

CARL LEVIN, MICHIGAN
DANIEL K. AKAKA, HAWAII
THOMAS R. CARPER, DELAWARE
MARK L. PRYOR, ARKANSAS
MARY L. LANDRIEU, LOUISIANA
CLAIRE McCASKILL, MISSOURI
JON TESTER, MONTANA
ROLAND W. BURRIS, ILLINOIS
EDWARD E. KAUFMAN, DELAWARE

SUSAN M. COLLINS, MAINE
TOM COBURN, OKLAHOMA
SCOTT BROWN, MASSACHUSETTS
JOHN McCain, ARIZONA
GEORGE V. VOINOVICH, OHIO
JOHN ENSIGN, NEVADA
LINDSEY GRAHAM, SOUTH CAROLINA

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

MICHAEL L. ALEXANDER, STAFF DIRECTOR
BRANDON L. MILHORN, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

April 30, 2010

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, we are writing regarding the Army's reconsideration of its stated plan to compete a new task order for base life support (BLS) services in Iraq under the LOGCAP IV contract. It is our understanding that the Army does not intend to compete this task order and instead plans to continue performance of these services under LOGCAP III. We are particularly concerned about the Army's continued reliance on LOGCAP III in light of the Justice Department's recent decision to bring a civil action against KBR for improper billing of security services under LOGCAP III.

Reconsideration of Plans to Transition to LOGCAP IV

Chairman McCaskill and then-Acting Ranking Member Collins previously expressed concerns about the Army's delayed transition from the flawed and abuse-prone monopoly LOGCAP III contract to the competitively bid LOGCAP IV contract.¹ A swift and orderly transition to LOGCAP IV is critical to ending the waste, fraud, and abuse under LOGCAP III that has been extensively documented by government auditors and congressional investigators.

In a hearing before the Subcommittee on December 17, 2009, Mr. Jeffrey Parsons, Executive Director of Army Contracting Command, testified that the Army would soon award two competitive task orders under LOGCAP IV for Iraq.² According to Mr. Parsons:

With the LOGCAP requirements in Iraq, we should be making an award I hope at the end of this month or the beginning of January for some of the services in Iraq. What has been holding us back a little bit on the base life support is knowing exactly what the requirements are going to be now that we have made, the

¹ See, e.g., Letter from Chairman Claire McCaskill and Ranking Member Susan Collins to Defense Secretary Robert Gates (May 1, 2009).

² Senate Homeland Security and Governmental Affairs Committee, Subcommittee on Contracting Oversight, *Hearing on Afghanistan Contracts: An Overview* (Dec. 17, 2009).

President has made the decision with the drawdown and trying to extract all the forces by December of 2011. So it has been taking us some time working with theater to identify those, but I think we are there. We should be releasing that RFP [Request for Proposal] very soon, and then that transition will start taking place again sometime in 2010.³

In February 2010, the Army awarded KBR a task order under LOGCAP IV to provide logistics support services, transportation, and postal services in Iraq.⁴ The competition under LOGCAP IV is estimated to result in up to 46% in savings for the Army.⁵

We understand that the Army now plans to halt the competition for base life support services in Iraq, the second of two Iraq-related task orders planned under LOGCAP IV. Instead, the Army plans to continue to rely on KBR to provide these services under LOGCAP III.⁶

In recent testimony before the Commission on Wartime Contracting, Lieutenant General James H. Pillsbury, Deputy Commanding General of Army Materiel Command, stated that the Army would consider both the costs of transition and the operational concerns of commanders in making its decision regarding the transition.⁷ At a subsequent Commission hearing, Edward Harrington, Deputy Assistant Secretary of the Army (Procurement), repeated Lieutenant General Pillsbury's explanation, adding that the operational concerns raised by commanders were related to the "complexity of the drawdown" currently under way in Iraq.⁸

Despite these concerns, both Mr. Harrington and Shay Assad, the Director of Defense Procurement and Acquisition Policy, stated that they supported competing the award of base life support services in Iraq if at all possible.⁹ According to Mr. Assad:

The Army has not yet come to me with the details of what it is that they're proposing, but I'll tell you how I feel about it in general. In general, unless there

³ *Id.*

⁴ KBR, *Press Release: KBR Awarded Major Task Order Under Logistics Civil Augmentation Program (LOGCAP) IV Contract* (March 2, 2010).

⁵ Commission on Wartime Contracting, *Hearing on Reliance on Contingency Services Contracts: Where is the Management and Oversight?* (April 19, 2010).

⁶ *Id.*; Commission on Wartime Contracting, *Hearing on Rightsizing and Managing Contractors During the Iraq Drawdown* (March 29, 2010).

⁷ Commission on Wartime Contracting, *Hearing on Reliance on Contingency Services Contracts: Where is the Management and Oversight?* (April 19, 2010).

⁸ *Id.*

⁹ *Id.*

is some type of operational reason to do otherwise, we ought to compete whenever we can, end of story.¹⁰

Department's Response to KBR Fraud Allegations

We are also seeking more information about how the Department plans to respond to a recent civil action brought by the Department of Justice against KBR, alleging that KBR committed fraud relating to improper billings for security services.

In 2007 and 2008, the Defense Contract Audit Agency disapproved \$103.4 million paid to KBR under LOGCAP III for unauthorized security services in Iraq. On November 6, 2009, Chairman McCaskill wrote you a letter regarding the Department's efforts to recover these monies from KBR.

On April 10, 2010, the Justice Department announced that it had brought a civil fraud suit against KBR for charging the government for these security services. According to the Justice Department, KBR passed along the costs of private security contractors to the government despite their own concerns about whether the use of private security contractors was permitted under the contract.¹¹

The Justice Department's lawsuit raises serious questions regarding KBR's present responsibility as a federal contractor. The Federal Acquisition Regulations require that all prospective contractors meet a "responsibility" standard, including "a satisfactory record of integrity and business ethics."¹² The fraud allegations brought by the Justice Department indicate that KBR's integrity and business ethics may not meet the Department's standards.¹³

Conclusion

Given the significant progress made in the last year toward increased competition, oversight, and accountability through the successful transition of both Kuwait and Afghanistan to LOGCAP IV, we are dismayed by the prospect of the Department foregoing those potential gains in Iraq. And although we have the highest respect for the operational concerns of our commanders in Iraq, we believe that their concerns could be mitigated by a thoughtful, well-planned transition process. A decision by the Army not to implement the additional oversight and cost savings measures of LOGCAP IV does not appear to be in the best interests of the taxpayer or the Department, particularly given the recent Justice Department action discussed above.

¹⁰ *Id.*

¹¹ United States Department of Justice, *Press Release: U.S. Sues Kellogg, Brown & Root for Alleged False Claims Act Violations Over Improper Costs for Private Security in Iraq* (April 1, 2010).

¹² Federal Acquisition Regulation § 9.1.

¹³ 48 C.F.R. 9.406.

The Honorable Robert M. Gates

April 30, 2010

Page 4

To assist the Subcommittee in its oversight, we request that you provide a briefing for Subcommittee staff on or before **May 14, 2010**. The briefing should address the following topics:

- (1) The basis of any decision regarding transition of BLS services in Iraq from LOGCAP III to LOGCAP IV, including the operational reasons and the cost-benefit analysis;
- (2) Whether the Department has taken the recent Justice Department lawsuit into account in considering the transition; and
- (3) What actions the Department may take as a result of the Justice Department lawsuit.

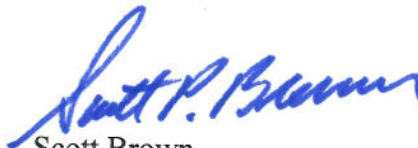
The jurisdiction of the Subcommittee on Contracting Oversight is set forth in Senate Rule XXV clause 1(k); Senate Resolution 445 section 101 (108th Congress); and Senate Resolution 73 (111th Congress).

Please contact Margaret Daum with Senator McCaskill's Subcommittee staff at (202) 224-8316 or William Wright with Senator Brown's Subcommittee staff at (202) 224-2186 with any questions.

Sincerely,



Claire McCaskill
Chairman
Subcommittee on Contracting Oversight



Scott Brown
Ranking Member
Subcommittee on Contracting Oversight



Susan M. Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs