensive Everglades Restoration Program (CERP). A complaint was made to the Environmental Protection Agency that an ACOE employee was receiving kickbacks in exchange for allowing individuals to farm land and remove trees within the Everglades. An investigation provided credible evidence to establish that the referenced employee was Mr. Wagner. On 16 July 2009, the Army SDO proposed Mr. Wagner for debarment as a result of his conviction for misprision of a felony on 18 June 2009 in the U.S. District Court for Southern District of Florida. (MAJ McDonald)

## **Proposed Debarments**

(1) Conspiracy, Bribery and Election Fraud (Washington, D.C.). On 15 January 2009, the Army SDO proposed Mitchell Wade (Mr. Wade) for debarment on the basis of his conviction to two-counts of conspiracy, one count of using interstate facilities to promote bribery, and one count of election fraud. Mr. Wade was sentenced on 24 December 2008 to serve an incarceration period of thirty months and pay a fine of \$250,000. Mr Wade was the principal owner and CEO of MZM, a defense contractor that sold equipment and services to DoD. MZM received over \$150 million from DoD on Government contracts from 2002 through 2005. The LLC was a Nevada



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limited liability company of which Mr. Wade was the managing member. Mr. Wade and MZM unlawfully exploited the Government procurement system by bribing Randall "Duke" Cunningham, a then sitting U.S. Congressman and member of a DoD appropriations subcommittee; by conspiring to provide certain improper favors/gratuities to a number of DoD officials; and by channeling illegal campaign contributions to two congressmen. The LLC was often utilized by Mr. Wade and MZM as a conduit to transfer said bribes, favors/gratuities and campaign contributions. In exchange for the above, MZM and Mr. Wade received preferential treatment within the Government procurement system and a corresponding financial benefit. MZM and the LLC were suspended on 30 March 2006, and proposed for debarment on 15 January 2009. Mr. Wade, MZM and the LLC were debarred on 4 March 2009. (MAJ McDonald)

(2) Theft (MEDCOM/Fort Sam Houston, Texas). On 15 January 2009, the Army SDO proposed Allen V. Barbauta (Mr. Barbauta), and his company, Executive Mobile Detailing (EMD), for debarment based on a criminal judgment entered against Mr. Barbauta in the U.S. District Court for the Western District of Texas on 12 December 2008. Mr. Barbauta entered a plea of guilty on 10 September 2008 to one count of theft based on allegations that he fraudulently charged GSA Voyager Fleet credit cards for services to the Army that were never rendered by his company, Executive Mobile Detailing. Mr. Barbauta was sentenced to three years probation, payment of a \$100 special assessment and restitution of \$16,448 to the Fort Sam Houston, Texas, Directorate of Contracting. EMD was debarred as an affiliate of Mr. Barbauta and as an imputee of his actions. Final debarment action against Mr. Barbauta and EMD occurred on 14 May 2009. (Mr. Persico)

(3) Larceny and Attempted Larceny (Fort Bliss, Texas). On 22 January 2009, the Army SDO proposed Darnell E. McCleod (Mr. McCleod) for debarment as a result of his plea of guilty to court-martial charges of larceny of Government property and attempted larceny of Government property. Mr. McCleod is a former U.S. Army Sergeant who was employed as a Supply Sergeant for D 1/7 ADA and the 178<sup>th</sup> Maintenance Company at Fort Bliss, Texas. In February 2007, Irving Harding, a Supervisory Supply Specialist for the General Services Administration (GSA), reported that

that there was a potential theft of Government property via GSA-Advantage by Mr. McCleod. Investigation of the matter revealed that SGT McCleod had used two DODAACs to purchase numerous electronic items. He bought four plasma televisions and five laptop computers which he shipped directly to his personal residence. He also attempted to purchase additional electronic items, but the specific restrictions placed upon the DODAAC automatically cancelled those orders. Mr. McCleod admitted, in a sworn statement, to obtaining these items for his personal use. Mr. McCleod pled guilty on 20 September 2007 and was sentenced to reduction to Private, E-1, confinement for 18 months and a bad conduct discharge. Debarment is pending. (MAJ McDonald)

(4) Bribery (AFRC/Garmisch, Germany). On 30 January 2009, the Army SDO proposed Steven G. Potoski (Mr. Potoski) for debarment on the basis of the guilty plea he entered on 11 December 2008, in the U.S. District Court, Eastern District of New York. Mr. Potoski was convicted of one count of bribing a public official and three counts of filing a false federal income tax return in violation of 18 U.S.C. § 201 (b)(2)(A) and 26 U.S.C. § 7206(1). He was sentenced to serve 31 months in prison on counts two through four, to run concurrently with each other, and count one; to make restitution in the amount of \$24,057 to the Internal Revenue Service; and make restitution in the amount of \$4007 to the New York State Department of Taxation. Between the dates of 23 July and 4 August 2005, Mr. Potoski rendered several sworn written statements to the U.S. Army Criminal Investigation Division (CID) wherein he admitted that, while employed by the U.S. Department of the Army as the Director of Contracting (DOC) at the Edelweiss Lodge and Resort (ELR), Armed Forces Recreation Center (AFRC), Garmisch, Germany, he demanded and received payments from fifteen contractors or subcontractors (contractors) twelve of which were German companies, two of which were American companies, and one of which was a British company. In return, Mr. Potoski agreed to approve inflated contract line items for work performed at AFRC. Mr. Potoski and the contractor or subcontractor would then split the difference between the inflated contract line items and the actual amounts of the line items. Debarment is pending. (Ms. McCaffrey)

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(5) Making False Statements (South West Asia Theatre Material Management Command/Baton Rouge, Louisiana). On 2 February 2009, the Army SDO proposed Mr. Oliver Moore, III (Mr. Moore) for debarment on the basis of his conviction to making two separate violations of making a false statement. Mr. Moore was sentenced on 21 November 2008 to an 18 month term of imprisonment. He was a civilian employee working as an Integration Supply Systems Analyst with the 321<sup>st</sup> Theater Material Management Command in Baton Rouge, Louisiana. Sometime between February and September of 2005, Mr. Moore created a fraudulent U.S. Army contract (the Contract) whereby the Army procured 40,000 pairs of tactical eyewear from F&F. In furtherance of the above, Mr. Moore created a false contract number and utilized false accounting and classification data. He then forged the signatures of legitimate Army contracting officials and processed the Contract, which ultimately resulted in the delivery of the subject eyewear to Camp Arifjan, Kuwait. Mr. Moore's above misconduct was discovered when F&F sought payment under the Contract. Mr. Moore was consequently indicted on 17 October 2007 in the U.S. District Court for the Middle District of Louisiana. On 3 June 2009, the Army SDO debarred Mr. Moore on the basis of his conviction and sentencing for making false statements. (MAJ McDonald)

(6) Conspiracy, Fraud and False Statements (Camp Casey, South Korea). On 23 February 2009, the Army SDO proposed Hans J. Wicks (Mr. Wicks) for debarment. Mr. Wicks was employed with Department of the Army, as Deputy Director of Public Works (DPW), Camp Casey, from 1994 to 2004. The U.S. Army Audit Agency audit in 2005 found Government Purchase Card (GPC) irregularities in \$1.4 million dollars worth of items DPW personnel purchased under Mr. Wick's supervision. The purchases did not comply with the applicable purchase card rules and the Army policies and procedures. In a subsequent CID investigation on 22 September 2007, Mr. Wicks admitted to making false statements, accepting gratuities from contractors and money from a subordinate. Among other things, Mr. Wicks specifically admitted to circumventing the competitive bidding process while purchasing surge-protectors and uniforms, to approving subordinates' GPC purchases af-

ter the fact, and altering dates on official records to make it appear as though purchases were made after approval. On 28 March 2008, Mr. Wicks was proposed for removal from the civil service for conduct unbecoming a federal employee in relation to his approval of GPC purchases in Korea. Mr. Wicks retired in lieu of termination on 3 May 2008. Debarment is pending. (Mr. Nelson)

(7) Procurement Integrity Violation (USACE, South Korea). On 13 March 2009, the Army SDO proposed Thomas Ushijima (Mr. Ushijima), a former Senior Executive Service (SES) employee of the U.S. Army Corps of Engineers (ACOE) for debarment. As an SES, Mr. Ushijima was in charge of UCOE's Programs Division, which entailed managerial responsibilities over civil works, military construction and environmental projects. He ended his service with ACOE in 2003 and in 2005 he began his employment with the civilian firm Jacobs Engineering Group, Inc., (Jacobs). In August of 2006, Mr. Ushijima improperly obtained sensitive source selection information pertaining to the Yongsan Base relocation project in Korea (the Project). The information he obtained was a memorandum prepared by then ACOE employee David Honbo (Mr. Honbo) that set forth the scoring and the subjective opinions of the board that was evaluating the firms competing for the contract to conduct the Project. Jacobs was one of those firms. Mr. Honbo was eventually charged with and convicted of one count of disclosure of source selection information. He was later debarred by the Army SDO. Mr. Ushijima's misconduct violated both the FAR and the Procurement Integrity Act. The SDO held a hearing on Mr. Ushijima's proposed debarment on 29 July 2009. A decision is pending. (MAJ McDonald)

(8) Violation of Ethics Regulations, False Statements, (MNF-I/Baghdad, Iraq). On 19 March 2009, the Army SDO proposed MSG Gerald Thomas Krage (MSG Krage), SSG Andrew John Castro (SSG Castro) and Alrafidane, LLC (Alrafidine), for debarment based on MSG Krage's guilty plea at his 3 March 2009 court-martial to one charge and four specifications of failure to obey a general order or regulation. He was found guilty at trial of one charge and one specification of making a false official statement.

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MSG Krage was sentenced to reduction to the rank of E-8 (he had previously been a Sergeant Major, E-9) and a \$10,000 fine. A period of three months confinement was made conditional on the payment of the \$10,000 fine. Between January and October 2008 MSG Krage was assigned to the Civil Affairs section of Task Force Dragon, Multi-National Corps - Iraq at Victory Base Complex, Baghdad, Iraq. Prior to his deployment, MSG Krage, SSG Castro and two other individuals formed Alrafidane, LLC, to sell water purification units designed specifically for the Iraqi climate and water conditions. On multiple occasions during his deployment, MSG Krage attempted to use his official position to obtain Government contracts for Alrafidane by making false representations to contracting officers, inserting requirements for Alrafidane products into contract specifications and providing information to SSG Castro to assist in the preparation statements of work for MNF-I projects. SSG Castro has provided a written response which is currently under evaluation by the Army PFB. A hearing was held on 3 June 2009. (Mr. Persico)

(9) False Statements (U.S. Army Tank-Automotive and Armaments Command/Warren Michigan). On 19 March 2009, the Army SDO proposed Chris Allen McCollum (Mr. McCollum) and his company Automotive Racking Systems, Inc. (ARS) for debarment. The proposed debarments are based upon Mr. McCollum's participation in a scheme to defraud the Government on a contract his prior employer, Environmental Technologies Group (ETG), held with the U.S. Army. ETG was a Michigan-based manufacturer, which had contracted with the U.S. Army for the manufacture of 238 marine shipping containers. ETG purposefully deceived Government officials as to the manufacturing process, the location of manufacture, and the completion of work. Mr. McCollum, in his capacity as an employee, assisted in this deception. Among other things, the scheme included moving a jig used in the manufacturing process from a plant in Muskegon Heights, Michigan, to another location. On 15 November, 2005, Mr. McCollum made statements in which he admitted he believed that the manufacturing of the containers had continued at the Muskegon Heights location, and that the only reason to move the jig was to deceive inspectors, but maintained that he

still had no direct knowledge of these matters. He also stated that he would not be able to refute an accusation that he assisted in the moving the jig for the purpose of deceiving inspectors. Debarment is pending. (Ms. McCaffrey)

(10) Sabotage – Destruction of War Material (AMC, Lake City Army Ammunition Plant). On 26 March 2009, the Army SDO proposed Charles Osborn (Mr. Osborn) and Timothy Langevin (Mr. Langevin) for debarment as a result of their 28 January 2009 convictions in the U.S. District Court for the Western District of Missouri, Western Division on one count each of sabotage – destruction of war material. Between 27 September 2007 and 28 March 2008, while employed at the Lake City Army Ammunition Plant, Independence, Missouri, Mr. Osborn and Mr. Langevin stole 16,528 pounds of copper “bullet cups,” used in the manufacture of 7.62mm ammunition, for resale as scrap metal. These “bullet cups,” would have produced approximately 1.5 million rounds of ammunition. The same day that they were convicted, Mr. Langevin was sentenced to serve 24 months in confinement and Mr. Osborn was sentenced to 36 months in confinement and were found jointly liable for restitution of \$77,138 to Alliant Techsystems, Inc., the operator of the Lake City Army Ammunition Plant. Both had previously been suspended from contracting with the Government on 23 May 2008. Final debarment action against Mr. Osborn and Mr. Langevin occurred on 14 May 2009. (Mr. Persico)

## Debarments

(1) Theft (Tripler Army Medical Center/Honolulu, Hawaii). On 15 January 2009, the Army SDO debarred both William Ikehara (Mr. Ikehara) and his company, Newton Square Pharmacy (NSP). Mr. Ikehara was employed as a pharmacist at the Tripler Army Medical Center in Honolulu, Hawaii (TAMC) from 1982 to 2006. While working in this capacity, Mr. Ikehara was also the owner and operator of his own private pharmacy, the NSP, which is located near the TAMC in Aiea, Hawaii. In early 2006, inventories conducted at the TAMC indicated that various drugs were inexplicably missing prompting the Chief of Pharmacy to conduct further inventories.



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Those inventories established that the subject drugs were most likely being taken from the TAMC pharmacy during shifts worked by Mr. Ikehara. Subsequent criminal investigation adequately established that Mr. Ikehara was stealing drugs from the TAMC to sell them to NSP. Loss to Government was estimated to be \$250,000. (MAJ McDonald)

(2) Wire Fraud (California National Guard/San Luis Obispo, California). On 30 January 2009, the Army SDO debarred Jennifer Anjakos (Ms. Anjakos), Carlos Chaves (Mr. Chavez), Derryl Hollier (Mr. Hollier) and Luis A. Lopez (Mr. Lopez), and [hereinafter, collectively referred to as “defendants”] from contracting with the Government on the basis of their conviction to conspiring to commit wire fraud against the Government, in violation of 18 U.S.C. § 371. Ms. Anjakos was sentenced to serve a three-year term on probation, which includes a six-month period in a home detention program; ordered to pay a special assessment of \$100; and restitution in the amount of \$86,557. Mr. Chavez was sentenced to serve a three-year term of probation; ordered to pay an assessment of \$100; and restitution in the amount of \$29,107, of which \$14,533 was payable immediately. Mr. Hollier was sentenced to serve a term of three years on probation, six months of which must be served in the home detention program; ordered to pay an assessment of \$100; and restitution in the amount of \$83,657. Mr. Lopez was sentenced to serve a three year term on probation, ordered to pay an assessment of \$100, and pay restitution in the amount of \$66,865. The defendants, while on deployment, conspired with a fellow National Guardsman, Jesse D. Lane (Mr. Lane), and a full time employee of the United States Payment and Fiscal Office (USPFO), a National Guard center in San Luis Obispo, California. Although on deployment, Mr. Lane continued to have access to the computer systems that allowed him to input pay information for members of the California National Guard. When he inputted this information, the Defense Finance and Accounting Service (DFAS), Indianapolis, Indiana, a DoD component, automatically transferred funds into members’ personal bank accounts by way of interstate wire transmissions. (Ms. McCaffrey)

(3) Procurement Integrity Violation (USACE/Yenasaz, South Korea). On 3 February 2009, the

Army SDO debarred David M. Honbo (Mr. Honbo) on the basis of his 22 July 2008 conviction in the U.S. District Court for the District of Columbia on one count of Disclosure of Source Selection Information, a violation of 41 U.S.C. § 423(a) and (e)(1)(B). Mr. Honbo, while a civilian employee of the U.S. Army Corps of Engineers (ACOE) stationed in South Korea, unlawfully provided sensitive source selection and procurement information to a bidder seeking to win the contract to relocate the U.S. Army base in Yongsan, South Korea. Mr. Honbo’s duties with ACOE during this time included direct participation in the awarding of U.S. Government contracts. Mr. Honbo was sentenced on 7 November 2008 to probation for a term of 36 months. (Mr. Csokmay)

(4) Conspiracy to Smuggle Goods (Fort Lewis, Washington). On 23 February 2009, the Army SDO debarred CPT Tomoaki Iishiba (CPT Iishiba) after he pled guilty in the U.S. District Court for the Western District of Washington to one count of Conspiracy to Smuggle Goods from the United States, a violation of 18 U.S.C. § 371. CPT Iishiba was sentenced on 7 November 2008 to a year and a day in prison for the aforementioned offense. His conviction and sentencing stemmed from his unlawful exporting of certain sensitive military hardware to his native Japan, which hardware included 60 EoTech 553 holographic night vision firearm sights that he had purchased from a business known as Optics Planet. Once he had acquired these items, CPT Iishiba would ship them to co-conspirators in Japan with customs forms he had deliberately mislabeled in order to avoid obtaining a requisite export license. (MAJ McDonald)

(5) Bribery (Patrick AFB, Florida). On 26 March 2009, the Army SDO debarred Alvaro Garcia, Jr., as a result of his conviction for bribery after a trial by court-martial. Mr. Garcia was a Staff Sergeant (SSG Garcia) employed in the supply and logistics office of the 2<sup>nd</sup> Brigade, 87<sup>th</sup> Division at Patrick AFB, Florida. He was responsible for securing temporary housing for reservists on active duty. In August 2006, the Orlando DCIS office was notified by a temporary housing contractor that SSG Garcia had solicited a gratuity from one of its employees in exchange for the award of a contract. The subsequent investigation revealed that SSG Garcia had solicited and received a gratuity

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from another temporary housing contractor, Ronald Livingston in 2005. In addition, it was discovered that he had also solicited a gratuity from another temporary housing contractor in July 2006 at or near San Juan, Puerto Rico. Charges were preferred against SSG Garcia in March 2008. He was charged with three specifications of bribery and one count of violation of a lawful order or regulation. He was suspended from Government contracting on or about 22 August 2008. On 18 September 2008, SSG Garcia was found guilty of two specifications of bribery. He was sentenced to reduction to the grade of E-1, total forfeitures and confinement for one year. He was proposed for debarment on 12 November 2008. He did not submit any matters in opposition to the proposed debarment. (MAJ McDonald)

### Settlement Agreements

(1) U.S. ex rel Hamilton v. Leo Burnett (Chicago, Illinois). On 6 January 2009, the Department of Justice announced a Civil False Claims Act settlement with Leo Burnett Company, Inc. Leo Burnett, based in Chicago, Illinois, had a contract from 2000 to 2005 with the U.S. Army to provide advertising services for the Army's recruiting mission. The settlement resolves allegations that Leo Burnett improperly billed the U.S. Army while developing the Army's recruiting web site and for advertising under the "Army of One" multimedia advertising campaign. Leo Burnett made a cash payment of \$12.1 million and credited the Army \$3.4 million in work performed, but not billed. The investigation originated from a 2003 qui tam complaint filed by former Leo Burnett executives and was investigated by the Federal Bureau of Investigation, Defense Criminal Investigative Service, Army Criminal Investigative Command - Major Procurement Fraud Unit, and the Defense Contract Audit Agency. The litigation and settlement of the case were conducted by the Justice Department's Civil Division and the U.S. Attorney's Office in Chicago. (MAJ Art Coulter)

(2) U.S. Court of Appeals for the Federal Circuit Affirms \$50 Million Fraud Penalty against U.S. Army Corps of Engineers Contractor. On 20 February 2009, the court affirmed a finding by the U.S. Court of Federal Claims that Daewoo Engineering and Con-

struction Co., must pay over \$50 million in penalties for a Contract Disputes Act Violation, submission of a false claim, as well as a \$10,000 fine for a False Claims Act violation. Daewoo Engineering and Construction Co., Ltd. v. United States, No.2007-5129. The court held that the company's right to any compensation for its claims was forfeited because of fraud. The disputed claim involved the construction of a road around the island of Babeldaob in the Republic of Palau. In 2002, Daewoo submitted a request for an equitable adjustment for nearly \$64 million based on alleged defective specifications and Government-caused delay. After the Government denied the request for the equitable adjustment, Daewoo filed suit. The Government filed fraud counterclaims, stating the request was false. The U.S. Court of Federal Claims found for the Government that at least \$50 million of the company's certified claims were made in bad faith. The court assessed a \$50 million penalty. The company appealed. The appellate court affirmed the lower court. The Army SDO subsequently proposed the company for debarment on 1 May 2009. (Mr. Nelson)

### Terminations of Suspensions/Proposed Debarments

(1) James McMann and Global Engineering and Construction LLC. On 6 February 2009, the Army SDO terminated the 5 May 2008 suspension of James McMann (Mr. McMann) and Global Engineering and Construction LLC. (Global). The basis for the termination was the 8 January 2009 dismissal of the criminal indictment filed against Mr. McMann. Global was also suspended in May 2008 because the allegations in the criminal complaint described the company benefitting from Mr. McMann's illicit actions. Mr. McMann is the owner and president of Global. (MAJ McDonald)

(2) Parmatic Filter Corporation. On 23 February 2009, the Army SDO terminated the proposed debarment of Parmatic Filter Corporation (PFC), to facilitate the purchase of the company by Admiral Filter (Admiral) in Chapter 13 bankruptcy proceedings in the U.S. Bankruptcy Court, District of New Jersey. On 17 May 2006, a federal grand jury returned a 13-count indictment against PFC, and Messrs. John Park-

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inson, Brett J. Halpin, William I. Sward and David D. Schwartz, Jr. in the U. S. District Court, District of New Jersey for conspiracy, major fraud against the U.S., and false statements related to the manufacturing of custom-fabricated NBC filters. On 2 June 2006, the Army suspended PFC and its owners and officers. During 2008, Messrs Sward, Halpin and Schwartz pled guilty to conspiracy and other crimes in the indictment, while Mr. Parkinson applied to enter a pre-trial diversion program. On 29 October 2008, the Army proposed PFC and its owners and directors for debarment. On 2 December 2008, T5 Equity Partners, LLC., contacted the Army PFB regarding the purchasing of PFC's assets in Chapter 11 bankruptcy proceedings through a new company Admiral. On 15 January 2009, T5 and Admiral's representatives made a presentation to the Army SDO regarding the pending purchase of PFC assets in bankruptcy. Admiral's legal counsel made further written submissions to the Army SDO on 13 February 2009 indicating that PFC owners and officers will have no interest, control, authority or affiliation with Admiral. In terminating the proposed debarment of PFC, the Army SDO ordered that Messrs. John Parkinson, Brett J. Halpin, William I. Sward, and David D. Schwartz, Jr. shall have no interest, authority, or control of the Admiral, and the new company is required to maintain an effective corporate ethics program. (Mr. Nelson)



Army Times 2009 "Soldier of the Year"





**PARTING SHOTS: GETTING READY TO JUMP AND WELCOME HOME**



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