Project On Government Oversight
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March 29, 2010

The Honorable John McHugh
Secretary of the Army
1400 Defense Pentagon
Washington DC 20301-1400

Dear Mr. Secretary:

The Project On Government Oversight (POGO) was recently informed that the Army is considering awarding KBR, Inc., additional work in Iraq under the Logistics Civil Augmentation Program (LOGCAP) III contract. That action continues KBR's monopoly on LOGCAP work in Iraq rather than using the competitive procurement procedures created under LOGCAP IV. To better evaluate goods and services, and to get the best value for taxpayers, the government must encourage genuine competition. In the context of the Commission on Wartime Contracting (CWC) hearing today, this issue is on the table via a business case analysis for the Army as it considers not transitioning from the noncompetitive LOGCAP III to the competitive LOGCAP IV contract for base life support services in Iraq. We have grave concerns about the awarding of several billion dollars to KBR for the LOGCAP program absent competition.

POGO echoes the concerns expressed by House Committee on Oversight and Government Reform Chairman Edolphus Towns in his March 3, 2010, letter to the Secretary of Defense about awarding a contract in Iraq to KBR in light of its poor past performance (Attachment 1). As stated by Chairman Towns, reports raise serious questions regarding KBR's past performance such as "[f]aulty electrical systems maintained by KBR have caused serious injuries in Iraq...." In addition to the electrocution issues, the Defense Contract Audit Agency (DCAA) reported numerous issues regarding KBR, including significant overpayments and fraud referrals, at a CWC hearing in May 2009.[1]

In light of KBR's serious performance issues, we are concerned that the Army is considering what amounts to a sole-source award to the company rather than using the competitive LOGCAP IV contract. The Army has stated that competition for in-theater procurements will solve many of the management problems on the LOGCAP program. In a press release on April 17, 2008, Acting Undersecretary of

[1] Testimony of April G. Stephenson, Director, Defense Contract Audit Agency, before the Commission on Wartime Contracting, May 4, 2009. Available at http://www.wartimecontracting.gov/images/download/documents/hearings/20090504/Stephenson_DCAA_testimony_5-4-09.pdf (Downloaded March 27, 2010)

1100 G Street, NW
Suite 900
Washington, DC
20005-3806
Phone: 202-347-1122
Fax: 202-347-1116

www.POGO.org
pogo@pogo.org
501(c)(3) ORGANIZATION

the Army Nelson M. Ford stated, "LOGCAP IV uses competition to deliver the best quality at the right price for our men and women around the world. This approach provides our soldiers the quality and value that the American public expects for their tax dollars."[2]

At a CWC hearing in May 2009, Mr. Jeffrey P. Parsons, Executive Director, U.S. Army Contracting Command, reiterated the positive benefits of competition when transitioning from LOGCAP III to IV: "Eliminating a single point of failure by awarding three contracts was just one of many of the improvements we made in LOGCAP IV. We realized early on that a number of problems we experienced in LOGCAP III were directly related to the overtaxed business systems and how the prime contractor [KBR] managed its subcontracts."[3]

Not only is a sole-source award to KBR inconsistent with the Army's plan for improved management of the LOGCAP IV contract, but it is also contrary to the requirements of Public Law 110-181, the National Defense Authorization Act for Fiscal Year 2008. Section 843 ("Enhanced Competition for Task Order and Delivery Order Contracts")[4] requires the use of competition when awarding task order or delivery order contracts in excess of $100 million unless certain conditions are met. Moreover, awarding a sole-source contract directly violates White House instructions to reduce "the use of high risk contracting authorities," including noncompetitive contracts.[5] In light of KBR's significant shortcomings in performance, including faulty electrical work that risked the lives of U.S. soldiers, and its unwillingness to correct deficiencies in its business systems in a timely manner, POGO hardly believes it is in the best interest of the public to award additional work to KBR under LOGCAP III.

Finally, we recognize that the drawdown of troops in Iraq presents management challenges to the Army. However, it appears that the Army's delay in transitioning from LOGCAP III to IV in Iraq only exacerbates this situation and continues to benefit KBR rather than the government and taxpayers. Senators Claire McCaskill and Susan Collins expressed concerns with the Army's delay in transitioning to LOGCAP IV in a May 1, 2009, letter to Secretary Gates (Attachment 2). POGO shares those concerns. Delays in transitioning LOGCAP III to IV in Iraq and the proposed use of a sole-source procurement to KBR represents an unacceptable risk to the taxpayer. We urge the Army to reconsider the continued use of the LOGCAP III program and end KBR's monopoly in Iraq.

POGO has a keen interest in government contracting matters, especially matters related to competition in federal contracting. Thank you for your time and consideration. If you have any

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[2] U.S. Army News Release, *LOGCAP IV logistics contract awarded through full and open competition*, April 17, 2008. Available at http://www.army.mil/-newsreleases/2008/04/17/8573-logcap-iv-logistics-contract-awarded-through-full-and-open-competition/ (Downloaded March 25, 2010)

[3] Hearing of the Commission on Wartime Contracting, *LOGCAP: Support-Contracting Challenges in Iraq and Afghanistan*, May 4, 2009. Available at http://www.wartimecontracting.gov/index.php/hearings/46-commission/67-hearing20090504

[4] Public Law 110–181, Sec. 843, "Enhanced competition requirements for task and delivery order contracts," January 28, 2008. Available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ181.110.pdf

[5] Executive Office of the President, Office of Management and Budget, Peter R. Orszag, *Memorandum for the Heads of Departments and Agencies: Improving Government Acquisition*, M-09-25, July 29, 2009. Available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-25.pdf (Downloaded on March 25, 2010)

questions or would like to discuss this issue in more detail, please contact me or POGO's General Counsel Scott Amey at (202) 347-1122.

Sincerely,

Danielle Brian
Executive Director

Attachments:

1. Letter from Chairman Edolphus Towns, House Committee on Oversight and Government Reform, to Robert M. Gates, Secretary of Defense, March 3, 2010.

2. Letter from Chairman Claire McCaskill and Ranking Member Susan Collins, Senate Subcommittee on Contracting Oversight, to Robert M. Gates, Secretary of Defense, May 1, 2009.

ATTACHMENT 1

EDOLPHUS TOWNS, NEW YORK,
CHAIRMAN

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ANH "JOSEPH" CAO, LOUISIANA

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5051
FACSIMILE (202) 225–4784
MINORITY (202) 225–5074

www.oversight.house.gov

March 3, 2010

The Honorable Robert M. Gates
Secretary of Defense
U.S. Department of Defense
100 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Gates:

I write with deep concern regarding reports that KBR, Inc. has been awarded a $2.8 billion contract to, once again, provide support services to our U.S. forces in Iraq. Astonishingly, despite KBR's poor past performance in Iraq, KBR reportedly won a one-year contract, with an option for four more years.

Recent reports about KBR's record, including one issued by the Defense Department's Inspector General,[1] raise serious questions regarding whether the Department of Defense should have awarded such a lucrative contract to KBR given the contractor's poor past performance in Iraq. KBR was responsible for providing a wide range of support services in Iraq, including the maintenance of electrical systems in facilities where several U.S. service members were fatally electrocuted. Faulty electrical systems maintained by KBR have caused serious injuries in Iraq and may have contributed to the numerous electrical fires that reportedly occurred at U.S. facilities in Iraq. In addition to this, there have been numerous allegations of waste, fraud, and abuse by KBR. Given this, it seems inconceivable to me that the Defense Department would award this new contract to KBR in Iraq.

On July 30, 2008, the Committee on Oversight and Government Reform held a hearing regarding KBR's deficient maintenance of electrical systems at U.S. facilities in Iraq. The hearing exposed the Defense Department's failure to provide adequate oversight over KBR and ensure that American troops were not endangered by faulty electrical systems. Despite this, it seems that the Defense Department continues to reward KBR for deficient contract performance that has endangered the lives of our service men and women.

According to the Federal Acquisition Regulations, "when selecting contractors to provide products or perform services, the Government will use contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform." Given

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[1] *See* Inspector General, U.S. Dept. of Defense, "Review of Electrocution Deaths in Iraq: Part I – Electrocution of Staff Sergeant Ryan D. Maseth, U.S. Army", Rept. No. IE-2009-006 (July 24, 2009).

KBR's poor track record, I don't understand how KBR could meet this standard. When multiple deaths of U.S. servicemen are not enough to preclude a contractor from being awarded a new contract, it makes me wonder what is.

The Committee on Oversight and Government Reform is the principal oversight committee in the U.S. House of Representatives, with jurisdiction over "any matter." Under Rules X and XI of the Rules of the House of Representatives, the Committee is conducting an investigation into the new task order that was awarded to KBR, Inc., under the Logistics Civil Augmentation Program (LOGCAP) IV contract, by the U.S. Army Contracting Command to provide logistic support, theater transportation and postal services to U.S. forces in Iraq.

To aid in our investigation, please provide the Committee with copies of the following records:

1. Copies of all task orders, modifications, and Performance Work Statements awarded to KBR under the Logistics Civil Augmentation Program (LOGCAP) IV contract, under which KBR is to provide corps logistics support services, theater transportation mission, and postal services;

2. Copies of all documents and communications, including e-mail, relating to the award of KBR's new support contract, including records related to bid solicitations;

3. Copies of all performance reviews and corrective action reports concerning KBR's work in Iraq, since August 1, 2008; and

4. Copies of all documentation, analysis, and criteria used to evaluate KBR's past performance in the decision to award the task order.

Please deliver the requested records to the Committee on Oversight and Government Reform, room 2157 Rayburn House Office Building no later than 4:00 p.m. on Wednesday, March 17, 2010. To facilitate delivery and review, we prefer that the records be delivered in electronic format. In addition, I request that representatives from DOD contact Committee staff as promptly as possible to schedule a meeting to discuss this matter.

Should you have any questions about this request, please contact Craig Fischer, Neema Guliani, or Steve Rangel of the Committee staff at (202) 225-5051.

Sincerely,

Edolphus Towns
Chairman

cc: The Honorable Darrell Issa
Ranking Member
Committee on Oversight and Government Reform

ATTACHMENT 2

JOSEPH I. LIEBERMAN, CONNECTICUT, CHAIRMAN
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United States Senate
COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

May 1, 2009

The Honorable Robert M. Gates
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Mr. Secretary:

As part of the Subcommittee's ongoing oversight of Defense Department contracting, I am writing regarding the Army's continued use of KBR's monopoly LOGCAP contract. I am concerned and need to understand why the Army is not moving quickly enough to transition to the new set of LOGCAP contracts, which were awarded nearly two years ago to reduce costs and improve contract oversight through competition among multiple contractors. The Army's continued reliance on KBR's monopoly contract is particularly disturbing in light of new information obtained by the Subcommittee regarding the Department's failure to recover overcharges and excess profits on KBR subcontracts.

Background

The third Logistics Civil Augmentation Program contract (LOGCAP III) was awarded to KBR, then a subsidiary of Halliburton, in 2001. The previous LOGCAP contracts were awarded to KBR in 1992 and Dyncorp in 1997.

Under LOGCAP III, KBR has been the sole provider of meals, laundry, housing and other support services to the troops in Iraq and around the world. As of February 2009, the value of KBR's work under the LOGCAP III contract was $31.3 billion.[1]

Problems with the LOGCAP III contract have been described in detail by company whistleblowers, government auditors, and congressional investigators. These problems include a lack of meaningful competition; the failure to heed government auditors' recommendations to withhold payments; and KBR's failure to adequately oversee subcontractors.

In 2006, the Army announced its intention to award a new set of contracts for LOGCAP execution through full and open competition. Instead of a single contractor receiving all the work, three contractors would compete to perform task orders. An additional "planning and

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[1] Army Sustainment Command, *LOGCAP Financial Management Update* (Feb. 13, 2009).

support" contract would be awarded to another firm, which would help the Army oversee the three execution contractors.

In June 2007, the Army awarded the LOGCAP IV execution contracts to KBR, Fluor, and Dyncorp. Serco, Inc. received the separate planning and support contract. Two unsuccessful offerors subsequently challenged the award, and in October 2007, GAO sustained their protests.[2] In April 2008, the Army announced that the contracts had again been awarded to KBR, Fluor, and Dyncorp.

Failure to Award Competitive Contracts under LOGCAP IV

On April 19, 2007, the Senate Armed Services Committee, of which I am a member, held a hearing on the Defense Department's management of costs under the LOGCAP contract. At the hearing, Members of the Armed Services Committee asked about the Department's planned response to the reported waste, fraud, abuse, and mismanagement under LOGCAP III. Major General Jerome Johnson, Commanding General of the Army Sustainment Command, told the Committee that LOGCAP IV would eliminate many of the structural problems associated with LOGCAP III.[3] According to Gen. Johnson:

> LOGCAP III grew so rapidly that it nearly exceeded a single contractor's capacity. To minimize this risk, LOGCAP IV will use multiple contractors. This will increase government contract oversight and reduce program risk, while reducing costs through competitive, continuous task order competition.[4]

At the hearing, Senator Levin asked why the Army had waited so long to split the LOGCAP contract among multiple contractors. Claude M. Bolton, Assistant Secretary of the Army for Acquisition, Technology, and Logistics, responded: "I don't have a good answer for you."[5]

The Armed Services Committee later referenced this exchange in recommending the enactment of section 843 of the National Defense Authorization Act for Fiscal Year 2008, which established enhanced competition requirements for Indefinite Delivery Indefinite Quantity contracts in excess of $100 million.[6] According to the Committee, the provision would ensure that future LOGCAP-type contracts would provide for the competition of task and delivery

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[2] *See* Government Accountability Office, *Matter of Contingency Management Group, LLC; IAP Worldwide Services, Inc.* (Oct. 5, 2007).

[3] Senate Armed Services Committee, *Hearings on Department of Defense's Management of Costs Under the Logistics Civil Augmentation Program (LOGCAP) Contract in Iraq,* 110th Cong. (April 19, 2007).

[4] *Id.*

[5] *Id.*

[6] S. Report 110-077.

orders unless there was "a compelling reason not to do so."[7] A similar provision was previously included in S. 680, which was prepared by the Homeland Security and Governmental Affairs Committee to ensure that there are more than one contract holders that are eligible to compete for task and delivery orders.

Despite the benefits to the taxpayer, the support of the Army Sustainment Command, and the plain language and stated intent of the law, the Army has failed to transition the support of its mission in Iraq from LOGCAP III to LOGCAP IV. As of February 2009, the latest date for which the Subcommittee has received information, the Army has not awarded a single task order for work in Iraq under LOGCAP IV.[8]

The Army has also been slow to transition work in Kuwait and Afghanistan to LOGCAP IV. Only $172 million has been funded under LOGCAP IV in the last year, of which $4 million was awarded for planning and support services. Implementation of LOGCAP IV task orders has also been delayed by protests. All three task orders for work in Kuwait, which were competed and awarded under LOGCAP IV to Fluor and Dyncorp, were subsequently protested by KBR. One protest was resolved against KBR; the other two protests continue. While the protests are underway, KBR continues to perform this work under LOGCAP III.[9]

New Information Regarding Waste, Fraud, and Abuse Under LOGCAP III

Documents obtained by the Subcommittee on Contracting Oversight raise concerns about whether the Department has taken adequate steps to identify and recover overcharges and excessive profits paid under contracts associated with KBR employees known or suspected to have committed fraud. These documents indicate that the Defense Department has failed to recover more than $100 million paid out under these fraudulent LOGCAP subcontracts.

Since the beginning of the war in Iraq, multiple KBR officials have been indicted or convicted of corruption-related charges involving LOGCAP subcontracts. These include Stephen Seamans, who was convicted of fraud relating to a subcontract with a Kuwaiti cleaning company; Jeff Mazon, who was indicted for fraud for a subcontract awarded to La Nouvelle; Glenn Powell, who admitted to accepting $110,000 in kickbacks from an Iraqi subcontractor; Laszlo Tibold, who was fired by KBR after awarding a gravel delivery contract to a vendor whose price was five times higher than that of a competitor; and Anthony Martin, who admitted to accepting kickbacks from First Kuwaiti General Trading & Contracting Company in exchange

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[7] *Id.*

[8] Army Sustainment Command, *LOGCAP Financial Management Update* (Feb. 13, 2009).

[9] *Id.*

for the award of subcontracts.[10] These men were responsible for awarding or administering at least $306 million in LOGCAP subcontracts.[11]

Although the Defense Department knew or should have known about the fraudulent activities of Mr. Seamans, Mr. Mazon, Mr. Powell, and Mr. Tibold since 2005, when the relevant indictments and convictions became public, the Defense Contract Audit Agency (DCAA) failed to take adequate steps to review the other contracts these men had awarded or administered. In fact, DCAA waited until February 2007 to send a preliminary letter to KBR asking for information on the other contracts that had been administered by Mr. Seamans, Mr. Mazon, Mr. Powell, and Mr. Tibold.[12]

DCAA also failed to perform timely audits of these high-risk subcontracts. DCAA told KBR that it was "confident" that KBR had "proactively" examined the subcontracts administered by the four men. DCAA did request the results of any reviews undertaken by the KBR, but indicated that it would not perform its own audits of these contracts if it KBR had performed adequate investigations.[13] According to DCAA:

> If KBRSI's reviews satisfy our audit needs, we will rely on its work and subsequently curtail our own examination of these subcontracts. However, if we find KBRSI has not performed any reviews or disclosed cost impacts on Government contracts (where appropriate), this will be considered in our overall opinion on KBRSI's accounting control environment and purchasing system internal controls.[14]

Four months later, in June 2007, DCAA reported that KBR had failed to account for millions of dollars in excess profits on contracts awarded by Mr. Seamans. According to DCAA, the subcontractor, Tamimi Global Performance, had potentially realized excess profits of $49.8 million, or 76%, as a result of Mr. Seamans' fraudulent activities.[15] KBR had proposed to return to the government only $525,202 – a small

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[10] *See* Indictment, *United States v. Mazon* (Mar. 16, 2005); *Former KBR Worker Admits to Fraud in Iraq*, Washington Post (Aug. 23, 2005); *Former Kuwait Manager Indicted for Million Dollar Payoff,* CorpWatch (Mar. 25, 2005); *Ex-KBR Worker Pleads Guilty to Bribes*, MarketWatch (Mar. 24, 2006); Letter from Chairman Henry Waxman, House Committee on Oversight and Government Reform, to Secretary of State Condoleezza Rice (Oct. 9, 2007).

[11] Defense Contract Audit Agency, *DCAA Sampled High Risk Subcontracts on KBR LOGCAP III Contract* (undated).

[12] Letter from Defense Contract Audit Agency to Todd Bishop, Kellogg Brown & Root Services, Inc. (Feb. 28, 2007).

[13] *Id.*

[14] *Id.*

[15] Defense Contract Audit Agency, *Memorandum: Reasonableness of KBRSI Settlement Offer on Tamimi Subcontract Nos. GU49-KU-S00001 and GU68-KU-S000018* (June 7, 2007).

fraction of that amount.[16] DCAA recommended that the Army "rigorously pursue recovery" of these excessive profits.[17] The Subcommittee is not aware of actions taken by the Army to recover these excess profits.

DCAA has also recommended that the Army recover millions of dollars in costs associated with the subcontracts awarded to First Kuwaiti by Mr. Martin. In March 2006, DCAA disapproved $51.3 million in costs relating to First Kuwaiti's subcontracts for the delivery of trailer living containers.[18] In January 2007, the Defense Contract Management Agency (DCMA) determined that $25.6 million of the $51.3 million in costs were allowable. DCAA then reduced the disapproved costs to $25.7 million.[19] In May 2008 – eight months after the public disclosure of Mr. Martin's guilty plea – DCMA reversed its earlier determination and disallowed the remaining $25.6 million.[20] The Subcommittee is not aware of actions taken by the army to recover the $51.3 million in costs from KBR.

Finally, the Department has failed to ensure that these individuals and companies will not receive more government contracts. According to the Excluded Parties List System, the database that contains information regarding individuals and companies who have been suspended or debarred, Mr. Tibold, La Nouvelle, and First Kuwaiti are still eligible to receive federal funds in the future.

Conclusion

Based on the information the Subcommittee has received, I do not understand why the Army continues to rely on the LOGCAP III contract. I also do not understand why the Army, DCAA, and DCMA have not done more to recover these costs. Finally, I do not understand why the Defense Department has failed to take steps to debar all of the individuals and companies involved in defrauding the government and the taxpayer.

Please notify me as to whether you intend to take immediate steps to increase competition, oversight, and accountability under the LOGCAP contracts. I also request that you provide a briefing for Subcommittee staff on these topics by **Friday, June 12.**

The jurisdiction of the Subcommittee on Contracting Oversight is set forth in Senate Rule XXV clause 1(k); Senate Resolution 445 section 101 (108th Congress); and Senate Resolution 73 (111th Congress). An attachment to this letter provides additional information on how to respond to the Subcommittee's request.

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[16] *Id.*

[17] *Id.*

[18] Defense Contract Audit Agency, *Living Container Cost Issues Time Line* (undated).

[19] *Id.*

[20] *Id.*; Letter from Defense Contract Management Agency to Todd Bishop, Kellogg Brown & Root (May 19, 2008).

Please contact Margaret Daum with the Subcommittee staff at (202) 224-8316 with any questions and to schedule the requested briefing.

Sincerely,

Senator Claire McCaskill
Chairman
Subcommittee on Contracting Oversight

Senator Susan Collins
Acting Ranking Member
Subcommittee on Contracting Oversight

Enclosure