



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
PROCUREMENT FRAUD DIVISION
9275 GUNSTON ROAD
FORT BELVOIR, VA 22060-5546

REPLY TO
ATTENTION OF

DAJA-PFD

6 June 2018

MEMORANDUM THRU

Commander, Far East District, U.S. Army Corps of Engineers, Unit # 15546, APO, AP 96205
Principal Assistant Responsible for Contracting (PARC) Dallas (PARC-DAL), [REDACTED]
U.S. Army Corps of Engineers, 1100 Commerce Street, Dallas, Texas 75242

FOR Contracts Branch Chief, Far East District, U.S. Army Corps of Engineers, Unit #15546,
APO AP 96205-5546

SUBJECT: Request for Compelling Reasons Determination to extend the contract completion date on contract number W912UM-09-C-0007 with SK Engineering and Construction Company, Ltd. by an additional 379 days

1. **Background.**

a. The U.S. Army Corps of Engineers (USACE), Far East District (FED), headquartered in Seoul, South Korea, provides engineering and construction services for the Department of Defense (DOD) in South Korea. This includes awarding U.S. government contracts to companies for the construction, maintenance, and operation of various structures and facilities in South Korea. Since 2005, FED has been the primary agency responsible for the multibillion dollar relocation program to consolidate U.S. military bases and installations in South Korea. As part of the relocation program, FED, in coordination with the Korean Ministry of Defense (MOD), has awarded infrastructure and construction contracts to private companies for the expansion of Camp Humphreys, a large military installation, located near the city of Pyongtaek. To this end, on 24 December 2008, FED awarded contract number W912UM-09-C-0007 to SK Engineering and Construction Company, Ltd. (SK E&C) for the Camp Humphreys Garrison Land Development and Utilities Infrastructure (LDUI) project. (Hereafter referred to as the "LDUI contract") The LDUI contract covered the land development, utilities, and infrastructure of Parcels 2A, L, K, and the original Humphreys Garrison. The contract completion date was set for 18 May 2018.

b. On 17 November 2017, based on a referral by the FED, I suspended Duane Nishiie, Seung-Ju Lee, and SK E&C (respondents) from future contracting with the U.S. government pursuant to Section 9.407 of the Federal Acquisition Regulation (FAR). The suspension was based on a Grand Jury indictment, filed on 21 September 2017, in the U.S. District Court for the District of Hawaii, charging Duane Nishiie and Seung-Ju Lee with multiple offenses, including conspiring with SK E&C ("Company A") to accept millions of dollars in bribery payments from SK E&C, in exchange for Mr. Nishiie's official acts as a FED contracting officer to influence

and direct the award of the multi-million dollar LDUI contract at Camp Humphreys to SK E&C. Presently, all three respondents remain suspended, pending the final outcome of the criminal proceedings.

2. Request for Compelling Reasons Determination.

a. On 23 May 2018, you emailed to [REDACTED] an Attorney-Advisor with the Army Procurement Fraud Division (PFD) a Compelling Reasons Determination (CRD) request memorandum, dated 9 May 2018, requesting extension of the LDUI contract completion date, originally set for 18 May 2018, by an additional 379 days. Your request was properly routed through and with the approval of your Commander and the PARC. In your request, you indicate that before and after its suspension, SK E&C has performed “diligently” and with “high quality” on the LDUI contract; and the project is approximately 95% completed. Notwithstanding, you are requesting an extension of the contract completion date due to the project having encountered the following construction delays:

- First, there was a 176-day delay of the full site release of Avenue C, which is the main road to the helicopter hangar and runway located at Humphreys, from the DPW to SK. The partial and late site release caused delays in SK E&C’s ability to begin construction along this road. Once construction on Avenue C was started, a previously unknown commercial gas line was found running through the site which the Government and SK agreed constitute a differing site condition. The line is owned by a local Korean utility which is the only entity authorized to design and construct the movement of this line as well as upgrade it to meet the necessary structural strength required to comply with SK’s existing design for that area. The Korean utility company has been slow to respond to requests to begin this work which has caused further delays to SK E&C’s ability to complete required construction.
- Second, other facilities under construction on the project cannot be accepted by the Humphreys Garrison, because they are waiting on the installation of utility manholes and/or connections to water and sewer mains that SK E&C needs to install. The missing connections and manholes have prevented vertical contractors from completing commissioning, and are impacting the mission/program, since Humphreys cannot accept the facilities without utilities. Impacted facilities include Senior Leaders Quarters, street lighting at the Morning Calm Facility, and the main sewer line connecting USAG Humphreys to the City of Pyeongtaek’s sewer main to the sewer plant.
- Third, and perhaps most importantly, due to the uncompleted utilities on Indian Head Avenue, swift ambulatory emergency access to the new hospital, scheduled to be completed on 30 June 2018, will be adversely impacted. Currently, due to the detours along this avenue, there is an additional 15 minute delay along this access road. If the contract completion date is not extended, FED would then

encounter additional delays in finding another qualified contractor and negotiating a new contract to complete the work on this avenue; and as a consequence, the ambulatory emergency response time to the new hospital will continue to be adversely affected, which may severely compromise the health and safety of our service members and their families at this installation, and have an overall adverse impact on our military readiness and national security in the region.

b. In addition, you indicate that the LDUI contract is critical to the completion of the Yongsan Relocation to Camp Humphreys, the relocation also being part of an international agreement. You also indicate that SK E&C's quality and performance on the LDUI contract has been rated "Very Good" to "Exceptional" over the last two years, and to bring in a new contractor on the project at this time would void SK E&C's existing warranties on the project and cause further delays in its completion. You also indicate that a time extension would be consistent with normal government construction contract modification provisions with the final agreed upon price, including compensation for extended overhead and other direct costs attributable to the delay, and time extension to be negotiated between the parties. Once done, the vertical contractors will be able to complete their utilities work, which will then allow the Humphreys Garrison to occupy the facilities as part of the overall mission.

3. **Decision.** I have determined that the FED has provided sufficient compelling reasons to extend the contract completion date on contract number W912UM-09-C-0007 (LDUI contract), originally set for 8 May 2018, by an additional 379 days, or by lesser amount of time as determined by the FED. My rationale is as follows:

a. Immediate operational needs require that the LDUI contract remain in force in order to insure timely completion of the LDUI project and facilities, including the timely completion and operation of the new hospital at Camp Humphreys. To terminate the existing LDUI contract and award a new contract to another contractor to complete this project would likely cause further project completion delays beyond the additional 379 days granted, and thus unduly compromise the life, safety, and security of our service members and their families in the region.

b. Additionally, completing the LDUI project as soon as possible is consistent with our national defense policy in this region to swiftly relocate and consolidate our military bases and installations in South Korea to Camp Humphreys without any further delays.

4. My determination of compelling reasons is for the sole purpose of allowing the FED to issue a modification to the current LDUI contract with SK E&C. Conversely, this determination does not authorize the awards, renewals, or time extensions of any other government contracts or subcontracts with SK E&C.


5. Pursuant to Section 209.405 of the Defense Federal Acquisition Regulation Supplement, written notification of this compelling reasons determination will be provided to the General

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SUBJECT: Compelling Reasons Determination; Re: SK E&C LDUI contract

Services Administration.

6. 


MORTIMER C. SHEA, Jr.
Army Suspension and Debarment Official

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DEPARTMENT OF THE ARMY
FAR EAST DISTRICT, U.S. ARMY CORPS OF ENGINEERS
UNIT #15546
APO AP 96205-5546

CEPOF-CTC

9 May 2018

MEMORANDUM THRU

Commander, Far East District, U.S. Army Corps of Engineers, Unit 15546 APO, [REDACTED]
AP 96205
Principal Assistant Responsible For Contract Dallas (PARC-DAL), [REDACTED]
U.S. Army Corps of Engineers, 1100 Commerce St. Dallas TX [REDACTED]
Chief, Procurement Fraud Branch, [REDACTED] United States Army Legal
Services Agency, 9275 Gunston Road, Suite 2100, Fort Belvoir, VA 22060-5546

FOR U.S. Army Suspension and Debarment Official, [REDACTED] Jr., United
States Army Legal Services Agency, 9275 Gunston Road, Suite 2100, Fort Belvoir, VA
22060-5546

SUBJECT: Request for Written Determination of Compelling Reasons to
Extend Contract Time on Contract No. W912UM-09-C-0007 with SK
Engineering and Construction Company, LTD

1. Description of Procurement Action:

a. **Project Description:** Design and construction of the Land Development and Utility Infrastructure (LDUI) for Parcels 2A, L, K and the Original Humphreys Garrison. The contract is for the design and construction of all land development and utility infrastructure in the designated parcels as part of the relocation of U.S. Forces in Korea to the U.S. Army Garrison Humphreys (Humphreys) in Pyeongtaek, Republic of Korea.

b. **Extension Modification:** The contractor, SK Engineering & Construction Company, LTD ("Contractor" or "SK"), has experienced delays in its work attributable to Government action or inaction and due to a differing site condition for which it has requested an adjustment in the contract completion date of 379 calendar days and a price adjustment for the associated extended overhead costs. The Government agrees that the project is delayed for these reasons cited by SK and that a portion of that delay is compensable, i.e., a portion has no overlapping or concurrent delay and is on the project schedule's critical path, but intends to negotiate both the time and cost of the extension pending approval of this compelling reason determination. The Government is preparing time impact and cost analysis to support these negotiations.

2. Rationale for Compelling Reason for the Extension:

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a. Background: Contract No. W912UM-09-C-0007 was awarded in December of 2008 to SK. The Contractor has continued to work diligently with numerous change requests prior to the suspension notice and has performed with a high quality of work. The contract work is approximately 95% completed.

b. On November 17, 2017 the Army Suspension and Debarment Official notified SK that it was suspended from further contracting with any agency of the U. S. Government. It is important to note that all of the requirements prompting these "compelling reasons" occurred prior to the 17 November 2017 suspension date.

c. The Contractor is currently requesting an extension of the contract completion date of 18 May 2018 by 379 calendar days. While the Government does not agree that the full 379 days should be granted, the Government concurs that the Contractor is entitled to a significant time extension of some amount less than what is requested and that portions of this delay will be compensable. The parties are currently in negotiation to establish a mutually agreeable time extension, subject to SDO approval.

d. Two issues have led to the current request for addition of time and were issues that predated the November suspension:

(1) There was a 176-day delay of the full site release of Avenue C, which is the main road to the helicopter hangar and runway located at Humphreys, from the DPW to SK. The partial and late site release caused delays in the Contractor's ability to begin construction along this road. The initial DPW delay occurred between 1 December 2016 to 24 May 2017 but SK's delay proposal was not received until 14 May 2017.

(2) Once construction on Avenue C was started, a previously unknown commercial gas line was found running through the site which the Government and SK agree constitutes a differing site condition. The line was initially identified at 4 Aug 2017. The line is owned by a local Korean utility which is the only entity authorized to design and construct the movement of this line as well as upgrade it to meet the necessary structural strength required to comply with SK's existing design for that area. The utility company has been slow to respond to requests to begin this work which has caused further delays to the Contractor's ability to complete required construction. SK did not submit a request for modification with a proposal until 4 January 2018.

e. Other facilities under construction in the program cannot be accepted by the Humphreys Garrison because they are waiting on the installation of utility manholes and/or connections to water and sewer mains that the Contractor needs to

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install. The missing connections and manholes have prevented vertical contractors from completing commissioning, and are impacting the mission/program, since Humphreys cannot accept the facilities without utilities. Impacted facilities include Senior Leaders Quarters, street lighting at the Morning Calm Facility, and the main sewer line connecting USAG Humphreys to the City of Pyeongtaek's sewer main to the sewer plant.

f. Uncompleted work along Indian Head Avenue is impacting access to the new hospital that is scheduled to be completed on 30 June 2018. Currently, approximately 15 minutes of driving is added due to the detours, but when completed the travel distance is approximately 800 meters. If another contractor is brought to complete this work, the ambulatory emergency response time will be significantly affected, impacting the wellbeing of service members and their families.

g. All proposed changes are in the scope of the existing contract which is to complete the LDUI for Parcels 2A, L, K and Original Humphreys and were either done as changes under the differing site conditions clause, FAR 52.236-2, or due to mission changes that required the contract be updated to incorporate those changes and executed under the changes clause, FAR 52.243-4.

h. Time is owed to the contractor as developed in the Government's Negotiation Objectives but the final agreed upon price, compensation for extended overhead and other direct costs attributable to the delay, and time extension has not been set and is currently in negotiation.

i. This contract is critical to the completion of the Yongsan Relocation to Camp Humphreys that is the subject of an international agreement.

j. Bringing in another contractor to take over the remaining work would void existing warranties of work completed by the current Contractor.

3. Benefits.

a. This time extension is due to the contractor as part of normal construction contract modifications to incorporate requirements changes and differing site conditions.

b. Contractor's quality and performance on this contract has been rated Very Good to Exceptional in CPARS over the last two years and bringing in a new contractor may decrease quality, increase time significantly and impact the mission significantly.

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c. Vertical contractors will be able to complete utilities for commissioning; thus, enabling the Humphreys Garrison to occupy the facilities as part of the overall mission.

4. Conclusion and Request. For the reasons set forth above, The U.S. Army Corps of Engineers, Far East District requests authorization from the Suspension and Debarment Official to permit a time extension on Contract No. W912UM-09-C-0007 of up to 379 calendar days from the current contract completion date of 18 May 2018.

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Contracting Officer
U. S. Army Corps of Engineers
Far East District

Date

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Assistant District Counsel
U. S. Army Corps of Engineers
Far East District

Date