

Too big to debar

Why only small firms get hammered

By KAREN ROBB

Aida Perez is trying to prove to the Air Force that her company is trustworthy enough to do business with the government.

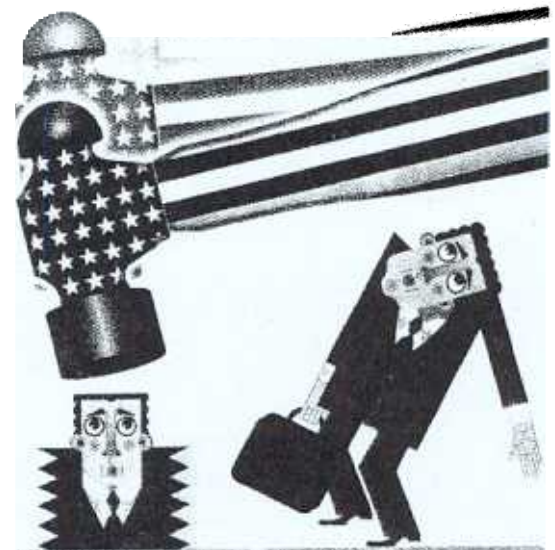
The 6-year-old company, San Antonio-based JADCAP Machine Works, makes aircraft parts and sells about 70 percent of them to the Defense Department.

In early 2003, the Air Force's debarment official, Steven Shaw, placed Perez, her husband, Joseph, and their jointly owned company on the government's list of people and companies excluded from doing business with federal agencies. Shaw suspended them on suspicions that Perez' company is closely affiliated with another company, owned by her father, that was previously debarred for selling defective aircraft parts.

Of the 3,400 companies on the list now, more than 2,700 — 80 percent — got there the way the Perezes did: through a discretionary process called suspension and debarment.

A TALE OF TWO COMPANIES

How two companies that sold faulty parts to the military fared under the government's debarment process:



Company	Herco Aircraft Machine Inc., San Antonio	Lockheed Martin Corp., Bethesda, Md.*
Annual revenues	\$1.5 million	\$31.8 billion
Faulty parts	G42 adapter plate assemblies for Air Force F-5 fighter jets and the T-38 trainer jets	T-500 accelerometer sensor assemblies for Navy F/A-18 Hornet aircraft
Date of settlement	March 2003	September 2002
Fine or sentence	\$1,000 fine and \$113,000 in restitution	\$6.2 million fine and an agreement to replace the parts
Debarment or suspension	Debarred by the Air Force until January 2006; company is now going out of business	Not recommended for debarment by the Navy

* Lockheed Martin's operation in Johnson City, N.Y., which produced the parts in question, was bought by BAE Systems in 2000. The 2002 settlement was with Lockheed and BAE Systems.

SOURCE: Federal Times research

GRAPHIC BY MARCIA STAMMER

See DEBAR, Page 6

Debar

Continued from Page 1

But the process is widely panned by contractors and federal procurement officials alike. Decisions are made behind closed doors by a handful of debarment officials. Practices vary from agency to agency, and, critics say, the process unfairly targets small companies and rarely aims at large companies.

"The debarment process is obviously broken, and we need to find a way to fix it," said Danielle Brian, executive director of the government watchdog group the Project on Government Oversight.

This spring, debarment officials, procurement experts from academia, contractor advocates and better government groups will meet to consider ways to improve the process.

"What we are trying to do in the acquisition community is start a dialogue so we can reach a consensus on the best way to approach debarment," said David Drabkin, deputy associate administrator for acquisition policy at the General Services Administration.

GSA, along with George Washington University in Washington, is sponsoring open forums on the topic and is inviting critics of the debarment process to take part.

"We are thrilled that GSA is sponsoring these discussions. Hopefully they will lead to the right solution," POGO's Brian said.

Small companies bear the brunt

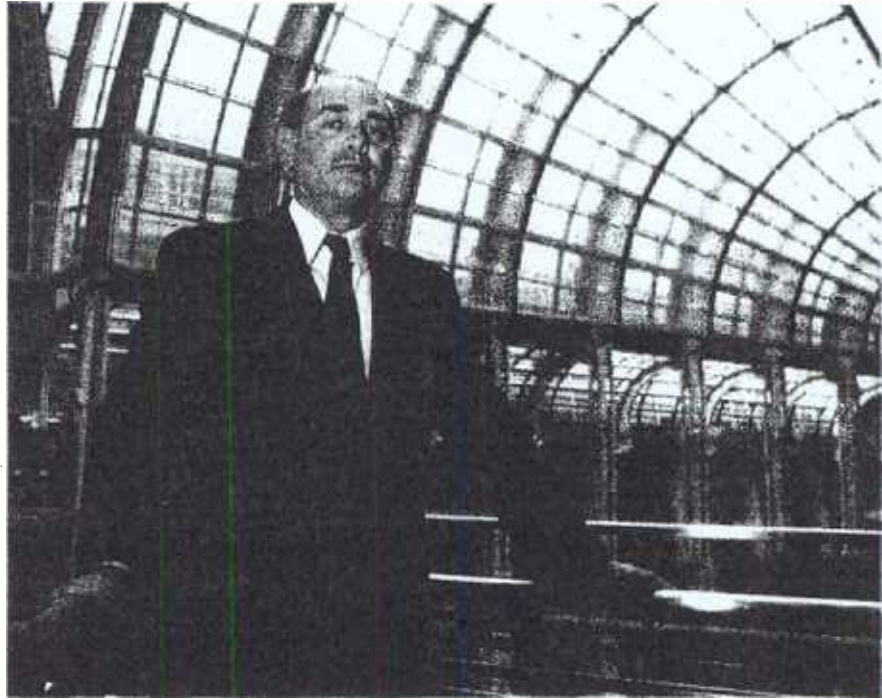
In some cases, laws and regulations spell out clearly when companies are to be debarred. About 800 companies are on the debarment list because they polluted the air or waterways, underpaid employees, exported weapons to forbidden countries, or violated other laws where debarment is required.

But in the majority of cases, the decision of whether a company gets debarred relies entirely on the aggressiveness of a customer agency's debarment program and each company's ability to defend itself if targeted for possible debarment.

Critics say a company's freedom to win new contracts after bad conduct depends too often on whether it is a large, powerful corporation that provides the government products and services that are not easily available from other companies.

The Project on Government Oversight maintains a database of alleged misconduct by the government's top 10 contractors. It shows that those contractors have paid \$2.97 billion dollars in fines, penalties, restitution, settlements and cleanup costs to settle 280 instances of alleged misconduct in the last 10 years. But none of those companies was suspended or debarred for those actions.

In the Perezes' case, the debarment proceeding was initiated by the Air Force, which has an aggressive debarment program. The service has suspended or debarred more companies than any other agency: more than 200 of the approximately 2,700 companies now on the so-called excluded parties



ALAN LESSIG/FEDERAL TIMES

Robert Meunier, debarment and suspension official for the Environmental Protection Agency, says EPA works aggressively to prevent its grantees from doing business with untrustworthy contractors.

list through the discretionary debarment and suspension process. The only large company the Air Force has placed on the list through discretionary debarment is the space launch division of Boeing Co. of Chicago, which was suspended last summer for using information improperly obtained from its competitor to win contracts.

Shaw, the Air Force's deputy general counsel for contractor responsibility, would not discuss the Perez case because it is still pending. But he said that the Air Force's debarment process does not differentiate between small and large companies.

"We are just as likely to consider a large company for debarment, but it is easier for large companies to prove that they have solved their problems," he said. "They have more resources, are more sophisticated, and it is easier for them to do things like fire the people who were involved in the misconduct than it is for small companies. With small companies it is often the owner who committed the misconduct in the first place."

Perez said that to save her company's federal business, she must prove to the Air Force that her business is not connected to Herco Aircraft Machine Inc., which is owned by her father. Herco was debarred last year after being convicted in federal court of deliberately selling the government defective aircraft parts.

"We have nothing to do with my father's business, but it is very hard to prove that you are not doing something," Perez said. "If the process was fair, the Air Force would have to prove my father was involved. If that was the case, I would be confident that we would win, since he is not involved in our business."

Perez had worked for her fa-



ALAN LESSIG/FEDERAL TIMES

Open discussion is needed to ensure the debarment process is fair, says David Drabkin, deputy associate administrator for acquisition policy at the General Services Administration.

ther's company since the early 1990s. In 1998 her husband started JADCAP, and in 2001 she left her father's company and became vice president of JADCAP. She says that her father never invested in her company or helped manage it. "We wanted to do it on our own," she said.

JADCAP has been successful at winning contracts to build tools and parts for military aircraft and had more than \$1 million in revenue the year before the suspension. It has 14 employees.

Because suspension and debarment does not affect current contracts, JADCAP has been able to stay in business during the 14 months it has been suspended, but will not last much longer.

"I figure we have enough business to stay open another four months. After that we will have to close if we aren't allowed to win new contracts," she said.

Perez expects a decision from the Air Force by May.

So far, the Perezes, whose annual combined salary is about \$50,000, have spent more than \$30,000 on attorneys and travel expenses to Washington to meet with Air Force debarment officials. "We have put all our money in our business, so spending this much fighting debarment is very hard for us," Perez said.

Shaw said that companies are not required to hire attorneys to defend themselves in the debarment process. "We work very hard to accommodate small companies and will take evidence over the phone rather than make them travel to Washington," he said.

Inconsistently applied

Herco is not the only defense contractor accused of supplying the military with defective parts. Defense giant Lockheed Martin

Corp. of Bethesda, Md., agreed to pay \$6.2 million in 2002 for selling the Navy defective parts. But Lockheed did not have to prove to the Navy's debarment official, Willard Blalock, that it had solved its problems that led to the faulty parts. Blalock said he never pursued debarring Lockheed because the Naval Air Systems Command, which had bought the defective parts, never referred the case to him.

Amy Gilliland, Navy spokeswoman, said the command did not believe debarment was warranted because the company cooperated with the Navy in correcting the problem.

"It is important to note that no adverse impact on aircraft flight control performance was documented during operational flying over millions of flight hours as a result of the [defective parts]," Gilliland said.

Jeffery Adams, spokesman for Lockheed, said the company acted just the way a responsible contractor should. "We cooperated fully and the Navy never questioned our present responsibility," Adams said. He points out that Lockheed was never accused of criminal misconduct.

Paul Martins, a partner with Helmer, Martins and Morgan law firm in Cincinnati, represented Raymond Anderson, a former Lockheed employee who brought the lawsuit against the company. He said that in his 12 years of suing companies for cheating the government, he has found the Navy is slow to debar contractors that engage in misconduct.

"In my experience, the Navy is most reluctant to debar contractors, because if they debar their contractors they have to find new ones, and that can cause projects to fall behind schedule," Martins said. "Congress is not very understanding around appropriations time about projects that fall behind schedule."

According to the excluded parties list, which is maintained by the General Services Administration, the Navy has debarred or suspended approximately 70 of the contractors on the list, about one-third the number put on the list by the Air Force.

The Air Force's Shaw said his service does not rely on its commands to refer companies for debarment. "There is an inherent conflict of interest when it is left to the command doing business with the company to decide whether a company should be considered for debarment," Shaw said. "That is why the Air Force has a separate, independent debarment official. I can initiate proceedings whenever it is appropriate. I don't wait for companies to be referred."

The Environmental Protection Agency also has an independent debarment office that aggressively pursues allegations of misconduct by its vendors, said Robert Meunier, debarring and suspending official for EPA.

"We have people who go through the newspapers looking for companies that have been accused of wrongdoing," he said.

Debar

Continued from Page 6

His agency has debarred or suspended about 120 companies on the excluded parties list.

One reason EPA is so aggressive is to protect the organizations that receive grants from EPA, which are forbidden from doing business with companies on the list.

"A lot of our grantees are small and unsophisticated," Meunier said. "They don't have the resources to do thorough investigations of potential contractors, and we don't want them to do business with untrustworthy companies."

Meunier, chairman of the Inter-agency Suspension and Debarment Coordinating Committee, said his agency's aggressive stance is unusual. "Most agencies don't invest the resources necessary to pay for a vigorous debarment program," he said.

Another reason the debarment and suspension is applied unevenly is that different agencies use different standards when considering whether to debar or suspend. Some, for instance, consider debarment only if a company has been convicted of a crime, Shaw said.

"Agencies frequently follow the easy road of either refusing to act except in the clearest of cases, or of deferring to act for several years until such time as the evidence has been fully developed by other agencies in litigation," Shaw said.

The cost of debarment

Another factor that some agencies consider is the economic impact of cutting off a contractor from future business. "Agencies have to fulfill their missions," Meunier said. "Debarring a contractor that is the only source of something an agency needs can be equivalent to shooting yourself in the foot."

But there is no consensus on whether agencies should consider the impact on their contracting programs before taking a debarment action.

GSA's Drabkin said the cost to the agency of banning a contractor should never be a factor. His agency suspended Ashburn, Va.-based telecommunications giant WorldCom last July while it considered whether to debar the company for poor internal controls and ethics problems because it was embroiled in an accounting scandal in which it overstated its earnings by \$11 billion.

GSA ended WorldCom's suspension in January, just in time for it to receive a one-year contract extension to provide telecommunications services to federal agencies. Agencies do more than \$300 million of business a year with the company. Ending WorldCom's federal business would have forced customer agencies to spend an estimated \$100 million collectively to change phone companies.

"Even though the debarment may have been a hardship for the

agencies, we didn't care and neither did the agencies," Drabkin said. "If we found that the company was not responsible, we would not want to do business with them no matter what it cost."

Air Force Maj. Gen. Craig Cooning, recently named the Air Force's director of space acquisition, agrees that the inconvenience and expense of debarring an important contractor is irrelevant. "Our first and foremost priority is to ensure the integrity of the system," Cooning said. "We want the American people to know we are spending their tax dollars with companies that are trustworthy."

He said the Air Force's recent suspension of Boeing's space launch division has not endangered his organization's effectiveness at all. "We have a waiver process we can use if it is a national security issue, but there have been very few overrides," he said. "The issue that we may spend more because Boeing is suspended has never even come up in discussions."

The Air Force is unlikely to have to ask for national security waivers to continue to do business with tiny JADCAP, since machine shops like it are commonplace. "We have always done a good job and never had any complaints," Perez said. "But it is very hard for such a small company to fight something as big as the Air Force. How do we convince them they can trust us?"

Policing debarment

Clouding the debarment picture further is a recent trend toward debarring companies for general misconduct rather than misdeeds committed within the scope of a government contract. For instance, in March 2002, GSA suspended Chicago-based accounting firm Arthur Andersen and Houston-based energy company Enron Corp. from receiving new government contracts for one year because of allegations by the Securities and Exchange Commission that the two companies defrauded stockholders.

"In the past there was a bright line between conduct that affected government contracts and conduct that didn't," GSA's Drabkin said. "That line is no longer there. Companies guilty of unethical conduct in any arena now will be considered for debarment."

But some observers say that the suspension of companies such as Enron and WorldCom were made for political reasons and are exceptions rather than the result of a clear policy that agencies feel obliged to follow.

"The public flogging of Arthur Andersen and Enron generated voter-pleasing sound bites but did very little to protect the government, since neither were significant government contractors," said Steven Schooner, professor at the George Washington University Law School. "The government is afraid to debar large contractors. There are very few household names on the excluded party list."