

November 17, 2009

AGILITY (AGLT.KW)

- Agility (The Public Warehousing Company) was informed that the U.S. Department of Justice had obtained an indictment against the company and has intervened in a civil lawsuit under the False Claims Act. Agility has sent out a statement regarding the matter, which is found below in full.
- In our previous analyst comment for Agility (dated 11 November 2009) we noted that we will be issuing an update report with new forecasts for Agility to incorporate the LOGCAP IV task order award. We will be meeting with Agility's management to get a better understanding of this latest development; however, we are placing Agility's coverage status as "Under Review" to properly assess the matter.
- Below is a copy of the statement we received from Agility:

Statement by Public Warehousing Co. (PWC)

Concerning Announcement of Indictment and Qui Tam Lawsuit

The Public Warehousing Company (PWC) has for some time worked with the government to seek a mutually agreeable resolution to a contract dispute between the U.S. government and the Company and is surprised and disappointed that the government has decided to take these actions. Today, the Company was informed that the Department of Justice ("DOJ") had obtained an indictment against the company and has intervened in a civil lawsuit under the False Claims Act, both of which allege that PWC committed fraud against the U.S. government.

The company has been the principal food supplier for the U.S. military in Kuwait and Iraq since 2003. PWC's service has been timely, reliable and cost effective throughout its work on these competitively awarded contracts, and its performance has been unparalleled. The prices it charges have been negotiated with, agreed to, and continually approved as by the U.S. government since then. The government has consistently found PWC's prices to be fair and reasonable.

Since 2006, the company's "fill rates" – the number of cases of food accepted compared with the number ordered – were consistently more than 99 percent, a number that exceeds the fill rates of U.S. domestic service providers. That means that PWC was more successful in delivering food and other items to the military in a hostile war zone than other vendors have been within the safe environs of the continental U.S.

The court documents filed in the United States reveal that the investigation leading to the indictment and the False Claims Act lawsuit was instigated by Kamal Mustafa Sultan, owner of Kamal Mustafa Sultan Company, who has a long history of strong animosity towards PWC, its officers and its employees. A July 19, 2009 San Antonio (Texas) Express-News story raises major questions about the company: http://www.mysanantonio.com/military/Firm_tied_to_Iraq_scandal_profited.html

In the PWC matter, Kamal Mustafa Sultan brought a "qui tam" case under the False Claims Act in November 2005, which means that he has a financial interest in the outcome of the case. In Kuwait, Kamal Mustafa Sultan has filed more than 40 court actions against PWC, its executives and its employees, and all of the court actions have been unsuccessful.

The company has long cooperated with government reviews, inspections, audits and inquiries necessary to ensure taxpayer dollars are being spent appropriately. The company made every effort to resolve this with U.S. contracting agencies, including trying to get a formal interpretation of the contract by a neutral agency and going to mediation, but the government refused.

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Our company has provided unparalleled service to U.S. troops and exceptional value for American taxpayers under the most demanding conditions ever faced by a contractor. Our success has come at a very high price. More than 30 employees have been killed and 200 injured in carrying out their work in a warzone. Attacks on our convoys have destroyed more than 300 trucks and damaged another 700.

An indictment and a complaint are merely allegations. PWC is confident that once these allegations are examined in court, they will be found to be without merit. As a result of the indictment, PWC Logistics has been debarred from future contract awards until such time as a determination has been made about the company's current responsibility as a contractor. These allegations should have no impact on any current contracts with the U.S. government.

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