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.
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.

5. 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.
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 contactor 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:

\[Signature\]

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

Encls:
1. Request for Compelling Reasons
2 Memorandum for Record, MNC-I 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
MEMORANDUM FOR Commander, U.S. Army Sustainment Command, Rock Island Arsenal, IL

SUBJECT: Compelling Reasons Determination – Agility Logistics Dubai

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 (UAE) (“Agility - Dubai”) 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 - Dubai. ASC was advised by [REDACTED] that it was DLA’s intention to suspend all of PWC’s affiliates. As such, ASC expects DLA to suspend Agility - Dubai 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 - Dubai to furnish freight forwarding services in Dubai. KBR’s Middle East Support Center is the largest procurement support center within KBR, and is serviced by Agility - Dubai, which is only one of the companies comprising KBR’s Middle East Support Center moving freight from Dubai 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 - Dubai 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 - Dubai will result in an interruption of freight forwarding services, which include receiving, customs, clearing, packaging and loading freight, from Dubai to all locations in Iraq and Afghanistan.
3. Agencies shall not renew or otherwise extend the duration of current contracts, or consent to subcontractors, 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 - Dubai through 31 March 2010. The basis of this request is that if Agility - Dubai 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 Agility – Dubai’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 extending the period of performance of KBR’s subcontract with Agility - Dubai until 31 March 2010 for the purpose of providing freight forwarding services in Dubai for the following reasons:

   a. Immediate operational need exists for the materials Agility - Dubai is scheduled to deliver from Dubai 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 as Agility - Dubai 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 - 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 Agility - Dubai’s suspension are not included in this compelling reasons determination.
Subject: Compelling Reasons Determination – Agility Logistics Dubai

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:

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
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 Tasniciilik Uizmelleri 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 [REDACTED] 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.
JALS-KFLD-PF (27-40f)
SUBJECT: Compelling Reasons Determination – Agility - Turkey

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:

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

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

SUBJECT: Compelling Reasons Determination – PWC Jordan

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. On 10 December 2009, DLA suspended The Public Warehousing Co (Jordan) P.S.C. (PWC Jordan) 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 PWC Jordan to furnish freight forwarding services in Jordan. KBR’s Middle East Support Center is the largest support center within KBR and is serviced by PWC, which is only one of the companies comprising KBR’s Middle East Support Center moving freight from Jordan 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 subcontract with PWC Jordan expires 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 PWC Jordan will result in an interruption of freight forwarding services, which include receiving, customs, clearing, packaging and loading freight, from Jordan 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 PWC Jordan through 31 March 2010. The basis of this request is that if PWC Jordan is not allowed to continue its work on its subcontract with KBR there will be an interruption of the materials forwarded by PWC Jordan 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 this request for a finding of compelling reason to extend the performance of PWC Jordan’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 extending the period of performance of PWC Jordan subcontract with KBR until 31 March 2010 for the purpose of providing freight forwarding services in Jordan for the following reasons:

   a. Immediate operational need exists for the materials PWC Jordan is scheduled to deliver from Jordan 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 contactor to replace PWC Jordan 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 PWC Jordan 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: U.S. Army Legal Services Agency, Procurement Fraud Branch,

ULDRIC J. 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, PWC Jordan, 10 Dec 09
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.

8. Questions regarding this action should be addressed to: Procurement Fraud Branch, ATTN:

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
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-0007 GCC 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.
JALS-KFLD-PF
SUBJECT: Compelling Reasons Determination - Gulf Catering Company

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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SUBJECT: Compelling Reasons Determination - Gulf Catering Company

b. In sufficient time exists to mobilize another contactor 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.

8. Questions regarding this action should be addressed to: Procurement Fraud Branch, ATTN:

ULDRI C. FIORE, JR.
Army Suspension and Debarment Official

6 Encls:
1. Request for Compelling Reasons
2. Memorandum for Record, MNC-I 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

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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 on 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(e). 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 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
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 contactor 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. Questions regarding this action should be addressed to: U.S. Army Legal Services Agency, Procurement Fraud Branch, ATTN: [Redacted]

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

ULDRICKS, PRO EJR.
Army Suspension and Debarment Official