UNITED STATES TRANSPORTATION COMMAND (USTRANSCOM)
POLICY DIRECTIVE 51-3
15 April 2009

Law

SUSPENSION AND DEBARMENT OF NON-RESPONSIBLE CONTRACTORS

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1. REFERENCES:

(a) DOD General Counsel Memorandum, *Request for Interpretation*, 3 July 2008

(b) AFPD 51-11, *Coordination of Remedies for Fraud and Corruption Related to Air Force Procurement Matters*

(c) FAR 9.1, *Responsible Prospective Contractors*

(d) DFARS PGI 209.4, *Debarment, Suspension, and Ineligibility*

(e) FAR 9.4, *Debarment, Suspension, and Ineligibility*

(f) USTRANSCOMI 51-4, *Fraud Remedies Program*

2. PURPOSE: The purpose of this policy directive is to establish policies, responsibilities, and procedures for assuring that government contracts are not awarded to non-responsible contractors. The USTRANSCOM Suspension and Debarment process is established in light of the 3 July 2008 DOD General Counsel Memorandum indicating that, as the Executive Agent for USTRANSCOM, the United States Air Force will provide USTRANSCOM with specialized legal support.

3. APPLICABILITY: Applies to all personnel assigned or attached to USTRANSCOM at Scott AFB IL.

4. POLICY:

4.1. Contractor Responsibility. In accordance with Federal Acquisition Regulation (FAR) 9.103(a), USTRANSCOM shall contract only with responsible prospective contractors. Under FAR 9.104-1, current and prospective contractors are expected to have adequate financial resources to perform the contract (or the ability to obtain them); be able to comply with the required or proposed delivery or performance schedule; have a satisfactory performance record; have a satisfactory record of integrity and business ethics; have the necessary organization,

experience, operational controls, and technical skills (or the ability to obtain them) for the contract; have the necessary production, construction and technical equipment and facilities (or the ability to obtain them) for the purposes of the contract; and be otherwise qualified and eligible to receive an award under applicable laws and regulations. Any substantial issue evidencing a lack of integrity or business ethics, evidencing non-compliance with applicable laws or regulations, or otherwise evidencing a history or pattern of behavior that is contrary to the foregoing definition of contractor responsibility is appropriate for consideration by the Air Force debarring and suspending official.

4.2. Fraud. In accordance with Air Force Policy Directive (AFPD) 51-11, fraud is defined as "[a]ny intentional deception by an individual, corporation, partnership, or other entity which seeks to unlawfully deprive the Air Force of something of value or to secure from the Air Force a benefit, privilege, allowance, or consideration for which there is no entitlement." Any issue arising under this definition of fraud is appropriate for consideration by the Air Force debarring and suspending official.

5. PROCEDURES:

5.1. The Office of the Staff Judge Advocate (TCJA) Early Involvement and Assistance. In accordance with this Policy Directive, any individual with concerns regarding a contractor's present responsibility may address issues directly to the suspending and debarring official. However, as TCJA will become involved in the matter once it is submitted to the suspending and debarring official, individuals are highly encouraged to consult with TCJA as soon as issues of fraud or contractor non-responsibility are identified. Early involvement with TCJA will ensure that packages sent to the suspending and debarring official are complete and legally sufficient. Additional instructions regarding the coordination of fraud remedies are found in USTRANSCOMI 51-4.

5.2. Once potential fraud or contractor non-responsibility issues have been identified, TCJA can provide assistance in compiling and preserving evidentiary information, locating applicable statutes and regulations, contacting the appropriate investigative offices, and preparing packages for consideration by the suspending and debarring official.

5.3. Debarment or Suspension Referral. In accordance with Defense Federal Acquisition Regulation (DFARS) 209.406-3 and 209.407-3, all potential debarment or suspension matters shall be referred to the Air Force Deputy General Counsel (Contractor Responsibility) as identified in DFARS 209.403. Follow the procedures at DFARS PGI 209.406-3. Copy TCJA on any documentation submitted.

5.4. Post-Filing Procedures. Once a matter has been referred to the suspending and debarring official in accordance with this policy directive, TCJA becomes the primary point-of-contact for interface with the suspending and debarring official. The individual or organization filing the referral will work with TCJA on a continuing basis to provide the suspending and debarring official all information, documentation, and materials necessary for the resolution of the suspension and debarment proceedings.

5.5. Excluded Parties List System. Individuals and companies under federal suspension or debarment can be identified by accessing the search engine for the Excluded Parties List System found at http://www.epls.gov .

5.6. USTRANSCOM shall not solicit offers from, award contracts to, or consent to subcontracts with companies identified on the Excluded Parties List System.

5.7. If an employee feels there is a compelling reason to contract with an individual or company listed on the Excluded Parties List System, coordinate with TCJA for assistance in preparing a "compelling reasons" package for review by the Agency Head.

5.8. Despite inclusion on the Excluded Parties List System, current contracts may continue in accordance with FAR 9.405-1.

5.9. Debarment of USTRANSCOM Contractors by Other Agencies. If an employee learns that a USTRANSCOM contractor has been debarred through the actions of another Government agency, TCJA should be notified. USTRANSCOM will determine if the debarment has a mission impact, assess available options, and choose an appropriate course of action. TCJA, the Directorate of Acquisition (TCAQ), and the customer office will coordinate to make initial assessments, which will then be elevated for further review, as necessary.

5.10. Records Hold. Records (hard copy or electronic) that are related to the suspected fraud must not be destroyed or shipped off base for archiving. Record location and size, along with contact information of the record custodian, should be forwarded to TCJA.

APPROVED BY

A. E. RONDEAU
Vice Admiral, USN
Deputy Commander

Attachment:
DOD General Counsel Opinion, 3 July 2008, Specialized Support for USTRANSCOM Provided by the United States Air Force

OPR: TCJA

GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
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JUL 0 3 2008

MEMORANDUM FOR COMMANDER, UNITED STATES TRANSPORTATION COMMAND (USTRANSCOM)

SUBJECT: Request for Interpretation

This memorandum responds to your letter to the then-General Counsel of the Department of Defense, dated February 29, 2008, regarding USTRANSCOM's requirement for specialized litigation support. You asked that this office advise whether the Department of the Air Force or the Department of the Army, or both, is responsible for providing this specialized support to USTRANSCOM, in light of its enhanced acquisition mission.

In the absence of information to the contrary, it is my opinion that the Department of the Air Force, as the Executive Agent for USTRANSCOM, is ultimately responsible for providing this specialized legal support in accordance with DoD Directive 5100.3, "Support of the Headquarters of Combatant and Subordinate Joint Commands." However, it is also my opinion, consistent with paragraph 4.6 of DoD Directive 5100.3, that the Department of the Army retains interim responsibility for this specialized legal support for those acquisition activities previously performed by the Military Surface Deployment and Distribution Command, until the Air Force can realign sufficient resources to meet this added mission requirement.

I am providing copies of this opinion to the Secretaries of the Army and Air Force, and their General Counsels and Judge Advocates General, for their information and appropriate action.

My point of contact for this action is Mr. Paul Koffsky, Deputy General Counsel, Personnel and Health Policy (DGC(P&HP). He may be reached at 703-697-9341.

Daniel J. Dell'Orto
Acting

cc:
Secretary of the Army
Acting Secretary of the Air Force

Attachment 1