CENTRAL REGION
KELLOGG BROWN & ROOT SERVICES, INC. RESIDENT OFFICE
DEFENSE CONTRACT AUDIT AGENCY
DEPARTMENT OF DEFENSE
4100 Clinton Drive, Mail Drop 03-1098A
Houston, Texas 77020-6237

3321-820.5/keb (2007-KBRSI-032)

June 7, 2007

MEMORANDUM FOR HEADQUARTERS, U.S. ARMY SUSTAINMENT COMMAND,
1 ROCK ISLAND ARSENAL, ROCK ISLAND, IL 61299-6500

ATTN: Kristan Mendoza, Acting Chief, LOGCAP Contracting Branch

SUBJECT: Reasonableness of KBRSI Settlement Offer on Tamimi Subcontract Nos. GU49-KU-S00001 and GU68-KU-S00018

In consonance with U.S. Army Sustainment Command's (ASC) letter, AMSAS-ACF-L, dated August 28, 2006 and as requested by ASC, we have reviewed (i) the reasonableness of KBRSI's settlement offer of a $525,202 credit amount related to the illegal activities of a former KBRSI subcontract administrator and Tamimi Global Company, Ltd., and (ii) the KBRSI proposed accounting for the $525,202 credit amount. Based on our review, the settlement offer may not consider the potential overpricing of the Tamimi subcontracts. We have estimated the excess profit realized on the subject Tamimi subcontracts to be $49.8 million.

The proposed settlement offer of the $525,202 credit amount was based solely on the $133,000 bribe paid by Tamimi to a former KBRSI subcontract administrator plus associated KBRSI indirect costs, fee, and penalties. The $133,000 was reported by the Department of Justice when KBRSI's former subcontract administrator was convicted of the crime. We do not believe the $525,202 credit adequately considers how much the negotiated subcontract (GU49-KU-S00001 and GU68-KU-S00018) prices may have been inflated in exchange for the $133,000 payment(s) and consequently does not provide for the Government to fully recover the increased price paid by the Government as a result of the improper activity. KBRSI applied the proposed credit to Task Orders 27 and 44 in the amounts of $371,555 and $153,647, respectively.

We performed an analysis to determine the profit achieved by Tamimi on the two DFAC subcontracts mentioned above. We performed this assessment to provide information to assist ASC in determining the reasonableness of KBRSI's proposed settlement offer of the $525,202 credit amount. As discussed in the following paragraphs, Tamimi has potentially realized excessive profits of up to $49.8 million as a result of the improper activities.

In October 2002, KBRSI awarded DFAC Subcontract No. GU49-KU-S00001 to Tamimi Global Company, in the not-to-exceed amount of $14.4 million with a one year period of performance. The subcontract was subsequently modified extending the period of performance and increasing the value to $130 million through Change 15 which was subsequently decreased to $109.8 million by Change 21. In December 2003, in order to determine the reasonableness of the subcontract costs, DCAA requested information from KBRSI on Tamimi's billings. In response to a KBRSI request, Tamimi provided KBRSI with cost documentation from October 2002 through October 2003. KBRSI performed an analysis on the data and provided supporting documents including the Tamimi incurred cost data. Using the same thirteen months of cost data, we determined that Tamimi "earned" an excessive profit rate of 76 percent, as shown below. The excessive profit rate is in addition to a negotiated profit rate of 10 percent under the contract and potentially may be due to an inflated subcontract price resulting from illegal activity between Tamimi and KBRSI's subcontractor administrator. The 10 percent profit was biiled within the daily service provision and is not included in the $60,765,802 billed amounts for labor and food shown in the schedule below:

Billed Amounts Based on Invoices Submitted by Tamimi to KBRSI for DFAC Sites 5a, 5b, 5c, 5d, 5e, 5f, and SPOD	$60,765,802
Actual Costs based on Tamimi internal reports from October 2002 to October 2003	$34,546,932
Excessive Profit	$26,218,870
Excessive Profit Rate	76%

The profit analysis shown above is based on the period October 2002 through October 2003 for Subcontract GU49-KU-S00001, since that is the only period for which cost data has been provided, while the actual period of performance for both subcontracts is October 2002 through August 2004. The total billings for both subcontracts for this period are $171.8 million. We requested KBRSI to provide additional data to allow us to assess Tamimi's profit for the entire period of performance for both subcontracts. We issued a letter on December 21, 2006 requesting KBRSI exercise the audit rights clause in Tamimi's subcontracts or arrange for DCAA to audit Tamimi's books and records. KBRSI sent a letter to Tamimi on February 5, 2007 and has had subsequent discussions with Tamimi's legal representatives in Houston. KBRSI has not provided the requested data to date or any timeframe as to when any data/information will be forthcoming. Since KBRSI has not provided the requested data, we calculated excessive profit of $49.8 million by applying our estimated excessive profit rate of 76 percent to all billings for the entire period of performance of Subcontract Nos. GU49-KU-S00001 and GU68-KU-S00018. A summary of our calculations is included in the Attachment.

We can assist your office is developing a more accurate estimate of the impact as a result of the improper activity if KBRSI provides access to: (i) adequate pricing data and/or (ii) Tamimi's accounting records. Neither KBRSI nor Tamimi have provided any information (accounting or management data) that asserts the excessive profit rate Tamimi experienced during the thirteen month period was the result of extraordinary efficiencies or improved practices implemented by Tamimi during the performance of their DFAC subcontracts. Short any evidence of such efficient performance or practice improvements, it appears the subcontract price may have been impacted by the improper activity by as much as $49.8 million.

Incidentally, the subcontracts discussed above were part of the Army Field Support Command (AFSC) March/April 2005 negotiated "DFAC Settlement Agreement" with KBRSI, that was entered into to settle specific questioned DFAC costs reported during DCAA audits of the initial DFAC subcontracts. However, the participants negotiating the agreement would not have been aware of the improper activity since it became known only after the DFAC Settlement Agreement was signed.

Paragraph 5a (e), Other Claims, of the DFAC Settlement Agreement allows for a reopening of negotiations in the event of certain activities, as follows:

> *This agreement does not release any claims that the US Government has or may have against the contractor or any affiliated entities or persons arising from or related to fraud or false claims, including, but not limited to violations of criminal law, civil statues or common law, including claims arising under the False Claims Act, 31 U.S.C. 3729, et seq.*

Accordingly, we recommend ASC exercise its right under the DFAC Settlement Agreement to reopen negotiations with KBRSI and rigorously pursue recovery of the excessive/unreasonable profits identified above on Subcontract Nos. GU49-KU-S00001 and GU68-KU-S00018. In addition, we recommend ASC consider further reductions to protect the taxpayers' interest for potential overpayments on other DFAC subcontracts negotiated between Tamimi and KBRSI's former subcontract administrator, unless KBRSI provides the data regarding those subcontracts. As discussed above, this information was requested many weeks ago and KBRSI has failed to provide the information for the Government's examination.

If you have any questions regarding this memorandum, please contact Mr. Gary Carsillo, Senior Auditor, at (713) 753-4804 or Mr. Gary Catt, Supervisory Auditor, at (713) 753-2548.

/signed/
Teresa A. Lawson
Resident Auditor

Attachment: Summary Computation of Excessive Profit plus KBRSI's Indirect Cost & Fee

Attachment to
2007-KBRSI-032.doc

Copy furnished:
- David DeFrieze, Chief, International & Operations Law Division, ASC
- Terese Harrison, Attorney Advisor, ASC
- Jerry Conry, Systems Administrative Contracting Officer, DCMA