

Whether you call them [Public Warehousing Company KSC](#) (PWC) or [Agility](#), they are facing quite a few charges by the Department of Justice (DOJ), stemming from their work in Southwest Asia (aka Iraq and Afghanistan). Reportedly, PWC (or Agility, as the company is now known) won roughly \$8.5 billion worth of contracts to provide food services for U.S. troops stationed in Iraq, Kuwait, and Jordan.

In November 2009, PWC was charged in a six-count indictment with “conspiracy to defraud the United States, committing major fraud against the United States, making false statements, submitting false claims and wire fraud,” according to [this CNN story](#)

. Essentially, the indictment alleged that PWC “submitted false information and manipulated prices to overcharge for food,” and was based on a qui tam (whistleblower) suit under the False Claims Act, filed by Kamal Mustafa al-Sultan, “the owner of a Kuwaiti company that had partnered with Public Warehousing to submit a proposal on the food supply contracts.”

The CNN story reported that—

According to the indictment, the company violated the False Claims Act by presenting false claims for payment, overcharging for locally available fresh fruits and vegetables, and failing to pass along to the U.S. government rebates and discounts it had obtained, as required by its contracts.

This [New York Times article](#) provided further details and some additional quotes, as follows—

Another Southwest Asia Contractor Under Fire

Written by Administrator
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Barbara E. Nelan, assistant United States attorney, said that during a 41-month period from 2003 to 2007, the company deprived the government of \$62.2 million by inflating the cost of local fruits, vegetables and other perishable items. 'That was just 41 months of the 76 months that a contract has been in place, and it was just for one part of the fraud,' she said. The company was awarded a contract for \$934 million in 2003. It received new contracts for \$1 billion and \$6.6 billion in 2005. Prosecutors said the company double-charged the government for certain transportation costs and did not pass along discounts that it received from vendors. The Department of Justice plans to file a related civil lawsuit against the company and may eventually file charges against individuals within the company. 'This is the first step in what we expect to be a long process,' Ms. Nelan said.

As might be expected, PWC denied the allegations. In a [published statement](#), the company stated—

PWC has for some time worked with the government to seek a mutually agreeable resolution to this contract dispute and is surprised and disappointed that the government has decided to take this action. The company has been the principal food supplier for the U.S. military in Kuwait and Iraq since 2003. 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 company has long cooperated with government reviews, inspections, audits and inquiries necessary to ensure taxpayer dollars are being spent appropriately.

More recently, the [Navy Times](#) reported that "Prosecutors have expanded their case" against Agility "by charging two of the company's subsidiaries with inflating prices and defrauding the U.S. government." The article recapped the prior charges, but noted additional details, including that—

The company also [allegedly] inflated fees by asking vendors to manipulate the way the products were packed, enabling it to bill the government twice as much as it should have, prosecutors said. And they said the firm encouraged a vendor in the state of Georgia to conceal fees that should have been paid to the company, leading to inflated prices.

The Navy Times also noted that the case “has slowed in recent months” because—

Several court hearings have been delayed as the company worked to reach a settlement with prosecutors. And the firm’s lawyers have argued that prosecutors failed to properly serve the company because it sent the indictment to the company’s U.S. subsidiaries instead of through diplomatic channels in Kuwait.

As we have [previously discussed](#), the Federal government takes a dim view of companies they view as holding federal funds that don’t belong to them, such as when there is a failure to pass on rebates or credits in compliance with the Credits cost principle found at FAR 31.201-5. Regardless of whether Agility has complied with its contract terms, merely being accused of violations of the False Claims Act gives a company a “black eye” – leading to reputational and other brand damage. That’s what has happened to PWC/Agility, as [this blog entry](#) demonstrates. (Note: as with many blogs, this one expresses the author’s

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rather extreme opinion ... vividly. You have been warned.)