



Office of the Secretary
Washington, DC 20250

November 2, 2022

THE HONORABLE CAROLYN B. MALONEY
Chair
Committee on Oversight and Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Maloney:

Thank you for your letter of June 17, 2022, expressing concern about the U. S. Department of Agriculture (USDA) and its awarding of government contracts to JBS USA and their affiliates. I appreciate the opportunity to answer your questions and apologize for the delay in responding while USDA was further reviewing the steps that had been taken related to the Federal Acquisition Regulation (FAR).

As Secretary, I am deeply committed to ensuring a fair and equitable food system for both producers and consumers, including through USDA's own procurement channels. As you may know, USDA is investing billions to transform our food system—including approximately \$1 billion to diversify and support independently-owned meat and poultry processing. We are also modernizing Packers and Stockyards Act rules and enforcement thereunder, with proposed rules (to date) to enhance transparency for poultry growers, ensure competition is inclusive, and promote integrity in the marketplace.¹ And, we are diversifying our procurement suppliers, including through the Local Food Purchase Assistance Program, Local Food for Schools Program, and additional support for farm to institution value chains.

We take seriously concerns of corporate conduct that may have run contrary to those principles. Following the Department of Justice's announcement of a guilty plea in the fall of 2020 by J&F Investimentos,² USDA considered suspension or debarment proceedings regarding its subsidiary, JBS USA Food Company (JBS USA) (collectively, JBS). USDA determined, in a finding on February 8, 2021, not to seek suspension and debarment.³ Specifically, USDA focused on whether the company's performance as a government contractor put the taxpayers as contractor specifically at risk. Statutory and regulatory standards expressly disallow debarment as a

¹ See USDA, "Agricultural Competition: A Plan in Support of Fair and Competitive Markets," May 2022, 20, available at <https://www.ams.usda.gov/reports/agricultural-competition-plan-support-fair-and-competitive-markets>.

² USDA was not notified of violations directly from JBS, Pilgrim's Pride or their affiliates. The USDA foods contractor, JBS USA Food Company, was not cited in any of the cases, as confirmed with DOJ attorneys on July 1, 2022 in due diligence in responding to your inquiry.

³ Such a finding also applied to the responsibility determination in accordance with the standard in FAR 9.104-1(d).

punishment.⁴ We also took note of JBS’s compliance with civil and criminal enforcement in the Foreign Corrupt Practices Act matter.⁵

USDA also remains attentive to the high degree of fragility in the market, including the circumstances surrounding food price inflation. Federal Acquisition Regulation debarment requires the contractor to be debarred across all government agencies. Removing a firm from government-wide procurement would potentially impair competitive choice for the taxpayer in securing affordable food for the range of needs that government must provide for, from school lunches to meals for our soldiers. Importantly, this case highlights the urgency of USDA’s multi-billion efforts, noted above, to increase the competitive choices in meat and poultry processing—competition that would benefit taxpayers, consumers, and producers alike.

I underscore that our evaluation of the trade-offs in these areas is not taken lightly, and that we are advancing a range of related policy steps to achieve the forward-looking goals that we share. USDA has formed a close partnership with DOJ, including establishment of a joint complaints and tips portal at farmerfairness.gov. We continue to closely coordinate with DOJ around matters relating to civil and criminal antitrust violations in the poultry sector, including evaluating allegations of price fixing by Pilgrim’s Pride in light of the recent conclusion of several of the associated criminal cases.

USDA remains committed to ensuring that JBS and its affiliates continue to demonstrate their responsibility to USDA pursuant to FAR Part 9.⁶ We take particularly seriously a pattern or

⁴ Per Federal Acquisition Regulation (FAR) Section 9.402, outlining FAR debarment, suspension, and ineligibility policy, “Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.” The policy to effectuate in this case being USDA’s interest in soliciting offers from, awarding contracts to, and consenting to subcontracts only with responsible contractors. Additionally, this policy stipulates that, “The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment.”

⁵ Specifically:

- J&F Investimentos agreed to pay a penalty of \$256.5 million for its guilty plea regarding conspiracy to violate the Foreign Corrupt Practices Act, as announced by DOJ.
- JBS S.A. has been cooperating with Government agencies in the proceedings, including paying civil and criminal penalties, and other restitution, as indicated by the Securities and Exchange Commission (SEC).
- JBS S.A. agreed to a three-year enhanced compliance program to prevent future violations. Under this program, JBS S.A. will regularly report to DOJ on the status of agreed upon remedial measures from October 2020 through 2023.
- USDA ascertained in February 2021 that JBS USA’s affiliate, JBS S.A., was in compliance with this enhanced compliance program. USDA continues to verify with the DOJ trial attorneys that JBS S.A. remains in compliance with the plea agreement. This was last confirmed on May 12, 2022.
- Although a separate matter, we have noted that Pilgrim’s Pride Corporation cooperated with DOJ’s probe relating to allegations of price fixing and paid a criminal fine of \$107,923,572 relating thereto.

⁶ USDA follows the policy and procedures in FAR Subpart 9.1, Responsible Prospective Contractors. To prevent fraud, bribery, or other misconduct to the greatest extent possible, USDA reviews the contractor’s representations and certifications in the System for Award Management (SAM), which include contractor responses to questions regarding criminal and civil convictions, tax liabilities, present debarments and indictments, previous contract terminations, etc. Additionally, USDA utilizes a “Contractor’s Responsibility Assessment” which is an automated report providing real-time responsibility data from the Federal Procurement Data System, the Federal Awardee Performance and Integrity Information System, and SAM, including a check of any exclusions from federal contracting.

practice of legal violations or disregard for cooperation with law enforcement authorities and note the possibility of a range of stepped-up compliance mechanisms should those be necessary to ensure trust going forward.

Thank you for your letter. If you have any further questions or concerns, please have a member from your staff contact the Office of Congressional Relations at (202) 720-7095.

Sincerely,



THOMAS J. VILSACK
Secretary

USDA last ascertained JBS S.A.'s continued compliance with the plea agreement with DOJ on May 12, 2022. USDA also confirmed with DOJ on July 1, 2022, that the representations and certifications made by JBS USA Food Company in the System for Award Management (SAM) regarding any felony or civil convictions is accurate. Additionally, JBS USA and its affiliates continue to fulfill its contractual requirements, meeting required delivery schedules and contract specifications which demonstrate they have the organization, experience, controls, technical skills, production facilities, and financial resources to perform. USDA also affirms with each purchase that there are no exclusions listed in SAM.gov that would otherwise make them ineligible for award.