



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
ARLINGTON VA 22203-1837

REPLY TO
ATTENTION OF

JALS-KFLD-PF

30 December 2009

MEMORANDUM FOR Headquarters, U.S. Army Sustainment Command Acquisition Center,
Rock Island Arsenal, Illinois

SUBJECT: Compelling Reasons Determination - Gulf Catering Company

1. On 16 November 2009, the Defense Logistics Agency (DLA) suspended Public Warehousing Company (PWC) from future contracting with any agency in the Executive branch of the U.S. Government in accordance with Section 9.407 of the Federal Acquisition Regulations (FAR), based the 9 November 2009 criminal indictment in the U.S. District Court for the Northern District of Georgia against PWC for two counts each in violation of 18 U.S.C. § 371, conspiracy, 18 U.S.C. § 1031, major fraud against the United States and 18 U.S.C. § 1343, wire fraud. It is alleged that between May 2003 and December 2008, PWC engaged in a conspiracy to defraud the United States as part of its performance of DLA's Prime Vendor I and Prime Vendor II contracts to provide food and other items to military customers in Southwest Asia, including Iraq, Kuwait and Jordan. PWC is alleged to have submitted false pricing information as part of its proposal for the award of the Prime Vendor II contract; overbilled the Government for freight consolidation costs; manipulated and inflated prices, case sizes and shipping costs to obtain financial benefits; and failed to pass on payment discounts on food given to it by suppliers. As a result of this indictment and the underlying allegations, DLA suspended PWC pursuant to FAR 9.407-2(a)(1), (3) and (8), as well as 9.406-7(c).

2. On 19 November 2009, DLA suspended Gulf Catering Company (GCC) as an affiliate of PWC in accordance with FAR 9.407-1(c). Kellogg Brown & Root (KBR) under the LOGCAP III contract, DAAA09-02-D-0007GCC subcontracted with GCC to erect and finish the Materials Warehouse on FOB Prosperity (D2) in Iraq. This subcontract expired on 3 December 2009. Current LOGCAP assets in theater are not able to self-perform this construction at this point. GCC already has an established Man Camp on FOB Prosperity and workers employed on the project are badged, vetted by the U.S. Military, and cleared to work in the International Zone, Baghdad by the Iraq Ministry of Defense. This request for an extension of subcontract performance for a period is an extension to the period of performance only and no additional costs will be incurred with this extension. Failure to consent to KBR's extending the existing GCC subcontract for a period of time not to exceed 28 February 2010 will result in a delay in the relocation of a warehouse facility on FOB Prosperity, Iraq. This will interfere with the negotiated schedule with the Government of Iraq to prepare and return this property to the Government of Iraq. The area where this warehouse is located is to be turned over to the Government of Iraq in March 2010.

3. Agencies shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended or proposed for debarment, unless the agency head, or a designee with authorized representative status, states in writing the compelling reasons for renewal or extension in accordance with the provisions of FAR 9.405-1(b) and 9.405-2(a) and (b).

4. On 29 December 2009, the Commander, U.S. Army Sustainment Command Acquisition Center, Rock Island Arsenal, IL (ASC), requested a compelling reasons determination to allow extension of the performance period for KBR's subcontract with GCC through 28 February 2010. The basis of this request is that if GCC is not allowed to continue its work on its subcontract with KBR there will a delay in the relocation of a warehouse facility on FOB Prosperity, Iraq. This will interfere with the negotiated schedule with the Government of Iraq to prepare and return this property to the Government of Iraq. The area where this warehouse is located is to be turned over to the Government of Iraq in March 2010. In addition, if GCC is not permitted to continue this project through to completion, a new subcontractor will have to come in and perform the work on a new, extended schedule. As such this will involve work being done after the handover of the property to the Government of Iraq which would leave the contractor without adequate force protection. The warehouse facility enables KBR to provide Base Life Support (BLS) to the Department of State and the United States Army. The warehouse facility stores BLS type of equipment including basic sanitation and hygiene materials/consumables like cleaning supplies, portable toilet solution and laundry detergent. The compromise of such items could have health and safety implications if not stored or controlled continuously and appropriately. This request was referred to the Chief, Procurement Fraud Branch, U.S. Army Legal Services Agency, Contract and Fiscal Law Division (PFB) consistent with Section 5109.405 of the Army Federal Acquisition Regulations Supplement. PFB has recommended approval of ASC's request for a finding of compelling reason to extend the performance of GCC's subcontract with KBR until 28 February 2010.

5. I have determined that ASC has provided compelling reasons for the Procuring Contracting Officer to consent to extending the period of performance of GCC's subcontract with KBR until 28 February 2010 for the purpose of erecting and finishing the Materials Warehouse on FOB Prosperity (D2) in Iraq for the following reasons:

a. Immediate operational need exists for erecting and completing this warehouse facility because it stores BLS type of equipment including basic sanitation and hygiene materials/consumables like cleaning supplies, portable toilet solution and laundry detergent. The compromise of such items could have health and safety implications if not stored or controlled continuously and appropriately.

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b. In sufficient time exists to mobilize another contractor to replace GCC as KBR's subcontractor in time meet the negotiated schedule with the Government of Iraq to prepare and return this property to the Government of Iraq. The area where this warehouse is located is to be turned over to the Government of Iraq in March 2010.

6. This determination of compelling reasons is for the sole purpose of extending the services provided by GCC as stated in the request by ASC at Enclosure 1. Other awards, renewals or extensions of additional contracts or subcontracts during the period of GCC's suspension are not included in this compelling reasons determination.

7. Pursuant to Section 209.405 of the Defense Federal Acquisition Regulation Supplement, written notification of this compelling reasons determination will be provided to the General Services Administration.

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6 Encls:

1. Request for Compelling Reasons
2. Memorandum for Record, MNC-1 DCMA
Headquarters, 14 Dec 09
3. Request for Extension of Performance Period,
KBR 20 Dec 09
4. Indictment, 9 Nov 09
5. Suspension, Public Warehousing
Company, 16 Nov 09
6. Suspension, APL, 19 Nov 09

ULDRIC L. FIORE JR.

Army Suspension and Debarment Official