



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

APR 04 2012

The Honorable Thomas R. Carper
United States Senate
Washington, DC 20510

Dear Senator Carper:

Thank you for your March 6, 2012, letter to the Secretary of Defense regarding concerns over contract awards to companies with tax delinquencies, in reference to a USA Today article about an Army contract with Leonie Industries. I am responding on behalf of the Secretary.

I am providing responses to the questions posed in addition to the information provided by Patton Boggs, LLP, in a March 9, 2012, letter to the Acting Inspector General of the Department of Defense (DoD) on which you and the Secretary were copied.

First, while the Department has a robust and effective process of collecting contractor tax debt, it can only be executed when the Department of the Treasury, through the Internal Revenue Service (IRS), notifies the Defense Finance and Accounting Service (DFAS) of a valid debt for which DFAS can offset against payments due to the company. IRS has not notified DFAS of a tax delinquency on the part of Leonie Industries or its owners. Since DFAS has received no notice from the IRS, no offsets have been applied to payments made to Leonie Industries.

Second, there is a requirement for contractors to complete the contract provision entitled "Certification Regarding Responsibility Matters." Included is a representation regarding delinquent taxes exceeding \$3,000 within a 3-year period for which a liability remains unsatisfied. If a contractor or corporate individual has entered into an arrangement with the IRS to pay outstanding taxes, the contractor would not be considered delinquent and therefore the IRS would not notify DFAS. The IRS has provided documentation that this was the situation in this case. Contracting officers review the provision to determine whether a contractor is responsible and should receive an award. The Army contracting officer did check when issuing the task orders and found that the contractor had represented that there were no delinquent taxes; on that basis, award was made.

Third, under current acquisition guidelines and procedures, tax debts are considered as part of the financial capability of a contractor and could impact performance; as such, a company's tax delinquency would be considered among other factors when making a responsibility determination to award a contract. In this specific instance, there was no indication that the company had such a debt.

In addition, section 8124 of Division A of the 2012 Consolidated Appropriations Act, Public Law 112-74, imposes a new provision that requires consideration of suspension and debarment before entering into a contract with corporations that have certain unpaid Federal tax




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liability within the preceding 24 months for which all judicial and administrative remedies have been exhausted or have lapsed and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. In January 2012, the Department implemented the statutory provision requiring DoD contractors to provide this information for new contracts funded with FY 2012 appropriations.

As a matter of information, this office has been advised that other Members of Congress have directly contacted the Acting Inspector General (IG) regarding Leonie Industries. We have forwarded your letter to the Acting IG so that you may be made aware of any additional information pertaining to this topic that the Acting IG may release.

A similar letter has been sent to Senator Coburn.

Sincerely,



Frank Kendall
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