



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

31 December 2009

MEMORANDUM FOR Commander, U.S. Army Sustainment Command, Rock Island Arsenal,
IL

SUBJECT: Compelling Reasons Determination - Agility - Turkey

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 on the 9 November 2009 criminal indictment of PWC in the U.S. District Court for the Northern District of Georgia on two counts each for 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. 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.

2. Although Agility Lojistik Tasmiacilik Uizmetleri Gida ve Tekstil Maddeleri Sanyi Ticaret Limited Sirketi (Turkey) ("Agility - Turkey") is not specifically listed on the EPLS, it is an affiliate of PWC. Since most of PWC's affiliates have been suspended, ASC contacted DLA to determine DLA's intention with respect to Agility - Turkey. ASC was advised by Laura Fernandez, DLA, Associate General Counsel that it was DLA's intention to suspend all of PWC's affiliates. As such, ASC expects DLA to suspend Agility - Turkey 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-0007 subcontracted with Agility - Turkey to furnish freight forwarding services in Turkey. KBR's Middle East Support Center is the largest procurement support center within KBR and is serviced by Agility - Turkey, which is only one of the companies comprising KBR's Middle East Support Center moving freight from Turkey to Afghanistan and Iraq. The Middle East Support Center, as a whole, purchases, receives, crates, tags, and transports by land, sea or air 75% of all materials used under LOG CAP III. KBR's current subcontract with Agility - Turkey is due to expire on 31 December 2009. KBR is requesting an extension of this subcontract from 31 December 2009 to 31 March 2010. Failure to consent to KBR's extension of its existing subcontract with Agility - Turkey will result in an interruption of freight forwarding services, which include receiving, customs, clearing, packaging and loading freight, from Turkey to all locations in Iraq and Afghanistan.

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 FAR 9.405-1(b) and 9.405-2(a) and (b).

4. On 30 December 2009, the Commander, U.S. Army Sustainment Command, Rock Island Arsenal, IL (ASC), requested a compelling reasons determination to allow extension of the period of performance for KBR's subcontract with Agility - Turkey through 31 March 2010. The basis of this request is that if Agility - Turkey is not allowed to continue its work on its subcontract with KBR there will be an interruption of the materials forwarded by it throughout Iraq and Afghanistan. These materials provide Base Life Support, Theater Transportation Mission Core Logistic Support Services and the Joint Military Mail Terminal. These materials include water purification equipment and spares; electrical materials and repair items; generators and spares; vehicles and repair parts. Any impact to the scheduled delivery of these items will impact life safety and security of personnel. 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 KBR's subcontract Agility - Turkey until 31 March 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 KBR's subcontract with Agility - Turkey until 31 March 2010 for the purpose of providing freight forwarding services in Turkey for the following reasons:

a. Immediate operational need exists for the materials Agility - Turkey is scheduled to deliver from Turkey throughout Afghanistan and Iraq. These materials include water purification equipment and spares; electrical materials and repair items; generators and spares; vehicles and repair parts. Any impact to the scheduled delivery of these items will impact life, safety and security of personnel.

b. Insufficient time exists to mobilize another contractor to replace Agility - Turkey as KBR's subcontractor in time to meet the operational needs of the war-fighter throughout Afghanistan and Iraq.

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

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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. Questions regarding this action should be addressed to: Procurement Executive, [REDACTED]

5 Encls:

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

ULDRIC L. FIORE, JR.

Army Suspension and Debarment Official