Regional Procurement Support Office
American Consulate General
U.S. Department of State
Geissener Strasse 30
60435 Frankfurt am Main, Germany

December 21, 2005

Dario Marquez
President
MVM, Inc.
Suite 700, 1593 Spring Hill Road
Vienna, VA 22182

Contract No. SGE500-05-C-1071
Embassy Security Force Contract for Kabul, Afghanistan

Dear Mr. Marquez:

Effective immediately Contract No. SGE500-05-C-1071 ("the Contract") is completely terminated for default per clause 52.249-8. Your firm's right to proceed under the Contract is terminated in its entirety. All work should immediately stop.

The Contract is being terminated due to your firm's failure to complete transition and commence full performance by December 22, 2005, the extended date to complete transition mutually agreed to in lieu of the date required by Section H.10 of the Contract. The Contract is terminated in full. Please note that the services terminated may be purchased against the contractor's account, and that your firm will be held liable for any excess costs. I have determined that your firm's failure to complete transition and commence full performance is not excusable. This notice of termination constitutes such decision. The Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs. This notice constitutes a decision that your firm is in default as specified. Your firm has the right to appeal under the Disputes clause.

Your firm shall present a plan to commence the immediate vacating of the Government provided facility in Kabul, Afghanistan. You shall complete the removal of all staff and employees no later then 25 days from this notice.

You shall promptly replace the ammunition that MVM borrowed from DOS for training purposes and return to DOS (via the Regional Security Officer) all Government-furnished property in MVM's possession,

Christopher P. Sager
Contracting Officer

FOR SETTLEMENT PURPOSES ONLY

January 20, 2006

Regional Procurement Support Office
American Consulate General
U.S. Department of State
Geissener Strasse 30
60435 Frankfurt Am Main, Germany

Attention: Christopher P. Sager

Subject: Contract No. SGE500-05-C-1071 Termination for Default

Dear Mr. Sager:

Thank you for speaking with us on January 13, 2006 about establishing a framework for negotiating State's termination for default of MVM's contract to provide a guard force at the U.S. Embassy in Afghanistan. MVM desires to have the default termination converted to a termination for convenience and to negotiate a fair and reasonable financial settlement.

MVM is concerned about the profound financial impact of the default termination on our company. As a Government contractor with an otherwise sterling record, we are also concerned about the past performance implications of a default termination on our ability to secure future government contracts. Therefore, it is imperative that we resolve this matter as quickly as possible and on terms that are fair and reasonable to both MVM and the Government.

MVM believes that a default termination was not the appropriate remedy for the difficulties that occurred on this contract, particularly given the Government's actions that contributed to those difficulties. Attached please find a letter from MVM's counsel that sets forth our summary of the facts and counsel's legal position on the merits. As you will note, our counsel advises that the default termination likely would be converted to a termination for the convenience of the Government if the matter were litigated. Counsel also advises that we would have a strong claim against State for our start-up costs under the contract.

Nevertheless, we believe that it is in both MVM's and the Government's interests to resolve this matter amicably and without resort to litigation, which would be time-consuming, expensive, and burdensome for everyone. MVM will approach our settlement discussions with the same level of professionalism and integrity that we showed in connection with the post-termination transition which, as even the RSO recognized, was handled quickly and efficiency under the most trying circumstances.

Accordingly, our proposal for resolving this matter is as follows:

1. The Department of State will convert the default termination to one for the convenience of the Government.

2. The Department of State and MVM will negotiate a mutually acceptable financial resolution. MVM is willing to make substantial financial concessions from the claim amount advocated by our counsel to reflect savings in legal fees, avoiding the risk associated with litigation, and as an accommodation for resolving this matter quickly.

We look forward to meeting with you in early February to resolve this matter. Thank you for your cooperation.

Sincerely,

MVM, Inc.

Joseph W. Morway
Executive Vice President

Enclosure

Copy to: D. Nadler (Dickstein Shapiro)

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January 20, 2006

Mr. Dario O. Marquez, Jr.
President
MVM, Inc.
1593 Spring Hill Road
Suite 700
Vienna, VA 22182

Re: Contract No. SGE500-05-C-1071; Termination for Default

Dear Mr. Marquez:

You have requested our views regarding the propriety of the determination by the Department of State, American Consulate General ("State" or "Government") to terminate Contract No. SGE500-05-C-1071 ("Contract") for default. The Contract was for an Embassy Security Force at the U.S. Embassy in Kabul, Afghanistan. Our investigation of this matter included interviews of MVM representatives and other individuals stationed in Kabul and Virginia, review of extensive correspondence and e-mails, and research of applicable procurement law.

In our view, the termination for default was improper, and there is a high probability that it would be converted to a termination for the convenience of the Government by the General Services Board of Contract Appeals ("GSBCA") or the U.S. Court of Federal Claims. Moreover, MVM has a viable claim against State for its costs incurred under the Contract in the amount of approximately $5.6 million. Given the substantial financial impact of the termination on MVM and the past performance implications of a default termination on the Company's ability to secure future government contracts, we recommend that MVM appeal State's determination if the matter cannot be resolved promptly.

The primary grounds for an appeal are as follows: (1) the termination based on MVM's alleged failure to meet the language requirements of the Contract was a pretext for State's true and improper reason for terminating the Contract, that is, to avoid MVM's provision of Namibians (South Africans) for the supervisory guard positions and the Emergency Reaction Team ("ERT"); (2) State failed to properly consider MVM's Corrective Action Plan ("Plan") in response to State's Deficiency Notice, and its determination to terminate the Contract in the face of that Plan was arbitrary, capricious, and not in the best interests of the Government; and (3) the Contracting Officer's determination to terminate the Contract was unduly influenced by the Regional Security Officer ("RSO") and the U.S. Ambassador to Afghanistan, and was not the product of the Contracting Officer's independent judgment.

The Contract

On July 7, 2005, the Contract was awarded to MVM as the low priced technically acceptable offeror in the amount of $23.7 million for the base year. The Contract was for a base year plus four option years and included a ninety (90) day Transition Period. The Contract required that MVM recruit, train, and manage the Embassy Security Force ("ESF") at the U.S. Embassy in Kabul, Afghanistan. The purpose of the ESF is to protect life and property, maintain order, and deter criminal activity in and around the U.S. Embassy in Afghanistan. MVM was required to furnish managerial, administrative, technical, direct labor, and subcontractor personnel to accomplish the work under the Contract. Contract, § C.1. The Contract required a Top Secret facility security clearance.

The work was to be performed at the direction of the Contracting Officer's Representative who was the RSO in Kabul. Contract, § C.1.1. MVM was required to provide trained guards for posts that were designated in the Contract. Each labor category under the Contract included qualifications for the position and the nationality required. Expatriate ("EXPAT") was defined to include citizens from native and non-native English-speaking countries, such as Australia, Canada, Ireland, New Zealand, the United Kingdom, and South Africa. Contract, § C.1.2. The nationalities required for the primary positions are: Supervisor (U.S. or EXPAT); ERT (U.S. for Supervisor and U.S. or EXPAT for ERT Guard); Guard (U.S. or EXPAT); and Guard (Third Country National ("TCN")). Contract, § C.1.2. Of significance here, MVM planned to use Namibians (South African citizens) for the Supervisory Guard and ERT Guard positions, and Peruvians for the TCN Guard positions.

On July 14, 2005, State issued a Limited Notice to Proceed, authorizing performance of transition activities. The Transition Period was subsequently extended twice by mutual agreement to December 22, 2005. By letter dated December 2, 2005, the Government issued a Deficiency Notice stating that MVM had not met the minimum language requirements set forth in Section H.5.1.4 (Senior Guard) and Section H.5.1.7 (TCN Guard) of the Contract. By letter dated December 9, 2005, MVM responded to State's Deficiency Notice and provided a detailed, twenty-page, Plan. On December 21, 2005, before commencement of full performance and before MVM formally delivered any services under the Contract, the Government terminated the Contract for default. The sole basis for the termination was MVM's alleged failure to complete transition and commence full performance by December 22, 2005 due to the purported language deficiency. The Government's termination letter includes no response to MVM's Plan or any analysis of why termination was in the best interests of the Government.

Prior to award of the Contract, the ESF was provided by Global Strategies Group ("GSG"), which was issued a non-competitive subcontract to the Embassy construction contract. GSG was not eligible to bid for the subject Contract because it does not possess a Top Secret facility security clearance. Nevertheless, in the wake of the termination of MVM's Contract, GSG continues to provide the ESF at a price that MVM believes to be approximately $7 million per month, or approximately three times higher than MVM's price. For the Supervisory Guard and ERT positions, GSG provided

predominately white EXPATs. The Namibians provided by MVM are predominately black. The TCN Guard positions under the incumbent contract with GSG are staffed mostly with Nepalese who do not speak English and would not meet the language requirements of the Contract.

The Termination Was Based On An Improper Pretext

State's determination to terminate the Contract for default based on MVM's alleged failure to meet the language requirements was a pretext for its true and improper reason for terminating the Contract, that is, to avoid MVM's provision of Namibians for the Supervisory Guard and the ERT positions. The law precludes default terminations based on pretext, and such improper terminations will be converted to terminations for the convenience of the Government, *even if the contractor is technically in default under the contract*. Thus, a key corollary of this rule is that a contractor's failure to satisfy contract requirements alone is insufficient to support a termination for default.

In *Schlesinger v. United States*, 182 Ct. Cl. 571, 390 F.2d 702 (1968), the U.S. Court of Claims converted a default termination to one for the convenience of the Government where the record demonstrated that the termination decision was based on a pretext. The Court found that "[p]laintiff's status of technical default served only as a useful pretext for the taking of action felt to be necessary on other grounds unrelated to the plaintiff's performance or the propriety of an extension of time." 390 F.2d at 709. Schlesinger was a cap manufacturer who won a contract to supply the Navy with 50,000 service caps for enlisted men and failed to deliver the first installment of caps as specified in the delivery schedule. At the time, Schlesinger was also a suspect in an ongoing U.S. Senate subcommittee investigation regarding textile procurement irregularities within the military. After Schlesinger testified before the Senate, the chairman of the subcommittee sent a letter to the Navy implying that Schlesinger's contract should be terminated. This information was communicated to the Contracting Officer, who promptly terminated Schlesinger's contract. The Court found that the termination for default on these facts was improper. As the Court stated:

> [T]he Navy used the termination article as a 'device' and never made a 'judgment as to the merits of the case.' Such abdication of responsibility we have always refused to sanction where there is administrative discretion under a contract. This protective rule should have special application for a default-termination which has the drastic consequence of leaving the contractor without any further compensation.

Id. (citations omitted).

Later decisions have followed *Schlesinger* in holding that a Contracting Officer must make a "judgment as to the merits of the case" and may not terminate a contract for default based on pretext. In *Darwin Construction Co. v. United States*, 811 F.2d 593 (Fed. Cir. 1987), the U.S. Court of Appeals for the Federal Circuit found a default

termination improper under a contract to provide facilities upgrades at a Navy station. The Federal Circuit held that it was proper to consider the Government's motives for terminating a contract for default where the contractor was in technical default:

> The Board's finding that the contracting officer abused his discretion provides the legal predicate for converting the termination for default into one for the convenience of the Government. As the court pointed out in *Schlesinger*, the default article of the contract does not require the Government to terminate on a finding of default, but merely gives the procuring agency the discretion to do so, and that discretion must be reasonably exercised. The facts of the case before us are almost identical to the salient facts in *Schlesinger*, where it was found that the contractor's status of technical default served only 'as a useful pretext for taking the action found necessary on other grounds unrelated to the plaintiff's performance or to the propriety of the extension of time.'

Id. at 596 (citations omitted).

According to the Federal Circuit, the Board's findings of fact made it clear that a default termination was inappropriate. For example, "[t]he failure of Darwin to complete the work on time did not interfere with the Navy's use of the building, which was still used for the production of explosives since Darwin had restored the building into usable condition." *Id.* at 595. Further, the Board found "[t]here was no urgency associated with the contract . . . [and] [a]t the time Darwin was performing work on the contract, many other construction contracts were being performed at the same ordnance station, and the Navy was content to collect liquidated damages for those contracts in which performance had been delayed." *Id.* at 595.

Similarly, in *Walsky Construction Co.*, ASBCA No. 41541, 94-1 BCA ¶ 26,264, the ASBCA converted a default termination to a convenience termination under an Air Force roof repair contract:

> Notwithstanding that many of the grounds asserted by the Government for default termination are weak [including failure to provide certifications and purported deficiencies in Walsky's technical solution], we need not explore whether there existed any other conceivable technical grounds to default terminate this contract under the circumstances of this case. A technical reason for default, even if established by the Government, does not require a default termination. We must review the totality of the circumstances to ascertain whether the termination decision was a reasonable exercise of discretion. When we view the facts of this case in the context of the Government's predisposition against Walsky under this contract, the conclusion is inescapable that this default termination may not stand.

Id. at 130, 625 (citing *Darwin* and *Schlesinger).*

The predisposition against Walsky was manifested in an instruction by the Director of Contracting to the Contracting Officer to terminate Walsky "if the smallest thing goes wrong." *Id.* at 130, 624. Of additional concern to the Board was an apparent rush to judgment by the Contracting Officer:

> Barely two work days after appellant's timely reply to the cure notice, the ACO [Administrative Contracting Officer] decided to issue a show cause notice for default. About 70 percent of the contract time still remained. Notwithstanding that appellant had 10 days to reply to the show cause notice, a decision to default terminate, insofar as [the ACO] was concerned, was made prior to the date that appellant's reply was due. Apparently, [the ACO's] mind was already made up – nothing appellant could have said in the reply would have made any difference.

Id. (citations omitted).

Finally, in *SIPCO Services & Marine Inc. v. United States,* 41 Fed. Cl. 196 (1998), the U.S. Court of Federal Claims concluded that NASA abused its discretion in terminating a contract for the removal and replacement of a specialized coating at a NASA testing facility on a pretextual basis:

> [T]he *Schlesinger* court found that '[p]laintiff's status of technical default served only as a useful pretext for the taking of action felt to be necessary on other grounds unrelated to the plaintiff's performance or the propriety of an extension of time.' Such a state of affairs seems echoed by the present case. The propriety of SIPCO's termination for default is brought into serious question by the acceleration of NASA's supervisory activities, its unilateral setting of a new completion date, and the timing of [the COTR's] discovery of the misapplication of the air monitoring guidelines. These appear to be more than mere coincidences but rather considered efforts to lay the predicate for SIPCO's default.

Id. at 221 (citation and footnote omitted).

Similarly, in this case, the record shows that the default termination based on alleged deficiencies in the language skills of the guards was a pretext and that there was a predisposition against MVM resulting from the RSO's objection to MVM's provision of South Africans, particularly for the ERT positions. Shortly after Contract award, a new RSO was assigned to the Contract. The new RSO was not involved in the preparation of the Solicitation for the Contract and had a vastly different conception of

the ERT skill level than was specified in the Contract.[1] As early as August 2005, and throughout MVM's tenure on the Contract, the RSO objected to MVM's use of Namibians and maintained that they were not qualified for the ERT positions. These objections had no basis in the Contract, which expressly allowed MVM to provide South Africans to fill EXPAT positions. Indeed, MVM's low price proposal was, in part, a function of its ability to provide South Africans to fill these positions, and State obtained substantial cost benefits on this Contract as a result.

The RSO's objections also had no factual basis as they were lodged months before the South Africans arrived in November 2005 when the Man Camp became available. It appears that the RSO had a preconceived opinion that the South Africans were unqualified and were less capable than Americans or the "true" EXPATs provided by GSG.[2] In fact, the Namibians were trained by the elite South African military and were well qualified to meet the Contract requirements. Nevertheless, on October 3, 2005, State advised MVM that "the RSO and ARSO in Kabul have decided that the Namibian/South African ERT candidates are not acceptable and will, therefore, not be suitable for the ERT." (E-mail from Jacqueline Richardson to MVM dated October 3, 2005.) MVM was directed to discontinue its efforts to recruit, train, and mobilize these individuals. However, the Contracting Officer recognized that the Contract permitted MVM to provide South Africans for the ERT and, by letter dated October 21, 2005, rescinded the October 3 directive. The RSO, thus, was in a bind: the Contract permitted MVM to provide South Africans, but State was unable or unwilling to modify the Contract to fund an ERT comprised exclusively of Americans or "true" EXPATs. MVM's days on this Contract were numbered.

The obvious solution to this quandary was to get rid of MVM by finding a basis to terminate the Contract before commencement of full performance so that State could continue to use the incumbent contractor (GSG) who had "true" EXPATs already in place for the ERT. At least as early as November 10, 2005, before MVM's guards arrived in Kabul and several weeks before the purported language deficiency issue was raised, State negotiated an extension of the GSG contract to January 31, 2006.[3] This timeline demonstrates that the termination based on alleged language deficiencies was a sham and not a material default under the Contract. Indeed, State accepted non-English speaking Nepalese for the TCN Guard positions under the GSG contract and continues to do so now at three times the MVM price. Moreover, a month before award

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[1] The RSO saw the ERT as three capable SWAT teams per shift. He expected proficiency in close quarters battle, motorized patrolling and escort duties, and all hands capable of functioning as decision makers during times of crisis.

[2] The RSO reportedly was concerned about the "appearance" of Namibians at the Embassy entry points. He was also concerned with not having a "homogeneous" guard force. Once the Namibians arrived in Kabul, one member of the RSO's office reportedly stated that "they look like a bunch of killers and murderers."

[3] We are also investigating whether State negotiated a separate six-month extension to the GSG contract before the language issue was raised.

of the Contract, State entered into substantially the same contract for a guard force at the U.S. Embassy in Baghdad, Iraq. We understand that there was no language requirement in that contract (or that it was waived). Peruvians with the same language skills as provided by MVM under the Contract are serving effectively as guards in Baghdad.

As discussed below, these events also show that State's Deficiency Notice was simply a *pro forma* step toward its predetermined decision to terminate the Contract for default. That decision was made before the language issue surfaced and before MVM submitted its December 9, 2005 Plan. Given the extension of the GSG contract, State could have extended the Transition Period at least through January 31, 2006 (and probably longer). Indeed, State's determination to terminate the Contract before full performance began was precipitous. As the potential term of the Contract was five years, there was more than ample time for MVM to have remedied any perceived shortfall in the language skills with no harm to the mission. However, as in *Walsky Construction Co., supra,* State's mind was already made up – nothing MVM could have said in its response would have made any difference.

State Failed To Properly Consider MVM's Corrective Action Plan

The Government's failure to properly consider MVM's Plan further demonstrates that the default was based on a pretext and also provides an independent basis for converting the termination to one for the convenience of the Government. The failure to provide a meaningful opportunity to cure will render a default termination procedurally defective. *Composite Laminates, Inc. v. United States*, 27 Fed. Cl. 310, 317 (Fed. Cl. 1992). Moreover, when an irrevocable decision to terminate is made before the end of the cure period and a contractor's timely efforts to cure are ignored, the termination is improper. *Cervetto Bldg. Maint. Co. v. United States*, 2 Cl. Ct. 299 (1983).

Immediately upon receipt of State's December 2, 2005 Deficiency Notice, MVM dispatched a team of senior executives to Kabul to assess any potential performance shortcomings. MVM's transition of executive decision making directly to Afghanistan enabled it to address any concerns in an expedited fashion and to ensure the effective implementation of appropriate remedial efforts. Further, on December 9, 2005, MVM submitted a twenty-page response to the concerns raised by State that included a Plan to fully remedy those concerns within sixty days. MVM proposed a rapid and rigorous program of testing and remediation to accurately identify and address any deficiencies in the language skills of the guard force. MVM's Plan was comprehensive and substantial – the anticipated cost to implement the Plan was approximately $5 million (plus $1.5 million per month in ongoing payroll costs).

As a key preliminary measure, MVM proposed to assess individually the language proficiency of each proposed guard candidate with the assistance of an independent contractor, ALTA Language Services ("ALTA"). ALTA's testing methodology evaluated the proficiency of candidates in four categories: comprehension, communication, grammar, and vocabulary, based on a twelve-level scale. The need for rigorous, independent testing was made clear by the circumstances

under which the alleged language deficiencies were identified by State. The purported deficiencies in the language skills of the guard candidates were based almost entirely on anecdotal evidence and observation, rather than on any objective testing or measurement by State.

For instance, State identified poor performance by guard candidates on exams requiring English reading and writing comprehension levels that were not required by the Contract. Further, training on weapons systems and other security requirements is highly technical in nature, and under normal training procedures, that training is conducted with the benefit of native language translators. In this case, training was conducted in English only shortly after the arrival of guard candidates in Afghanistan. Guard candidates were intimidated and bluntly told that failure would result in their being sent home. Compounding these conditions, the training schedule was compressed as a result of State's delays in the availability of the Man Camp. The cumulative effect of these factors created a false impression of language deficiencies by fostering an environment hostile to the demonstration of English language proficiency.

Under these circumstances, a comprehensive and independent review of the guard candidates' language proficiency was necessary to identify the nature and extent of any deficiencies in the language proficiency of the guard force and to properly identify what, if any, remedial efforts were appropriate. After completing this testing, MVM proposed a detailed remediation plan to determine which candidates would be able to perform Contract requirements without remedial training and which candidates would be able to assume their duties with remedial training. Guard candidates completing remedial instruction would be subject to follow-on testing to ensure full proficiency. Further, MVM proposed to have ALTA screen additional guard candidates in their home countries to provide a readily available pool of additional guard candidates as necessary to replace candidates in Afghanistan who did not meet Contract requirements.

Given the compressed schedule and the lack of guidance from State during the period between the Deficiency Notice (December 2) and the termination (December 21), MVM moved forward with implementation of its Plan. Not surprisingly, MVM's objective, independent testing of the guards' skills demonstrates that State's assessment of the extent of the deficiencies was grossly exaggerated.[4] Indeed, a majority of the Peruvians and South Africans did not need to be replaced and would have been eligible to assume their duties with remedial training. By contrast, the incumbent force provided by GSG is comprised of Nepalese that do not speak English, and there does not appear to be a plan for them to be brought up to the same language standards as required of MVM.

It is patently unreasonable for State to pay triple the cost to GSG for guards that do not speak English, and without any plan for them to learn English, rather than to adopt MVM's Plan which would meet the language proficiency requirements in sixty

[4] The test results are included as an attachment to the Plan.

days at one-third the cost. Moreover, since State had already extended GSG's contract to at least January 31, 2006, there would have been no harm to the Government if it accepted MVM's Plan. The protocol used by GSG was to communicate through an English-speaking Nepalese supervisor. There is no reason that MVM could not have used the same protocol with an English-speaking Peruvian supervisor pending full implementation of its Plan. Under these circumstances, State's failure to accept MVM's Plan was arbitrary, capricious, and not in the best interests of the Government.

State not only failed to accept MVM's Plan, it did not even consider it. As discussed above, this is because the language issue was a pretext, and State decided to terminate the Contract well before the Deficiency Notice was sent. Despite having the Plan for eleven days prior to the termination, State provided no substantive response to the Plan or analysis of why termination was in the best interests of the Government. State's failure to consider MVM's Plan is also shown by its actions after the Deficiency Notice was issued. For example, on December 8, 2005, a day before MVM's Plan was submitted, State requested a list of all equipment and ammunition that MVM shipped to Kabul. This request was reiterated to MVM on December 22, the day after the termination.[5] Similarly, by letter dated December 12, 2005, three days after MVM's Plan was submitted, State requested a current listing of all MVM employees in Kabul who are assigned to the Contract and residing in the Man Camp. This correspondence confirms that State had predetermined to terminate the Contract without regard to MVM's Plan and was positioning itself in advance of the default. State's irrevocable decision to terminate before the end of the cure period and its failure to consider MVM's timely efforts to cure render the termination improper. *Cervetto Bldg. Maint. Co. v. United States, supra.*

The Contracting Officer Did Not Exercise Discretion And Independent Judgment

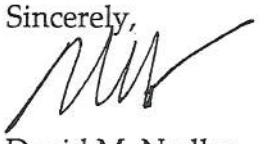
The decision to terminate a contract for default must be the result of the Contracting Officer's exercise of sound discretion and his own independent judgment. *Schlesinger v. United States, supra.* A key corollary of this principle is that the Contracting Officer cannot defer the decision to terminate a contract for default to others. *Id.* In *Schlesinger*, a default termination was converted to a convenience termination where the evidence established that the Contracting Officer was improperly influenced in his termination decision by a Senate subcommittee. Similarly, in *Walsky Construction Co., supra,* the ASBCA overturned a default termination where the termination decision followed an instruction by the Director of Contracting to the Contracting Officer to terminate Walsky "if the smallest thing goes wrong."

[5] State has incorrectly asserted that it has title to all equipment that was delivered in support of the Contract. Section B.1.2 of the Contract provides that title passes to the Government for equipment acquired by the Contractor using Contract funds. As the Government has not paid MVM under the Contract, no Contract funds were used in the purchase of the equipment, and title remains with MVM.

Here, the decision to terminate the Contract for default was unduly influenced by the RSO and the U.S. Ambassador to Afghanistan, and was not the product of the Contracting Officer's independent judgment. As discussed above, the RSO vehemently objected to MVM's solution to use Namibians on the ERT and in supervisory guard positions despite the fact that South Africans met the requirements of the Contract. It is apparent that the RSO pressured the Contracting Officer to terminate the Contract once it became clear that State could not legally prevent MVM from providing South Africans under the Contract. We also understand that the U.S. Ambassador to Afghanistan, State's most senior representative in the country, sent a cable to the Contracting Officer before MVM's Plan was submitted that instructed or further pressured the Contracting Officer to terminate the Contract. These circumstances indicate that the Contracting Officer abdicated his discretion to others and that the default termination was not the product of his independent judgment. As such, the default termination was improper and should be converted to one for the convenience of the Government.

Based on the foregoing, unless this matter can be settled promptly, we recommend that MVM appeal the termination decision to the GSBCA or to the U.S. Court of Federal Claims and file a claim with the Contracting Officer for the Company's costs incurred under the Contract. If you have any questions regarding this matter, please feel free to call me.

Sincerely,



David M. Nadler

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January 31, 2005
MVM Inc.
1593 Spring Hill Road, Suite 700
Vienna, VA 22182

Subject: Contract # SGE500-05-C-1071

Dear Mr. Morway:

I have reviewed your letter of January 20, 2006 regarding the Termination for Default notice. The accompanying letter from your attorneys, Dickstein Shapiro requires a response. I take a great umbrage at the allegation that my basis for termination was "pretextual" or that my decision was made without consideration of all elements of MVM performance or lack thereof, including the proposed get-well plan. In addition my decision was made independently and not the result of pressure from the RSO or the Ambassador. The bottom line is the fact that MVM did not fulfill the requirements of the contract.

I am open to discussion relative to your request for our consideration of conversion of the termination for default to one of convenience. I do so in the interest of the Government's program and not because we give any weight to the defamatory "legal arguments" included with your letter.

Sincerely

Christopher P. Sager
Contracting Officer

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Tel.: 49-69-7535 3330
Fax.: 49-69-7535 3329

February 17, 2006
MVM Inc.
1593 Spring Hill Road, Suite 700
Vienna, VA 22182

Subject: Contract SGE500-05-C-1071

Dear Mr. Morway:

As stated in my previous letter of January 20, I am open to discussions relative to MVM's request for consideration of conversion of the termination for default to one of convenience. I entered into the February 9 meeting based on your request to negotiate a fair and reasonable settlement. In that meeting you failed to honor your offer to make substantial financial concessions from the claim amount advocated by your counsel and presented a settlement proposal that was 35% higher. These acts are not examples of good faith negotiations.

I must make clear the Government's position before pursuing these issues any further. Before further discussion can be held, I must have a signed statement that you understand and agree that the settlement discussions do not bind the Government in any way unless and until a final settlement is reached and signed. Further more, MVM will agree not to attempt to use anything said in the settlement discussion as evidence in any subsequent litigation.

I await your reply in this matter.

Sincerely

Christopher P. Sager
Contracting Officer

February 22, 2006

Christopher P. Sager
Contracting Officer
American Consulate General Frankfurt
Regional Procurement & Support Office (RPSO)
Geissener Strasse 30
D-60435 Frankfurt am Main, Germany

Re: Contract No. SGE500-05-C-1071

Dear Mr. Sager:

This letter is in response to your letter dated February 17, 2006 concerning the potential resolution of the Government's termination for default of the above-referenced Contract.

MVM understands and agrees that our settlement discussions are subject to Federal Rule of Evidence 408 and are not admissible by either MVM or the Government in any subsequent proceeding regarding the propriety of the default, liability for MVM's claim, or the amount of the claim. Nor are statements made by either party in compromise negotiations admissible in any proceeding related to this matter.

In the interest of cooperation and to resolve this matter quickly, MVM offers to resolve this matter under the following terms: (a) The Government will convert the termination for default to a termination for the convenience of the Government effective December 21, 2005, and (b) The Government will pay MVM $4.5 million dollars (which shall include payment of approximately $2M for the purchase by the Government of the equipment acquired by MVM for the Contract) in resolution of MVM's claim, subject to a mutual release by the parties.

Thank you for your cooperation and we look forward to your reply.

Sincerely
MVM, Inc.

Joseph Morway
Executive Vice President

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