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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

November 6, 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 Department's efforts to recover more than $100 million that was improperly paid to KBR under the massive LOGCAP contract in Iraq.

Under the terms of the LOGCAP contract, the prime contractor, KBR, and all of its subcontractors are prevented from billing the U.S. government for security services. In February 2007, the Army acknowledged that it had paid at least $19.6 million for security services that were improperly billed by KBR under subcontracts to just one company, ESS.[1] The Defense Contract Audit Agency (DCAA) suspended these costs and the Army subsequently withheld $19.6 million in payments to KBR.[2]

In August 2007, DCAA completed its review of KBR's subcontracts with all other companies. DCAA estimated that KBR had improperly billed $99.7 million in security costs under the LOGCAP contract, including the $19.6 million previously identified.[3] In 2008, DCAA disapproved $99.7 million in costs plus the fees paid to KBR on top of those costs, for a total of $103.4 million.[4]

In August 2009, the Army recovered $22.3 million from KBR, for a total repayment from KBR of $42 million. On November 2, 2009, DCAA Director April Stephenson testified before the Commission on Wartime Contracting that the Army was now "in the process of taking action" to recover the remaining $61 million.[5]

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[1] Letter from Army Procuring Contracting Officer Kristen Mendoza to KBR Senior Manager Mary Wade (Feb. 6, 2007).

[2] Letter from Army Procuring Contracting Officer Kristen Mendoza to KBR Senior Manager Mary Wade (Feb. 6, 2007).

[3] Defense Contract Audit Agency, *Report on Evaluation of Kellogg Brown and Root Services, Inc. Disclosure of Costs of Armed Private Force Protection Services Associated with LOGCAP III Contract* (Aug. 29, 2007).

[4] Defense Contract Audit Agency, *Notice of Contract Costs Suspended and/or Disapproved* (Aug. 3, 2009) (Notice 127 Revision-1).

[5] Commission on Wartime Contracting, *Hearings on Accountability Issues in Iraq and Afghanistan* (Nov. 2, 2009).

Ms. Stephenson also testified that KBR had filed a claim with the Armed Services Board of Contract Appeals in April 2008 in an attempt to reclaim the $19.6 million already recovered by the Army. According to Ms. Stephenson, the Armed Services Board of Contract Appeals still has not reached a resolution as to the validity of KBR's claim.[6]

At the same hearing, Defense Contract Management Agency (DCMA) Director Charlie Williams testified that DCMA is currently reviewing "the remedies currently available to the government" for recovering costs. According to Mr. Williams, DCMA is also developing new proposed rules related to suspending costs.[7]

It is now more than two years since DCAA identified the improper billings for security services under KBR's LOGCAP contract. I am encouraged that the Department has taken steps to recover some of the funds that were improperly paid to KBR. However, I am concerned that the Department is not moving quickly enough to recover the remaining $61 million. This also raises questions about the sufficiency of the Department's efforts to recover suspended and disapproved costs on other contracts and subcontracts.

As a result, I request that you provide information regarding the status of the Department's recovery of the $103 million improperly billed by KBR. I also request that you provide a briefing for Subcommittee staff on these topics, including the proposed DCMA regulations and information sufficient to show the Department's recovery of all suspended costs relating to contracts in Iraq and Afghanistan, on or before **Tuesday, December 1**.

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).

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

cc: Robert Bennett
Ranking Member

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[6] Commission on Wartime Contracting, *Hearings on Accountability Issues in Iraq and Afghanistan* (Nov. 2, 2009).

[7] *Id.*