



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MAR 14 2014

In reply refer to
DARS Tracking Number: 2014-O0007

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation— Prohibition on the Use of the 8(a) Business Development
Program for Acquisition of Military Simulation and Military Simulation Training

Effective January 30, 2014, in accordance with the Stipulation and Agreement of Settlement in *DynaLantic Corporation v. United States Department of Defense, et al.*, No. 95-2301 (EGS)(D.D.C.) (*DynaLantic v. Department of Defense*) approved by the Court on January 30, 2014 (Attachment), contracting officers are prohibited from awarding “prime contracts under the Section 8(a) program (competitive and sole source) for the purchase of military simulation and military simulation training contracts.... ‘Military simulation’ and ‘military simulation training’ contracts are contracts for (i) the provision or sale of devices where the primary purpose of the device or devices is instruction for the use, operation and/or maintenance of military equipment of any nature or kind (including, but not limited to, aircraft, ships, tanks, etc.), and (ii) the training in the use, operation or maintenance with all military simulator equipment.” Accordingly, contracting officers shall not use FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), in the case of such procurements.

The injunction entered by the Court in its August 15, 2012, decision and order, as modified by the Stipulation and Agreement of Settlement, remains in effect. The modifications are described in this class deviation. The memorandum from the Director of Defense Procurement and Acquisition Policy, dated August 22, 2012, subject: “Immediate Cessation of Small Business Development Program (8(a) Program) Procurement Contracts for Military Simulators or Services in the Military Simulator Industry,” advised addressees of the decision, provided instructions effective August 15, 2012, based on the decision, and included as attachments the Court’s decision and order dated August 15, 2012.

This class deviation remains in effect until further notice. My point of contact is Ms. Lee Renna, who may be reached at 571-372-6905, or at marylee.renna.civ@mail.mil.


Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

NOW, THEREFORE, Plaintiff and Defendants stipulate and agree as follows:

1. Subject to the Court's approval, the injunction entered by the Court in its August 15, 2012 Order shall be modified to read as follows: "Defendants shall not award prime contracts under the Section 8(a) program (competitive and sole source) for the purchase of military simulation and military simulation training contracts without first articulating a strong basis in evidence for doing so. 'Military simulation' and 'military simulation training' contracts are contracts for (i) the provision or sale of devices where the primary purpose of the device or devices is instruction for the use, operation and/or maintenance of military equipment of any nature or kind (including, but not limited to, aircraft, ships, tanks, etc.), and (ii) the training in the use, operation or maintenance with all military simulator equipment." The injunction, as so modified, shall not apply to contracts already in effect as of the date this Stipulation and Agreement of Settlement is signed by Plaintiff and Defendants.

2. The provisions contained in this Paragraph are contingent upon the Court's approval of the modifications to its injunction set forth in Paragraph 1 above, and shall become effective only upon the Court's entry of this Stipulation and Agreement as a Court order:

A. Defendants shall pay Plaintiff the sum of One Million and 00/100 Dollars (\$1,000,000.00) in full and final satisfaction of Plaintiff's claims for attorney's fees, costs, and other litigation expenses on account of (i) this action from its inception up to the date this Stipulation and Agreement of

Settlement is signed by Plaintiff and Defendants, (ii) Plaintiff's pending appeal in D.C. Circuit Case No. 12-5330, (iii) Defendants' appeal in D.C. Circuit Case 12-5329, (iv) Plaintiff's appeal in D.C. Circuit Case No. 96-5260, and (v) Plaintiff's petition for writ of mandamus in D.C. Circuit Case No. 12-5220, and Defendants shall have no further liability for any such fees, costs, or expenses. Payment shall be made as promptly as practicable, consistent with the normal processing procedures followed by Defendants, the Department of Justice, and the Department of the Treasury, by electronic transfer of funds as specified in instructions provided to Defendants' counsel by Plaintiff's counsel in writing.

- B. Plaintiff shall promptly dismiss its pending appeal in D.C. Circuit Case No. 12-5330.
- C. Defendants shall refrain from seeking to vacate the injunction entered by the Court in this case for a period of at least two years after the date on which this Stipulation and Agreement of Settlement is signed by Plaintiff and Defendants. At any time after the expiration of that two-year period, Defendants may give notice to the Court and to Plaintiff of Defendants' intent to begin re-using the Section 8(a) program for military simulation and military simulation training contracts. Such notice (i) shall be in writing, (ii) shall be given at least thirty days prior to the date on which Defendants propose to begin such contracting activities, and (iii) shall be

filed and served through the Court's electronic case filing system or as otherwise permitted by the Federal Rules of Civil Procedure and the local civil rules. The injunction shall remain in effect until further action is taken by the Court modifying or dissolving it.

3. Except as expressly set forth herein, Plaintiff reserves all of its rights (i) with respect to the injunction entered by the Court in this case, and (ii) to oppose any request to vacate the injunction.

4. If Plaintiff at any time believes that any contracting action or proposed contracting action by Defendants has violated or would violate the Court's injunction, Plaintiff shall notify Defendants of the alleged violation and Defendants shall then have ten days to cure the violation or otherwise respond to the claim. The parties shall make a good faith effort to resolve any dispute arising from or regarding the injunction's scope or applicability before bringing the dispute to the Court's attention.

5. The Court shall retain jurisdiction over this case.

6. Each signatory hereto represents and warrants that he is fully authorized to enter into this Stipulation.

IN WITNESS WHEREOF, Plaintiff and Defendants, intending to be legally bound, have executed this Stipulation on this 28th day of January 2014.

/s/ Michael E. Rosman
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Counsel for Plaintiff

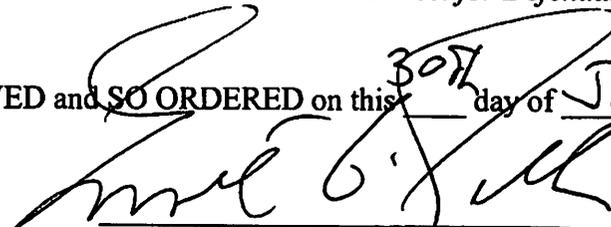
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/s/ Daniel F. Van Horn
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Counsel for Defendants

APPROVED and SO ORDERED on this 30th day of JAN, 2014.


UNITED STATES DISTRICT JUDGE