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Defense Contractor Resolves Criminal, Civil and Administrative Liability Related to Food Contracts

Agility Pays \$95 Million and Gives Up \$249 Million in Claims to DOD

Agility Public Warehousing Co. KSC (Agility), a Kuwaiti company, has agreed to globally resolve criminal, civil, and administrative cases arising from allegations that Agility overcharged the United States when performing contracts with the Department of Defense (DOD) to supply food for U.S. troops from 2003 through 2010. As part of the global resolution, Agility has agreed to pay \$95 million to resolve civil fraud claims, to forgo administrative claims against the United States seeking \$249 million in additional payments under its military food contracts, and to plead guilty to a criminal misdemeanor offense for theft of government funds. DOD's Defense Logistics Agency (DLA) will also release a claim of \$27.9 million against Agility and lift its suspension of Agility, as the company has been suspended from federal government contracting for the last seven years after being indicted. An administrative agreement entered between DLA and Agility requires oversight of an Agility entity by an independent corporate monitor and the maintenance of an ethics and compliance program with a number of detailed requirements.

"The Department of Justice will hold accountable contractors that seek to profit unfairly at the expense of U.S. troops and taxpayers," said Deputy Assistant Attorney General Joyce R. Branda for the Justice Department's Civil Division. "Those who expect to do business with the government must do so fairly and honestly, abiding by the contract terms to which they agreed."

"Today's global resolution represents a fair and just outcome of criminal, civil, and administrative cases that have been pending since 2009," said U.S. Attorney John Horn for the Northern District of Georgia. "Agility has admitted to criminal conduct, has given up claims it valued at up to \$249 million, and must pay \$95 million to the government. The agreements require Agility to take responsibility for its criminal wrongdoing and take affirmative steps to prevent it from engaging in this conduct again, and the government recovers significant funds that were alleged to have been wrongly paid."

"This settlement marks the conclusion of a lengthy investigation that demonstrates the Defense Criminal Investigative Service's (DCIS) commitment to ensuring that tax dollars spent to support Department of Defense programs and missions are protected from fraud and abuse throughout the procurement process, but especially during overseas combat operations which are the most vulnerable," said Special Agent in Charge John F. Khin of , DCIS-Southeast Field Office. "This extremely complex investigation required DCIS agents and our partners to tenaciously sort through and piece together an unprecedented volume of information and documents, and persevere through many years of exhaustive work, to bring this case to a resolution."

"We are very pleased with this resolution, and are gratified that the public can now see what we've been aggressively investigating," said Director Frank Robey of the U.S. Army Criminal Investigation Command's Major Procurement Fraud Unit (MPFU). "Companies that do business with the government must comply with all of their obligations, and if they overcharge for supplying our men and women in uniform who are bravely serving this nation, they must be held accountable for their actions."

“In simple terms, defense contractor based fraud is theft directly from the American people,” said Special Agent in Charge David J. LeValley of FBI Atlanta Field Office. “The FBI is pleased with the persistence and determination of its investigators, law enforcement partners, and federal prosecutors who saw this investigation through to its successful conclusion.”

The civil claims and criminal charges resolved today arise out of allegations originally raised in a civil whistleblower suit against Agility and another Kuwaiti company, The Sultan Center Food Products Company, K.S.C. (TSC). Kamal Mustafa Al-Sultan, a former vendor of Agility, filed the lawsuit under the qui tam, or whistleblower, provisions of the False Claims Act (FCA), which permit private individuals to sue on behalf of the government for false claims and to share in any recovery. The Act also allows the government to intervene and take over the action, as it did in this case. Mr. Al-Sultan will receive \$38.85 million as a result of the civil action he filed, which is captioned U.S. ex rel. Kamal Mustafa Al-Sultan v. Agility Public Warehousing Co., K.S.C. et al., No 1:05-cv-2968-GET (N.D. Ga.).

In its civil complaint, the United States alleged that Agility and TSC knowingly overcharged the Department of Defense for locally available fresh fruits and vegetables that Agility purchased through TSC, and falsely charged the full amount of TSC’s invoices despite agreeing that Agility would pay 10 percent less than the amount billed. The United States also alleged that Agility failed to disclose and pass through rebates and discounts it obtained from U.S.-based suppliers, as required by its contracts.

The criminal Information to which Agility has agreed to plead guilty alleges conduct that was part of the pending indictment. Specifically, it alleges that in connection with one of its contracts, Agility concealed consolidation fees that should have been paid by Agility, plus an additional markup to the company, in the product price billed to the United States. As a result of Agility’s price manipulation, the United States paid an inflated price for food. The criminal Information to which Agility is pleading guilty charges Agility for one inflated invoice in an amount of less than \$1,000, although the United States asserts that Agility engaged in this price manipulation whenever it used this consolidator.

Following Agility’s criminal Indictment by a grand jury, on Nov. 16, 2009, DLA suspended Agility from government contracting due to the criminal Indictment. This suspension was subsequently extended to Agility’s more than 300 affiliated entities. As a result, Agility and its affiliates have forgone the opportunity to obtain billions of dollars in revenue associated with DOD contracts since 2009. Although Agility’s suspension will be lifted, it will be required to use an independent monitor. Moreover, the agreement requires Agility to maintain an ethics and compliance program with a number of detailed requirements.

Since 2006, Agility has filed a number of contract claims seeking additional payments of \$249 million alleging that DLA owed Agility payments for its performance under a series of military contracts, which DLA contested in protracted litigation. Today’s agreement requires Agility to release all claims against DLA related to the contracts.

The resolution of the criminal and civil matters in the U.S. District Court for the Northern District of Georgia were the result of a coordinated effort by the U.S. Attorney’s Office for the Northern District of Georgia and the Civil Division’s Commercial Litigation Branch. The claims resolved by the settlements are allegations only, except to the extent the conduct was admitted as part of the defendant’s guilty plea, and there has been no determination of liability.

The criminal and civil cases were investigated by the DCIS, U.S. Army’s Criminal Investigative Command’s MPFU, Defense Contract Audit Agency, and the FBI.

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