



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

December 20, 2013

VIA CERTIFIED MAIL – RETURN RECEIPT

Microtechnologies, LLC
8330 Boone Blvd.
Suite 600
Vienna, VA 22182-2624

Anthony Jimenez
1107 Robindale Drive
Great Falls, VA 22066-1800

Re: Notice of Proposed Debarment

Dear Mr. Jimenez:

I am the Suspension and Debarment Official at the U.S. Small Business Administration (SBA). SBA is proposing to debar Microtechnologies, LLC d/b/a MicroTech (MicroTech) (Duns: 145454182, and 078468018), and Mr. Anthony Jimenez from future contracting with any agency of the Executive Branch of the United States Government under Section 9.406 of the Federal Acquisition Regulation (FAR), Title 48 of the Code of Federal Regulations (CFR). This letter notifies you of your opportunity to submit a response for my consideration as the SBA's Suspension and Debarment Official.

I am proposing the debarment of MicroTech, and Mr. Jimenez based on information showing that Mr. Jimenez and MicroTech submitted false and misleading statements to the SBA in connection with MicroTech's application to participate in SBA's 8(a) Business Development (BD) Program. As the President/CEO and Managing Member of MicroTech, Mr. Jimenez is responsible for and is assumed to be aware of information submitted to SBA on behalf of MicroTech, and therefore the conduct of MicroTech in submitting false and/or misleading information to SBA may be properly imputed to Mr. Jimenez. Mr. Jimenez is being proposed for debarment based on his own conduct and as an affiliate¹ of MicroTech.

¹ Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment. FAR 9.403

SBA's 8(a) BD program provides companies meeting the qualifications for program participation additional opportunities to obtain Government contracts. The program provides these opportunities in order to assist in the overall business development of 8(a) participant firms. 8(a) BD participants are eligible for both set-aside and sole source contracts (collectively 8(a) BD contracts). 13 C.F.R. § 124.501(b).

8(a) BD participants, with exceptions not relevant to this matter, must be managed on a full-time basis by one or more disadvantaged individuals. 13 C.F.R. § 124.106(a)(1). SBA may deny admission to the 8(a) BD program if SBA learns that an applicant submitted false information during the application process, notwithstanding whether that information was material. 13 C.F.R. § 124.108(a)(5).

SBA may debar a person or business for any reason listed in FAR § 9.406-2, when there is a preponderance of evidence to suspect a person (including a corporation) has committed an offense in connection with the performance of a public contract. According to the FAR:

The debarring official may debar –

(a) A contractor for a conviction of or civil judgment for –

(1) Commission of fraud or a criminal offense in connection with

(i) Obtaining;

(ii) Attempting to obtain; or

(iii) Performing a public contract or subcontract; . . .

(c) A contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

FAR § 9.406-2(a)(1) and (c).

SBA believes that MicroTech's present responsibility is questionable due to the false and misleading information contained in its 8(a) BD application. Mr. Jimenez submitted an application for SBA's 8(a) BD program on behalf of MicroTech in April 2005. On April 15, 2005 and May 4, 2005 SBA asked for additional documents and information from MicroTech and Mr. Jimenez regarding the relationships between MicroTech, its owners and officers, and two other firms, MicroLink, LLC (MicroLink), and GovWare, LLC (GovWare). The information shows that MicroTech's two minority equity holders, Mr. Timothy Wharton (Mr. Wharton), and Mr. David Truitt (Mr. Truitt) were the sole owners of MicroLink, as well as partial owners of GovWare.

SBA's request for information about GovWare, stated the following, "Explain the relationship if any, between Govware, LLC and Microtech, LLC." SBA also requested that Mr. Jimenez provide corporate documents for GovWare, as well as tax returns for the firm. In response to this request Mr. Jimenez and MicroTech provided GovWare's Operating Agreement, including recent changes and amendments, and the firm's recent tax returns. Mr. Jimenez and MicroTech also provided this statement:

Until January 1, 2005, Anthony Jimenez had controlling ownership in Govware,

LLC. In an effort to devote the entirety of his time to the management and running of MicroTech, LLC on January 1, 2005 Mr. Jimenez sold controlling interest of the company to James Hawkins. Mr. Jimenez currently owns 9 percent of GovWare, LL. There is no relationship between Govware, LLC and MicroTech, LLC. Mr. Jimenez is a passive investor in Govware, LLC.

A mere two years later in 2007, Mr. Jimenez, the passive investor, would formally retake control of GovWare, and in a letter from Mr. Timothy Wharton (also a managing member of GovWare as well as a member of MicroTech and MicroLink) would inform GovWare's members that "all or substantially all" of GovWare's assets would be sold to MicroTech, a firm that SBA had been told had "no relationship" with GovWare.

In 2007, MicroTech described its acquisition of GovWare's assets, which is the company that two years earlier Mr. Jimenez and MicroTech had assured SBA had "no relationship" to MicroTech, as follows:

On June 30, 2007, the Company [MicroTech] assumed all assets, liabilities and contract obligations of a company owned by the Company's members, GovWare, LLC (GovWare). The merger was between entities under "common control". Therefore, the assets and liabilities assumed were recorded at historical cost as if the companies were combined since inception in accordance with accounting principles generally accepted in the United States of America. Prior to June 30, 2007, the Company [MicroTech] and GovWare, in the normal course of business, entered into certain transactions for the purchase and sale of services. These intercompany transactions have been eliminated in the accompanying financial statements.

In statements to SBA in 2005, Mr. Jimenez maintained that he was merely a passive investor in GovWare and that the two companies had no relationship. In 2007, the firms were described as under common control and as having intercompany contracts and transactions that relate back to the inception of the firms. The two statements are not compatible. The 2005 statement had the effect of misleading SBA about the true nature of the relationship and connections between the two firms and their officers and owners. SBA was led to believe by Mr. Jimenez that the two firms would be separate, and that he and MicroTech would have "no relationship" with the firm, and this was asserted along with his statement of being just a "passive" investor.

How is it that Mr. Jimenez, and his partners in MicroTech (Mr. David Truitt and Mr. Timothy Wharton) were able to own and control GovWare in 2007 when Mr. Jimenez and MicroTech previously told SBA that Mr. Jimenez and his MicroTech partners were just passive investors and that the businesses were completely separate and had "no business relationships"? It appears that the answer is that Mr. Jimenez and MicroTech purposefully misled SBA about the relationship in 2005 and also withheld corporate documents from SBA. Specifically while Mr. Jimenez and MicroTech did provide GovWare's Operating Agreement, including amendments and updates, they failed to provide SBA with a May 31, 2005² Option Agreement between the

² MicroTech was not admitted to 8(a) program until June 10, 2005 and its application was still under review at the time the option agreement was dated. Further, even if the option agreement was dated after MicroTech had been admitted the program, the firm would have had an affirmative duty to provide SBA with a copy. "The concern must

members of GovWare. That Option Agreement was never disclosed to SBA during the review of MicroTech's application, or after the firm was accepted into the program in June 2005. The Option Agreement allowed Mr. Jimenez to "repurchase" Mr. Hawkins shares at any time for a few hundred dollars. In 2007, Mr. Jimenez exercised those options, and he and his partners then transferred all the assets of GovWare to the company that Mr. Jimenez had certified to SBA that it had no business relationships with, MicroTech. The existence of options is extremely important to SBA in evaluating ownership and control, as well as in determining affiliation for size purposes. Pursuant to SBA's regulations for its various socio-economic programs, including the 8(a) BD program, SBA will generally treat stock options as exercised in determining who controls the firm under review. *See* 13 C.F.R. § 121.103(d), § 124.105(e); § 125.9(e); § 126.201(a); and § 127.201(f). Where another individual or business entity has the authority to exercise options or convert debentures to voting stock in a firm that would affect the control of the firm (e.g., where an individual would own more than 50% of a firm after options are exercised), SBA will consider the options as already exercised and that individual or business entity will be deemed to control the firm. The rules are in place to cover the exact situation that occurred with Mr. Jimenez seizing control of GovWare. Reported equity holders and their percentages of ownership are illusory if there are options outstanding that can be exercised at any time and effectively change the control of a firm. In this case, Mr. Jimenez held options for GovWare that would give him majority ownership and control of the firm. These options were never disclosed to SBA. Mr. Jimenez and MicroTech misled SBA about the extent and nature of the relationship between himself, MicroTech, Mr. Truitt, Mr. Wharton, and GovWare.

In addition, Mr. Jimenez, Mr. Truitt and Mr. Wharton were deemed to be the "Initial Members" of GovWare. Pursuant to GovWare's Operating Agreement, certain rights were granted exclusively to the Initial Members. Thus, even after GovWare added Mr. James Hawkins as an additional Member, Mr. Jimenez, Mr. Truitt and Mr. Wharton continued to control GovWare regarding significant actions. When Mr. Hawkins later attempted to dispute actions that eliminated his ownership interest in GovWare, he was told that as an "additional member" of GovWare, he did not have the authority to do so. Specifically, he was told that the "Right of First Refusal to Purchase Company Assets" was "solely and expressly granted to the Initial Members." *See* July 3, 2007 Letter from Patton Boggs LLP. As such, it appears that Mr. Jimenez continued to possess significant control over GovWare even after his supposed sale of his controlling interest to Mr. Hawkins in January 2005, contrary to his assertions in MicroTech's 8(a) application.

During the application process, SBA also requested information from MicroTech regarding the relationship between itself, its owners and members, and the firm MicroLink and that firm's owners and officers. In response to SBA's request, MicroTech provided the following response:

Anthony Jimenez is the majority owner of Micro Tech, LLC, David Truitt is a minority owner in Micro Tech, LLC. Although David Truitt holds ownership in the firm, he does not hold any position within the firm. Additionally, he receives no regular salary from Micro Tech, LLC. He is not in any managerial capacity

inform SBA in writing of any changes in circumstances which would adversely affect its program eligibility, especially economic disadvantage and ownership and control." 13 C.F.R. § 124.112 (2005).

within the company. David Truitt is the majority shareholder of Micro Link, LLC in the capacity of CEO and President.

There is no link, relationship, or partnership of **any kind** between Micro Tech, LLC and Micro Link, LLC. Micro Tech, LLC operates in an entirely different NAICS code than Micro Link, LLC. The NAICS code that Micro Tech is operating under is 517212. Micro Link is operating under NAICS code 541511. Micro Tech, LLC is neither a vendor to nor a customer of Micro Link, LLC. **No business has ever** been conducted between these two companies. [Emphasis added.]

This is a very clear statement on the part of MicroTech that it does not do any business with MicroLink, and, given the different NAICS codes that the two companies operate in, that there is no intention of doing business together in the future. The clear intent of this statement is to lead SBA to believe that no business relationship exists now, and that no business relationship will exist in the future. That is the clear intent of the statement, and that is the meaning that SBA applied to the statement. However this statement appears to be a complete fabrication, and the future conduct of all parties now being proposed for debarment sheds light on their original motives.

MicroTech's actions after its acceptance into the 8(a) BD program paint a much different picture of the relationship between the companies and between Mr. Jimenez, Mr. Truitt, and Mr. Wharton than the one presented by the firms and Mr. Jimenez at the time of MicroTech's application. Rather than having no links, no relationships, no partnerships of any kind, and no business together ever, MicroTech reported substantial payments to MicroLink³. In 2005, MicroTech recorded \$35,924 in rent, and \$258,780 for "subcontractor, commissions, accounting, and consulting expenses" to MicroLink. In 2006, MicroTech recorded \$177,626 for rent and an additional \$120,658 for "subcontractor, commissions, accounting, and consulting expenses" to MicroLink. In 2007, MicroTech recorded \$182,630 for rent and an additional \$622,618 for "subcontractor, commissions, accounting, and consulting expenses" to MicroLink. In 2008, MicroTech recorded \$353,450 for rent and an additional \$529,003 for "subcontractor, commissions, accounting, and consulting expenses" to MicroLink.

MicroTech and MicroLink Transactions 2005-2008			
	Rent	Subcontractor, commissions, accounting, and consulting expenses	Total
2005	\$35,924	\$258,780	\$296,709
2006	\$177,626	\$120,658	\$300,290
2007	\$182,630	\$622,618	\$596,999
2008	\$353,450	\$529,003	\$884,461
<i>Total</i>	\$749,630	\$1,531,059	\$2,280,689

³ The records being referenced do not name MicroLink, but rather state a "company owned by two of its members." With knowledge from outside those documents I am assuming this is a reference to MicroLink and not to another firm not disclosed to SBA.

In the year in which MicroTech applied to the 8(a) BD program and the following three years, MicroTech had \$749,630 recorded in rent payments and \$1,531,059 recorded in “subcontractor, commissions, accounting, and consulting expenses”. Mr. Jimenez’s and MicroTech’s assertion that the two firms were separate and had no relationships is not born out by their subsequent conduct. \$2,280,689 is not a small or de minimis amount of business between two firms and is a far cry from the, “no link, relationship, or partnership of any kind between Micro Tech, LLC and Micro Link, LLC” statement made to SBA.

Further, MicroTech’s application and response does not state that Mr. Timothy Wharton, a member of MicroTech since its inception in 2004, also owns 20% of MicroLink, is member of both companies, and is an officer of MicroLink. Further with respect to MicroLink, LLC and Mr. Wharton, SBA’s application for the 8(a) BD program asks the following the question, “Does any owner, director, officer or management member have an ownership interest in any other firm?” MicroTech’s application states that the answer to that question is “yes”, but only provides the name of Mr. David Truitt, and not Mr. Timothy Wharton.

The response also states that, “Although David Truitt holds ownership in the firm, he does not hold any position within the firm.” Whether this was true at the time of MicroTech’s application is debatable⁴, but Mr. Truitt either officially or unofficially held officer titles and positions at MicroTech during the firm’s participation in the 8(a) BD Program. SBA was never informed at the time that Mr. Truitt’s role had changed, and that he had been made an officer of the firm as required by SBA regulations.

The record also shows that MicroTech may not have been a small business concern for many of the contracts it was awarded between 2005 and 2010⁵ due to the affiliation between MicroTech and MicroLink. See 13 C.F.R. § 121.103. The record shows a deep and thorough connection between the two firms, its management and its owners. The firms had common ownership and management (Mr. Truitt has been shown to be listed as an officer of both firms), shared resources and were co-located at the same location. Pursuant to SBA’s regulations, “SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.” 13 C.F.R. § 121.103(a)(2). While no one factor may be dispositive, SBA regulations clearly state that, “[i]n determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.” § 121.103(a)(5). Although SBA did conduct several size determinations of the firm during this time period in response to protests relating to specific contracts, the issue of affiliation was not raised by the protestor and was not determined by SBA. The issue of affiliation was raised in a size determination in 2012, but at that time Mr. Wharton and Mr. Truitt no longer owned MicroLink, and Mr. Truitt was no longer working for MicroLink. In 2012, Mr. Truitt was working full time for MicroTech. However, prior to 2010 there are substantial links between the

⁴ It appears that Mr. Truitt may have always held an officer title and position within the firm, but MicroTech did not view this as an officer position because Mr. Jimenez had ultimate control. At the least, SBA believes that further clarification was required because common sense would lead to a conclusion that a person with a title and a position as an officer is an officer.

⁵ In 2010, MicroLink was sold to another business.

two companies, and clearly Mr. Truitt and Mr. Wharton owned significant interests in both firms, as well as GovWare. Rather than operating as two independent entities, the record appears to show a very close relationship between all parties, and separate entities owned by common individuals operating together both formally and informally. For example, when Mr. Truitt sold MicroLink, he did not go to work for another firm; he continued to work as an officer for MicroTech.

There is also an issue regarding the total amount of compensation provided by MicroTech to Mr. Jimenez and Mr. Truitt. SBA's 8(a) BD regulations require that Mr. Jimenez be the highest compensated individual in the 8(a) participant firm. *See* 13 C.F.R. § 124.106(e)(3). Records show that Mr. Truitt and Mr. Jimenez were both paid dividends by MicroTech for most years. For example, in 2007 MicroTech paid Mr. Jimenez \$175,333 and Mr. Truitt \$126,151 in dividends. According to records, neither drew a salary that year. However, records also show, as noted above, that MicroLink received \$596,999 (\$182,630 for rent and \$622,618 for subcontractor, commissions, accounting, and consulting expenses) from MicroTech that year. As a principal of MicroLink, Mr. Truitt certainly received benefits from the transactions between MicroTech and MicroLink. In order for Mr. Jimenez to be the highest compensated individual in MicroTech, it is conceivable that MicroTech paid certain specified amounts to Mr. Truitt indirectly through MicroLink as "consulting services." Further, any rent that was paid by MicroTech to MicroLink that exceeded the fair market rate for MicroTech's space could also be considered as compensation paid by MicroTech to Mr. Truitt. Given the amount of money transferred between the two firms over the years, there are issues about the compensation of Mr. Jimenez relative to Mr. Truitt that needs further clarification.

Conclusion.

The proposed debarment is effective throughout the executive branch of the Federal Government and has the following consequences:

1. The names of the Microtechnologies, LLC d/b/a MicroTech (Duns: 145454182, and 078468018), and Mr. Anthony Jimenez will be published in the System for Award Management (SAM), where it will be noted that you are in an "Ineligible (Proceedings Pending)" status. SAM is available at <http://www.sam.gov>.
2. Microtechnologies, LLC d/b/a MicroTech (Duns: 145454182, and 078468018), and Mr. Anthony Jimenez are excluded from receiving contracts. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with you unless the agency head determines that there is a compelling reason for such action.
3. Microtechnologies, LLC d/b/a MicroTech (Duns: 145454182, and 078468018), and Mr. Anthony Jimenez are excluded from conducting business with the Government as agent or representative of other contractors.
4. Microtechnologies, LLC d/b/a MicroTech (Duns: 145454182, and 078468018), and Mr. Anthony Jimenez are excluded from acting as an individual surety.

5. Microtechnologies, LLC d/b/a MicroTech (Duns: 145454182, and 078468018), and Mr. Anthony Jimenez are excluded from participating in a Federal agency transaction that is a covered transaction, or act as a principal of a person participating in a covered transaction. The term "covered transaction" is defined in 2 C.F.R. § 180.200.

If debarment is imposed, the limitations described above will continue to apply and Microtechnologies, LLC d/b/a MicroTech (Duns: 145454182, and 078468018), and Mr. Anthony Jimenez will be identified in SAM as "Ineligible (Proceedings Completed)." If imposed, debarment will be for a period commensurate with the seriousness of the cause.

Within 30 days of receipt of this Notice, you or a representative may submit either in person or in writing, or both, information and argument in opposition to the proposed debarment. If you designate a representative to respond, please notify me 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.

Your submission, if any, may include specific information that raises a genuine dispute over facts material to the proposed debarment. If it is found that the information or argument submitted raises a genuine dispute over material facts, fact-finding may be conducted to determine the disputed facts.

This proposed debarment proceeding has been initiated on the basis of the administrative record. A copy of the record, except for those materials protected from disclosure, will be furnished upon request. Any written information you submit will become a part of the administrative record. Information or argument presented orally will be considered to be part of the administrative record only to the extent such information and argument is submitted in written form. The determination whether to debar you 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 you during the period of proposed debarment.

Any communications regarding this matter should be directed to Christopher Clarke of my Office at 202-205-7307. Any written submission should be forwarded to him at U.S. Small Business Administration, 409 Third Street SW, Fifth Floor, Washington, DC 20416, with a copy by email to Christopher.clarke@sba.gov.

For your information, a copy of regulations relevant to your proposed debarment are enclosed, 48 C.F.R. subpart 9.4.

Sincerely,



John W. Klein
SBA Suspension and Debarment Official

Enclosures