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Downtown Office
112 East Third Court
Panama City, Florida 32401
(850) 763-4672

December 29, 2003

Via Certified Mail: 7003 1010 0003 4621 9074

Emerald Coast Insider
Attn.: Debbie Van Court
P.O. Box 27633
Panama City, FL 32411

Re: Express Lane, Inc.

Dear Ms. Van Court:

I represent Express Lane, Inc., in relation to your letter dated, December 11, 2003.

My client allowed your company to place several magazines in a few Express Lane stores. On several occasions, as documented by my client's employees, there were disagreements and arguments between your employees and the employees of Express Lane, Inc. Further, there have been numerous complaints to my client regarding your magazine. There is no written or verbal agreement between your company and my client, as to keeping magazines in stores for specific periods of time. Accordingly, you are hereby notified that the business relationship between your company and my client is terminated and you are directed to remove all magazines from all stores by **Friday, January 9, 2003.**

You are further directed to cease any and all communication with the staff and management of Express Lane, Inc., and direct all future correspondence to my office. Any further conflict with staff or management will result in swift legal action.

Sincerely,



Derrick Bennett

DB/jaw

cc: Express Lane, Inc

2003 UNIFORM BUSINESS REPORT (UBR)

DOCUMENT# P02000001003

FILED
Jan 09, 2003
Secretary of State

Entity Name: BIG WHEEL RECYCLING, INC.

Current Principal Place of Business:

460 HARRISON AVE.
PANAMA CITY, FL 32401

New Principal Place of Business:

475 HARRISON AVE.
SUITE 200
PANAMA CITY, FL 32401

Current Mailing Address:

460 HARRISON AVE.
PANAMA CITY, FL 32401

New Mailing Address:

475 HARRISON AVE.
SUITE 200
PANAMA CITY, FL 32401

FEI Number: 59-3194335

FEI Number Applied For ()

FEI Number Not Applicable ()

Certificate of Status Desired (X)

Name and Address of Current Registered Agent:

CORPORATION SERVICE COMPANY
1201 HAYS STREET
TALLAHASSEE, FL 32301

Name and Address of New Registered Agent:

LIVINGSTON, JIMMY PRES.
475 HARRISON AVENUE
SUITE 200
PANAMA CITY, FL 32401

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: JIMMY LIVINGSTON

01/09/2003

Electronic Signature of Registered Agent

Date

Election Campaign Financing Trust Fund Contribution ()

OFFICERS AND DIRECTORS:

Title: D () Delete
Name: LIVINGSTON, JIMMY
Address: 1018 RADCLIFF AVE.
City-St-Zip: LYNN HAVEN, FL 32444

Title: D () Delete
Name: FAULK, DWIGHT
Address: 460 HARRISON AVE.
City-St-Zip: PANAMA CITY, FL 32401

Title: () Delete
Name:
Address:
City-St-Zip:

ADDITIONS/CHANGES TO OFFICERS AND DIRECTORS:

Title: P (X) Change () Addition
Name: LIVINGSTON, JIMMY
Address: 475 HARRISON AVE., SUITE 200
City-St-Zip: PANAMA CITY, FL 32401

Title: D (X) Change () Addition
Name: HARRISON, WILLIAM
Address: 475 HARRISON AVE., SUITE 200
City-St-Zip: PANAMA CITY, FL 32401

Title: D () Change (X) Addition
Name: MCELHENEY, RANDALL
Address: 475 HARRISON AVE., SUITE 200
City-St-Zip: PANAMA CITY, FL 32401

FEDERAL PRISON



I hereby certify that the information supplied with this filing does not qualify for the for the exemption stated in Section 119.07(3)(i), Florida Statutes. I further certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with an address, with all other like empowered.

SIGNATURE: JIMMY LIVINGSTON

P

01/09/2003

Electronic Signature of Signing Officer or Director

Date

850-236-2355
Emerald Coast Times Publishing Company, Inc.
P.O. Box 27633
Panama City Beach, FL 32408

**Emerald Coast
Insider Magazine**

Fax



To: Lynn Register – Chief Criminal Prosectuor **From:** John Caylor – Editor Insider Magazine

Fax: 850-434-9050 **Pages:** 5

Phone: **Date:** 4/8/2004

Re: Big Wheel – Aztec Investigation **CC:**

Urgent For Review Please Comment Please Reply Please Recycle

● **Dear Lynn:**

Glad to see that you are heading this one up. I worked hard to get you folks interested. Did 2 magazine articles on these guys at Aztec and Big Wheels. I am including the last one in Fall Edition of my Magazine, Emerald Coast Insider.

Page 43 is very interesting. This ultimately leads to political influence possibly, sought – bought and paid for all the way to President George Bush, Jr. by William Harrison, Jr. who was on the Bush White House Transition Team.

Harrison was also an officer in Big Wheel Recycling, Inc. until we ran part of this story in June 2003. I don't know what EPA will find if they dig up the Landfill property? But, I can sure as hell bet you it won't be nice stuff. Lynn ...this one runs through and deep.

Don't trust anyone from Florida DEP. because they are in bed with Aztec and Big Wheels people. Also on the Enviromed, Inc. side of this, Justin Kent would probably be a damn good witness. Please let me know when you can release anything and hope you enjoy the story.

John Caylor

Publishing Editor

Emerald Coast Insider Magazine

850-236-2355

U.S. Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CRIMINAL INVESTIGATION DIVISION
TAMPA RESIDENT OFFICE

PAUL E. BOUFFARD
SPECIAL AGENT

500 ZACK STREET
SUITE 101
TAMPA, FL 33602

OFF: (813) 274-6499
FAX: (813) 274-6197
FGR: (877) 681-6332

Fax

Name: John

Organization: INSIDER MAGAZINE

Fax: 850 236 - 2355

Phone:

From: Paul Bouffard, SA
Tampa Resident Office
U.S. EPA-CID

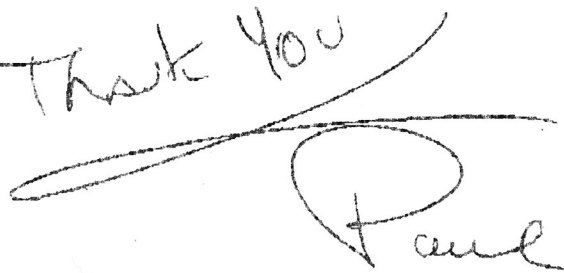
Date: 5/13/03

Subject: COLL

Pages: ①

Comments:

PLEASE re-contact me regarding your
recent CALL.

Thank You

Paul

DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC 20330-1740

SEP 08 2005



Office of The Deputy General Counsel

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

SAF/GCR
4040 N. Fairfax Drive
Suite 204
Arlington, VA 22203-1613

Aztec Environmental, Inc.
475 Harrison Avenue
Suite 200
Panama City, FL 32401

Re: Notice of Proposed Debarment

Ladies and Gentlemen:

You are hereby notified that the Air Force has proposed that Aztec Environmental, Inc. (AEI) be debarred from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. This action is initiated pursuant to the authority of the debarment procedures contained in the Federal Acquisition Regulation (FAR) Subpart 9.4. Copies of FAR Subpart 9.4, Defense FAR Supplement 9.4 and Appendix H, and 32 C.F.R. Part 25 are enclosed for your information. (Encl. 1). 32 C.F.R. Part 25 is the Defense Department's implementation of the Nonprocurement Common Rule, referenced in FAR 9.401.

The proposed debarment is based upon the information in the attached Memorandum In Support of the Proposed Debarments (Encl. 2).

The proposed debarment is effective this day and has the following consequences during the period of proposed debarment:

1. The company name, Aztec Environmental, Inc., will be published in the List of Parties Excluded From Federal Procurement and Nonprocurement Programs, a publication of the General Services Administration containing the names of contractors debarred, suspended, proposed for debarment, or declared ineligible by any agency of the Federal Government. Proposed debarment is effective throughout the executive branch of the Federal Government.

2. Offers will not be solicited from, contracts will not be awarded to, existing contracts will not be renewed or otherwise extended for, and subcontracts requiring Government approval will not be approved for AEI by any agency in the executive branch of the Federal Government

AEAR0036

unless the head of the agency taking the contracting action or a designee states in writing the compelling reason for continued business dealings between AEI and the agency.

3. AEI may not conduct business with the Federal Government as an agent or representative of other contractors.

4. No Government contractor may award AEI a subcontract equal to or in excess of \$25,000 unless there is a compelling reason to do so and the contractor first notifies the contracting officer and further complies with the provisions of FAR 9.405-2(b).

5. No agency in the executive branch shall enter into, renew, or extend primary or lower-tier covered transactions, in which AEI is either a participant or principal, unless the head of the agency grants an exception in writing. (Covered transactions are defined at 32 C.F.R. Section 25.110).

6. AEI may not act as an agent or representative of other participants in federal assistance programs.

7. AEI's affiliation with or relationship to any organization doing business with the Government will be carefully examined to determine the impact of those ties on the responsibility of that organization to be a Government contractor or subcontractor.

Within thirty calendar days after receipt of this notice, a representative on AEI's behalf may submit, either in person or in writing, or both, information and argument in opposition to the proposed debarment. If AEI designates a representative to respond, please notify my counsel in writing of the identity of the representative. The designation should specifically state the names and addresses of all individuals or companies the designee has the authority to represent in this matter.

AEI's submission, if any, should include any specific information that may raise a genuine dispute over material facts. If it is found that the information submitted raises a genuine dispute over material facts, factfinding may be conducted to determine the disputed facts. Facts proved by conviction or civil judgment, however, are not subject to dispute in this proceeding.

This debarment proceeding has been initiated on the basis of an administrative record. A copy of the record will be furnished upon request.

The determination whether or not to debar AEI is discretionary and will be made on the basis of the administrative record, together with any written materials submitted for the record by the Government or AEI during the period of proposed debarment.

If debarment is imposed, the limitations described in Paragraphs 1 through 7 above will continue to apply and the company's name, Aztec Environmental, Inc., will continue to be published in the List of Parties Excluded From Federal Procurement and Nonprocurement Programs. The status, however, will be changed to reflect that AEI is debarred.

Any communication regarding this matter should be directed to my counsel, Richard A. Pelletier at (703) 588-0049 or by e-mail at "richard.pelletier@pentagon.af.mil." Any written submissions should be forwarded via express mail to Mr. Pelletier at SAF/GCR, 4040 N. Fairfax Drive, Suite 204, Arlington, Virginia 22203-1613.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Shaw', with a stylized flourish at the end.

STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)

2 Encl.
a/s

AEAR0038

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

AZTEC ENVIRONMENTAL, INC., et al.)
)
 475 Harrison Ave, Ste. 200,)
 Panama City, FL 32401,)
)
 Plaintiffs,)
)
 v.)
)
 THE HONORABLE PETER GREEN)
 SECRETARY OF THE AIR FORCE)
)
 and)
)
 STEVEN A. SHAW)
 Deputy General Counsel,)
 Office of Contract Responsibility)
)
 4040 N. Fairfax Drive, Ste. 204)
 Arlington, VA 22203-1613)
)
 Defendants.)
)

Civil Action Number:

4:05cv399-RH/WCS

**MEMORANDUM IN SUPPORT OF PLAINTIFF AEI'S
APPLICATION FOR A TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65, Plaintiff, Aztec Environmental, Inc., including its owners, officers, employees, former employees, and related entities (all of the parties-plaintiff are collectively referred to herein as "AEI"), respectfully submits this Memorandum in Support of its Application for a Temporary Restraining Order and Motion for a Preliminary Injunction.

OFFICE OF CLERK
U.S. DISTRICT CT
NORTHERN DIST. FLA.
TALLAHASSEE, FLA.

05 OCT 26 AM 11:33

FILED

I. FACTUAL BACKGROUND

A. Nature of the Case

1. AEI commenced this action on or about October 25, 2005, to obtain relief in connection with its "proposed debarment" by Steven A. Shaw, Air Force Deputy General Counsel for Contractor Responsibility, and Debarring Official ("SAF/GCR"). AEI seeks immediate injunctive and declaratory relief to preclude SAF/GCR from blocking contract and subcontract awards to AEI. AEI will demonstrate, as a matter of law, that SAF/GCR has no rational basis on which to proceed with its proposed debarment of AEI.

2. Alternatively, AEI seeks immediate injunctive and declaratory relief to preclude SAF/GCR from blocking contract and subcontract awards to AEI while SAF/GCR considers the proposed debarment. This relief, if granted, would allow AEI to continue as a viable company while AEI demonstrates its present responsibility as a contractor to SAF/GCR.

3. On September 8, 2005, Defendant SAF/GCR issued the Notice of Proposed Debarment to exclude AEI from Government contracting.¹ All of the AEI party-plaintiffs contend that the Notices must be set aside, pursuant to 5 U.S.C. § 706, as arbitrary, capricious, not supported by substantial evidence, and illegal.

B. AEI: A Successful "8(a)" Business

4. AEI, a small, woman-owned business, located in Panama City, Florida, provides construction and environmental remediation services primarily to Federal clients under U.S. Government contracts and subcontracts. (Verified Complaint ¶ 3.) Federal Government contracting comprises the vast majority, up to 80 percent, of AEI's business. (Verified Complaint ¶ 36.)

¹ A copy of the Notice of Proposed Debarment sent to AEI is attached as Exhibit "1." The other named parties-plaintiff received similar notices.

5. SAF/GCR names 27 different companies or individuals. This action is brought on behalf of 24 of the named companies or individuals. Six of the plaintiffs are former employees of AEI, and three companies related to AEI are no longer actively in business. (Verified Complaint ¶¶ 3 and 5; and Exhibit 2.)

6. One former employee, and a third-party contractor (and its president) are not plaintiffs herein. (Verified Complaint ¶ 6; and Exhibit 2.)

7. For purposes of this Memorandum in Support of AEI's Application for a Temporary Restraining Order and Motion for a Preliminary Injunction, the parties-plaintiffs will be collectively referred to as "AEI," and relief is sought, in full, for each named plaintiff.

8. In 2000, the U.S. Small Business Administration ("SBA") granted AEI the preferred "8(a)" status in SBA's program for disadvantaged small businesses, based in part on AEI's demonstrated technical competence. (Verified Complaint ¶ 3.)

9. Before SAF/GCR issued the notice proposing AEI for debarment, AEI expected to receive new contracts, subcontracts, delivery orders, and contract modifications that would allow it to generate approximately \$9,000,000 in annual revenue. (Verified Complaint ¶ 3.) These business opportunities, in most cases, also represent new funding for ongoing work under existing AEI contracts. (Verified Complaint ¶ 36.)

C. 2003: AEI's Hurlburt Field Project

10. During late 2003, AEI became aware of an investigation of AEI based on allegations of environmental compliance issues made by the State of Florida Department of Environmental Protection ("FDEP") inspectors at AEI's Hurlburt Field project. FDEP's visual observation of the site identified potential asbestos containing materials during AEI's pre-abatement preparations. Within days, several laboratory tests determined that the visual

observations were incorrect and the substances were not asbestos. The Hurlburt Field Commander, 16th Civil Engineers Squadron, following a complete review, directed the work to proceed. FDEP closed its investigation. AEI completed its subcontract, the work was accepted by the Air Force, and AEI received full final payment. (Verified Complaint ¶ 26.)

11. Sometime prior to April 2004, the U.S. Attorney's Office, Northern District of Florida, commenced a grand jury investigation of AEI, including the execution of search warrants, issuance of grand jury subpoenas, interviews of AEI employees, and testimony before the grand jury. However, by January 2005, the U.S. Attorney's Office had notified AEI's counsel that the investigation was closed without any charges being brought. All AEI documents and data were returned to the company. The grand jury proceeding primarily constituted another look at the Hurlburt Field work, once again to examine whether AEI had violated asbestos abatement and removal standards, interfered with environmental inspectors, or possibly violated laws related to the employment of illegal aliens. (Verified Complaint ¶ 11.)

12. These same allegations, all of which were rejected by the grand jury, apparently have been referred to SAF/GCR by an Air Force investigator, and were combined with another limited set of allegations related to a 2002 AEI contract to remove waste at Tyndall AFB. The Tyndall "oil/water separator" project involved the removal of oil, grease, and sump pump waste from tanks on the base. Because no violations occurred at Tyndall AFB, nor were there any contract performance problems, at the time neither the Air Force nor FDEP ever raised any issues. (Verified Complaint ¶ 14.)

13. A SAF/GCR Memorandum for the Deputy General Counsel ("SAF/GCR Mem.") relies upon the prior grand jury issues, and a short reference to the Tyndall AFB project to

support the Notice(s) of Proposed Debarment. SAF/GCR also refers to a set of alleged immigration violations supposedly connected with AEI's work. (Exhibit 1.)

14. At no point during the FDEP or the grand jury investigation, which together extended over a period of sixteen months, from July 2003 to January 2005, did the Air Force, or any other State or Federal Government agency, deem it necessary to terminate any Government contract or subcontract that AEI was performing. (Verified Complaint ¶ 31.) Moreover, at no time from July 2003 to September 8, 2005, did any State or Federal Government agency suspend or debar AEI from future Government contracting. (*Id.*)

15. In fact, before, during, and after the investigation, the Government continued to award AEI new contracts, all of which have been successfully performed. (Verified Complaint ¶¶ 17, 22, and 24.)

D. The September 8, 2005, Notice of Proposed Debarment

16. The Notice of Proposed Debarment cites information from the September 8, 2005, SAF/GCR Mem. (Exhibit 1.) Referring to the one Tyndall contract and the one Hurlburt subcontract, together with the alleged immigration violations, SAF/GCR postulates that because of these problems "the seriously improper conduct of [AEI] is of so serious or compelling a nature that it affects their present responsibility to be Government contractors or subcontractors." (Exhibit 1, SAF/GCR Mem. p. 6, ¶ 2.)

17. SAF/GCR also cites the Tyndall and Hurlburt work as constituting a "willful failure to perform and history of failure to perform in accordance with the terms of Government contracts or subcontracts" as a separate basis for debarment. SAF/GCR Mem. p. 6, ¶ 1.

18. The Air Force counsel does not cite, nor make any finding, that there is an immediate need to prevent AEI from receiving any contracts or subcontracts during the time

SAF/GCR deems it necessary to review the proposed debarment. However, under its regulations, the proposed debarment has the effect of immediately blocking any such new contract or subcontract awards Government wide. Federal Acquisition Regulation (“FAR”) 9.405(a), 48 C.F.R. § 9.405(a) (“Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts”)

19. SAF/GCR also does not mention the fact that since the Tyndall, Hurlburt, and immigration allegations date from 2002 and 2003, after a two year investigation, a grand jury refused to return any indictment, and the matters have been closed for nearly a year. (Verified Complaint ¶¶ 28 – 30; and Exhibits 3-4.) The factual allegations against AEI recited by SAF/GCR were simply rejected.

20. SAF/GCR also neglected to mention that since 2004, base commanders (acting through local contracting officers) have awarded AEI approximately 89 contracts and subcontracts, which AEI has successfully performed. (Verified Complaint ¶¶ 22, 33, and Exhibit 5, Tab D.) These same Government customers were in the process of entering into new contracts with AEI until SAF/GCR issued its Notice of Proposed Debarment on September 8, 2005. (Verified Complaint ¶ 22.)

21. SAF/GCR had never previously contacted AEI or issued AEI a “show cause” notice that would have allowed AEI to respond prior to its contract awards being disrupted. (Verified Complaint ¶ 36.) Rather, SAF/GCR unilaterally issued the Notice of Proposed Debarment, which under the SAF/GCR and FAR procedures are effective immediately and blocked the contract and subcontract awards. FAR 9.405(a), 48 C.F.R. § 9.405(a).

22. SAF/GCR also has now caused AEI to be placed on the Excluded Parties List System (“EPLS”), a web-based listing of all contractors that are currently ineligible to receive Government contracts or subcontracts. (Verified Complaint ¶ 35.)

23. Although AEI does not minimize the seriousness of the prior grand jury investigation, it cannot be disputed that after the lengthy review by the U.S. Attorney’s office, which AEI believes involved consultations with the Air Force Office of Special Investigations, FDEP, EPA, and ICE, AEI was not found to have violated any rule, standard, procedure or contract requirement. Moreover, AEI would have made immediate restitution, but there was never any monetary claim asserted or penalty assessed by a Federal or State agency. (Verified Complaint ¶ 32.)

E. SAF/GCR Has Effectively “Debarred” AEI from Contracting, Without Advance Notice or a Hearing

24. Federal Acquisition Regulation (FAR) Subpart 9.4, “Debarment, Suspension, and Ineligibility,” governs “suspension” and “debarment” from U.S. Government contracting. FAR Subpart 9.4 exists to ensure that any Federal contracts and subcontracts are awarded only to companies that are presently “responsible.” FAR 9.402(a), 48 C.F.R. § 9.402(a). The FAR process is also supplemented by the Defense Federal Acquisition Regulation Supplement (“DFARS”), DFARS Subpart 209.4, 48 C.F.R. Subpart 209.4.

25. FAR Subpart 9.4 permits, but does not require, the immediate “suspension” of a firm that has been indicted for allegedly fraudulent conduct. See FAR 9.407-1(a), 48 C.F.R. § 9.407-1(a) (suspending official may suspend a contractor). The central question in suspension cases is whether the contractor in question presents some immediate threat to the public interest. FAR 9.407-1(b)(1), 48 C.F.R. § 907-1(b)(1) (suspension permitted “when it has been determined that immediate action is necessary to protect the Government’s interest”). AEI was never

indicted, nor did the Air Force ever consider that “immediate action” was necessary to protect the Government’s interest; hence AEI has never been suspended. (Verified Complaint ¶ 31.)

26. The FAR regulations also permit, but do not require, that a company can be “debarred” based on inter alia: (a.) conviction or a civil judgment for fraud or a criminal offense in connection with the performance of a Government contract, (b.) commission of offenses indicating a lack of business integrity, or (c.) violation of the terms of a Government contract so serious as to justify debarment, such as a willful failure to perform or a history of failure to perform. FAR 9.406-2, 48 C.F.R. § 9.406-2.

27. AEI has never been convicted of anything, but SAF/GCR belatedly has reviewed the allegations and other materials related to the prior investigation of events in 2002-2003. Not being strictly bound by the prior determination by the U.S. Attorney’s office that there is no cause to take civil or criminal action against AEI, SAF/GCR has commenced its administrative proceedings against AEI by issuing the Notice(s) of Proposed Debarment.

28. As previously noted, a “Notice of Proposed Debarment” has the immediate effect of rendering a contractor ineligible for the award of any new Government contracts or subcontracts. FAR 9.405(a), 48 C.F.R. § 9.405(a). Under this administrative process, the contractor is permitted to submit a response to SAF/GCR within 30 days, after which, if there are disputed questions of fact (which there are in this case), the debarring official may convene a hearing and otherwise review the contractor’s “present responsibility.” AEI has made initial submissions to SAF/GCR seeking an immediately lifting of the proposed debarment. (Exhibits 5, 6, and 7.) AEI’s review of the record confirms it is the set of inconsistent, unsubstantiated, and inaccurate allegations that already have been rejected by the competent State and Federal authorities.

29. AEI has emphasized that since 2004, the Government's contracting officers have continued to make determinations that AEI is a responsible contractor by making numerous contract awards to the company. (Verified Complaint ¶¶ 22, 33; and Exhibit 5, Tab D.)

30. At the same time, AEI offered to provide SAF/GCR an extraordinary level of assurances. AEI offered to restrict its environmental contracting and perform only civil construction contracting for the Government during SAF/GCR's review of the administrative record. (Exhibit 6.) AEI has also set up an enhanced compliance program and retained an experienced outside ombudsman (a retired U.S. Army Brigadier General familiar with procurement matters), all to provide SAF/GCR assurance that there is no risk to the Government while SAF/GCR reviews the file relating the environmental and any other allegations that arose two years ago and were rejected by the grand jury. (Exhibit 5, Tab C)

31. In similar circumstances, SAF/GCR has demonstrated that it has authority to lift a notice of debarment pending completion of its review, to allow a contractor to receive selected contracts during the interim period. (Exhibit 8.) This is especially important for smaller contractors, who depend on maintaining work flow. Under this modified procedure, if a responding contractor fails to demonstrate its present responsibility in a relatively short period, typically 30 or 45 days, under the terms of the SAF/GCR agreement to lift a debarment notice, the debarment process is reinstated and SAF/GCR proceeds to issue a final decision using the process set forth in its regulations.

32. Granting interim relief of this type is particularly appropriate for AEI. The prior Government investigations yielded no charges against the company. In the meantime, the Government offices whose business it is to evaluate contractors and award contracts have

continued to choose AEI for projects, all of which have been successfully completed. (Verified Complaint ¶¶ 22, 33; and Exhibit 5, Tab D.)

33. AEI has added layers of protection for the Government, but SAF/GCR is turning a deaf ear to the company's arguments that the failure to allow AEI to perform even unrelated Government civil construction work is killing the company. On October 21, 2005, SAF/GCR definitively informed AEI that SAF/GCR would not provide any temporary relief by lifting the proposed for debarment status. (Verified Complaint ¶ 34.) SAF/GCR will review this matter for at least another 30, 60, or 90 days, or even longer. In fact, there is no sanction in the regulations for SAF/GCR's failure to act within any specific time in this process.

34. In short, AEI contends that SAF/GCR's proposing it for debarment and depriving AEI of contract and subcontract awards, prior to an opportunity for a hearing on the particular facts of this case, is arbitrary and capricious. AEI further argues that SAF/GCR's action, and failure to act, violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

35. The Verified Complaint of AEI's founder, Debora Livingston (filed concurrently herewith), establish the hard fact that, without its contract renewals and other new business expected to be received in the remainder of 2005, AEI is losing not less than \$2,000,000 in business and will have to lay off most of its work force. (Verified Complaint ¶ 36.) It will take many years to recover from this loss, if indeed AEI can continue to operate. It is virtually certain, however, that AEI will cease business operations due to continuing overhead expenses and lack of business if it is debarred. (Id.)

36. SAF/GCR may claim that it faces the possibility of harm from continuing to do business with a contractor that was subject to a prior investigation, even if FDEP, EPA, and the U.S. Attorney's Office found nothing. Painting in such broad strokes will not do on the facts of

this case. If there had been an immediate need to cease all work with AEI, then SAF/GCR could have issued a suspension many months, or even years ago but it did not. FAR 9.407-1(b)(1), 48 C.F.R. § 907-1(b)(1). By contrast, the base commanders and contracting officers in Florida, Mississippi, Alabama, and Georgia have continued to award AEI contracts making an affirmative determination of responsibility with each contract award that AEI is a competent, responsible contractor. (Verified Complaint ¶¶ 22, 33; and Exhibit 5, Tab D.)

37. The Air Force can make no showing that it would be harmed by the issuance of the temporary injunctive relief requested here given the passage of time and multiple contract awards that AEI has successfully performed, not to mention that fact that AEI was absolved of any wrongdoing in the first place. Moreover, the very substantial remedial and preventive measures AEI has already taken virtually assure that AEI is in a better position to review its contracting on a continual basis than most Government contractors today. Yet SAF/GCR's failure to act creates a continuation of the pending debarment status that will put AEI permanently out of business regardless of the outcome of SAF/GCR's administrative review. (Verified Complaint ¶ 36.)

Argument

II. JUDICIAL INTERVENTION IS APPROPRIATE AND NECESSARY

A. The Proposed Debarment Constitutes "Final Agency Action" and Thus is Ripe for the Court's Consideration

38. SAF/GCR has placed AEI in the "proposed for debarment status" and refused to take any other action that would allow AEI to continue receiving some new work while SAF/GCR goes through its administrative process to consider AEI's "present responsibility" as a Government contractor. This is final agency action within the meaning of section 10(c) of the Administrative Procedure Act ("APA"), 5 U.S.C. § 704. AEI will never be more ineligible for

Government contracts than it is now. Resource Applications, Inc. v. Environmental Protection Agency, No. 93-2525 (D.D.C.) (preliminary injunction issued under APA review, prohibiting agency from taking further suspension action). (Exhibit 9.)

39. As stated by the Supreme Court in Williamson Cty. Regional Planning Comm'n v. Hamilton, 473 U.S. 172 (1985): “[T]he finality requirement is concerned with whether the initial decision maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury” Also, the “exhaustion of administrative remedies” doctrine does not preclude immediate judicial review of the limited issues presented in this litigation. The U.S. Supreme Court has recognized that exhaustion of administrative remedies is a discretionary matter for the Courts. N.L.R.B. v. Industrial Union of Marine and Shipbuilding Workers of America, 391 U.S. 418, 426 n.8 (1968). See also West v. Bergland, 611 F.2d 710, 715 (8th Cir. 1979) (administrative remedies need not be pursued if the litigant’s interests in immediate need for judicial review).

40. Further, under 5 U.S.C. § 704 (final sentence) the pendency of a request for reconsideration, or even the availability of an administrative appeal, does not prevent the aggrieved plaintiff from obtaining immediate judicial review where the agency action is otherwise final. See generally Darby v. Cisneros, 113 S. Ct. 2539 (1993) (debarment action subject to judicial review without exhaustion of agency-level appellate remedies). AEI’s “proposed for debarment” status is thus properly before the Court.

41. The problem AEI faces, obviously, is the enormity of the irreparable harm SAF/GCR has caused by blocking all of AEI’s contract and subcontract awards. AEI has made a cogent showing, including the certified report of its Chief Financial Officer, that it faces imminent irreparable harm at the hands of SAF/GCR. (Exhibit 5, Tab E; and Verified

Complaint ¶ 36.) AEI will be denied all access to new business from the U.S. Government, accounting for up to eighty percent of AEI's annual revenue. Id.

42. The proposed debarment attempts to tell the public that AEI and its officers and employees "lack the integrity necessary for Government contracting, [and] even if later reversed, could have a permanently stigmatizing effect on their professional reputations and employment opportunities." Girard v. Klopfenstein, 930 F.2d 738, 741 (9th Cir. 1991). At this point, AEI has no ready recourse against the Government to recover monetary damages for the lost business.

43. For these reasons, and foremostly to prevent further irreparable harm to AEI, Plaintiffs implore the Court to grant AEI the temporary relief it seeks.

B. The Normal Administrative Procedure Act Standard of Review Applies to the Court's Consideration of AEI's Proposed Debarment Status by the Air Force

44. Title 5 U.S.C. § 706 sets forth the applicable standard of review. The Court must set aside any agency action that is arbitrary, capricious, contrary to law, or not supported by substantial evidence. Id. These standards guide the Court's review of a proposed for debarment action. See, e.g., Novicki v. Cook, 743 F. Supp. 11, 13 (D.D.C. 1990), rev'd. on other grounds, 946 F.2d 938 (D.C. Cir. 1991) (applying "arbitrary and capricious" standard; debarment invalidated where agency applied incorrect legal standard, and in any case, substantial evidence did not support agency findings).

C. Requirements for Issuance of Temporary Injunctive Relief

45. In determining whether to award a temporary restraining order or a preliminary injunction, the Courts traditionally follow the four-part test set forth in Public Citizen v. National Economic Comm'n, 703 F. Supp. 113, 124 (N.D. Fla. 1989). A party seeking a temporary

restraining order or a preliminary injunction must show the following: (a.) substantial likelihood of success on the merits; (b.) irreparable injury; (c.) the injury suffered by the plaintiff outweighs the harm to defendant if the injunction is granted; and (d.) the injunction is not contrary to the public interest. See Supra Telecomms. & Info. Sys., Inc. v. BellSouth Telecomms., No. 4:05CV132-SPM/AK, 2005 WL 946892, at *1 (N.D. Fla., Apr. 18, 2005); Johnson, et. al. v. Mortham, et. al., 915 F. Supp. 1529, 1552 (N.D. Fla. 1995). The moving party carries the burden of persuasion in proving the above. Id. at 1552.

46. While the first factor is generally the most important, the moving party is not always required to show a strong probability of success on the merits. Gonzalez ex rel. Gonzalez v. Reno, 2000 WL 381901, at *1 (11th Cir. Fla., Apr. 19, 2000); United States v. Hamilton, 963 F.2d 322, 323 (1992). Rather, where “the balance of the equities weighs heavily in favor of granting” injunctive relief, the moving party is only required to show a “substantial case on the merits.” Id.

III. AEI IS ENTITLED TO RELIEF

A. AEI Faces Immediate, Irreparable Harm

47. AEI will suffer irreparable harm unless a Temporary Restraining Order and a Preliminary Injunction are issued. As elaborated above, AEI is out of business if it is prevented from obtaining new contracts while the “proposed for debarment” status lasts. It is a matter of basic fairness to recognize the enormous practical effect that the SAF/GCR actions will have on AEI. See Standard Airlines v. Civil Aeronautics Board, 117 F.2d 18, 20 (D.C. Cir 1949).

48. The Air Force will suffer no harm if a Temporary Restraining Order and/or a Preliminary Injunction is placed in effect, particularly if it is only during the time SAF/GCR requires to review the administrative record. AEI has been successfully performing contract

work for a multiple Government agencies since 2004 without incident. AEI also has put in place a corporate ombudsman, and already conducted compliance training. Given the nature of the case and the substantial precautionary safeguards implemented by AEI, SAF/GCR does not have a basis to continue to paralyze AEI's operations.

B. AEI Has No Adequate Remedy at Law

49. In a post-debarment action pursuant to the Administrative Procedure Act, 5 U.S.C. § 702-706, AEI might have a legal remedy in seeking to set aside a SAF/GCR debarment. In the circumstances AEI faces, this remedy is unavailing. If the "proposed for debarment" status is not temporarily lifted, AEI is legally precluded on an immediate basis from receiving any new Government business whatsoever, and this business is subject to shutting down. FAR 9.405(a), 48 C.F.R. § 9.405(a).

50. This "proposed for debarment" status remains in effect until a final resolution of the question of whether a contractor should be debarred from Government business for an extended period, up to three years. Being proposed for debarment by one Government agency, here the Air Force, operates to exclude a contractor from receiving new business from any other Government agency. The "proposed for debarment" status is Government wide. FAR 9.405, 48 C.F.R. § 9.405. Accordingly, the practicalities of an eventual legal challenge to an actual debarment will not save AEI from the irreparable harm it faces today. See Rutigliano Paper Stock, Co. v. U.S. Gen Servs. Admin., 967 F. Supp. 757, 764 (E.D.N.Y. 1997) (contractor's almost total loss of business and inability to bid on new contracts "incapable of being remedied by monetary damages alone.")

C. The Public Interest Will Be Served by the Issuance of Temporary Injunctive Relief

51. Public interest considerations support the issuance of temporary and preliminary injunctive relief as AEI requests.

52. AEI agrees that a grand jury investigation raises a serious question of whether it is in the public interest to continue doing business with that company. Again, however, we would urge the Court to examine the specific facts of this case. The acts alleged are said to have occurred during 2002 and 2003, and AEI was absolved any serious wrongdoing. (Exhibits 3, 4.) There is no allegation of any repetition. Obviously, the investigation of the charges originated with the Air Force itself, as the case involves alleged performance issues under an Air Force contract. The Air Force has known about the charges all along and if there was any substantial public interest in this case in protecting the Government from AEI, AEI could have been suspended when the allegations first came to light.

53. In the interim, the Department of Agriculture, the Department of the Army, the Department of Veterans Affairs, the General Services Administration, the Department of the Navy, the U.S. Marine Corps, the Bureau of Prisons, and multiple other offices of the Department of the Air Force have actively solicited AEI to perform new work and awarded AEI contracts. (Exhibit 5, Tab D.)

54. We ask the court to note that there has been: (a.) the passage of two years, (b.) the full knowledge of the allegations by the Air Force for this significant period of time, (c.) the determinations in a series of subsequent contracts that AEI was a responsible contractor notwithstanding the isolated allegations by Air Force inspectors, (d.) the grand jury's declining to act on those allegations, (e.) the substantial positive response of AEI to the business aspects of the allegations.

55. Throughout all of this no criminal or civil allegation has been pursued against AEI by any Federal or State office. No contract claim has been asserted by any contracting officer. Arguably, the Government's contracting officers, who have the primary and day-to-day contract administration role under the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-609, are in the best position to judge a contractor's performance. Rather than accuse AEI of wrongdoing, quite to the contrary, these contracting officers have sought AEI to perform public contract after contract. (Exhibit 5, Tab D.)

56. It cannot now be said that overriding public interest considerations require that AEI be put out of business while SAF/GCR takes a third or fourth "bite at the apple" and reviews these old allegations, and before SAF/GCR even hears AEI's side of the story. Further, the public interest is served by allowing public contracting agencies who wish to avail themselves of AEI's services, based upon their own bidding and public contracting procedures, to do so.

D. If Numerous Federal Agencies Have Found AEI Responsible, It Would Be Arbitrary and Capricious for SAF/GCR to Find Otherwise

57. The FAR requires that contracting officials only conduct business with firms of integrity. FAR 9.402(a) states that "[a]gencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only." FAR 9.103(b) likewise states that "No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility." (Emphasis added.)

58. Since there is legal presumption that Government officials act in accordance with the law, and since the events leading to the current proposed debarment have been known to the Air Force since 2002 and 2003, then it can only be presumed that for the contracts awarded to AEI from that time forward each contracting officer made the independent determination, as

required by the FAR, that AEI possessed the integrity and responsibility to satisfy the FAR requirements.²

59. Moreover, as recently as up to and after SAF/GCR's issuance of the Notice of Proposed Debarment on September 8, 2005, contracting officers were willing, and we understand, still are willing to proceed with contract awards to AEI if not prevented from doing so by SAF/GCR. (Exhibit 5, Tab E.) In fact, the Air Force recently has rated AEI's performance on the Tyndall oil/water separator contract as "Excellant" [sic] in the Air Force Contractor Performance Assessment Reporting System (CPARS) (Exhibit 10). Even with respect to the original Hurlburt asbestos removal contract, the Air Force Commander, 16th Engineer Squadron, who oversaw the work, referred to the resolution of all issues and stated that it was "a super effort by everyone concerned," which expressly included AEI. (Exhibit 11.)

60. For SAF/GCR to contend that AEI is somehow "not responsible" is tantamount to SAF/GCR asserting that it is more knowledgeable in environmental contracting than the cognizant contracting officers at each installation, or that the Agriculture, Army, Veterans Affairs, General Services Administration, Navy, Marine Corps, Bureau of Prisons, and Air Force contracting officers did not follow the FAR when making awards of contracts to AEI on approximately 89 separate occasions since 2004. AEI also offers the signed "Status Reports" of the Government's own contracting officers, which were required to be submitted to AEI's bonding company, as further evidence that in the view of the contracting officers, these AEI contracts were "completed, accepted, and the contractor released," and that the work was satisfactory. (Exhibit 12.) This is not a "history of failure to perform," as cited by SAF/GCR in

² The contracting officer's affirmative determination of responsibility encompasses elements of responsibility including, but not limited to: "capability, competency, capacity, credit, [and] integrity" FAR 19.602-1, 48 C.F.R. § 16.602-1. (Emphasis added.)

its (Mem. p. 6, ¶ 1), but rather a successful history of contracting under a Small Business Administration program, which the Air Force should promote, not end.

61. The importance of the “affirmative determination of responsibility” that is inherent in every award of a Government contract was set forth completely by the U.S. Court of Appeals for the Federal Circuit in Impresa Construzioni Geom. Domenico Garuif v. United States, 238 F.3d 1324 (Fed. Cir. 2001). There the Court stated:

Under the Federal Acquisition Regulations, ‘no purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility.’ 48 C.F.R. § 9.103(b). In making the responsibility determination, the contracting officer must determine that the contractor has ‘a satisfactory record of integrity and business ethics.’ 48 C.F.R. § 9.104-1(d).

238 F.3d at 1334 (Emphasis added.)

62. Similarly, for the Government to award AEI contract after contract since 2004, many awarded by the Air Force itself, each contracting officer determined AEI to be a responsible bidder. FAR 9.103(b), 48 C.F.R. § 9.103(b). (Exhibit 5, Tab D, and Exhibits 10, and 12.)

63. In 2001, the U.S. Court of Federal Claims set aside a U.S. Department of Agriculture (“USDA”) suspension on these same grounds in Lion Raisins, Inc. v. United States, 51 Fed. Cl. 238 (2001). The Court ruled that the agency's contract awards were so logically inconsistent with the suspension/debarment official's action as to be arbitrary and capricious.

64. On the one hand, the USDA had awarded a series of contracts to Lion Raisins, Inc., while on the other hand the USDA was considering allegations that the firm had been dishonest in its prior dealings with the agency. The Court held that the USDA action in attempting to suspend the firm from Government contracting was arbitrary and capricious. The Court stated:

The USDA awarded plaintiff five contracts between the completion of its investigation in May 1999 and its decision to suspend plaintiff in January 2001. The USDA statutorily was obligated to make an affirmative finding of plaintiff's responsibility before awarding each of those contracts. See FAR § 9.103(b); *Impresa*, 238 F.3d at 1334.

In other words, five times between May 26, 1999, and February 1, 2001, the USDA itself affirmed that plaintiff's business practices met the standards for present responsibility.

51 Fed. Cl. at 247-48. (Footnotes omitted, emphasis added.)

65. AEI informed SAF/GCR of the contract awards that it has won and successfully performed since 2004, but SAF/GCR has provided no explanation why it refuses to grant AEI even interim relief. Based on all of the above, for SAF/GCR to propose AEI for debarment nearly a year or more after the grand jury proceedings concluded, and after the awards of all of the contracts that AEI has received since 2004 and successfully performed, it can only mean that SAF/GCR action constitutes impermissible punishment. See FAR 9.402, 48 C.F.R. § 9.402(b) (“The serious nature of debarment ... requires that [it] be imposed only in the public interest for the Government’s protection and not for purposes of punishment.”) See also *Robinson v. Cheney*, 876 F.2d 152, 154 (D.C. Cir. 1989); *Caiola v. Carroll*, 851 F.2d 395, 398 (D.C. Cir. 1988); *Shane Meat Co. v. United States Dept. of Defense*, 800 F.2d 334, 338 (3d Cir. 1986); *Silverman v. Dept. of Defense*, 817 F. Supp. 846 (S.D. Cal. 1993).

E. AEI Poses No “Immediate Threat” to the Public Interest

66. SAF/GCR has no basis to block all contract and subcontract awards to AEI with the “proposed for debarment” status, which is the equivalent of suspending AEI.

67. The Air Force may impose suspension only where “immediate action is necessary to protect the public interest.” FAR 9.407-1(b)(1), 48 C.F.R. § 9.407-1(b)(1). The question of “immediate need” to suspend must be analyzed by the Air Force separately from the issue

whether any “cause for suspension” exists under FAR 9.407-2. Under FAR 9.407-1(b) (2), “(t)he existence of a cause for suspension does not necessarily require that the contractor be suspended.”

68. Accordingly, in addition to cause, the Air Force must have an adequate evidentiary basis for concluding that “immediate action is necessary to protect the Government’s interest.” The Air Force’s Notice of Proposed Debarment nowhere cites “an immediate need.” The events of two years ago, particularly in the absence of any allegation of repetition, do not support a finding of immediate need to block AEI’s business from going forward.

69. Because the facts establish that AEI poses no threat, immediate or otherwise, to the public interest, the effect of the proposed debarment is purely punitive, contrary to the regulations. Given the absence of a threat to the public, the proposed debarment of AEI is also arbitrary and capricious. Imposing the proposed for debarment status without any prior opportunity for AEI to advise SAF/GCR of its side of the story is particularly arbitrary and unfair. FAR 9.406-1(a) contemplates a debarring official receiving evidence of “remedial measures or mitigating factors from a contractor when a contractor has reason to know that a cause for debarment exists” prior to taking action.

70. In response to SAF/GCR, in good faith AEI has taken the following actions: (a.) AEI retained outside counsel to review AEI’s existing compliance procedures; (b.) AEI has already completed employee training in immigration issues, and is scheduling further training for environmental contracting and Government contract compliance; (c.) AEI has reexamined its written Code of Business Conduct, which clearly states to employees that it is AEI’s policy to conduct business honestly and fully in compliance with the law and the terms and conditions of its contracts; and (d.) AEI has retained an experienced corporate Ombudsman, who will conduct

a compliance audit. (Exhibit 5, Tab C) But these positive responses to the allegations were essentially ignored in SAF/GCR's decision to leave AEI in a debarment status. On this record to date, it is proven that SAF/GCR's actions are arbitrary and unsupported by substantial evidence.

71. By successfully performing the long series of contracts for many different Government customers, AEI has demonstrated, as factual and legal matter, that it is a responsible contractor. If SAF/GCR wished to review the AEI contract performance record two years ago, it could do so, but at this late juncture SAF/GCR should not be allowed to destroy AEI with SAF/GCR's belated administrative review of stale allegations. At minimum, AEI should not remain in a "proposed for debarment" status while SAF/GCR conducts its review.

72. The courts will set aside agency debarment determinations when the agency has acted illegally. Novicki v. Cook, 946 F.2d 938, 939 (D.C. Cir. 1991). Here, because there was no finding of "immediate need to protect the Government's interest" beyond a highly questionable cause for debarment, the Air Force has misapplied the regulations.

F. The Air Force Had Alternative, Interim Steps It Could Take

73. As noted above (¶ 31), in similar circumstances, SAF/GCR demonstrated that it has authority to lift a notice of proposed debarment pending completion of its review, which allows a contractor to receive selected contracts during the interim period. This is especially important for smaller contractors, who depend on maintaining work in process.

74. If a responding contractor fails to demonstrate its present responsibility in a relatively short period, typically 30 or 45 days, under the terms of an agreement to lift a notice of proposed debarment, the debarment process is reinstated and SAF/GCR proceeds to issue a final decision using the process set forth in its regulations.

75. By failing to apply this process to AEI, or even explain why it could not be used, SAF/GCR has acted in an uneven and heavy-handed manner against AEI. The interim relief would seem especially appropriate since SAF/GCR is reviewing an outdated record, but still SAF/GCR provided no explanation.

G. A Proposed Debarment That Deprives AEI of all Contracts and Subcontracts Prior to a Hearing Violates AEI's Procedural Due Process Rights

76. For a contractor facing suspension or debarment, fundamental fairness requires that the bidder be given specific notice of the charges against him, and in the usual case, an opportunity to respond to those charges. Horne Brothers, Inc. v. Laird, 463 F.2d 1268, 1271 (D.C. Cir. 1972). AEI is entitled at least to this much before its business is destroyed.

77. Moreover, in United States v. James Daniel Good Real Property, 510 U.S. 43 (1993), the U.S. Supreme Court held that in the absence of "exigent circumstances," seizure of real property without first affording the owner notice and an opportunity to be heard violates the Due Process Clause of the Fifth Amendment. While this is not a drug forfeiture case and seizure of real property is not directly involved, the principles enunciated in the Supreme Court's decision are indeed relevant here.

78. The Court started with the general principle that under the Due Process clause, "individuals must receive notice and an opportunity for a hearing before the Government deprives them of property." Id. at 11. We would add that procedural due process rights also attach to the deprivation of a liberty interest as a result of a suspension from contracting based on the alleged commission of a fraud. ATL, Inc. v. United States, 736 F.2d 677, 682-83 (Fed. Cir. 1984). In Good, the Supreme Court also stated: "We tolerate some exceptions to the general rule requiring predeprivation notice and hearing, but only in 'extraordinary situations where some

valid governmental interest is at stake that justifies postponing the hearing until after the event.”
Id. at 20. (Emphasis added.)

79. The Court, referencing the three-part test of procedural due process in Matthews v. Eldridge, 424 U.S. 319 (1976), then reasoned: (a.) the plaintiff’s right to maintain control over his home, and to be free from Governmental interference, was a strong private interest “of historic and continuing importance;” (b.) “The practice of ex parte seizure creates an unacceptable risk of error,” and “provides little or no protection to the innocent owner;” and (c.) the Government’s interest in seizing real property before a hearing was not “justified by a pressing need for prompt action.” Id. at 20-24.

80. In the present case, the Government does not have an overriding interest in immediately blocking AEI contracting work. The events occurred long ago, just as was the case in Good. Like Good, AEI’s interest in at least temporarily retaining its status as a Federal contractor, including the right to obtain additional funding for work that is already in process so that it will not lose its employee base, is compelling. In short, a pre-hearing debarment status can be justified, under the principles in Good, only if “exigent circumstances” are present. Such circumstances are absolutely lacking here. See also Fuentes v. Shevin, 407 U.S. 67 (1972) (procedural due process under the Fourteenth Amendment of the United States Constitution guarantees notice and an opportunity to be heard at a meaningful time and in a meaningful manner).

H. Procedural Considerations

81. AEI, including its President, Debora K. Livingston, will be available at the Court’s convenience for a hearing on its Application for a Temporary Restraining Order and a Motion for a Preliminary Injunction.

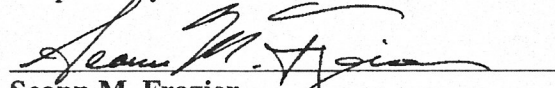
82. In view of the absence of any harm to the Government as a result of the issuance of temporary injunctive relief, Plaintiff respectfully submits that the Court should impose only a minimal cash bond in lieu of bond with surety. See Rule 65(c).

IV. CONCLUSION

For the reasons set forth above, and in the Verified Complaint filed this date, the Court should grant AEI's Application for a Temporary Restraining Order and its Motion for a Preliminary Injunction.

Dated: October 26, 2005

Respectfully submitted,



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Of Counsel

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Former Aztec employee

Home Address: [REDACTED]

Home Telephone: [REDACTED]

can testify that in July 2003 and August 2003, he worked for Aztec on the Bldg 90333, HFLD, FL asbestos project. When he arrived at the project on July 21, 2003, Aztec workers discussed whether the ceiling contained friable asbestos. claimed it was not asbestos. However, everyone working on the project suspected it was friable asbestos, yet no containment or decontamination structure was erected. In addition, workers did not wear their personal protective equipment or respirators. Aztec workers immediately began removing the inner contents of the building, which included the suspended ceiling tile. As the suspended ceiling was removed, friable asbestos fell everywhere and created a large cloud of dust/debris. The asbestos covered everything in the building, which included the carpet. Asbestos covered worker's clothes and equipment, and it filled their noses and mouths. On July 23, 2003, and arrived at Bldg 90333 to inform the Aztec crew that FDEP was coming to inspect. screamed at Aztec workers to clean up the asbestos before the inspector arrived. Aztec employees worked diligently to clean up the asbestos by sweeping, shoveling, and throwing it into an open Aztec dumpster. Carpet rolls covered in asbestos were thrown into the same dumpster. In addition, they hid asbestos in the bathrooms and furnace room. Workers hepa-vacuumed the building's stairwell and the grass where asbestos spilled. After cleaning up the site, he and other Aztec workers were told to leave the site and wait in Aztec trailers located across from HFLD, FL. Eventually, and the other Aztec workers came back to the site to finish it. Workers erected a containment structure, but they still did not handle asbestos properly. believed they scraped the ceiling's remaining asbestos without wetting it first. In addition, a grinder was used on the dry ceiling in an attempt to make the building "look good" for inspection.

Can testify that routinely illegally dumped friable asbestos into Big Wheel landfill. In September 2003, he worked with to remove friable asbestos in motels on Panama City Beach, FL. Asbestos was commingled with mattresses and placed in Aztec dumpsters. He rode along with while he transported this commingled asbestos debris to Big Wheel landfill. intended to dump the material, but it started to storm so he left the trailer at Big Wheel so it could be buried after the storm.

~~Can testify that any person who worked for Aztec either knew or suspected that hired illegal aliens. Aztec workers and supervisors regularly discussed the legal status of Aztec Hispanic employees. They frequently joked with these illegal aliens about calling immigration. knew regularly used illegal aliens for Aztec. actually transported many of the illegal aliens to Aztec projects because they did not have vehicles or driver's licenses. Individuals, such as, and liked using illegal aliens because they could work them long hours and underpay them. If the illegal aliens complained about safety or work conditions, or threatened to call immigration.~~

~~Can testify that in 2003, told him to find American asbestos workers because she had problems getting the "Mexican" workers past security on military bases. also asked him to find American workers because he got into trouble on Maxwell AFB, GA due to the use of illegal aliens. owned trailers in Tallahassee, Panama City, and in Port St. Joe to allow illegal aliens to reside. Aztec supervisors routinely circumvented security to bring illegal aliens onto military bases. Aztec Supervisors had illegal aliens ride in the back of Aztec vans or trailers, where tools were located, to hide from base security. He witnessed the following: In July 2003, hid at least one illegal alien so he could enter HFLD, FL. In April 2003, hid illegal aliens so they could enter TAFB, FL. In April/May 2003, hid illegal aliens so they could enter Maxwell AFB, MS. In May/June 2003, hid illegal aliens so they could enter Keesler AFB, MS. maintained several trailers on his Milton, FL property where he allowed illegal aliens to live. While working on a large asbestos project at the Tampa, FL airport, numerous illegal aliens obtained false identification documents from a Tampa, FL document vendor. All the Aztec project supervisors, including were aware of this.~~

Exhibit 38: Written interview record of

USE

Former Aztec Employee

Home Address: [REDACTED]

Home Telephone: 8 [REDACTED]

[REDACTED] can testify that in February 2000 Big Wheel landfill was not run in accordance with state regulations. [REDACTED] can testify bags containing non-friable asbestos were buried all throughout the landfill as opposed to the designated area. [REDACTED] stated he often crushed the bags. [REDACTED] believed crushing the tiles would make the asbestos in the tiles friable. In 2002, [REDACTED] heard Aztec was conducting an asbestos project at Cove Gardens, Panama City, FL. [REDACTED] was told not to keep a log of truckloads coming into the landfill. [REDACTED] heard Aztec had made a deal with an unknown government official to overcharge the government.

Exhibit 24: Written interview record of [REDACTED]

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REPORT OF INVESTIGATIVE ACTIVITY

1. DATE OF INVESTIGATIVE ACTIVITY

10 Feb 04

2. PLACE

Holiday Inn Select, 2001 North Cove Boulevard, Room 323, Panama City, FL

3. ACTIVITY NUMBER

27836040402214

4. REMARKS

Witness Interview of:

Date/Place: 10 Feb 04/

Interviewers: [REDACTED]

On 9 Feb 04, [REDACTED] was interviewed and provided the following. [REDACTED] indicated that although his complete name is [REDACTED] he goes by [REDACTED]. [REDACTED] stated that he illegally entered the United States sometime prior to March 2003. He paid \$40,000 in [REDACTED] currency to a coyote to be taken from [REDACTED] to Mexico. [REDACTED] entered the United States through an area of Mexico known as [REDACTED]. He traveled through the desert and was taken to Atlanta, Georgia where a friend picked him up. [REDACTED] stated that the coyotes have a house in Aqua Prieta where they keep all the men and women before they take them to the United States. The house holds up to 200 people.

[REDACTED] stated that in Atlanta, Ga., he purchased a fraudulent social security card and Alien Registration Receipt Card (immigration card). He paid a total of \$125.00 for both cards. He used the name [REDACTED] on the cards. [REDACTED] does not know the Atlanta address where he purchased the fraudulent identification cards. While in Atlanta his friends provided him with a fraudulent asbestos training certificate using the name [REDACTED].

[REDACTED] began working for AZTEC Environmental (AZTEC) in March 2003 as a laborer removing mainly asbestos. [REDACTED] stated that he was not involved any demolition projects. The first asbestos abatement took place at the Tampa International Airport, Tampa, Florida. [REDACTED] stated that this project took approximately three months to complete. The work consisted of removing of ceilings that contained asbestos. [REDACTED] stated that they used water during the removal and that the asbestos was placed in double bags and subsequently identified as being as such. [REDACTED] stated that this job was done properly. After completing this job [REDACTED] returned to Atlanta. The next Aztec jobs took place in Tallahassee, Florida; Decatur, Alabama; Montgomery, Alabama; Panama City and Atlanta.

[REDACTED] explained that when he went to work for AZTEC in Tampa he told the company that he had lost his social security card, immigration card asbestos training certificate during the move. [REDACTED] stated that [REDACTED] an AZTEC supervisor, told him that he could work using the name of [REDACTED]. According to [REDACTED] was an AZTEC worker who had failed to show up at all at the Tampa work site. [REDACTED] stated that co-workers told him that [REDACTED] had a fraudulent social security number. Although [REDACTED] never showed up for work he did contact AZTEC management to complain that an employee working for them was using his name. [REDACTED] stated that [REDACTED] the project supervisor at Tampa International Airport, told him later on that he had explained to management that he was a good worker and that he wanted to keep him. [REDACTED] recalls [REDACTED] telling him that he could continue working using the name of [REDACTED] until they could get him properly trained. [REDACTED] understands that [REDACTED] had taken the required asbestos training courses.

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4. REMARKS (Continued)

_____ stated that he has never received any asbestos related training. _____ believes that many of the other illegals who work at AZTEC took the required asbestos training in Atlanta. The training lasted four days. _____ stated that the workers paid for their own training; AZTEC did not pay it for. Additionally, none of his undocumented co-workers ever received Aztec sponsored medical examinations. Instead, his co-workers had to pay for their own medical examinations. _____ stated that they are getting their own certifications because they are not necessarily AZTEC employees, but temporary workers. In contrast, AZTEC selectively sends their non-Hispanic workers to AZTEC sponsored training and physicals. AZTEC sends them to training in Alabama. _____ qualified his earlier statement by stating that AZTEC does send all their employees, including the temporary ones to the required annual asbestos refresher training. _____ told the Reporting Agent that _____ has a fraudulent asbestos training certificate, which he obtained in Atlanta.

_____ said that he had never undergone a fit-test for his respirator mask. Aztec does provide respirator masks. _____ explained that generally the workers would use the respirators only if they are finding it hard to breathe due to the amount of dust created during a dry removal. _____ stated that the workers did use their respirators while working at Tampa International Airport.

_____ informed the Reporting Agent that the Tallahassee job consisted of removing asbestos at the university. The ceiling was removed without using any water. The pieces of ceiling were then placed into double bags dry without treating them with water. _____ does not recall seeing any of the workers wearing a respirator. Neither did he see the supervisor, _____ wearing one. Plastic was used to cover only the furniture within the rooms. _____ added that plastic was also used on the walls. _____ admitted that the cleanup at the end of the project was not done well. _____ stated that they left the site very dirty.

_____ stated that the supervisors have never advised the workers before a project if asbestos is present. The supervisors only tell them what they want done. _____ stated that a project in Panama City consisted of removing the ceiling and sheet rock from rooms at a Ramada Inn. _____ stated that they removed this very friable insulation that was located above the ceiling. _____ stated that they should have used water during the abatement but that they did not. A worker who goes by the name _____ was responsible for bringing drinking water as well as water to use during the abatement. _____ an African-American who supervises when _____ not present. The AZTEC workers waited for _____ to arrive with the water, however, when he did not they decided to go ahead with the asbestos abatement. _____ stated that is easier to remove asbestos when one uses water. _____ stated that he, along with _____ and other co-workers did not wear respirators during this removal. _____ stated that _____ has never commented on the workers lack of using respirators. _____ recalls seeing an inspector leaving small boxes to monitor the air quality. _____ commented that _____ never addressed the issue of not wearing respirators while working or the issue of workers smoking in the abatement area. _____ stated that the asbestos was placed into double bags but that at the end they just placed it into one bag. Additionally, some of the bags were not identified with a sticker that warned of asbestos because they ran out of stickers. _____ described how during this removal they moved some filled bags from a clean area to an area that still have to be abated. Consequently, when the abatement began the clean bags became contaminated with asbestos. The outside of the bags were not cleaned before they were disposed of in a dumpster. _____ stated that _____ was very nervous about the abatement conducted at the Ramada Inn. _____ stated that they completed the job so fast and so poorly that _____ suspected they might get into trouble. Consequently, _____ ordered the demolition to begin even before they were finished cleaning up to cover up the inadequate abatement.

_____ advised that no water was used during the removal of asbestos from pipes at the Maxwell Air Force Base, Montgomery, Alabama. Additionally, _____ stated that no respirators were used. _____ stated that the cleanup at the end of the project was done really well because they were on a

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4. REMARKS (Continued)

stated that the showers that were set up for workers to decontaminate before they changed into every day clothes were not hooked up to a water supply. Additionally, no soap was provided. At best, workers would wash their hands. The only exception to this was the abatement at the Tampa International Plaza. The showers at that particular site were hooked up to water and were used. The reason why everything was done correctly at this location was due to an inspector who was very thorough and required that corrections be made.

stated that the abatement at Fort Walton was conducted properly, using water and respirators. The reason for this was that they had a strict supervisor named Clay on the job. stated that does not take short cuts but does the abatements according to regulations.

stated that the abatement in Decatur, Alabama was done properly in that water was used, the asbestos was double bagged and that the workers protected themselves using respirators. However, the workers failed to decontaminate by showering at the end of the day. Furthermore, the cleanup at the end was not done well; they left the site very dirty.

stated that in Atlanta and in Valdosta, Georgia he was involved with two projects removing tile flooring. stated that although AZTEC has available a machine to remove the tile by grinding it they never used it. The tile was instead removed using scrappers. The job in Valdosa took place in a church.

stated that he was never given a Certificate of Workers Acknowledgement of the hazards. stated that he does not know the difference between friable and non-friable asbestos. stated that he and his co-workers always wore tyvck suits, yet they would not use the head covering. stated that he does not know if something he is removing contains asbestos or not. It is not until the end when they start placing stickers on the bags that warn of asbestos that he knows. does not have any knowledge regarding what regulatory agencies inspect the work that AZTEC does. does not know who the Florida Department of Environmental Protection is.

does not know who is. stated that he met twice, once at a barbeque and another time at a job site. I identified as being the owner of AZTEC. AZTEC had him removing shrubbery and doing other yard work at a church when showed up. On that day was bragging how was going to give him a truck as a gift for getting so many jobs done so quickly. stated that did get a white truck from

stated that he gets paid by check for the hours that he works. Typically he is paid for 12-13 hours a day.

stated that he does not know anything about Big Wheel landfill. He has never heard of that place before. He added that he has only been to one landfill while working with AZTEC. He could not recall the name of the landfill but stated that it was located in Pensacola. stated that the bags of asbestos were just thrown from the truck onto the ground and left there.

stated that as far as he could tell every job that he was on there was some form of air monitoring taking place, to include stationary air monitors.

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4. REMARKS (Continued)

_____ recalls working at the Tyndall AFB on three separate occasions. _____ stated that the ceiling tiles were to be removed in certain buildings. _____ was not assigned to perform the abatement but instead he just prepped the area before the abatement. _____ entered Tyndall AFB with a supervisor named _____. The other times he was responsible for clean up the project site.

_____ believes that AZTEC's main office is located in _____. That is where all personnel files, medical exams and other paperwork like the asbestos training certificates are maintained. _____ stated that Knight brings the asbestos training certificates to every job site. _____ keeps the certificates in his truck.

_____ stated that he believes management knows that they are hiring undocumented individuals. _____ was unable to articulate why he thinks they know that they are hiring illegal aliens.

_____ stated that workers will gather at Sherman Avenue in Panama City and get picked up for work by AZTEC. On other occasions AZTEC will pay for the workers, at a job site in another state, to stay in a hotel. _____ does not know whom AZTEC contacts in Atlanta when they need workers.

_____ stated that Tyndall and Montgomery are the only two military bases that he has worked at.

_____ stated that on March 4, 2003, he purchased a fraudulent social security card and alien registration receipt card from an individual named _____ for \$130.00. _____ lives in an apartment located in Panama City. _____ stated that he did not know the address but that he could take the Reporting Agent to the apartment complex. _____ stated that _____ also known for selling marijuana.

_____ mentioned that while he was working at the Ramada Inn an incident occurred between a female named _____, and _____ an AZTEC employee, warned _____ that _____ had not received any asbestos training and should not be conducting abatements. Afterward, _____ told _____ that he should keep his mouth shut otherwise _____ could lose his job.

_____ provided _____ with his pay stubs that are made out to _____ stated that he cashes the checks at a store near the beach in Panama City.

_____ provided the Reporting Agent with his fraudulent social security card and alien registration receipt card. The name on both documents is _____

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REPORT OF INVESTIGATIVE ACTIVITY

1. DATE OF INVESTIGATIVE ACTIVITY

6 May 04

2. PLACE

3. ACTIVITY NUMBER

27880041311538

4. REMARKS

Witness Interview of:

Date/Place: 6 May 04/ [REDACTED]

Interviewers: [REDACTED]

On 6 May 04, [REDACTED] was interviewed, and he provided the following. [REDACTED] worked as an Aztec Environmental, Inc (AZTEC) asbestos worker for approximately [REDACTED] years. He quit AZTEC in Jan 04 because of health and safety concerns. [REDACTED] worked in Jul and Aug 03 on the Hurlburt Field (HFLD) Bldg 90333 asbestos project. When [REDACTED] arrived at the project on 21 Jul 03, AZTEC workers discussed and believed the ceiling contained friable asbestos, including [REDACTED] AZTEC supervisor. From [REDACTED] experience of working around asbestos, he thought it looked like asbestos. Ultimately, [REDACTED] told AZTEC workers it was not asbestos. AZTEC workers did not contain the building or build a decontamination structure. In addition, workers did not wear their personal protective equipment or respirators. AZTEC workers immediately began removing the inner contents of the building, which included the suspended ceiling tile. As the suspended ceiling was removed, friable asbestos fell everywhere and created a large cloud of dust/debris. The asbestos covered everything in the building, which included the carpet. Asbestos also covered worker's clothes and equipment, and it filled their noses and mouths. [REDACTED] threw away his clothes for fear of exposing his family to asbestos. A few days after starting the project, [REDACTED] AZTEC Vice President, arrived at Bldg 90333 to inform the AZTEC crew that Florida Department of Environmental Protection (FDEP) was coming to inspect. [REDACTED] told AZTEC workers to clean up the asbestos before inspectors arrived. By the time FDEP arrived, approximately half the ceiling's asbestos was removed. Carpet rolls covered in asbestos were commingled with the ceiling tile and bags of friable asbestos. All the asbestos material was thrown into an open AZTEC dumpster sitting outside Bldg 90333. When [REDACTED] found out he was exposed to such a large amount of asbestos, he requested to work another job. [REDACTED] continued to work on Bldg 90333 for another four days constructing a containment and decontamination structure until he was transferred. [REDACTED] never observed any air monitoring performed while he was on the project.

[REDACTED] stated illegal activity occurred on nearly every AZTEC asbestos project. [REDACTED] AZTEC supervisor, was the worst offender and was called "the devil." [REDACTED] pushed crews to work quickly and take shortcuts. Asbestos was often removed dry, but [REDACTED] sprayed water on the bags as an appearance of wetting the asbestos. For example, [REDACTED] recalled a project in 2002 on Tyndall AFB where no asbestos prep or air monitoring was performed. Pipes covered with friable asbestos were dry removed from the building. [REDACTED] emphasized that air monitoring was also bogus. AZTEC collected its own air samples, including clearance samples, from locations outside containment. This ensured the project always passed the final clearance inspection. When AZTEC was closely supervised and required to use an air monitoring consultant, supervisors such as [REDACTED] requested air monitoring consultants who helped them pass their inspection. [REDACTED] would say lets use Southern Earth Sciences, because we can get away with not taking real air samples.

[REDACTED] said [REDACTED] regularly illegally dumped friable asbestos into Big Wheel Recycling (Big Wheel) landfill. Sometime in 2002, [REDACTED] was at Big Wheel Recycling (Big Wheel) landfill, Section 388, whereupon he observed [REDACTED] dump a load of friable asbestos in the landfill. The landfill operator (NFI) covered the asbestos with a layer of sand and then another layer of garbage. *

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4. REMARKS (Continued)

and . AZTEC President, routinely manipulated AZTEC employees to keep them quiet about illegal activity. and bought their employees vehicles and houses so they would not leave the company. After quit AZTEC, asked him to come back to the company, and they would give him a house. and exploited and overworked illegal aliens and then threatened to call immigration if they complained.

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REPORT OF INVESTIGATIVE ACTIVITY

1. DATE OF INVESTIGATIVE ACTIVITY

16 Dec 03

2. PLACE

AFOSI Detachment 309, 223 Cody Ave Ste 1,
Hurlburt Field, FL 32544-5310

3. ACTIVITY NUMBER

27880033501433

4. REMARKS

Review of: Social Security Administration Check of Aztec Environmental Inc Social Security Numbers

Date of Review: 16 Dec 03

Reviewer(s): [REDACTED] AFOSI DET 309

On 16 Dec 03, a review of Social Security Administration-Office of Inspector General (SSA-OIG) check of Aztec Environmental, Inc (AZTEC) employees was performed (TAB A). During 2002 and most of 2003, AZTEC employed approximately two hundred and eighty-five (285) individuals. Approximately, ninety (90) of the 285 employees were flagged by SSA-OIG as using false Social Security Numbers (SSN). Of these 90, sixteen (16) had an invalid SSN (the number was never issued), while seventy-four (74) were using a not verified SSN (number was issued to a different person).

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Other Investigative Activities

Coordination/Consultation

1. On August 12, 2003, [redacted] AFOSI Region 3, provided the following guidance concerning the Aztec case. Continue to work with the EPA-CID but do not stretch the case beyond AFOSI's purview. Check all local landfills certified to handle friable asbestos without alerting Aztec of an AFOSI investigation to confirm whether Aztec disposed asbestos at their landfill. Identify SSNs documented on asbestos training certifications and abatement project entry logs for possible fraudulent identification. Base Security Forces Pass and Identification will likely have documentation of Aztec employees for present and near future projects. Determine if Volkert & Associates was the contracted Licensed Asbestos Consultant for the Bldg 90333, HFLD, FL asbestos abatement project and confirm the location of asbestos in Bldg 90333. If necessary, contact [redacted] HQ AFOSI, to run a FINCEN report on Aztec and Big Wheel.

2. On August 13, 2003, [redacted] AFOSI, made contact with [redacted] Resident-Agent-in-Charge (RAC), EPA-CID, Tampa, Florida. [redacted] briefed [redacted] on AFOSI's investigation of Aztec and the events surrounding an asbestos abatement of Bldg 90333, HFLD, FL. [redacted] related his organization previously maintained derogatory information about Aztec, and a journalist published a series of articles in The Insider about the company. The article indicated Aztec had ties with a funeral home and a local hospital and was improperly disposing of asbestos and bio-hazardous material in Big Wheel landfill, owned by Aztec. [redacted] said his office did not have an open investigation against Aztec because the article's journalist had not produced the sources of information. [redacted] related [redacted] EPA-CID, had more detailed information concerning Aztec.

INSIDER - MAGAZINE

3. On August 14, 2003, [redacted] contacted [redacted] to discuss Aztec. [redacted] stated Aztec and Big Wheel landfill were owned by the same person, [redacted] and were the subjects of numerous allegations. [redacted] provided [redacted] with a FDEP report of Aztec and Big Wheel. On October 21, 2002, Bay County Solid Waste Code Enforcement Officer, Panama City, FL, observed heavy equipment running over non-friable asbestos material, making it friable asbestos. However, Big Wheel is not certified to handle friable asbestos. On October 24, 2002, FDEP, inspected Big Wheel and identified a significant amount of 1/4 inch to 3 inch pieces of asbestos containing material exposed in the landfill's non-friable asbestos area. In addition, [redacted] faxed [redacted] a June 2003 article in the Emerald Coast Insider. The article mentioned Aztec crushed asbestos to compact it for improved disposal in the landfill, which caused asbestos to become airborne. [redacted] stated [redacted] was an excellent source of information regarding Aztec and Big Wheel. [redacted] related EPA-CID was very interested in an investigation of Aztec. On September 8, 2003, [redacted] opened a joint investigation of Aztec with AFOSI acting as the lead agency.

4. On August 19, 2003, a check of the following Bldg 90333 Aztec employees in 16th Security Force Squadron (SFS) Pass and Identification's, HFLD, FL database was performed:

None of the individuals appeared in the database, and it was determined the only way for these individuals to enter HFLD, FL was through temporary base passes. Consequently, no biographical information was available for these individuals.

5. On August 27, 2003, [redacted] contacted AUSA [redacted] Florida Northern Federal Judicial District, Pensacola, FL regarding the Aztec investigation. AUSA [redacted] stated the investigation sounded like a case the US Attorney's Office would accept. However, AUSA [redacted] requested [redacted] and [redacted] send him a case synopsis, and he would forward it to his supervisor, [redacted] Register, Florida Northern Federal Judicial District, Pensacola, FL. On September 16, 2003, [redacted] provided AUSA Swaim with a case synopsis. On September 17, 2003, AUSA [redacted] reviewed the synopsis and requested answers to several questions before he sent it to MAUSA Register for case declination or acceptance. On September 18, 2003, [redacted] and [redacted] supplied AUSA [redacted] with answers to his questions. On October 17, 2003, MAUSA Register assigned the Aztec case to AUSA [redacted] Senior Litigation Counsel, Florida Northern Federal Judicial District, Pensacola, FL.

picture, and he was extremely certain

was not residing at this

14. On October 23, 2003, [redacted] coordinated with [redacted] FDEP Environmental Coordinator, Tallahassee, FL. [redacted] stated Aztec was performing construction and demolition of Bldg 1142, TAFB, FL, from October 15, 2003 to November 30, 2003. [redacted] emphasized no asbestos work was being performed on Bldg 1142. In addition, the TAFB project was Aztec's only current Federal project in Florida.

15. On October 31, 2003, AFOSI met with the JTTF regarding the Aztec case. [redacted] delineated three major areas to focus investigative efforts: Bldg 90333, HFLD, FL witness interviews; JTTF illegal alien initiative; and a search warrant of Aztec's corporate office. It was determined AFOSI and EPA-CID would pursue witness interviews of Aztec employees from the Bldg 90333, HFLD, FL asbestos project. [redacted] and [redacted] would continue to provide the JTTF with all Aztec employee information to create a large database of information to identify trends in Aztec's use of illegal aliens and false SSNs. The JTTF would use the information to surveil Aztec project sites and residences. Ultimately, the JTTF planned to perform a major arrest of Aztec employees who were undocumented in the U.S. AFOSI planned to be involved with interviewing Aztec employees after the JTTF arrests them. The final major investigative activity involved a search warrant of Aztec's corporate office. The search warrant would encompass seizing Aztec's personnel records, to include employee withholdings and distributions, employee applications, and I-9 Employee Verifications. All three major investigative areas would be synched together to not compromise any investigative activities.

16. On November 3, 2003, [redacted] provided a verbal update on the Aztec case to [redacted] determined [redacted] was doing a good job with the case, and there were no apparent investigative steps missing.

17. On November 20, 2003, AFOSI met with the JTTF regarding the Aztec case. The following issues were discussed. [redacted] U.S. Attorney's Office, provided the group with updated intelligence analysis of Aztec. [redacted] identified each Aztec employees' work history by tax quarter. In addition, [redacted] planned to run all Aztec employee SSNs through the SSA-OIG for a valid certification. While [redacted] continues with intelligence analysis, other JTTF members would surveil Aztec employees using false SSNs. After SSA-OIG certification was completed, an affidavit would be submitted to a U.S. Magistrate to search Aztec's corporate personnel records.

18. On January 12, 2004, Senior Trial Attorney [redacted] DOJ-ECS, Washington D.C., contacted [redacted] and advised he was assisting AUSA [redacted] with the case, specifically focusing on asbestos violations.

19. On February 6, 2004, AFOSI requested Defense Contract Audit Agency's (DCAA) assistance with this case. On February 10, 2004, DCAA opened case file no. 1101-2004R48600006, and they assigned [redacted] Senior Auditor, to assist with the investigation.

20. On February 13, 2004 [redacted] and GS-12 [redacted] reviewed costs associated with the Bldg 90346, HFLD, FL asbestos abatement project. 16 CONS awarded the Bldg 90346 asbestos abatement contract, No. F08620-02-M-7010, to Aztec. In 2002, HFLD, FL authorized payment of \$15,000 to Aztec for the asbestos abatement of Bldg 90346.

21. On June 28, 2004, a review of [redacted] documents relating to records checks of the Central Index System (CIS), Deported Alien Control System (DACS), and Identification and Enforcement database was performed. On June 28, 2004 [redacted] AFOSI, contacted [redacted] and requested records checks of twenty-six (26) Aztec employee's names found on a hand-written note above [redacted] Aztec office Worker, desk. Of the 26 names listed on [redacted] note, seven (7) names were identified as individuals previously deported for illegally entering the U.S.

nineteen (19) names were not listed in CIS and DACS so [redacted] and [redacted] The remaining [redacted] could not ascertain their legal status in the U.S.

22. On June 29, 2004, [redacted] was unable to provide specific information involving the oil/water separator contract held by Aztec. [redacted] conducted a review of the contract folder and found it did not contain documentation pertaining to waste disposal facilities used by Aztec to dispose oil and grease collected from TAFB, FL. In addition, [redacted] advised there was no record found of [redacted]

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surveillances or progress meetings on file. believed the contract did not require strict quality control because it was under \$100,000. found a filed letter that stated Port St. Joe Wastewater Treatment Plant authorized Aztec to dump septic waste at their facility. However, the authorization strictly prohibited the dumping of grease trap waste.

Briefs

1. On August 19, 2003, on the details of the Aztec case. Although the base does not have sovereign immunity in environmental cases. believed the base should not be held liable for the actions of Aztec as long as immediate and corrective remedies were taken to ensure the safety and well-being of base members.

2. On August 21, 2003, was briefed on the Aztec investigation. Also present at the meeting were and emphasized base members' health and safety was his primary concern, and he requested 16th Bioenvironmental Engineering perform air monitoring of Bldg 90333, HFLD, FL to ensure it was safe for base personnel to occupy.

3. On October 29, 2003, AUSA was briefed on the current status of the Aztec case. previously informed the JTTF of Aztec's history of using employees with false SSN to perform asbestos abatement on military bases. Thus, AUSA combined the JTTF initiative to target AZTEC for using undocumented workers on DoD bases and the Bldg 90333, HFLD, FL asbestos violations into one case against Aztec. AUSA determined a historical search of Aztec false documents was the strongest aspect of the case. AUSA requested the past three years of Aztec employee names, associated projects, and their SSNs. AUSA requested documentation from the SSA-OIG certifying which AZTEC employees used false SSNs. AUSA requested and provide further information regarding asbestos violations obtained from Bldg 90333, HFLD witness interviews. AUSA believed could be material witnesses for the case. AUSA asked to prepare an affidavit to formally request these individuals be transferred from custody to DOJ custody. AUSA requested the case agents look into tax violations because of the high number of invalid SSNs. AUSA felt the case could culminate with a search warrant of Aztec's corporate office, specifically focusing on Aztec personnel records.

4. On October 30, 2003, was briefed on the Aztec case. stated Aztec had at least two upcoming asbestos abatement projects on HFLD, FL. said the base could debar Aztec if AFOSI supplied substantive criminal information against Aztec. and AFOSI agreed the base must monitor Aztec very closely until they were suspended or debarred. If Aztec failed to perform adequately, a new asbestos abatement contractor would immediately be sought.

5. On November 12, 2003, was briefed on the current status of the investigation. provided with a copy of the updated investigative plan, which included future investigative steps/operations. was satisfied with the current investigation, but emphasized the USAF's interest should revolve around the issues on HFLD, FL, specifically environmental violations and fraudulent documentation.

6. On November 21, 2003, was briefed on the Aztec case. stated HFLD, FL could temporarily suspend Aztec from doing work on base. The standard for suspension is adequate information of wrongdoing, which a Federal indictment clearly fulfilled. The suspension would affect Aztec on all Federal executive government projects. Once AFOSI finished its investigation, the Report of Investigation would be forwarded to a Debarment Official at the Secretary of the Air Force, General Counsel, Remedies (SAF/GCR), Washington, D.C. This person is an objective party not directly affiliated with HFLD, FL who would determine whether Aztec should be placed on a Federal government debarment list for at least three years. emphasized specific Aztec employees should be listed as Subjects to ensure they are also placed on the debarment list.

7. On June 10, 2004, coordinated with to finalize the debarment memorandum for the SAF/GCR. provided investigative information to place the following organizations and individuals on the debarment memorandum: Aztec Environmental, Inc, Big

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Former Aztec Employee

Home Address: [REDACTED]

Home Telephone: [REDACTED]

can testify Aztec employed several illegal aliens. Many of these illegal aliens were relatives of Aztec Supervisor. Aztec illegal aliens had fictitious identification cards and occasionally disappeared for up to fourteen (14) days to obtain new identification cards. said the alien identification cards were "obviously fake" because it looked like they were made with a typewriter and did not look authentic. Illegal aliens were "switched out" and hid under the seats of a company van to access military installations. overheard [military installations]." Aztec President, tell Aztec Supervisor, to "do whatever it takes to get them on aliens because used to house the illegal aliens and other employees. knew Aztec hired illegal for the illegal aliens. met with (LNU), Aztec office worker, about obtaining U.S. citizenship

Can testify that a created "adjusted" time sheets to reflect employees and drivers working no more than eight-hour days. Any time beyond eight hours, paid employees "under the table" with "per diem" checks. made shred all original and "adjusted" timesheets in case the IRS or Florida Department of Transportation (DOT) audited Aztec. told that adjusting the time sheets was against the law. When confronted about illegally "adjusting" employee timesheets, replied, "It's my company." quit working for Aztec the first time because of "personal problems." quit working for Aztec the second time because she did not want to be a part of any illegal activity.

Can testify Aztec illegally removed and disposed of grease from grease traps on TAFB, FL by using a permit authorized to pump water overflow drainage. Aztec was denied Florida State permits to service grease traps because Aztec lacked proper certifications. pumped grease from the traps into a truck containing raw sewage and disposed of it at a facility on Industrial Drive, Panama City, FL. The facility denied further attempts to dump the grease because it was mixed with raw sewage. The raw sewage/grease mixture was also dumped in Big Wheel landfill and an additional location in Port St Joe, FL. The location in Port St. Joe accepted the mixture once and would only accept cash payment. knew Aztec dumped TAFB, FL sludge illegally because she heard and argue about dumping the sludge illegally. could not recall the specifics of the argument, but she knew they mentioned illegal disposal. Later, told that illegally accepted mixtures of sludge and sewage at Big Wheel landfill. only wrote a check to Gulf Coast Grease Corp, Industrial Drive, Panama City, FL one-time to dispose grease and sewage mixture.

Exhibit 46: Written interview record of

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Aztec Truck Driver

Home Address: [REDACTED]

Home Telephone: [REDACTED]

[REDACTED] can testify he disposed of the oil/water separator waste collected from TAFB, FL at the Big Wheel compacting/transfer station located at Port St. Joe, FL. [REDACTED] stated [REDACTED] told him to dispose of the waste at Port St Joe. [REDACTED] stated he began to properly dispose of grease trap and oil waste after federal agents searched Aztec's main office on April 7, 2004.

Exhibit 23: Written interview record of

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