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Contract and Fiscal Law Developments of 2006—The Year in Review

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The Ugly: War Profiteers

Continuing the push to provide law and order to the “Wild Middle East,” there were a number of high profile pleas and convictions this past year. The U.S. Attorney Office for the Central District of Illinois and the U.S. Department of Justice’s Criminal Division has been leading the criminal charge as evidenced by these three cases involving the work of Halliburton’s subsidiary, Kellogg, Brown & Root Services Inc. (KBR), on the Logistics Civil Augmentation Program (LOGCAP III). The LOGCAP III supports the logistical needs of U.S. military forces in Iraq.45

On 18 November 2005, Glenn A. Powell, a former employee of KBR was sentenced to fifteen months in prison for taking a $121,800 kickback to award a subcontract from the LOGCAP III prime contract to an Iraqi subcontractor.

On 23 March 2006, Stephen L. Seamans, a former ‘Procurement Materials and Property Manager’ of KBR pled guilty to wire fraud and conspiracy to launder money related to the awarding of a subcontract under the LOGCAP III contract. According to the plea agreement and statements made in court, Seamans accepted kickbacks in excess of $124,000 to improperly award a dining facility services contract at Camp Arifjan in Kuwait. He awaits sentencing.46

On 23 June 2006, Mohammad Shabir Khan, Tamimi Global Company’s former Director of Operations for Kuwait and Iraq pled guilty to paying KBR employees kickbacks to secure two military dining facility contracts.47

Administrative

APA Review

As a reminder that suspension and debarment officials (SDO) are reviewable there was a rare challenge of that authority this year: WEDJ et al. v. Department of Defense.49

WEDJ Inc., a small air conditioner manufacturer in York, Pennsylvania, had numerous government contracts with the Communications and Electronics Command (CECOM) and the Defense Logistics Agency to provide environmental control units—military air conditioners—on various weapon systems. WEDJ used the Administrative Procedure Act (APA)49 to attack the Army’s SDO decision to debar WEDJ and its principles under Federal Acquisition Regulation (FAR) part 9-406. The Army’s SDO debarred WEDJ and its principles for improperly using surplus parts and falsifying first article test results on air conditioners for Patriot Missile Shelters, Firefinder Radar Control Shelters and Navy Hovercraft.

WEDJ contention was that the SDO had acted arbitrary and capriciously by relying on the factual record before him. Judge James McClure reviewed the administrative record and noted that each of WEDJ’s “spurious” allegations had been heard by the SDO in the hearing and in the written materials and had been properly considered. Key to this decision is that Army had kept a complete administrative record and that the SDO had what he needed before him to make a decision that survived APA scrutiny.

There is nothing new here, but the case is a classic textbook manner in which coordination between the buying command (CECOM), the investigators (Defense Criminal Investigative Service and the Army’s Criminal Investigative Command—Major Procurement Fraud Unit), the DOJ, and the agency headquarters element (Army Procurement Fraud Branch) resulted in a solid administrative record supporting a fact-based debarment.

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48 2006 WL 2077021 (M.D. Pa.)