



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

REPLY TO  
ATTENTION OF

JALS-KPLD-PF

30 December 2009

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

SUBJECT: Compelling Reasons Determination - Agility Project Logistics

1. On 16 November 2009, the Defense Logistics Agency 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. 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. 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. On 3 December 2009, DLA also suspended Agility Project Logistics (APL) as an affiliate of PWC in accordance with FAR 9.407-1(c). APL is a subcontractor to Kellogg Brown & Root (KBR) under the LOGCAP III contract, DAAA09-02-D-0007, and performs freight forwarding services of all material handling equipment to ensure that vital LOGCAP III property is received in Afghanistan and Iraq in serviceable and/or new condition, regardless of the site. APL performs these services in Houston, Texas where twenty percent of all LOGCAP III equipment is shipped using APL, this includes helmets, vests, up-armored vehicles and trucks, incinerators and spare parts, water treatment materials, equipment and spares, electrical materials and repair items, heating, venting and air conditioning materials and repair items. The period of performance for KBR's subcontract with APL is currently set to conclude on 31 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 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 APL through 31 March 2010.

The basis of this request is the requirement that a replacement subcontractor for APL would require another 90 days in order to complete the process and execution of the operational transition to another freight forwarding company with a seamless transition to our troops and those supporting them. Waiting 90 days would result in a critical and potential life and safety threatening break in the receipt of mission essential material and equipment for the war-fighter and those supporting the war-fighter. This request was referred to the Chief, Procurement Fraud Branch(PFB), U.S. Army Legal Services Agency, 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 APL's subcontract with KBR until 31 March 2010

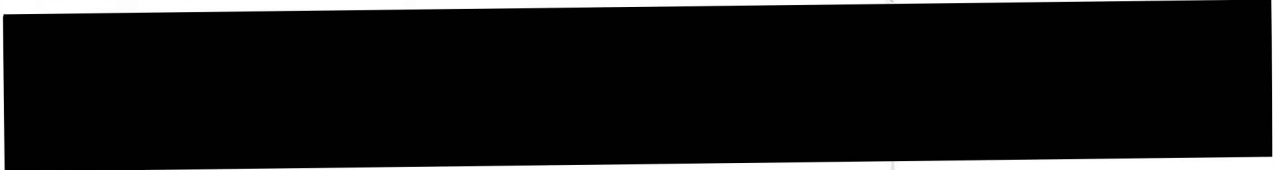
5. I have determined that ASC has provided compelling reasons for the Procuring Contracting Officer to consent to a subcontract with APL for the purpose of providing freight forwarding services in Houston, Texas until 31 March 2010 for the following reasons:

a. Immediate operational need exists for the continued receipt of mission essential materials and equipment for the war-fighters and those supporting them.

b. Insufficient time exists to mobilize another contractor to replace APL as KBR's subcontractor for freight forwarding services needed to ensure there is a continuous shipment of vital LOGCAP III property to Afghanistan and Iraq.

6. This determination of compelling reasons is for the sole purpose of extending the services provided by APL as stated in the request by ASC at Enclosure 1. Other awards, renewals or extensions of additional contracts or subcontracts during the period of APL'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.



ULDRIC L. FIORE, JR.  
Army Suspension and Debarment Official

- 6 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
  6. Suspension, APL, 3 Dec 09