



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

11 May 2010

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

SUBJECT: Compelling Reasons Determination – Agility Logistics LLC/FZE Dubai (UAE)

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 Logistics LLC/FZE Dubai (Agility Dubai) is not specifically listed on the EPLS, it is an affiliate of PWC and PWC and many of its affiliates have already been suspended. Therefore, it is safe to assume that Agility Dubai will soon be placed on the EPLS. Agility Dubai currently provides freight forwarding services to Afghanistan and Iraq under a subcontract with KBR. An extension of KBR's current subcontract with Agility Dubai was allowed for freight forwarding services in Dubai through 31 March 2010. This was required to maintain the uninterrupted freight forwarding services in Dubai. Freight forwarding services includes receiving, customs, clearing, packaging, and loading. Under this subcontract freight forwarding includes furnishing all material handling equipment to include forklifts, banding machines, container handlers as well as tools, wood materials, and carpenters for robust crating skidding, blocking and bracing operations needed to ensure that vital LOGCAP III property is received in Afghanistan and Iraq in serviceable and/or new condition regardless of site, location, or circumstances.

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3. KBR's Middle East Procurement Support Center is the largest procurement center within KBR and Agility Dubai is one of the companies which comprise KBR's Middle East Support Center and moves freight from Dubai to Afghanistan and Iraq. The center transports by sea, land and air 75% of all materials used under LOGCAP III. These materials support Base, Life, Theater Transportation Mission Core Logistic Support Services, and the Joint Military Mail Terminal. They include Reserve Osmosis Water Purification Unit equipment, materials and spares; electrical materials and repair items; heating, venting and air conditioning materials and repair items; generators and spare parts; vehicles and spare parts. Any impact to the scheduled safe delivery of these items will impact life, safety and security of personnel.

4. Due to the delays in the Afghanistan customs exemption process, some freight being shipped from Dubai to Afghanistan initiated prior to 31 March 2010 did not reach its destination by the 31 March 2010 deadline despite the fact that the contractor did not leave these shipments to the last minute. The last shipment from Dubai to Afghanistan was actually made on 5 February 2010. Therefore, additional time is needed on this subcontract for the scope of work to be completed. KBR is requesting that it be permitted to extend its subcontract with Agility-Dubai for a period of three months beyond the waiver granted by the Army Suspension Debarment official which is through 31 March 2010. The continuation of services is strictly limited to and required for the freight forwarding missions initiated in advance of 31 March 2010 to be completed and no new missions will start after 31 March 2010.

4. 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). On 30 April 2010, the Commander, U.S. Army Sustainment Command, Rock Island Arsenal, IL (ASC), requested a compelling reasons determination to allow for the extension of KBR's subcontract with Agility Dubai. The basis of this request is that if KBR is not granted its request to extend its subcontract with Agility-Dubai, the timely receipt of Base Life Support Materials will be impacted and any impact to the scheduled safe delivery of these items will impact life, safety and security of personnel.

5. 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 allowing KBR to issue extend its current subcontract with Agility Dubai for a period of three months past 31 March 2010. This extension will allow KBR through its subcontract with Agility Dubai to provide for the continued flow of Base Life Support materials to the war-fighter.

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6. I have determined that ASC has provided compelling reasons for the Procuring Contracting Officer to consent to an extension of KBR's subcontract with Agility Dubai for freight forwarding services to Afghanistan and Iraq under its subcontract with KBR. The initial extension of KBR's current subcontract with Agility Dubai provided for freight forwarding services through 31 March 2010. An extension of this subcontract is needed so that Agility Dubai can complete its freight forwarding work for three months past 31 March 2010 for the following reasons:

a. An immediate operational need exists for the freight which has been delayed in Afghanistan due to a customs problem to move to where it is needed such as the interior of Afghanistan or Iraq.

b. Insufficient time exists to mobilize another contractor to replace Agility Dubai to move the freight stuck in customs, to Iraq or Afghanistan. As Agility-Dubai is being paid from the freight forwarding services through 31 March 2010 an extension is needed so that it can continue the scope of work described by its subcontract with KBR. As such, awarding a new subcontract within the restricted time-line is not possible in time to meet the operational needs of the war-fighter throughout Iraq.

6. This determination of compelling reasons is for the sole purpose of allowing KBR to issue a modification to its current subcontract with Agility-Dubai 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. Questions regarding this action should be addressed to: Procurement Fraud Branch, ATTN: [REDACTED] U.S. Army Legal Services Agency, 901 North Stuart Street, Suite 500, Arlington, Virginia 22203-1837. [REDACTED]

4 Encls:

1. Request for Compelling Reasons
2. Memorandum for Record, MNC-1 DCMA
Headquarters. 30 April 2010
3. KBR's Request for an Extension of time for its subcontract with KBR
4. Copy of EPLS listing the Suspension of PWC and its affiliates
8 April 2010

[REDACTED]
ULDRICE FIORE JR.

Army Suspension and Debarment Official