Florence, Elaine J CIV NAVSUP FLC Jacksonville, 220

From: Florence, Elaine J CIV NAVSUP FLC Jacksonville, 220
Sent: Monday, February 06, 2017 17:55
To: [redacted]
Cc: [redacted] Darryl Q CIV NAVSUP FLC Jacksonville, 220
Subject: RE: Existing FN Workforce
Signed By: ELAINE.FLORENCE@NAVY.MIL

(b) [redacted]

The Government intends to do whatever it can within its contractual authority to assist Seaward. Seaward's response to the Government's Cure Notice is due by close of business 10 February 2017. The Government will evaluate Seaward's response before it considers taking any additional steps.

Vr,
Elaine Florence
Contract Specialist
NAVSUP/Fleet Logistics Center
Jacksonville, FL 32212
Phone: (904) 542-1657
Fax: (904) 542-1088

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Click here for the survey: https://www.neco.navy.mil/contracting/survey.aspx

-----Original Message-----
(b) (6) [redacted]
Sent: Monday, February 06, 2017 10:24 AM
To: Florence, Elaine J CIV NAVSUP FLC Jacksonville, 220
Cc: (b) (6) [redacted]
Subject: [Non-DoD Source] Existing FN Workforce

Elaine:

I am writing you to hopefully jump start some effort by the Navy to address the contractual situation that led to the Cure Notice issuance. This email is not meant to be a response to the Cure Notice. That will be coming separately and will include the requested corrective action plan sought by the Navy.

This email is focused only on what the Navy can do now to assist in untangling this troubling contract situation. As you know, Seaward has had no transition assistance from MCM, and instead has been subject to a coordinated campaign of obstruction and tortious conduct. The culmination of this lack of cooperation is when MCM threatened the Foreign National ("FN") workers that if they went to work for Seaward they would be deported back to the Philippines. This campaign of obstruction and intimidation was not the level of transitional cooperation which Seaward expected when it bid on the Solicitation and proposed to retain the incumbent's FN staff. At some point after the award of our contract, you shared with us that the transitional obligations set forth in MCM's contract were "not ideal." Specifically, we understood that the incumbent contract lacked certain clauses regarding continuity of services. Looking back, it is plain

that this contractual omission played a key part in the transition events. Since we are now facing a second transition, and hand-off of contract work, we are hoping the Navy can take steps to assure these recent events will not be repeated.

FAR 37.110 provides that:

(c) The contracting officer may insert the clause at 52.237-3, Continuity of Services, in solicitations and contracts for services, when-
(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and
(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

Every one of these conditions are met here -- the contract is vital and must be continued without interruption; there are now real difficulties with the transition; this is a very remote location for the services; and special security clearance approvals are plainly required.

Whatever the reason why the Continuity of Performance clause was not included in MCM's original contract, or the various extensions thereof, it now clearly belongs in MCM's current contract. We have not been furnished the contract extension issued to MCM, but we are assuming it still omits these continuity of service obligations.

Here are some of what FAR 52.237-3 Continuity of Services clause provides for with respect to MCM's obligations:

. "The [incumbent] Contractor agrees to . exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor."
. "The [incumbent] Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to ninety (90) days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required."
. "The [incumbent] Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor."

Accordingly, we respectfully request that the Navy do the following:

1. Immediately and unilaterally amend and modify MCM's current contract extension to add the FAR 52.237-3 Continuity of Services clause.

2. Demand by letter to MCM that they exercise their best efforts and cooperation to effectuate an orderly efficient transition to the successor contractor, Seaward, by March 1st. Demand that MCM negotiate a plan with the successor for the phase out of the services under the supervision of the Navy. Demand that MCM to allow as many personnel as practical to remain on the job to help the successor maintain continuity and consistency of the services. This is all verbatim requirements from the FAR 52.237-3. Please warn MCM that they will be found financially responsible for breaching these obligations.

3. Take an active role in overseeing the transition and holding MCM to its obligations thereunder. The Navy should be arranging meetings with Seaward, MCM and Navy personnel and set milestones for the transition of the FNs. Otherwise, based on MCM's flagrant past misconduct this will be inherently disorderly and may impact your military mission.

4. Convene a formal investigation into the oppressive conduct of MCM towards its FN workforce. Seaward wrote MCM on February 2, 2017 and laid out the allegation that MCM had intimidated the FNs and threatened to have them deported if they went to work for Seaward. This was the focal point of Seaward's email to MCM. When MCM responded, they ignored the intimidation and offered no general denial that they had indeed done this wrongful, tortious act. No doubt MCM will respond that it has the right to retain portions of their workforce as their employees, but in no circumstances, can they impose such discontinuity on the performance of a government contract by the wrongful means that they employed. They have unclean hands, and have forfeited any contract rights they may have had. And to be clear, these FN workers may terminate their contracts and are not subject to any restrictive covenants or non-compete agreements that prevent them from moving with the contract. These Filipino FNs are vulnerable workers, isolated, and engaged to work in a place where the usual labor laws and Executive Orders do not apply. They are not the property of MCM, and cannot be treated as if they are plantation workers or indenture servants or even less worthy of any rights. They need your assistance and protection from predatory employer conduct. So far the Navy has sat on its hands. We are asking you to not abandon these workers who have traveled thousands of miles to come to GTMO to serve your military mission. If you want Seaward to have a shot at retaining the existing workforce, and not to have to recruit, transport, house and train a new workforce, you need to take affirmative action.

5. We also ask you to investigate the legality of MCM's plan to divert these workers and turn them into laborers or construction workers. These workers are trained seaman and maintenance mechanics. They shouldn't be coerced to work outside of their job skills. We understand that when MCM received permission from the Philippine's authority, POEA, to hire these workers, that permission was limited to employment at a specific POEA approved position title. If the position an employee agreed to is no longer available, then the worker cannot be forced to take a position on a different contract doing a different job.

6. Please confirm prior to the deadline of submission of the cure plan (say by this Wednesday) a time line and total period needed to allow processing of ordinary Base Clearances. Certainly, there can be additional time built-in for proposed workers who are red flagged by Base Security. But for those replacement workers that the Navy wants Seaward to recruit from the outside, and who pass through this security process, Seaward needs to know the timeline so they can propose appropriate corrective action to secure a replacement workforce. One thing that seems self-evident is that if it takes 60 days to obtain the base clearances, that Seaward cannot furnish new replacement workers by March 1st.

7. Prior to final turn over of responsibilities, Seaward requests the Navy's actively participate in overseeing and facilitating training activity for new replacement workers in conjunction with MCM prior to take-over.

8. At the moment of the final turnover of the contract responsibilities, Seaward requests the Navy's active participation preventing MCM taking Government owned equipment and materials from the facilities.

9. Seaward requests the Navy's active participation in preventing MCM from obstructing (sabotaging) daily operational activity post take-over.

Again, this email is focused on what the Navy can do to help fix the problem. Seaward will respond by separate letter to the cure notice and address what it can do to resolve the situation.

Respectfully submitted,

(b) (6) [redacted]

President/COO

Seaward Services Inc.

222 Pearl Street, 3rd Floor

New Albany, IN 47150

A HMS Global Maritime Company

(b) (6) [redacted]

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