



SECRETARY OF THE ARMY
WASHINGTON
JAN 15 2013

The Honorable Jeanne Shaheen
United States Senate
Washington, DC 20510

Dear Senator Shaheen:

Thank you for your December 5, 2012 letter concerning suspension and debarment recommendations made by the Special Inspector General for Afghanistan Reconstruction (SIGAR).

SIGAR recommendations for suspension or debarment action are reviewed for legal and evidentiary sufficiency by the Army Procurement Fraud Branch (PFB), whose attorneys present the cases to the Army Suspension and Debarment Official (SDO), Mr. Uldric Fiore, Jr., for decision. While actual PFB processing time is dependent upon the adequacy of the evidence and the complexity of the issues, recommendations which are supported by sufficient evidence are generally presented to and acted upon by the SDO within 30 days of receipt of that evidence.

SIGAR provided the 43 recommendations you referenced to the Army PFB on September 4, 2012. These included nine recommendations based on a designation by the Commander, U.S. Central Command, under Section 841 of the Fiscal Year 2012 National Defense Authorization Act, that these individuals or entities support the insurgency, and 34 recommendations for the initiation of suspension or debarment action based solely upon the placement of an individual or entity on the Department of Commerce (DOC) Entity List. Unfortunately, these 43 recommendations did not include any supporting evidence other than the fact that the subject individuals or entities were so designated.

Under Section 9.406 of the Federal Acquisition Regulation, an SDO may not debar a contractor unless a preponderance of the evidence establishes that the contractor has engaged in serious misconduct. Although supporting documentation for the nine Section 841 recommendations ultimately was received by PFB in November, it consisted of classified intelligence reports from multiple unidentified sources of varying reliability. A compendium of information from anonymous or unidentified sources whose credibility and reliability cannot be ascertained is an insufficient basis for suspension or debarment.

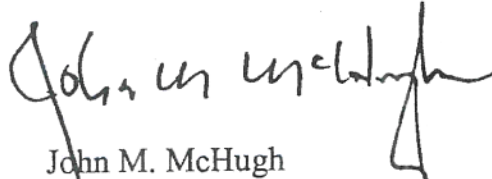
Mr. Fiore reports to me that the SIGAR has not provided evidence concerning the basis for the DOC listing for any of the 34 Entity List recommendations – other than the sole fact of their having been listed. Debarment based solely upon entry on the Entity List or Section 841 designation would fail to meet due process requirements and would

likely be deemed arbitrary and capricious if challenged in court under the Administrative Procedure Act review.

I have asked the Army SDO, Mr. Fiore, to provide a full briefing on these cases and the Army Suspension and Debarment process to you or your staff at your convenience. In the meantime, Army PFB attorneys will continue to work with the SIGAR staff to develop the necessary evidence to proceed with these suspension or debarment actions.

I trust this information is helpful. Thank you for your inquiry into this matter and for your continued support of our Soldiers and their Families.

Sincerely,



John M. McHugh