

On July 25, 2002, the Office of Contracting and Procurement (“OCP”) issued Solicitation No. POAM-2002-B-00 19DR (Solicitation). Roberson submitted a bid for this procurement on August 29, 2002. The solicitation called for an indefinite delivery/indefinite quantity contract for construction services. Roberson submitted the third lowest bid and was being considered for the contract award. As a condition for award, the Solicitation required the potential awardee to meet certain Bonding Requirements (Section 1.5). Specifically, the Solicitation required the successful bidder to furnish a document from its surety company showing capability of securing performance and payment bonds in the amount of

\$5 million. Moreover, the successful contractor was required to submit the required bonds during the issuance of the Task Order.

On November 22, 2002, in response to the Solicitation, Roberson sent OCP a letter purporting to be from its bonding company, Patriot Bonding, stating that Roberson was bonded for \$5 million in the case of a single contract award and up to \$10 million in the case of an aggregate award.

In reviewing the submitted letter, OCP noticed that the document was not written on company letterhead and did not otherwise appear to read as a typical suretyship verification letter. Therefore, OCP contacted the Patriot Bonding signatory, Leif Gibson, Associate Underwriter, to inquire about the document.

On December 6, 2002, Mr. Gibson sent a facsimile to OCP enclosing a notarized affidavit of forgery from the State of Arizona, County of Maricopa, to acknowledge that Patriot Bonding did not send the suretyship verification letter received by OCP and that someone forged Mr. Gibson's signature.

(CAB No. D-1224 Notice of Appeal, Attachment).

On December 9, 2002, Roberson's vice president, Steven Roberson, Jr., sent an unsigned letter to OCP's contract specialist, regarding the submitted bond letter, informing the contract specialist that Roberson was rescinding the previously submitted bond letter because it "was sent prematurely." (D-1233 Appeal File ("AF") Tab 14). Steven Roberson, Sr., sent another letter dated December 9, 2002, advising the contract specialist that Roberson would "have bonding in place by the close of business on December 11, 2002." (*Id.*).

On March 12, 2003, the agency chief contracting officer sent a letter notifying Roberson that it was being proposed for debarment as a result of the false bonding verification document. (D-1233 AF Tab 11). The letter was addressed to Steven A. Roberson, President of Roberson International, Inc., and contained a subject line reading: "Re: Proposed Debarment/Suspension Action (Roberson International)." A reading of the relevant portions of the letter indicates only that the company is being proposed for debarment:

This letter is to inform you that the Chief Procurement Officer (CPO), Office of Contracting and Procurement (OCP), District of Columbia, is proposing debarment of Roberson International, Inc. (Roberson) from consideration for award of District contracts and subcontracts.

....

The CPO is proposing the debarment of Roberson for submitting a false bonding document in an effort to receive a District contract award. The action by Roberson was taken in an effort to defraud the District and obtain a public contract. Such action provides a significant indication of Roberson's lack of business integrity. Moreover, Roberson's action was sufficiently serious and compelling to affect

Roberson's responsibility as a District government contractor in responding to Solicitation No. POAM-2002-B-OO 19DR.

This letter serves as notice of the proposed debarment action against Roberson. As of the date of this notice, the District will not solicit offers from, award contracts to, renew, or otherwise extend contracts with, or consent to subcontracts with Roberson pending a debarment decision.

Within thirty business days after receipt of this notice, Roberson must submit to OCP, in person, in writing, or through a representative, information addressing the aforementioned issues raised regarding this matter. In addition, Roberson may submit any additional specific information that raises a genuine issue of material fact. If a response from Roberson is not received by OCP within the thirty-day period, OCP will make a final decision to debar Roberson on the basis of available information in its possession. Attached you will find a copy of the applicable District regulations articulating the procedures governing debarment.

According to D.C. Official Code §2-308.04(f), the debarment or suspension of any person or business shall constitute a debarment or suspension of any affiliate of that person or business. Affiliate means any business in which a suspended or debarred person is an officer or has a substantial financial interest (as defined by regulations), and any business that has a substantial direct or indirect ownership interest (as defined by regulations), in the suspended or debarred business, or in which the suspended or debarred business has a substantial direct or indirect ownership interest.

On April 11, 2003, Roberson responded to the notice of proposed debarment by stating that Roberson had rescinded the forged suretyship verification document and that the company's president, Steven Roberson, Sr., was recuperating from a kidney transplant during the procurement phase, that a company consultant had submitted the forged verification document, and that the services of the consultant had been terminated. In its response, Roberson argued that the circumstances did not warrant debarment or suspension and that if the charges were not dismissed, Roberson demanded a hearing and a copy of current applicable debarment regulations. (D-1233 AF Tab 12).

In a letter dated May 19, 2003, the Chief Procurement Officer replied to Roberson's letter of April 11, stating that Roberson had raised an issue of fact relating to the "circumstances surrounding the attempt by Mr. Roberson to rescind the false bonding document" and set a hearing for May 30. The subject line of the letter reads: "Re: Proposed Debarment/Suspension Action (Roberson International, Inc.)." (D-1233 AF Tab 13). In a May 29, 2003 letter, counsel for Roberson stated that Roberson's president and vice president would be witnesses at the hearing, and attached copies of their December 9, 2002 letters to the contract specialist. (D-1233 AF Tab 14).

On May 30, 2003, the CPO conducted a hearing in the debarment proceeding. The CPO began the hearing as follows: "In meeting my responsibilities as the Chief Procurement Officer, I also serve as the buying official under the [Procurement Practices Act]. By a letter dated

March 12, OCP informed Roberson International, Incorporated, hereinafter referred to as Roberson, of its proposed debarment from consideration for award of District contracts and subcontracts.” (D-1233 AF Tab 15). By letter of June 4, 2003 to Roberson’s counsel, containing a subject line reading: “Re: Proposed Debarment/Suspension Action (Roberson International, Inc.),” the CPO stated: “Thank you for meeting me on May 30, 2003. The purpose of your visit was to provide your client, Roberson International, Inc. (Roberson) an informal hearing to discuss facts in dispute material to the proposed debarment of Roberson.” (D-1233 AF Tab 16).

On July 14, 2003, the CPO issued his final decision on the proposed debarment action of Roberson. The decision states:

On November 22, 2002, OCP received the false bonding document from Roberson. Upon receiving the letter, OCP contacted the bonding company to verify its accuracy. Exactly two weeks later, on Friday, December 6, 2002, the bonding company provided information identifying the document as false. On Monday, December 9, 2002, Mr. Roberson wrote two letters to OCP attempting to rescind the false document. Although no evidence was presented at the informal hearing to suggest that OCP informed Roberson of the falsity before Mr. Roberson attempted to rescind the document, the submission of a false bonding document to obtain a contract is sufficiently serious and compelling to affect Roberson's present responsibility.

Roberson's actions were sufficiently serious and compelling to affect its present responsibility as a District government contractor. Such is the case despite Mr. Roberson's attempt to rescind the false bonding document on December 9, 2002. Although Mr. Roberson made an attempt to rescind the document, the fact remains that Roberson submitted a false bonding document in an effort to obtain a District contract. However, Mr. Roberson's attempt to rescind the false document was considered when I decided the debarment period.

....

Given the circumstances of this matter, I am debarring Roberson, its principals, and its affiliates from consideration for award of District contracts and subcontracts for one-year. Mr. Roberson's attempt to rescind the false document was considered in making this decision. In rendering this decision, however, the CPO placed great emphasis on the fact that Roberson submitted a false bonding document to obtain a District award. In addition, Roberson presented no evidence in writing or at the informal hearing to suggest it had or will take remedial measures to ensure that similar events will not occur in the future.

....

This debarment decision is applicable to the principals of Roberson. The identified principals of Roberson are: Steven Roberson Sr., President, and Steven Roberson Jr., Vice President. The principals of Roberson are being debarred under the applicable standard. Individuals can be debarred if they "participated

in, knew of or had reason to know" of the contractor's misconduct. *Novicki v. Cook*, 946 F.2d 938 (D.C. Cir. 1991). Roberson asserts the company consultant facilitated the submission of the false document. However, principals are usually responsible for the actions of their employees. Therefore, the principals knew of or had reason to know of the consultant's misconduct in submitting the false bonding document.

(D-1233 AF Tab 17). The company and the two principals were debarred for a period of one year from March 12, 2003, through March 12, 2004. On September 12, 2003, Appellants filed an appeal docketed as CAB No. D-1224, but the appeal was voluntarily dismissed when the District initiated a new debarment proceeding challenged by Appellants in CAB No. D-1233. The original debarment period concluded on March 12, 2004, despite the subsequent attempts by the District to reopen the debarment proceeding and impose additional debarment penalties on Roberson and its principals. *See Roberson International, Inc., et al.*, CAB No. D-1233, Sept. 9, 2004, 52 D.C. Reg. 4229. On September 10, 2004, Roberson filed a notice of appeal docketed as CAB No. D-1241, to contest the propriety of the July 14, 2003 debarment decision by the CPO. In a status conference of March 11, 2010, the parties agreed that the case should be resolved on the written record, including the District's October 13, 2004 combined motion to dismiss and motion for summary judgment.

DISCUSSION

We exercise jurisdiction over these appeals pursuant to D.C. Code §§ 2-308.04(d) and 2-309.03.

Roberson International challenges its one-year debarment as being contrary to the findings of the CPO and the evidence adduced at the hearing. The corporate Appellant also argues that the debarment decision is a nullity because the debarment regulations are outdated and not consistent with the procurement law changes made by the Procurement Reform Amendment Act of 1996. We sustain the CPO's debarment decision regarding Roberson International. The record amply supports the CPO's conclusion that the company's submission of a forged bonding verification in order to obtain contract award was sufficiently serious and compelling evidence of a lack of business integrity and ethics that undermined its present responsibility. Although it had an opportunity at the hearing, Appellant did not introduce testimony from Steven Roberson, Sr., or Steven Roberson, Jr., regarding their knowledge of the forged bonding document and its submission as part of the company's bid. We discern no legal error in the CPO's conclusion that the remedial actions taken by Roberson International after the fact of forgery became known to the District were insufficient to find the company presently responsible. Regarding Roberson International's challenge to the debarment regulations, it fails to point to any specific regulatory prescription in 27 DCMR Chapter 22 that was applied to its debarment proceeding in a manner inconsistent with the debarment provisions found in D.C. Code § 2-308.04. Moreover, Roberson International has demonstrated no prejudice arising from any application of the debarment regulations to it.

Steven Roberson, Sr., and Steven Roberson, Jr., the individual Appellants, challenge the CPO's decision to impose the same one-year debarment on them as affiliates. They argue that

the March 12, 2003 notice of proposed debarment only identified Roberson International, Inc., as the entity being proposed for debarment.

The Procurement Practices Act requires “reasonable notice to a person or a business and reasonable opportunity to be heard” before the District may impose debarment or suspension. D.C. Code § 2-308.04. Due process itself mandates such notice and an opportunity to be heard. *ATL, Inc. v. United States*, 736 F.2d 677, 682-83 (Fed. Cir. 1984); *Transco Security, Inc. of Ohio, et al. v. Freeman*, 639 F.2d 318, 323 (6th Cir.), cert. denied 454 U.S. 820 (1981); *Gonzalez v. Freeman*, 334 F.2d 570, 574 (D.C. Cir. 1964). The debarment regulations specify the form and manner of the notice and opportunity to be heard. 27 DCMR § 2213.3 provides: “The [CPO] may extend the debarment decision to include any affiliates of the contractor by specifically naming the affiliate and giving the affiliate written notice of the proposed debarment and an opportunity to respond in accordance with the provisions of this chapter.” 27 DCMR § 2214.1 provides in relevant part: “The [CPO] shall initiate debarment proceedings by notifying the contractor and any specifically named affiliates by certified mail, return receipt requested, of the following: (a) The reasons for the proposed debarment in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed debarment is based” In *Fort Myer Construction Corp.*, CAB No. D-1223, Dec. 9, 2003, 52 D.C. Reg. 4155, 4156-58, we concluded on very similar facts as here that the debarments of the individual Appellants in Fort Myer were void *ab initio* because the District had failed to provide adequate written notice to each principal. In the present case, neither the initial notice of proposed debarment of Roberson International, nor any of the subsequent correspondence from the CPO prior to the debarment decision, put the individual Appellants on notice that they individually and specifically were being considered for debarment. Accordingly, we conclude that the debarments of Steven Roberson, Sr., and Steven Roberson, Jr., are void *ab initio*.

CONCLUSION

We conclude that the debarment of the corporate Appellant, Roberson International, Inc., is supported by the record and the law but we vacate the debarment of the individual Appellants because the District did not provide adequate notice and opportunity to respond. Accordingly, the appeals are sustained in part and denied in part.

SO ORDERED.

DATED: March 19, 2010

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Chief Administrative Judge

CONCURRING:

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge