

Office of the Assistant Secretary of the Army

Acquisition Logistics and Technology

US Army Contracting Agency

December 2004

## Reference

### **Iraq Reconstruction Security Support Services contract to Aegis Defence Services.**

I am writing from the Pat Finucane Centre, a non-governmental human rights organisation in Derry, N.Ireland. I have been asked to write to you by Mrs Jean Mc Bride whose son Peter was murdered by two members of the British Army in Belfast in 1992. We have acted as advocates for the family since 1997. We have accompanied the family to meetings with the Taoiseach (Prime Minister) of the Irish Republic and other senior officials, the British Minister of State for Defence and two Secretaries of State for Northern Ireland. You will gather from this that the murder of Peter Mc Bride is a cause of major concern.

Two soldiers, Mark Wright and James Fisher, were convicted of the murder of Peter Mc Bride and their convictions were upheld on appeal.

Mrs Mc Bride has requested that you urgently review your decision to award an Iraq Reconstruction Security Support Services (RSSS) contract to Aegis Defence Services. We support that request. The CEO of Aegis is Lt Col Tim Spicer, a former officer in the Scots Guards Regiment of the British Army and then commanding officer of Wright and Fisher when Peter Mc Bride was murdered.

You recently replied to a number of senior US Senators who had raised objections to this contract in a letter to Secretary of Defence Donald Rumsfeld. Those objections included the role of Spicer following the murder of Peter Mc Bride in September 1992.

From your response it is clear that your office was supplied with inaccurate information regarding Tim Spicer. He has attempted to justify the murder of an unarmed teenager by soldiers under his command. In addition a previous company of which he was CEO, Sandline International, was involved in major violations of international and British law and has been the subject of international and British investigations.

His actions both as an officer in the British Army and as CEO of Sandline International have a '*bearing on his ... record of integrity and business ethics*' and how Aegis Defence Services conducts itself in Iraq. For these reasons we must urge you to conduct a thorough review of the contract. Below we are setting out in detail the reasons why we believe your office should revisit this decision as a matter of urgency.

**We are bringing information to your attention on the basis that;**

- the record of integrity and business ethics of Aegis Defence Services and Tim Spicer is a relevant consideration in awarding the RSSS contract,
- the post-award review of this decision by your office reached factually inaccurate conclusions,
- other relevant information concerning the activities of Sandline International and Tim Spicer were not properly taken account of,
- that the information in relation to Spicer's actions in Ireland, Sierra Leone and Papua New Guinea is relevant to the nature of the RSSS contract in Iraq,
- that the information in relation to Spicer's actions in Ireland, Sierra Leone and Papua New Guinea raises serious doubts about the decision to award this contract to Aegis,
- that your office has a responsibility to ensure that the RSSS contract is not awarded to a company whose CEO has justified a human rights abuse.

**We are requesting an urgent review of the decision to grant the RSSS contract to Aegis Defence Services.**

**Your post-award review reached factually inaccurate conclusions**

We note that the five senior members of the US Senate had asked,

*'...whether, in making his responsibility determination, the contracting officer "considered human rights abuses-or an individual who vigorously defends them-as part of [Aegis's] record."*

Letter from Senators Kerry, Kennedy, Schumer, Clinton and Dodd to Secretary Rumsfeld.

You responded,

*'...the contracting officer was not aware of the allegations subsequently lodged against Mr Spicer in the press at the time of contract award. However our post-award review of the facts surrounding these matters did not establish that Mr Spicer's advocacy on behalf of his former soldiers had any bearing on his or Aegis's record of integrity and business ethics. I understand that others besides Mr Spicer, including members of the British Government, also advocated for the soldiers release from prison. The British Government reviewed the case and found in favor of the soldiers release. Recently a British Army review board reinstated the soldiers into the British Army.'*

It is clear from the above that certain information was brought to your attention that prompted a post-award review of the contract. We welcome the fact that your office accepts that serious allegations in relation to such a sensitive contract in Iraq must be investigated.

**Regrettably we must point out that the conclusions reached in your review are factually inaccurate and flawed on a number of levels.**

For this reason we must urge you to carry out a further review. It is our contention that Lt Col Tim Spicer has vigorously defended a human rights abuse-the murder by soldiers under his command of an unarmed teenager in broad daylight- and that the RSSS contract to Aegis Defence Services should be cancelled forthwith.

- 1) Firstly we presume you agree that any allegations against Lt Col Tim Spicer have an obvious and pertinent bearing on Aegis Defence Services given his pivotal role in the

company; and also that serious concerns about ‘*his or Aegis’s record of integrity and business ethics*’ is highly relevant to the awarding of an RSSS contract.

2) According to your letter,

*I understand that others besides Mr Spicer, including members of the British Government, also advocated for the soldiers release from prison.*

**The allegation against Mr Spicer is not that he advocated for the soldiers release from prison.**

The issue is that he opposed their arrest and opposed their being charged with any offence whatsoever. In a sworn affidavit and in his autobiography Spicer stated,

“They should never have been charged with murder, let alone convicted of it.”

(Extract from Spicer autobiography)

In his sworn affidavit and again in his autobiography Spicer has sought to portray an entirely fictitious and untruthful version of the events preceding, during and following the actual murder. I am enclosing an Open Letter to Tim Spicer that highlights this. It is essential to point out that the version of events as described by Spicer, which constituted the defence offered by the soldiers, has been totally rejected by the courts and described as a ‘concoction of lies’ by the trial judge. The original judgement has been upheld in subsequent appeals.

3) You go on to assert that,

*The British Government reviewed the case and found in favor of the soldiers release.*

This is factually incorrect. The early release of the soldiers from a life sentence caused great controversy but has never been the subject of any legal action or review by any party including the British Government.

4) You go on to assert that,

*Recently a British Army review board reinstated the soldiers into the British Army.*

Again this is factually incorrect. Guardsmen Wright and Fisher remained in the British armed forces even while they were in jail serving life sentences. This is contrary to army regulations and reflects the bizarre nature of this entire case. As such they were not ‘reinstated’. Upon early release from jail a British Army Board held a hearing to determine if the Guardsmen should be retained (not reinstated) in the British Army. This was in 1998 and not recently as your review determined. The Army Board decided that Guardsmen Wright and Fisher should be retained. According to Queen’s Regulation 9.402 (an internal army regulation) soldiers who receive a custodial sentence must be dismissed from the armed forces unless there are ‘exceptional’ circumstances justifying their retention.<sup>1</sup> Lawyers for the family of the murder victim launched an unprecedented legal action to have this decision overturned.

**The decision of the first Army Board was overturned in the High Court in Belfast.**

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<sup>1</sup> Over 2000 soldiers have been dismissed, usually for minor offences, under QR 9.402 in the ten year period corresponding with this case. No soldier convicted of murder has ever been retained in the British Army except for two other individuals who were also convicted of the murder of Catholic civilians in the North of Ireland. (Source-British Ministry of Defence)

(One of the members of the first Army Board, the decision of which was found to be unlawful, is now an advisor to Aegis Defence Services. The fact that this person, retired General Sir Roger Wheeler, ruled that murderers could remain serving soldiers raises serious questions about his understanding of international law regarding the use of lethal force or indeed his understanding of internal army regulations. In the context of the Iraq contract this is relevant.)

A second Army Board was set up which again sought to ignore the ruling of the courts and allow retention of the soldiers. In 2003 a Belfast court ruled that the reasons offered as 'exceptional' by the second Army Board and which sought to justify retention of the soldiers were not in fact 'exceptional.' As of December 2004 the family of the victim are awaiting judgement in further legal action which is seeking to compel the Ministry of Defence to take action as a result of the 2003 ruling.

**In summary - the reasons offered to justify retention of Guardsmen Wright and Fisher have no legal standing and are contrary to QR9.402. This is the latest legal position.**

We are extremely concerned that your review has been misled and provided with erroneous information as to the current status of this case. Was this provided directly by the British Ministry of Defence or by any other British Government department? If so we are also anxious to know when this occurred as this information could be relevant to ongoing legal action.

Having clarified the above we must again stress that though the information in your letter is incorrect it is also somewhat irrelevant from the perspective of Lt Col Tim Spicer. His untruthful and deeply hurtful interventions have been based on the premise that the two guardsmen under his command should never even have been charged or convicted. Lt Col Tim Spicer seeks to argue that to shoot an unarmed teenager in broad daylight did not constitute murder. He seeks to justify this by offering a discredited and fabricated version of the events that unfolded on the morning of September 4 1992. The court held, contrary to Spicer's contention, that the soldiers were aware that Peter Mc Bride was unarmed and posed no threat. It is not legally possible to defame the dead and as such his statements cannot be challenged in court. They do however raise the most serious questions about his suitability in the context of such an important security contract in Iraq.

Recently the US press carried reports regarding allegations that a US soldier had shot and killed an unarmed and injured man in a mosque in Falluja, Iraq. The incident was captured on film and broadcast. Our understanding is that the soldier is under investigation. Should this case result in a murder conviction and should the Commanding Officer of the soldier provide an entirely untruthful and lying defence of the actions of his subordinate we suspect that the US Army would not look favourably on this officer taking on a position of considerable responsibility in matters concerning security in Iraq. This is our position in relation to Spicer.

5) A further point concerns the attitude of the British Ministry of Defence towards this contract. You have informed the Senators that,

*'...It is significant that the British Ministry of Defence was apprised of our intention to award the RSSS contract to Aegis, and did not object or advise against the action.*

Given the fact that the Ministry of Defence is deeply implicated in this disgraceful scandal it would surely have been significant **had** the MoD informed the US Army Contracting Office that it had serious misgivings! After all the MoD was itself sharply criticised in the courts for its decision to retain convicted murderers and has shown considerable disdain for domestic law and human rights standards. In any case many will not be surprised that the MoD did not offer a negative assessment of a company on whose payroll is General Sir Roger Wheeler (retired). **He is the former Chief of the UK General Staff of the British Army.**

**Did the MoD merely take note of the fact that Aegis was to be awarded the contract or offer active encouragement?**

As regards the attitude of the British Government to the contract I am enclosing two relevant parliamentary replies. In a reply dated 12 July 2004 the Minister of State at the Foreign and Commonwealth Office makes direct reference to the Aegis RSSS contract. In reply she notes that,

*'Her Majesty's Government are not a party to the contract, nor were they involved in any way in its negotiation.'*

(See Written Statement available online in the official Hansard parliamentary record.)

In the second enclosed reply from a Minister of State at the Department of Trade and Industry it is made clear that the Ministry responsible for supporting and advocating British business interests at home and abroad,

*'...have not met representatives of Aegis Defence Services.'*

nor have they made,

*'...any representations to the United States relating to Aegis Defence Services or its personnel associated with its operations.'*

Members of Parliament have informed the Pat Finucane Centre that they find the above responses highly unusual. At the very least this hardly constitutes a ringing endorsement of a British company which has just been awarded a significant private security contract in Iraq worth some \$293 million dollars.

**Accountability, the RSSS contract in Iraq and possible legal consequences in the US.**

There are a number of additional issues that we wish to bring to your attention regarding the suitability of Aegis Defence Services for the RSSS contract awarded by the US Army. These concern the activities of Sandline International, of which Spicer was CEO and which have an obvious and relevant

*bearing on his ... record of integrity and business ethics*

to quote from your response to the Senators. It is our contention that a failure on your part to take these concerns properly into consideration may well leave you as an individual, as well as the office responsible for Acquisition, Logistics and Technology, the relevant command structure within the US Army and indeed the US Secretary for Defence open to legal proceedings in the US courts in the event that any employee of Aegis is found guilty of human rights abuses.

**In awarding the RSSS contract to Aegis did your office, or any other department of the US Army, read the findings of the official British Government report (the Legg Report) into the Sandline/Sierra Leone scandal?**

[Sandline violated a UN arms embargo and British law in an affair that caused a political crisis in Britain and was described as,

*'...not only embarrassing but I would say quite damaging to the government at the time.'*

(Dennis Mc Shane, MP, Parliamentary Under-Secretary of State , Foreign and Commonwealth Office)

The fiasco involved the purchase of arms from Bulgaria and the use of South African mercenaries, Russian helicopters and Russian pilots, and led to official British Government inquiries and the drafting of guidelines on contacts between government officials and private military /mercenary

companies. Sandline had sought access to mining concessions as partial payment. As the scandal unfolded Spicer's home and business premises in Britain were searched by the authorities.]

**In awarding the RSSS contract to Aegis did your office or any other department of the US Army assess the findings of the two Commissions of Inquiry set up by the government of Papua New Guinea into the involvement of Sandline International in mercenary activity in that country?**

[Spicer was arrested in Papua New Guinea in 1997 after it emerged that Sandline was involved in a plan to bring arms and mercenaries into the country. Riots followed and the government collapsed. The intervention of Sandline in Papua New Guinea involved a force of South African mercenaries, employees of Sandline, who planned to massacre their local guides. The involvement of Sandline, which cost the impoverished nation \$18 million dollars, was opposed by the Australian and New Zealand Governments and the British Government. Large arms shipments were imported by Sandline from a Lebanese registered company, based in Belarus and imported through a Bulgarian air freight company. See enclosed Sunday Times article]

**In awarding the RSSS contract to Aegis did your office, or any other department of the US Army, consider the previous activities of companies of which Spicer was CEO, (ie Sandline) in the context of the US Arms Export Control Act ?**

[There is no suggestion that Sandline was contracted by any US Government agency in relation to events in Sierra Leone or Papua New Guinea. The previous business ventures of Sandline are however a relevant consideration in judging Spicer's '*...record of integrity and business ethics.*' In all likelihood the arms purchase and shipments referred to above would have constituted a violation of the US Arms Export Control Act had the company been US based.]

**In awarding the RSSS contract to Aegis did your office or any other department of the US Army assess the information provided by the Independent Commission Against Corruption in Hong Kong to the second inquiry set up by the government of Papua New Guinea into the Sandline affair? This revealed that the company of which Spicer was CEO had bribed public officials in Papua New Guinea.**

Spicer offered inaccurate statements to journalists, judges and parliamentarians about the precise nature of Sandline, who had set it up and its links to other companies involved in mercenary activities and in particular about his relationship to a Mr Anthony Buckingham who had accompanied him to Papua New Guinea. (In 1995 Buckingham also travelled to Baghdad in meet the Iraqi Oil Minister Safa Hadi Jawad. No UK or US national attended this meeting, where the Iraqi Government sought potential investment partners, other than Buckingham.)

**Legal duties to ensure the protection of human rights.**

We have brought information to your attention that seeks to establish that you have awarded an RSSS contract to a company whose CEO, Tim Spicer, has,

**vigorously defended a human rights abuse**

and whose

**record of integrity and business ethics**

is questionable for reasons outlined above. Clearly there is an onerous legal duty on the office responsible for Acquisition, Logistics and Technology within the US Army to ensure the protection of human rights in the context of the above-mentioned RSSS contract. Private security companies have already been linked to allegations of serious human rights abuses in Iraq and on receipt of this communication your office no longer has the benefit of the 'no-one told us' defence.

We refer you also to the transcript of evidence from a UK parliamentary hearing in June 2002 at which Spicer gave evidence. A member of the Foreign Affairs Committee of the House of Commons, Mr David Chidgey MP asked,

*‘... how can you, wearing both your hats, your previous career and this one<sup>2</sup>, be sure that the personnel you are employing and deploying literally in the front line behave in the way they behaved when they were trained by you and operated under the Armed Forces Act?’*

*(Lt Colonel Spicer)* It would be my responsibility to ensure that our own vetting process, not a registration or Government licence vetting process, although that would help, and the type of people we employ, the database of employees, sorted that out. We are very careful to make sure that we are not employing those who might react adversely and carry out those breaches of the Geneva Convention... I would answer that by saying that if there were the situation which exists now where it is my responsibility to ensure that the people I employ behave properly and within the law of armed conflict, I am confident that those I employ would not carry out those breaches.

*(Mr Chidgey MP)* Do you feel you can do that without the sanctions you would have had as a serving officer to enforce upon your men the sanctions available under the Armed Forces Act? In any circumstances?

*(Lt Colonel Spicer)* In the majority of the circumstances. In the same way I would say, putting my previous experience hat on, yes, of course you have the luxury of the Armed Forces Act, the law of the country, etcetera, but you cannot guarantee it 100 per cent. Something could go wrong.

*(Mr Chidgey MP)* But at least you have the opportunity of an example under the Act for those who do transgress to encourage the others.

*(Lt Colonel Spicer)* Yes.

## **PFC Commentary**

In another context the above comments might prove comforting. (1) An experienced former officer in the British Army reassures parliamentarians that it is his responsibility to employ only those who would behave as those under his command behaved while in the regular army. (2) He goes on to emphasise that he would ensure that his employees stayed within the law of armed conflict. (3) Pressed on how he would do this without the legal sanction available to him in the British Army he admits that the legal constraints imposed on serving soldiers provided for some degree of adherence to the law which is not available in the privatised world of guns for hire. (4) He then agrees that punishing those who break the law acts as a form of deterrence to others.

## **How should we understand his responses to a parliamentary committee in the context of the Mc Bride case?**

### **(1) It is his responsibility to employ only those who would behave as those under his command behaved while in the regular army.**

If employees of Aegis behave in the same way as soldiers under his command did while in the Scots Guards Regiment in Belfast then you have a serious problem on your hands. Tim Spicer does not accept that to shoot an unarmed 18 year old boy in the back constitutes murder. The prosecution service, the police and the judiciary all came to the conclusion that a murder had been committed. There is for instance every reason to believe that Spicer would employ Guardsmen Wright and Fisher who, despite their convictions, did no wrong according to Spicer.

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<sup>2</sup> a reference to his career in the British Army and as someone involved in private security/mercenary companies.

**(2) He goes on to emphasise that he would ensure that his employees stayed within the law of armed conflict.**

If employees of Aegis are expected to respect the law of armed conflict because Tim Spicer intends to ensure that they do then you have another serious problem on your hands. Spicer has shown total disdain for the law in respect of the murder of Peter Mc Bride.

**(3) Pressed on how he would do this without the legal sanction available to him in the British Army he admits that the legal constraints imposed on serving soldiers provided for some degree of adherence to the law which is not available in the privatised world of guns for hire.**

Where the legal process governing the use of force was unequivocal, as in Belfast, Spicer sought to frustrate that same legal process. Where the legal process governing the use of force is unclear, as is the case with a British based private company, contracted by the US Army and working in Iraq, there are grounds for serious concerns regarding the compliance of Aegis employees with international laws on the use of force. Spicer's admission that even fewer safeguards exist in the privatised world of guns for hire is further evidence of the potential for human abuses to be committed.

**(4) He agrees that punishing those who break the law acts as a form of deterrence to others.**

It follows that the opposite is also true. On the one occasion where soldiers under his command were accused of and then convicted of murder Spicer sought to excuse and condone the actions of his men and frustrate the due process. British soldiers who observed the aftermath of the Mc Bride case, far from being deterred, will have understood that the command structure of the British army will go to considerable lengths to help them literally get away with murder.

Within hours of the murder of Peter Mc Bride Lt Col Tim Spicer was of the view that the soldiers who committed the murder should be sent straight back out on patrol in Belfast. This was contrary to army regulations and would have thwarted the police investigation. In his affidavit he justifies this proposed reaction by stating that it was similar to getting back on a horse having fallen off. The Mc Bride family and the wider community do not regard the murder of an 18 year father of two young children as comparable to falling off a horse.

We also refer you to further evidence from the UK parliamentary hearing on the subject of Private Military Companies. The committee discussed the possibility of issuing licences to such companies. The question and answer we wish to direct you to is referenced at 136 below. Mr Bill Olnier MP asked Dr Denis Mc Shane MP, Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office,

*136. Using the same scenario to which you just referred, would you then say that the official who licenses the private military company would be deemed to be responsible for any human rights violations that that company may well commit at a later stage?*

*(Dr MacShane)* I think that we are getting into seriously hypothetical waters. I think that the company itself or the individuals within the company would accept responsibility. In this country, we do not follow the doctrine of, "we were only obeying orders". People who do bad things have to accept responsibility at whatever level decisions are made for having done bad things.'

**PFC** It should be noted that Tim Spicer did not accept responsibility, as in 'command responsibility' as commanding officer for the murder of Peter Mc Bride. Furthermore, when questioned by the parliamentarians in relation to the Papua New Guinea fiasco Spicer denied any wrongdoing whatsoever on his part.

**Is the office responsible for Acquisition, Logistics and Technology within the US Army satisfied that Aegis Defence Services and Tim Spicer as CEO would accept responsibility for**



**any human rights violations that employees may commit while contracted by your office in Iraq?**

In conclusion;

- the record of integrity and business ethics of Aegis Defence Services and Tim Spicer is a relevant consideration in awarding the RSSS contract,
- the post-award review of this decision by your office reached factually inaccurate conclusions,
- other relevant information concerning the activities of Sandline International and Tim Spicer were not properly taken account of,
- that the information in relation to Spicer's actions in Ireland, Sierra Leone and Papua New Guinea is relevant to the nature of the RSSS contract in Iraq,
- that the information in relation to Spicer's actions in Ireland, Sierra Leone and Papua New Guinea raises serious doubts about the decision to award this contract to Aegis,
- that your office has a responsibility to ensure that the RSSS contract is not awarded to a company whose CEO has justified a human rights abuse.

**We are requesting an urgent review of the decision to grant the RSSS contract to Aegis Defence Services.**

Please see [www.serve.com/pfc](http://www.serve.com/pfc) and click on Peter Mc Bride to see extensive background on the murder of Peter Mc Bride, the Iraq contract and the mercenary activities of Tim Spicer in Sierra Leone and Papua New Guinea.