UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF MISSION SUPPORT

# Memorandum of Debarment Decision

**NovaCor Consulting Group, LLC**
**EPA Case No. 22-1234-02**

## Procedural History

On August 25, 2022, the U.S. Environmental Protection Agency (EPA) Senior Debarring Official (SDO) issued a Notice of Suspension and Proposed Debarment (Notice) to NovaCor Consulting Group, LLC (Respondent), together with a copy of an August 10, 2022 Action Referral Memorandum (ARM) (the *Sanchez* ARM) and an August 15, 2022 ARM (the *Lopez* ARM). The *Sanchez* ARM and the *Lopez* ARM were submitted to the SDO by the EPA Suspension and Debarment Division (SDD).[1]

On September 26, 2022, Respondent submitted a letter to the SDO requesting clarification regarding the deadline to contest the Notice and via phone requested an extension to the deadline.[2] On September 26, 2022, the Suspension and Debarment Hearing Officer (SDHO) acknowledged the letter, approved an extension to October 26, 2022 to contest the Notice, and notified Respondent that in addition to written submissions, if at any time Respondent would like to schedule a meeting with the SDO, to please let the SDHO know. On October 22, 2022, Respondent requested a seven-day extension to contest, which the SDHO approved and provided the new contest deadline of November 2, 2022 to Respondent.

On November 2, 2022, Respondent submitted a timely written contest of the Notice (First Response and accompanying Exhibits A-G). In its First Response, Respondent reserved the right to request to meet with the SDO at a Presentation of Matters in Opposition (PMIO) and noted Respondent "will soon contact the Suspension and Debarment Hearing Officer to make appropriate arrangements." *See First Response* at 14. Counsel for Respondent and the SDHO discussed Respondent's right to request a PMIO during a telephone call on November 14, 2022, as documented in email correspondence from that same day. *See Nov. 14, 2022, email from counsel to SDHO* (acknowledging that Respondent could request a PMIO at a later date if it chose to do so).[3]

On November 29, 2022, SDD submitted a reply (First SDD Reply and accompanying Exhibits 11-16). The SDHO acknowledged receipt of the First SDD Reply and provided Respondent with an opportunity to respond by December 20, 2022. On December 15, 2022, Respondent requested an extension to

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[1] The Suspension and Debarment Division was represented in this matter by Angelia Blackwell, Suspension and Debarment Division Counsel.

[2] Respondent is represented in this matter by Grant B. Osborne and Avery J. Locklear, Attorneys, Ward and Smith, P.A.

[3] Specifically, with regards to a request for a PMIO, Counsel for Respondent stated: "I understand that we can properly and timely request a "Presentation of Matters in Opposition" ("PMIO") conference with the Suspension and Debarment Official **after** we have received the response of the Suspension and Debarment Division Counsel, and that such a conference (which will be transcribed) can be held by video at a time that works for all concerned. I presume that we will request such a conference and will be in touch after we have received the Suspension and Debarment Division Counsel's response."

December 28, 2022, which the SDHO approved. On December 28, 2022, Respondent submitted a second response (Second Response and accompanying Exhibits H, I).

On January 10, 2023, SDD submitted a second reply (Second SDD Reply) and the SDHO provided Respondent with an opportunity to respond by January 31, 2023. On January 31, 2023, Respondent notified the SDHO that it intended to submit its third response on February 1, 2023, in order to include a notarized affidavit. The SDHO approved the deadline extension. On February 1, 2023, Respondent submitted its third response (Third Response and accompanying Exhibit J).

On February 3, 2023, SDD declined to submit a reply. On February 6, 2023, the SDHO requested that if Respondent chose to supplement the record to please notify the SDHO and submit any additional materials by February 17, 2023. Respondent did not respond and did not contact the SDHO to request a PMIO. On February 21, 2023, the SDHO notified the Respondent that because the SDO's office had not received further submission from Respondent or its representatives, that the SDHO intended to close the record on February 22, 2023. On February 22, 2023, the SDHO closed the record and set a decision date of April 7, 2023.

## Information in the Record

After carefully reviewing and considering all the evidence in this matter, including the Action Referral Memoranda and responses submitted by SDD, the Respondent's submissions, and all the related exhibits or attachments (collectively, the record), I find the record contains undisputed material facts sufficient to establish, by a preponderance of the evidence, cause to debar Respondent, including:

1. Respondent is an active limited liability company with its principal office at 258 Old Weaverville Road, Asheville, NC 28804. *SDD Exh. 4* (North Carolina Secretary of State Information); *First Response* at 1–2. Respondent currently "operates primarily as a business management consultant for ProCon Staffing, LLC, to which it provides business consulting and employee-management services. *First Response* at 2. On or about the timeframe of the misconduct in this matter, Respondent "employed approximately forty-seven (47) non-temporary employees." *Resp. Exh. J* (Third Affidavit of Donaciano Alegre) at 2.

2. In 2020, Respondent received a federal loan of approximately $438,000 from the U.S. Small Business Administration (SBA)'s Paycheck Protection Program (PPP), "the proceeds of which have been forgiven in full." *Sanchez ARM* at 3; *SDD Sanchez Exh. 5* (USASpending Report for NovaCor Consulting Group); *First Response* at 9, *Resp. Exh. A* at 1.

3. Between November 2017 and January 2019, Respondent conducted an asbestos worker training program. *First Response* at 2; *Resp. Exh. A* (First Affidavit of Donaciano Alegre) at 1. Respondent decided to "provide Asbestos Training so that it could provide its client, ProCon Staffing, LLC, with a reliable, qualified source of employees." *Resp. Exh. A* at 2. Approximately 211 students completed Respondent's Asbestos Training. *Resp. Exh. A* at 4.

4. Respondent employed Ana Yorling Rugama Sanchez (Sanchez) between October 2016 and January 2019. *First Response* at 3, 6; *Resp. Exh. A* at 2, 6. Sanchez "is the only person [Respondent] employed to teach Asbestos Training classes." *Resp. Exh. A* at 2.

5. Jose Carlos "Victor" Pena Lopez (Lopez) was "authorized to teach one Asbestos Training class for [Respondent]" and, as such, was "associated with [Respondent]" at the time of the misconduct, even though he was "never employed or paid by [Respondent]." *First Response* at 3, 7, 10–11; *Resp. Exh. A* at 2.

6. Respondent authorized Lopez to teach one Asbestos Training class because Sanchez "had previously cancelled at least one Asbestos Training class, was behind on rescheduling the class, and apparently didn't believe she would have time to teach the class in the near future." *Resp. Exh. A* at 2.

7. Respondent's Chief Operations Officer (COO), Donaciano Alegre (Alegre), was responsible for "oversight and management of [Respondent]'s asbestos worker training program" from approximately February of 2018 until January 2019. *Resp. Exh. H* (Second Affidavit of Donaciano Alegre) at 2. Alegre and Sanchez were the only Respondent's employees "involved in the Asbestos Training Program." *Second Response* at 3; *Resp. Exh. H* at 2.

8. Respondent "stopped providing Asbestos Abatement Training around January of 2019, for two reasons," one was that Sanchez "fled the country on or about January 2019" and the other was that "the North Carolina State Bureau of Investigation raided all of [Respondent]'s office locations, in Asheville, Charlotte, and Raleigh, on or about February 21, 2019, and seized all documents related to the certification program." *First Response* at 6; *Resp. Exh. A* at 6. Respondent "never heard from [Sanchez] again" after she fled the country. *First Response* at 13. Respondent "never associated itself with [Lopez]" again after the period of misconduct. *First Response* at 13.

9. On May 26, 2022, Sanchez was convicted on two counts of illegal certification of asbestos training, and for aiding and abetting the same, in violation of the Toxic Substances Control Act (15 U.S.C. § 2615(b)(1)) and 18 U.S.C. § 2. *SDD Sanchez Exh. 3* (Judgment). Specifically, Sanchez, in performance of her duties as an employee for Respondent, requested that Lopez sign false certificates of course completion for asbestos workers on June 9, 2018, and, on June 30, 2018, Sanchez signed Lopez's name as the instructor on certificates for completion of an asbestos abatement training refresher course for students Lopez did not instruct, that did not fulfill the required training, and for a course that did not take place in Raleigh, North Carolina. *Resp. Exh. B* (Sanchez Factual Basis) at 2. Sanchez then had the certificates submitted to regulators at the North Carolina Department of Health and Human Services (NCDHHS) to obtain asbestos worker licenses for the purported attendees. *Id*. As a result of Sanchez's actions on June 9, 2018 and June 30, 2018, she "knowingly and willfully" refused to comply with an Asbestos Hazard Emergency Response Act regulation causing one or more persons to be falsely certified as having completed asbestos abatement training. *Id*.

10. On May 26, 2022, Lopez was convicted on one count of illegal certification of asbestos training, and for aiding and abetting the same, in violation of the Toxic Substances Control Act (15 U.S.C. § 2615(b)(1)) and 18 U.S.C. § 2. *SDD Lopez Exh. 3* (Judgment). Specifically, Lopez, as an associate of Respondent and authorized by Respondent to conduct an asbestos abatement refresher training on June 9, 2018, "knowingly and intentionally signed false certificates of course completion for people who did not receive the required training on June 9, 2018." *SDD Lopez Exh. 2* (Lopez Factual Basis) at 2; *First Response* at 3, 7, 10; *Resp. Exh. A* at 3.

11. Respondent was never charged with a crime in connection with the falsification of records. However, on July 22, 2019, Respondent entered into a Settlement and Release Agreement with the NCDHHS to resolve a disputed penalty related to its Asbestos Training Program. *First Response* at 6; *Resp. Exh. G* (Settlement and Release Agreement). Under the terms of the Settlement and Release Agreement, Respondent agreed to pay $3,750.00 to NCDHHS and execute a Corrective Action Plan "in order to be and remain in compliance with requirements of the State of North Carolina's Asbestos Hazards Management Plan." *Resp. Exh. G* at 3, 7–8. The Corrective Action Plan was to "remain in full force and effect for a period of three (3) years from and after July 22, 2019." *Resp. Exh. G* at 3.

12. Respondent "terminated its Asbestos Abatement Training Program" in January of 2019. *First Response* at 10. "Currently, [Respondent]'s business involves minimal asbestos work." *Resp. Exh. J* at 1. Respondent "has not reinstituted the [Asbestos Abatement Training] Program or commenced any similar training program." *Resp. Exh. H* at 2.

## Discussion

### A. Background

Debarment is an administrative action taken by a federal agency's SDO to protect Federal procurement and nonprocurement program activities from individuals and entities that, because of waste, fraud, abuse, general misconduct, noncompliance, or poor performance, threaten the integrity of Federal procurement and nonprocurement activities. The purpose of debarment is to protect the public interest, not to punish respondents. 2 C.F.R. § 180.125.

Under the Nonprocurement Common Rule (NCR) at 2 C.F.R. part 180, the Government may take an exclusionary action against any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction. 2 C.F.R. § 180.150. The agency has the burden of establishing the bases or causes for debarment. 2 C.F.R. § 180.855. Even though a cause for debarment may exist, the SDO has discretion in determining whether to impose a debarment based on a consideration of the seriousness of the respondent's acts or omissions and the mitigating or aggravating factors. 2 C.F.R. § 180.845. Once the Government establishes a basis for debarment, the respondent has the burden to demonstrate to the satisfaction of the SDO that the respondent is presently responsible and that debarment is not necessary. 2 C.F.R. § 180.855.

If the SDO finds that debarment is necessary to protect the public interest, the SDO will determine the term of debarment appropriate to protect the Government's interests based on the seriousness of the causes upon which the debarment is based and the existence of remedial measures or other factors, such as those listed in 2 C.F.R. §§ 180.860, 180.865.

### B. Participant or Principal Status

The Government may take an exclusionary action, such as a debarment, against any individual or legal entity that has been, is, or may reasonably be expected to be a contractor or a participant or principal in a covered transaction. The authority to take action against any entity that has been, is, or may reasonably be expected to be involved in a covered transaction or a federal procurement transaction is not intended to operate as a limitation on an agency's ability to protect the Government's business interests. Agencies

have broad authority to take action to protect federal programs from any individual or entity that presents a rational business risk to the Government's procurement or nonprocurement programs.

Here, Respondent received a federal loan of approximately $438,000 through SBA's PPP in 2020. *Sanchez ARM* at 3; *SDD Sanchez Exh. 5*; *First Response* at 9, *Resp. Exh. A* at 1. Based on Respondent's acknowledged receipt of the PPP loan and in accordance with 2 C.F.R. §§ 180.970(a)(6) and 180.210, I find the preponderance of the evidence in the record establishes Respondent has been a participant in a covered transaction. *SDD Sanchez Exh.* 5; *First Response* at 9. Further, based on Respondent's experience as a participant in a covered transaction, Respondent may reasonably be expected to be a participant again in the future. Additionally, while Respondent noted it has "never been a party to a government contract," Respondent acknowledged that it "hopes to preserve its eligibility to enter into one." *First Response* at 8–9. Accordingly, I also find the preponderance of the evidence establishes Respondent may reasonably be expected to be a participant or contractor in a federally funded transaction in the future.

### C. <u>Cause for Debarment</u>

Pursuant to 2 C.F.R. §§ 180.850 and 180.855(a), it is the Government's burden to establish a cause for debarment by the preponderance of the evidence in the record. Here, the Notice informed Respondent that the cause for Respondent's suspension and proposed debarment is imputation of Sanchez's and Lopez's fraudulent, criminal, or other improper conduct, pursuant to 2 C.F.R. § 180.630(a). Notice at 2. Specifically, 2 C.F.R. § 180.630(a) states, "A Federal agency may impute the fraudulent, criminal, or other improper conduct of any … employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization."

On May 26, 2022, Sanchez was convicted on two counts of illegal certification of asbestos training, and for aiding and abetting the same, in violation of the Toxic Substances Control Act (15 U.S.C. § 2615(b)(1)) and 18 U.S.C. § 2, based on criminal acts that occurred in June 2018. *SDD Sanchez Exh. 3*. Sanchez's conviction establishes cause for her debarment under 2 C.F.R. §§ 180.800(a)(3) and 180.800(a)(4).

Also on May 26, 2022, Lopez was convicted on one count of illegal certification of asbestos training, and for aiding and abetting the same, in violation of the Toxic Substances Control Act (15 U.S.C. § 2615(b)(1)) and 18 U.S.C. § 2, based on conduct that occurred on behalf of Respondent. *SDD Lopez Exh. 3*; *See First Response* at 4 (Respondent "agreed to permit Mr. Lopez to lead one course of Asbestos Abatement Training for [Respondent]"). Lopez's conviction establishes cause for his debarment under 2 C.F.R. §§ 180.800(a)(3) and 180.800(a)(4).

Respondent acknowledges it employed Sanchez and was "associated" with Lopez at the time of the misconduct and Respondent does not dispute that Sanchez and Lopez were convicted of improper conduct in connection with their performance of duties for or on behalf of Respondent. *First Response* at 7. Respondent also acknowledges "the apparent existence" of cause for its debarment." *Id*.

Based on a thorough review of the record, I find the preponderance of the evidence establishes cause to debar Respondent based on imputation of Sanchez's and Lopez's criminal and improper conduct. Specifically, Sanchez's criminal and improper conduct may be imputed to Respondent because it occurred while Sanchez was employed by Respondent and the conduct was in connection with

Sanchez's performance of duties for or on behalf of Respondent as Respondent's "asbestos training coordinator." *Resp. Exh. B* at 2; *First Response* at 3. Similarly, Lopez's criminal and improper conduct may be imputed to Respondent because it occurred in connection with Lopez's performance of duties for or on behalf of Respondent while Lopez was "associated with" Respondent and "authorized" by Respondent to conduct an asbestos abatement refresher training on June 9, 2018. *First Response* at 3, 7, 10; *Resp. Exh. A* at 3. Accordingly, I find the Government has met its burden to establish a cause for Respondent's debarment by the preponderance of the evidence in the record.

**D. <u>Present Responsibility</u>**

Having determined that the Government met its burden to prove that a cause for Respondent's debarment exists, the burden shifts to Respondent to demonstrate "to the satisfaction of the debarring official" that Respondent is presently responsible, thereby rendering debarment unnecessary. 2 C.F.R. § 180.855(b).

Even though there is an established cause to debar Respondent, I must determine whether debarment is appropriate and, if so, the length of debarment, based on consideration of the seriousness of Respondent's acts or omissions and any remedial measures or factors set forth at 2 C.F.R. § 180.860. The existence or nonexistence of any factor is not necessarily determinative of present responsibility. 2 C.F.R. § 180.860. The regulations provide that the period of debarment shall be commensurate with the seriousness of the causes. 2 C.F.R. § 180.865. Although a debarment generally should not exceed three years, there is no maximum period. *Id*. The Government is free to impose longer periods in egregious circumstances that present an unusual threat to the Government's business interests. *Coccia v. Defense Logistics Agency*, 1992 U.S. Dist. LEXIS 17386, *14, 1992 WL 345106 (E.D. Pa. 1992). Furthermore, the existence of mitigating factors or other demonstration of substantial progress made toward achieving present responsibility may allow the Government to impose a shorter period of debarment. In this matter, SDD Counsel recommended a debarment period of up to three years for Respondent. *Sanchez ARM* at 4; *Lopez ARM* at 4.

The conduct imputed to Respondent includes its former employee, Sanchez, requesting that Lopez sign false certificates of course completion for asbestos workers on June 9, 2018, and, on June 30, 2018, Sanchez signing Lopez's name as the instructor on certificates for completion of an asbestos abatement training refresher course for students Lopez did not instruct, that did not fulfill the required training, and for a course that did not take place in Raleigh, North Carolina. *Resp. Exh. B* at 3–4. Sanchez then had the certificates submitted to regulators at NCDHHS to obtain asbestos worker licenses for the purported attendees. *Id*. As a result of Sanchez's actions on June 9, 2018 and June 30, 2018, she "knowingly and willfully" refused to comply with an Asbestos Hazard Emergency Response Act regulation causing one or more persons to be falsely certified as having completed asbestos abatement training. *Id*.

The conduct imputed to Respondent also includes Lopez, an individual associated with Respondent and authorized by Respondent to conduct an asbestos abatement refresher training on June 9, 2018, "knowingly and willfully" refusing to comply with an Asbestos Hazard Emergency Response Act regulation by "knowingly and intentionally" signing false certificates for asbestos abatement training, submitting false certificates to regulators from the NCDHHS for the purpose of obtaining asbestos worker licenses, and causing one or more persons to be falsely certified as having completed asbestos abatement training. *SDD Lopez Exh. 2 at 2*.

Collectively, the conduct imputed to Respondent is significant and serious as it involved Respondent's only non-executive level employee in its asbestos abatement training program along with another individual associated with Respondent, "knowingly and willfully" falsifying documents related to asbestos abatement training, submitting those documents to state regulators, and causing one or more persons to be falsely certified as having completed asbestos abatement training. *SDD Lopez Exh. 2 at 2*; *Resp. Exh. B* at 2–3; *Second Response* at 3; *Resp. Exh. H* at 2. Further, Respondent does not dispute that its "failure to properly train asbestos workers and then to issue them false asbestos training certificates places the worker and the general public at an increased risk of asbestos exposure." *Second Response* at 2.

**The actual or potential harm of the wrongdoing (2 C.F.R. § 180.860(a))**

Although Respondent initially asserted that the wrongdoing of Sanchez and Lopez "has not resulted in any 'actual or potential harm,'" Respondent ultimately appeared to accept that SDD's argument on the "potential harm of the wrongdoing," as summarized in a press release from the Office of the U.S. Attorney in the Western District of North Carolina, was "true generally." *First Response* at 8; *Second Response* at 2. While Respondent correctly notes that there was no "actual" harm, at least in the sense that none of the four purported students were ultimately licensed to perform asbestos abatement, there was the "potential" for harm based on the wrongdoing. *Id*. Moreover, the "potential" harm never became "actual" harm because NCDHHS (not Respondent) identified the falsified certifications prior to the issuance of a license by the NCDHHS. *First Response* at 5–6; *Second Response* at 2. Ultimately, although there was no "actual" harm due to the efforts of NCDHHS, there was the "potential" for harm resulting from the misconduct. As such, I find this factor partially aggravating.

**Frequency and duration of the wrongdoing (2 C.F.R. § 180.860(b))**

As Respondent notes in multiple submissions the conduct imputed to Respondent involved two individuals, two asbestos abatement classes, and four false certificates, over a 21-day period in 2018. *First Response* at 8; *Second Response* at 2. The imputed misconduct was neither frequent nor occurred over a long period of time due, in part, to Respondent's cooperation with NCDHHS. *First Response* at 4–6, 8. As such, I find this factor mitigating.

**Whether there is a pattern or history of wrongdoing (2 C.F.R. § 180.860(c))**

In its initial response, Respondent argued that it has been "a model corporate citizen whose record of good conduct would be unblemished" except for the conduct of Sanchez and Lopez. *First Response* at 8. In the *First SDD Reply*, SDD identified a September 2017 Notice of Violation from the NCDHHS, which was issued because Respondent had attempted to certify a student who did not complete the asbestos worker course. *First SDD Reply* at 2; *SDD Exh. 11* (NCDHHS Notice of Violation). SDD also identified a November 2017 warning letter sent by NCDHHS to Respondent for the failure to follow course notification requirements. *First SDD Reply* at 2; *SDD Exh. 12* (Warning Letter). SDD asserts that these events, in addition to the conduct for which Sanchez and Lopez were convicted, "reflect a pattern of disregard or neglect of strict compliance with the regulatory requirements." *Second SDD Reply* at 2.

Respondent acknowledged the Notice of Violation and the Warning Letter in its Second Response but said that the company's COO, who started in the position in 2018, was not aware of the 2017 documents until notified of them by EPA. *Second Response* at 3; *Resp. Exh. H.* (Second Affidavit of Donaciano Alegre) at 2-3. Respondent asserts that as these were the only known instances of alleged

noncompliance that occurred before the alleged 2018 misconduct, they neither indicate a pattern of malfeasance nor raise issues with Respondent's "dedication to compliance with 'regulatory requirements' today." *Third Response* at 2. Further, Respondent notes that its Vice President at the time, "characterized" the situation leading to the 2017 Notice of Violation as a "mix up with paperwork" and a "fluke" rather than an effort to inappropriately have an individual licensed to handle asbestos. *Id.* at 3–4.

Regardless of Respondent's former Vice President's characterization of the events in 2017 or its COO's knowledge of the 2017 documents, Respondent ultimately acknowledged there were "mistakes" in 2017 and specifically assigned Alegre to "oversee and manage the Asbestos Abatement Training Program in a concentrated effort to eliminate the previous mistakes." *Third Response* at 3. Although there were "mistakes" in 2017, which, in part, were related to the imputed conduct in 2018, Respondent's record is otherwise unblemished. Accordingly, I find this factor neither mitigating nor aggravating.

**Whether Respondent has been previously excluded or disqualified by a government agency (2 C.F.R. § 180.860(d))**

Respondent has never been "excluded or disqualified by an agency of the Federal Government or been barred from participating in State or local contracts." *First Response* at 8. As such, I find this factor mitigating.

**Whether Respondent has previously entered an administrative agreement with a government agency (2 C.F.R. § 180.860(e))**

Respondent "has never entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment." *First Response* at 9. As such, I find this factor mitigating.

**Whether Respondent planned, initiated, or carried out the wrongdoing (2 C.F.R. § 180.860(f))**

Respondent did not plan, initiate, or carry out the wrongdoing. *First Response* at 9. Rather, the wrongdoing was planned, initiated, and carried out by one of Respondent's employees and another individual associated with Respondent. *SDD Lopez Exh. 2 at 2*; *Resp. Exh. B* at 2–3. As such, I find this factor mitigating.

**Whether Respondent accepted responsibility for the wrongdoing and recognized its seriousness (2 C.F.R. § 180.860(g))**

Respondent was never charged with a crime in connection with the falsification of records. However, on July 22, 2019, Respondent entered into a Settlement and Release Agreement with the NCDHHS to resolve a disputed penalty related to its Asbestos Training Program. *First Response* at 6; *Resp. Exh. G* (Settlement and Release Agreement). Under the terms of the Settlement and Release Agreement, Respondent agreed to pay $3,750.00 to NCDHHS and execute a Corrective Action Plan "in order to be and remain in compliance with requirements of the State of North Carolina's Asbestos Hazards Management Plan." *Resp. Exh. G* at 3, 7–8.

Although Respondent acknowledges there is cause for its debarment through imputation of the conduct committed by its former employee and associate, Respondent repeatedly places blame for the

misconduct solely on Sanchez and Lopez. *First Response* at 9–10; *Second Response* at 2; *Third Response* at 2. Respondent states that it was "blindsided" and did not even have "reason to be aware" of the criminal misconduct committed by its employee and an associate. *Second Response* at 2; *Third Response* at 2.

While the situation was primarily the result of Sanchez and Lopez's misconduct, the record lacks any evidence indicating that Respondent ever accepted any responsibility to look inward to determine whether and to what extent it may have vulnerabilities in its policies, procedures, staffing, management, oversight, or compliance functions that failed to prevent or identify the misconduct in this matter such that Respondent would not have been "blindsided" and would have been aware of the conduct within its operations.

The absence of any information in the record on this point is particularly concerning given the evidence that is in the record regarding potential "red flags" that were seemingly missed by Respondent, including but not limited to Alegre's failure to understand the scope of the misconduct following contact by NCDHHS, Sanchez being the only employee in a program providing training on a highly regulated topic to 211 people in a little over a year, or that Sanchez previously cancelled at least one Asbestos Training class, was behind on rescheduling the class, and apparently didn't believe she would have time to teach the class in the near future." *Resp. Exh. E* at 1; *Resp. Exh. A* at 2. Based on the totality of the evidence in the record on this factor, I find it partially aggravating.

**Whether Respondent paid or agreed to pay all criminal, civil, and administrative liabilities for the improper activity (2 C.F.R. § 180.860(h))**

Respondent has no criminal or civil liability resulting from the improper activity. Respondent paid the only applicable administrative penalty stemming from the improper activity. *SDD Exh. 15*. As such, I find this factor mitigating.

**Whether Respondent cooperated fully with the government (2 C.F.R. § 180.860(i))**

Respondent "cooperated thoroughly and promptly" by recovering and providing documentation to NCDHHS. *First Response* at 10. Respondent "complied with NCDHHS's investigation in every way and was never criminally charged." *Id*. Accordingly, I find this factor mitigating.

**Whether the wrongdoing was pervasive in Respondent's organization (2 C.F.R. § 180.860(j))**

The wrongdoing was limited to one employee and one individual associated with Respondent. *First Response* at 4–6, 8; *Second Response* at 2; *SDD Lopez Exh. 2 at 2*; *Resp. Exh. B* at 2–3. The wrongdoing took place over the course of 21 days in 2018. *First Response* at 2, 4, 8; *SDD Lopez Exh. 2 at 2*; *Resp. Exh. B* at 2–3. Additionally, Respondent was "frequently audited during the remainder of 2018, but [NCDHHS's Division of Health, Hazard Control Unit] Consultants reported to [NCDHHS's Division of Health, Hazard Control Unit] that they did not observe any violations and had no recommendations regarding improvement of [Respondent]'s training program. *First Response* at 6. Accordingly, I find this factor mitigating.

**The kinds of positions held by the individuals involved in the wrongdoing (2 C.F.R. § 180.860(k))**

Respondent asserts that Sanchez did not have management or supervisory responsibilities, and Lopez was not employed by Respondent. *First Response* at 10-11. However, Sanchez was the "asbestos training coordinator" for Respondent and, regardless of the title, it was her responsibility to "recruit, hire, and train potential asbestos-abatement workers." *First SDD Reply* at 3; *Second Response* at 4. Further, Sanchez was the only one of Respondent's employees "involved in the Asbestos Training Program." *Second Response* at 3; *Resp. Exh. H* at 2. Additionally, the only person providing "oversight and management of [Respondent]'s asbestos worker training program" from approximately February of 2018 until January 2019 was Respondent's COO, Alegre. *Second Response* at 3; *Resp. Exh. H* at 2.

Accordingly, while Sanchez may not have had "managerial or supervisory responsibility," Sanchez (and Alegre) were solely responsible for Respondent's asbestos worker training program, through which approximately 211 students completed Respondent's Asbestos Training. *Resp. Exh. A* at 4. Further, after Sanchez fled the country, Respondent terminated its asbestos training program altogether, at least, in part due to her absence. *First Response* at 6; *Resp. Exh. A* at 6. Consequently, I find that Sanchez was vital to Respondent's Asbestos Training Program. As such, I find this factor partially aggravating.

**Whether Respondent took appropriate corrective action or remedial measures, such as ethics training or new programs to prevent recurrence (2 C.F.R. § 180.860(*l*))**

Respondent asserts that it promptly discontinued the asbestos program in January 2019 before it learned that Sanchez had falsified documents, but after Sanchez fled the country "because the benefits of providing such training simply didn't justify the costs and burdens of doing so." *First Response* at 13. Therefore, Respondent argues that it eliminated the circumstances that led to the cause for debarment. Respondent's "decision to terminate the Asbestos Training Program was largely due to the cost and burden of the program outweighing its benefits. The Asbestos Training Program made the least amount of money for Novacor, but it had caused the most problems for Novacor's business due to compliance issues." *Resp. Exh. J* at 2. However, those circumstances could change. Respondent's business still currently involves "minimal asbestos work," and to the extent Respondent is primarily a business management consultant for ProCon Staffing, LLC, it is possible that changes within ProCon Staffing, LLC could cause Respondent to restart its Asbestos Training Program. *First Response* at 2.

Further, while Respondent claims it "implemented" a Corrective Action Plan its not clear that Respondent ever actually operated under the Corrective Action Plan. Respondent executed the Corrective Action Plan on July 25, 2019, but Respondent terminated its Asbestos Abatement Training Program" in January of 2019, and "has not reinstituted the [Asbestos Abatement Training] Program or commenced any similar training program." *First Response* at 10; *Resp. Exh. H* at 2; *Resp. Exh. G* at 8. As such, it is an open question whether the Corrective Action Plan would effectively address the issues that arose in 2018 if implemented today. Moreover, Respondent has not demonstrated that it is committed to adopting the remedial measures in the Corrective Action Plan should it restart its Asbestos Abatement Training Program or that it has adopted any aspects from the Corrective Action Plan for use in Respondent's existing programs.

Further, it is not clear in the record that Respondent took any other remedial measures to prevent recurrence other than ceasing operation of the Asbestos Training Program since January 2019. However, absent evidence of a thorough internal investigation and root cause analysis it is not clear that Respondent has identified the entire scope of issues that enabled (or at least failed to prevent) the

misconduct, let alone identified where similar issues may exist elsewhere within the company, or taken demonstrable steps to ensure all such issues have been fully remediated. Given the insufficient evidence in the record on this factor, I find that it is neither mitigating nor aggravating.

**Whether Respondents' principals tolerated offense (2 C.F.R. § 180.860(m))**

By the time Respondent was aware of the extent of the misconduct, Sanchez had fled the country and Lopez was no longer associated with Respondent in any way. *First Response* at 13. Additionally, Respondent "terminated its Asbestos Abatement Training Program" in January of 2019. *First Response* at 10. Respondent "has not reinstituted the [Asbestos Abatement Training] Program or commenced any similar training program." *Resp. Exh. H* at 2. However, Alegre was one of Respondent's principals and was responsible for "oversight and management of [Respondent]'s asbestos worker training program" from approximately February of 2018 until January 2019. *Resp. Exh. H* (Second Affidavit of Donaciano Alegre) at 2. In fact, Alegre and Sanchez were the only employees "involved in the Asbestos Training Program." *Second Response* at 3; *Resp. Exh. H* at 2. Nevertheless, the record is devoid of any evidence that Respondent addressed Alegre's failure to understand the extent of the misconduct after he was notified by NCDHHS that Respondent issued certificates for classes that Respondent never performed or Alegre's failure to prevent the offenses as Sanchez's supervisor and the only other employee in the Asbestos Abatement Training Program. *Resp. Exh. E* at 1. Given the insufficient evidence in the record on this factor, I find that it is neither mitigating nor aggravating.

**Whether Respondent brought the activity cited as a basis for debarment to the attention of the government in a timely manner (2 C.F.R. § 180.860(n))**

Respondent was "blindsided by the surreptitious conduct of Ms. Sanchez and Mr. Lopez" and was informed of it by NCDHHS. *First Response* at 5; *Second Response* at 2. As such, Respondent was unable to bring the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner. As such, I find this factor is neither aggravating nor mitigating.

**Whether Respondents fully investigated the circumstances surrounding the matter (2 C.F.R. § 180.860(o))**

Respondent failed to adequately investigate the circumstances surrounding its cause for debarment, and as a result, did not understand the misconduct involved. As a result, Respondent failed to take disciplinary action or establish remedial measures before Sanchez fled the country and the program no longer made financial sense.

The imputed conduct occurred in June 2018. *SDD Lopez Exh. 2 at 2*; *Resp. Exh. B* at 2–3. Respondent states that it first became aware that there were issues with respect to its asbestos program in July 2018, following a call from NCDHHS. *Resp. Exh. A* at 4. On July 12, 2018, NCDHHS sent Respondent's COO an email stating that Respondent "issued training certificates to 4 asbestos workers for a worker refresher Spanish class scheduled on June 30, 2018, **that [Respondent] never performed**." *Resp. Exh. E* at 1 (emphasis added). Respondent misinterpreted these interactions with NCDHHS, and statements by Sanchez during a telephone call on July 10, 2018, to indicate that the sole concern of state regulators was that the class had been moved; Respondent did not understand that the class had not been performed. *First Response* at 4–6. The COO stated that he "sincerely believed that the falsification they were both referring to dealt with the certificates indicating that the course was taught in Raleigh instead of Concord" and that he was "unaware that the falsification was due to Ms. Sanchez signing Mr.

Lopez's signature and Ms. Sanchez distributing course certificates without the students completing the course(s)." *Resp. Exh. A* at 5.

Regardless of what Respondent's COO believed in 2018, the preponderance of the evidence in the record demonstrates that Respondent failed to "fully" investigate the circumstances surrounding Sanchez's conduct following the inquiry from NCDHHS. *First Response* at 4–6; *Resp. Exh. E* at 1. Without a full investigation, Respondent failed to understand that it had issued certificates with false signatures to individuals who did not complete the required courses until the North Carolina State Bureau of Investigation raided Respondent's offices in February 2019, despite having received an email from NCDHHS in July 2018, which specifically stated that the certifications were issued for courses that were "never performed." *Resp. Exh. E* at 1. Without making the effort to obtain a full understanding of the circumstances, Respondent inhibited its ability to take corrective or disciplinary action as the facts would warrant and allowed its COO to "sincerely believe" the issue was limited to the location of the training. As such, I find this factor aggravating.

**Whether Respondent had effective standards of conduct and internal controls at the time the conduct occurred (2 C.F.R. § 180.860(p))**

Respondent asserts that it had effective controls in place "designed to ensure that all proper certifications and documents were preserved and that its employees were properly licensed at all times." *First Response* at 12; *Resp. Exh. A* at 2-3. Additionally, Respondent "required Ms. Sanchez to comply with North Carolina law to become an asbestos supervisor." *Id.* Respondent required its employees to sign an employee handbook that, among other restrictions, provided for discipline for employees who falsified documents or records. *Second Response* at 4; *Resp. Exh. I.*

However, beyond the fact that Respondent "trusted Ms. Sanchez to do her job correctly", and had her sign a pledge to do so, it is unclear what other standards or controls were in place in Respondent's organization to ensure proper conduct by Respondent's employees responsible for certifying asbestos students. *First Response* at 12; *Second Response* at 4; *Resp. Exh. I.* Respondent has not identified, for example, how it assessed or mitigated risk, or how it monitored employee performance for compliance with company policies and applicable laws. This is especially relevant in a highly regulated environment such as asbestos worker certification. The record fails to demonstrate the effectiveness of Respondent's standards of conduct and, instead, confirms that Respondent did not have effective internal controls in place to prevent or identify the misconduct. As such, I find this factor aggravating.

**Whether Respondent took appropriate disciplinary action (2 C.F.R. § 180.860(q))**

Respondent states that it "never had a chance to take 'appropriate disciplinary action against' Ms. Sanchez" because she "disappeared without a trace" and Respondent "never heard from her again." *First Response* at 13. Additionally, Respondent "could not take action against Mr. Lopez because he was never employed by" Respondent, though, Respondent "never associated with him in any way" again. *Id*. Further, Alegre notes that if Respondent "had known the actual wrongdoing of Ms. Sanchez and Mr. Lopez, we would have taken harsher disciplinary action." *Resp. Exh. A* at 6. Given Respondent's limited ability to discipline Sanchez and Lopez, I find this factor is neither aggravating nor mitigating.

**Whether Respondent has had time to eliminate the circumstances within the organization that led to the cause for debarment (2 C.F.R. § 180.860(r))**

Given that the misconduct occurred in 2018, Respondent has had time to eliminate the circumstances within its organization that led to the cause for its debarment. *First Response* at 13; *Resp. Exh. A* at 7. However, it remains unclear in the record whether Respondent has eliminated the circumstances that led to the misconduct due to the absence of evidence of a thorough internal investigation, root cause analysis, and demonstrable remedial efforts beyond narrowly focused actions to cease the Asbestos Abatement Training Program and disassociate from Sanchez and Lopez. Given the insufficient evidence in the record on this factor, I find that it is neither mitigating nor aggravating.

## Finding

While the asbestos program is no longer in place, I find there is insufficient evidence to demonstrate that Respondent has adequately investigated the matter and fully remediated the issues within its control to ensure similar wrongdoing is less likely to occur in its other programs or if it restarts its Asbestos Abatement Program. Accordingly, after reviewing the totality of the record and considering the seriousness of the conduct imputed to Respondent and all the applicable aggravating and mitigating factors, I find that the Respondent has failed to meet its burden of demonstrating that it is presently responsible such that debarment is not necessary. 2 C.F.R. § 180.855(b).

I have considered the record in light of the imputed conduct underlying Sanchez's and Lopez's convictions. I find that there is cause for the Respondent's debarment and that the Respondent is not presently a responsible participant in covered transactions.

Because the Respondent rationally presents a business risk to federal programs, the EPA may take action to protect the Government's interests.

## Decision

The preponderance of the evidence in the record supports the finding set forth above and I find that the conclusions drawn are warranted. I specifically find, based on the totality of the record, that the Respondent is not a presently responsible contractor or participant. I have considered SDD's recommendation of a debarment for three years and weighed all the mitigating and aggravating factors as well as the seriousness of the cause for debarment. After careful consideration of the record, I have concluded that a one-year period of debarment is necessary to protect the Government and the public interests.

THEREFORE, the suspension initiated on August 25, 2022, is hereby terminated. Respondent is debarred from participation in Federal procurement and non-procurement programs for a period of one year. Taking into consideration the time Respondent has been suspended, the debarment will terminate on August 24, 2023.

## Reconsideration and Appeal

The Respondent may request that I reconsider this decision by submitting a written petition for reconsideration to me. The written request for reconsideration should be submitted electronically to

Suspension_Debarment@epa.gov and to the Suspension and Debarment Hearing Officer, Emily Wald at wald.emily@epa.gov.

Alternatively, the Respondents may appeal this decision to the Director of the EPA Office of Grants and Debarment. A request for review on appeal must be made by written petition within 30 days of your receipt of this Decision. The request must state the specific findings the Respondents believe to be in error and include the reasons or legal bases for Respondents' position. The written request should be submitted electronically to the attention of the Director of the EPA Office of Grants and Debarment, Michael Osinski, electronically at Suspension_Debarment@epa.gov and to the Suspension and Debarment Hearing Officer, Emily Wald, at wald.emily@epa.gov.

If the Respondent is unable to submit documents electronically, please contact the Suspension and Debarment Hearing Officer, Emily Wald, at 202-564-1523 to discuss alternate arrangements for submitting information in hard copy.

JAMES LEMLEY Digitally signed by JAMES LEMLEY Date: 2023.04.07 19:04:19 -04'00'

Dated: _____

James Lemley
EPA Senior Debarring Official