



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

REPLY TO
ATTENTION OF

December 17, 2009

JALS-KFLD-PF

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

SUBJECT: Request for Compelling Reasons Determination

1. On 16 November 2009, Public Warehousing Company (PWC) was suspended from future contracting with any agency in the Executive branch of the United States Government in accordance with Section 9.407 of the Federal Acquisition Regulations (FAR). This action, taken by the Defense Logistics Agency, was based the 9 November 2009 filing of a 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. Specifically, 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. As part of this conspiracy, 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). GCC is a subcontractor to Kellogg Brown & Root (KBR) under the LOGCAP III contract, DAAA09-02-D-0007, which includes task order 159 (TO 159) for the provision of dining facility (DFAC) operations for KBR at multiple locations in Iraq, to include the site D5.3 located at Sather Air Base, Baghdad, Iraq (Sather AB). The period of performance for TO 159 is currently set to conclude on 21 December 2009.

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 16 November 2009, the U.S. Army Sustainment Command Acquisition Center, Rock Island Arsenal, Illinois (ASC), submitted a request for a compelling reasons determination to allow for an extension of the period of performance for TO 159 through 31 August 2010. The basis of this request is the requirement that a replacement subcontractor for GCC would require a

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60 to 90 day mobilization period prior to beginning performance, resulting in a negative impact on health and life support requirements at Sather AB. 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 TO 159 until 31 August 2009.


5. I have determined that ASC has provided compelling reasons to continue to contract with GCC for the purpose of extending TO 159 until 31 August 2009 for the following reasons:

a. Immediate operational need and continuity of the health and life support services provided by GCC at Sather AB as part of TO 159.

b. Insufficient time exists to mobilize another contractor to replace GCC as the operator of the DFAC at Sather AB to prevent a gap in food services at that location.

6. This determination of compelling reasons is for the sole purpose of extending the services provided by GCC as part of TO 159 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.

8. 
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6 Encls:

1. Request for Compelling Reasons Determination and HCA Concurrence, 16 Nov 09
2. Memorandum for Record, MNC-I DCMA Headquarters, 14 Dec 09
3. Request for Extension of Performance Period, KBR Government and Defense, 7 Dec 09
4. Indictment, 9 Nov 09
5. Suspension, Public Warehousing Company, 16 Nov 09
6. Suspension, Gulf Catering Company, 19 Nov 09


ULDRICK B. JOHNS, JR.

Army Suspension and Debarment Official