

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
BOARD OF CONTRACT APPEALS  
WASHINGTON, D. C.

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In the Matter of:

EDWARD M. ALBA  
and  
EDWARD M. ALBA &  
ASSOCIATES, INC.,

Appellants

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HUDBCA No. 83-820-D39  
(Activity Docket  
No. 83-897-DB)

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For the Government

DETERMINATION

Statement of the Case

By letter dated July 21, 1983, Edward M. Alba was notified by the U. S. Department of Housing and Urban Development that it intended to debar him and his affiliate, Edward M. Alba & Associates, Inc., from participation in all Departmental programs for a period of three years. The proposed debarment was based on the conviction of Edward M. Alba for conspiracy to defraud the United States, in violation of 18 U.S.C. §371. Both Alba and his affiliate were temporarily suspended pursuant to 24 C.F.R. §24.13(c) pending determination of debarment.

A timely request was made on behalf of Edward M. Alba and Edward M. Alba & Associates, Inc., Appellants, for the opportunity to submit written briefs and documentary evidence

pursuant to 24 C.F.R. §24.5(c)(2) in opposition to their proposed debarment. This determination is based on written submissions filed by both Appellants and the Government.

### Findings of Fact

1. Edward M. Alba ("Alba") is President of Edward M. Alba & Associates, Inc. ("EMAA"), an electrical engineering corporation located in New Orleans, Louisiana (Govt. Exh. C).

2. On November 1, 1979, EMAA, through Alba, entered into a contract with the Housing Authority of New Orleans ("HANO"), a local government entity, for the design of electrical renovations at the Iberville Housing Complex. The contract was completely funded by the U. S. Department of Housing and Urban Development through the Community Development Block Grant Program. (Govt. Exh. C.)

3. Thomas Holen, a HANO employee until April 21, 1980, was the contracting officer for the contract and HANO's Acting Technical Supervisor (Govt. Exh. C).

4. Pursuant to the contract, EMAA was required to perform inspections of each of the 1,200 units in the complex. Alba was concerned for the safety of his employees in performing such inspections. Holen offered to perform or obtain the services of an inspector for Alba, and Alba agreed to pay Holen for those services. Holen, in turn, hired another HANO employee to perform the inspections and split the payment from Alba with that employee. (Govt. Exh. C.)

5. There is no evidence that Alba was aware that Holen subcontracted with another HANO employee to perform the inspections for Alba.

6. EMAA's contract with HANO provided that no local official or employee of a local government entity could be given any interest in, or receive any proceeds from, the contract (App. Exhs. E at 13, I).

7. On April 12, 1981, Alba was indicted by a Federal Grand Jury for the Eastern District of Louisiana, charging him with conspiracy to defraud an agency of the United States Government, in violation of 18 U.S.C. §371, based upon his arrangement with Holen (Govt. Exh. C).

8. On May 11, 1983, Alba entered a plea of guilty to the charge of conspiracy to defraud. The presiding judge questioned Alba at length about the plea and the facts underlying the case before imposing sentence. A Judgment of Conviction was entered, imposing a suspended sentence, five years probation, a fine of

\$6,000, and an order to perform supervised community service for one year. (Govt. Exh. B; App. Exh. E.)

### Discussion

In order to assure the Government that it only does business with responsible parties, HUD is authorized to debar contractors and grantees it finds to be lacking in present responsibility. 24 C.F.R. §24.0. As a party to a contract with a city Housing Authority for which payment was made with HUD funds, EMAA is a "contractor or grantee" within the meaning of the regulation applicable to debarment. 24 C.F.R. §24.4(f). Edward Alba, as president of EMAA, was likewise a "contractor or grantee" because he, too, received HUD funds indirectly through that same contract. Ibid. Furthermore, EMAA is an affiliate of Alba because, as its president, Alba controlled and represented the corporation in the very actions for which he was convicted. 24 C.F.R. §§24.4(d); 24.14(b)(3).

Regulatory causes for debarment of HUD contractors and grantees are enumerated at 24 C.F.R. §24.6(a). Among them are conviction for a criminal offense in connection with the performance of a public contract, 24 C.F.R. §24.6(a)(1), and conviction for "any other offense indicating a lack of business integrity and honesty, which seriously and directly affects the question of present responsibility." 24 C.F.R. §24.6(a)(9). Alba was convicted for conspiring to defraud HUD in the performance of a HUD-financed contract. The record firmly establishes cause for debarment pursuant to 24 C.F.R. §24.6(a)(1) and (9).

The establishment of a cause for debarment does not mandate that the sanction be applied. 24 C.F.R. §24.6(b). However, recognizing that a debarment action is to be taken in the best interests of the Government after consideration of all mitigating circumstances, 24 C.F.R. §24.6(b), I find that the facts of this case require the debarment of Appellants. Alba engaged and paid for the services of a public employee in express violation of the terms of his contract. That employee was no mere acquaintance but the contracting officer responsible for making all of the administrative decisions related to the contract, including evaluations of performance and approvals of payment requests. While the record is clear that the contracting officer proposed the prohibited subcontracting arrangement, Alba willingly entered into it in clear derogation of his contract. The conflict of interest and opportunity for corruption inherent in that arrangement should have been obvious to Alba.

The fact that the Government did not suffer a financial loss or that the work itself was acceptable is beside the point. The arms-length contract relationship that is at the heart of public procurement was absolutely compromised by the arrangement between

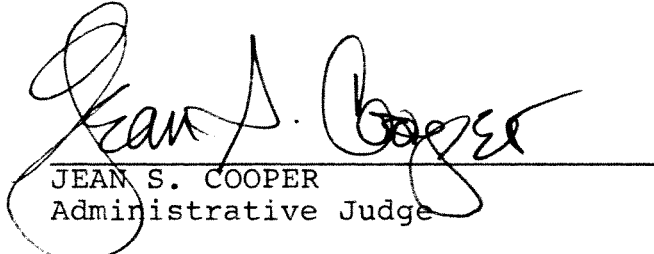
Alba and the contracting officer. Alba showed a serious lack of responsibility as a Government contractor in entering into that arrangement. He appears from the record to show no present understanding of why his conduct was not responsible, other than that it was "technically" against the law. A finding of present lack of responsibility may be inferred from past acts.

Schlesinger v. Gates, 248 F. 2d 111 (D.C. Cir. 1957). I can find no solace from the record that Alba is presently responsible, based on his past acts and lack of understanding about why those acts are prohibited.

I find that a three-year period of non-participation in Departmental programs is warranted to protect the public interest. Appellants have been temporarily suspended since July 21, 1983, and credit will be given for the suspension in imposing the period of debarment. Appellants have made a written offer "in lieu of debarment" to voluntarily never do business with HUD again. I have no jurisdiction to consider such an offer and reject it on that basis.

#### Conclusion

For the foregoing reasons, EDWARD M. ALBA and EDWARD M. ALBA & ASSOCIATES, INC. shall be debarred from this date up to and including July 20, 1986.

  
JEAN S. COOPER  
Administrative Judge

Issued at Washington, D. C.  
March 30, 1984