



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

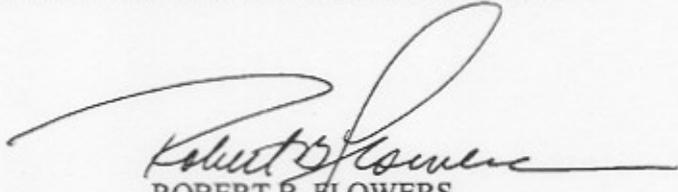
CEPR-ZB (715)

MEMORANDUM FOR BG ROBERT CREAR, COMMANDER, SOUTHWESTERN
DIVISION, 1114 COMMERCE STREET, DALLAS, TX 75242-0216.

SUBJECT: Waiver for Submission of Cost and Pricing Data on Contract DACA63-03-D-0005

1. Reference CESWD Request for Waiver of 19 December 2003, SAB.
2. I hereby approve the referenced request.
3. My point of contact for this action is LTC Albert A.J. Castaldo, 202-761-8645.

Encl


ROBERT B. FLOWERS
Lieutenant General, USA
Commanding

REQUEST FOR WAIVER

In accordance with FAR 15.403-1(c)(4), I hereby request a waiver of the requirement for Kellogg Brown and Root Services (KBRS) to submit cost or pricing data pursuant to 10 U.S.C. §2306a and 41 U.S.C. §254b for contract DACA63-03-D-0005, Task Orders 0005, 0007, and subsequent task orders involving the purchase of fuels. This task order was issued to KBRS to procure gasoline and other fuels for distribution and use in Iraq due to the fact that Iraq's oil producing and refining facilities were completely shutdown.

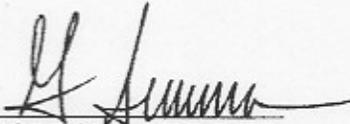
Prior to issuance of the first delivery order, KBRS obtained adequate price competition for the delivery of gasoline into Iraq and awarded to the lowest price offeror. However, since that time the Kuwaiti Petroleum Company (KPC) has refused to grant permission to any subcontractor other than that offeror, Altanmia Commercial Marketing Company (Altanmia) for the additional purchase and delivery of fuels. Although since May 2003 other trucking and oil distributors have made proposals to KBRS on more favorable terms than Altanmia, none have been able to obtain approval from KPC. A request sent by the administrative contracting officer in October has yet to be accepted or approved by KPC. Thus, since the issuance of the initial purchase order KBRS has been unable to secure any real competition for these services.

In the absence of continued competition, KBRS has requested cost and pricing data from Altanmia to support the pricing arrangement under which the two have been operating. To date Altanmia has refused to provide cost and pricing data as required of KBRS by the Federal Acquisition Regulation (FAR) because it has advised that to do so would violate Kuwaiti law. According to a contact in the Defense Energy Supply Command (DESC), an agency that is part of the Defense Logistics Agency (DLA) who has purchased jet fuel and distillate fuels for the U.S. Forces for 25 years, one is never able to obtain cost and pricing data from a foreign oil company. This information is supported further by a source contacted within the U.S. Embassy in Kuwait who has indicated that it is common throughout the Middle East for contractors to refuse to provide such information. Therefore, given the refusal by Altanmia to provide cost and pricing data together with the unwillingness on the part of KPC to permit any other subcontractor to provide these services, KBRS is left with no option for providing these services from Kuwait other than to continue obtaining them from Altanmia.

Part 15 of the FAR allows the Head of the Contracting Agency to waive the requirement for submission of cost and pricing data in exceptional cases when the price of the product or service can be determined to be fair and reasonable without the submission of cost and pricing data. Despite the fact that KBRS has been prevented from competing the purchase of fuel, transport and delivery out of Kuwait, KBRS has been able to provide data that otherwise indicate the fair and reasonable price of these services. KBRS has continued to negotiate the best price possible, and we will direct them to continue to do so. In these circumstances I conclude that submission of cost and pricing data is not

necessary. Your approval of this Request for Waiver for KBRS to continue to provide such cost and pricing data is requested.

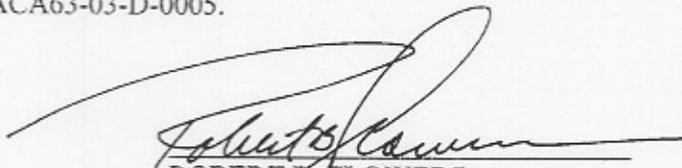
Date 19 Dec 03


GORDON A. SUMNER
Contracting Officer

I have hereby determined that it is in the best interest of the United States Government to waive the requirement for cost and pricing data from Kellogg, Brown and Root Services regarding its award of a subcontract for gasoline to Altanmia.

By the authority delegated to me as the Head of the Contracting Agency, in accordance with FAR 15.403-1(c)(4), and upon reviewing the foregoing facts, authorities and analysis, I concur with the recommendation of my Contracting Officer and grant this Request for Waiver to Kellogg, Brown and Root Services to exempt KBRS from providing any cost and pricing data pertaining to its subcontract with Altanmia for the purchase of fuels under Task Orders 0005, 0007, and subsequent task orders involving the purchase of fuels under DACA63-03-D-0005.

Date 19 Dec 03


ROBERT B. FLOWERS
Lieutenant General
US Army Corps of Engineers
Commanding