

Defense Co. Fights DOD Ban For Alleged Subcontractor Ties

By **Alyssa Aquino**

Law360 (August 2, 2024, 8:02 PM EDT) -- A Mideast defense contractor challenged the U.S. Department of Defense's decision to ban it from receiving U.S. contracts, telling a D.C. federal court that it had no way of addressing the security issue that warranted the ban.

Kamal M. Al Sultan Co., a Kuwait-based company that has provided essential base services to the U.S. military since 1995, said it had done various background checks to ensure that neither its employees nor subcontractors were security risks, including regularly checking the DOD's list of entities actively opposed to the U.S. and banned from receiving U.S. contracting money.

But despite its efforts, the company said it was added to the Section 841 exclusion list of banned contractors based on its association with a worker and subcontractor. However, the worker and the company had been added to the list only after KMSCo had cut ties with them, the company said.

"Defendants' decision to nevertheless place KMSCo on the [Section] 841 exclusion list in December 2022 was irrational, arbitrary, and capricious, and should be set aside because neither Khaled Farhat nor [his employer, Cedar Electromak General Tradings & Contracting Co.] was a covered person or providing funds, directly or indirectly, to a covered person during the time they were employed by KMSCo," the company said in **a Thursday complaint**.

The Section 841 exclusion list is so named for the provision of the National Defense Authorization Act of 2015 that bans foreign contractors from channeling U.S. government contract funding to enemies of the U.S. That same provision also directs top security officials, including the U.S. State and Defense secretaries to create a program to identify persons and entities that have provided funds to those opposed to the U.S. — an obligation that KMSCo said the U.S. was failing to fulfill.

It pointed to a June 2022 report from the Special Inspector General for Afghanistan Reconstruction that found that the DOD failed to update the Section 841 list since 2015. That failure has deprived contractors of the information needed to prevent funds from accidentally going to the enemy, KMSCo said.

"As a result, even when contractors complied with their obligation to check their employees and contractors against the [federal System for Award Management]-maintained exclusion list, they might still receive no notice if those employees or subcontractors were ineligible to work on U.S. government contracts," the company said.

It pointed out that it references the Section 841 list every time it hires a new employee or subcontractor, and it checks that list "at least quarterly" to check whether its employees have been added.

In challenging its listing, the company further alleged that it had already addressed the security issue that had landed it on the Section 841 list. It had thoroughly investigated its ranks, after being informed of a potential security issue, and wound up terminating the worker and subcontractor who had been flagged by U.S. defense officials based on their ties in Lebanon, KMSCo said.

The company estimates that roughly 20% of its business derived from U.S. government contracts before it was named to the Section 841 exclusion list, according to the complaint.

Representatives for the company and the federal government didn't immediately respond to late Friday requests for comment.

KMSCo is represented by Adam S. Hickey, Luke P. Levasseur, Carmen N. Longoria-Green and Lee H. Rubin of Mayer Brown LLP.

Counsel information for the federal government wasn't available.

The case is KMSCo. v. Austin et al., case number 1:24-cv-02258, in the U.S. District Court for the District of Columbia.

--Editing by Andrew Cohen.