

Senate Democratic Policy Committee Hearing

“An Oversight Hearing on Contracting Abuses in Iraq”

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The Pentagon’s Conduct in the Restore Iraqi Oil Program

Good morning, Chairman Dorgan and members of the committee. Thank you for inviting me to testify here today about the Pentagon’s conduct of the Restore Iraqi Oil, or RIO, program. Over a 12-year period, I wrote proposals for billions of dollars worth of Defense and other government contracts for engineering, construction, and environmental companies, the last several years as an independent consultant. Early last year, I was responsible for the proposal that won Bechtel the Iraq civil infrastructure reconstruction contract from USAID. That summer, I led Bechtel’s proposal team in the Iraq oil competition conducted by the Corps of Engineers’ Fort Worth District, the competition the Pentagon promised to give other contractors a chance at the billions of dollars of RIO work secretly awarded to Halliburton KBR that March. The irony is the “Sons of RIO” competition turned out to be far more suspect than the sole-source award. I led the Bechtel effort until I discovered the competition was a sham and recommended Bechtel withdraw, which it did.

In their conduct of the entire RIO program, I believe Pentagon officials, up and down the chain of command, ignored our federal laws and regulations and the procedures that normally ensure fair play. In 12 years, I never saw anything approaching the arrogant and egregious ways in which the Corps treated Halliburton’s competitors and violated federal laws and regulations to ensure KBR kept its RIO work.

These are strong accusations to make, but they’re based on hard evidence contained in official procurement documents posted on the Web by the Corps last summer for the bidders — and the entire world — to see (Ref. 1). I would like to describe some of that evidence, which forced me to conclude the Sons of RIO competition was a farce, probably only conducted to keep the Pentagon’s critics off its back. But first I’d like to comment briefly on what led up to that competition.

The Iraq Oil Firefighting and Contingency Planning

Pentagon officials told us many things that may have sounded reasonable but were not true. They claimed Halliburton was the best qualified company to do the firefighting/contingency planning and the only company that could do the planning and later execute the plan fast enough. As you know, the Army gave the planning work to KBR in November 2002 as a \$2 million LOGCAP task order, even though Pentagon officials were advised beforehand that it was out of scope. A second LOGCAP task order in February 2003, also out of scope, paid KBR \$65

million to preposition firefighting equipment and personnel. A third secret sole-source award in March, the RIO contract, was worth up to \$7 billion over 2 years. So, like dominos, three lucrative assignments fell into Halliburton's hands.

The Pentagon claimed Halliburton was best qualified because it had extinguished 320 oil well fires in Kuwait, but that company was responsible for extinguishing none of the 650 wells on fire when the first Gulf War ended. It was, in fact, Bechtel that managed the entire firefighting and oil field reconstruction program in Kuwait — in half the time experts said it would take. The story was widely reported. The Pentagon could have had Bechtel's services just as quickly as KBR's because Bechtel had at least two federal contracts that could have been used just as easily as LOGCAP. Plus, their scopes would have accommodated the firefighting, oil spill cleanup, and other hazardous work. One is a contract with the Defense Threat Reduction Agency called the Cooperative Threat Reduction Integrating Contract, or CTRIC. The other is a DOE contract to manage and operate the Nevada Test Site, including the National Counter-Terrorism Training Center and the Hazardous Materials Spill Center, where military personnel go for training and field exercises.

The Pentagon could have easily avoided sole-sourcing the Iraq oil work by simply having its own Defense Threat Reduction Agency conduct a fast-track competition like they did for the planning and disposition of the WMD they expected to find in Iraq. The Agency competed that work among the five CTRIC contractors, which include Halliburton, Bechtel, and Parsons. We only had a week to do the proposal, and the two winners were selected only a week or two later. The Pentagon could have done the same thing — the smart thing — and combine the planning and execution of the oil field work into one task order and then pick two winners, rather than rely on one contractor with all the risks that entails. The CTRIC approach would have been so easy because the Defense Threat Reduction Agency's director reports to Assistant Secretary of the Army Claude Bolton, who officially approved both the \$65 million task order and the sole-source contract.

The Sons of RIO Competition

As you know, the Pentagon awarded the sole-source RIO contract to Halliburton KBR on March 8, 2003, but it wasn't made public until the 24th, when the Pentagon said it was just temporary and short-term and went to Halliburton because of the 320 well fires in Iraq. On March 26, the Honorable Henry Waxman wrote to General Robert Flowers, head of the Corps of Engineers, but General Flowers did not respond until April 8, the day after the press corrected the mistake — the number of well fires Halliburton put out was 0, not 320. General Flowers promised Mr. Waxman “ample opportunity for competition of the overall requirements to support the restoration of Iraq's oil infrastructure.” He reiterated that promise in subsequent letters answering Mr. Waxman's, including one on May 2 in which he finally revealed the true size of the sole-source contract — up to \$7 billion over 2 years.

That spring, the Pentagon promised to hold a “free and open competition” for the non-emergency RIO work and have new contractors in place by August, but hard evidence that I'll summarize for you today shows what actually happened was quite different and quite improper in three basic ways.

First, the competition, started July 7, 2003, was supposed to be for “the overall restoration of Iraq’s oil infrastructure,” as General Flowers put it, and that’s what the Corps led bidders to believe: that it was a “recompete” and the resulting contracts would completely replace the sole-source contract. But the “overall restoration of Iraq’s oil infrastructure” was firmly committed to Halliburton — not just by the U.S. Government but, as I’ll show, in an official document signed by the Iraqis as well, and it was their oil fields. And that’s why the Sons of RIO competition turned out to be a sham. The work advertised by the Corps as available to Halliburton’s competitors was not, and that fact was confirmed by a Corps spokesman on August 13, the day before their proposals were due, as I’ll explain in a moment.

Second, despite the fact that the Sons of RIO contracts were, in essence, fictitious, the competition for them was unfair. The evidence I’ll describe in a moment shows Corps personnel broke federal laws, both civil and criminal, including Conspiracy to Defraud the United States and False Statements. It shows how they violated the basic standards of conduct underlying the Federal Acquisition Regulation, including complete impartiality, preferential treatment for none, and the general rule to avoid any conflict of interest, even the appearance of a conflict of interest, in government-contractor relations (§3.101-1). The evidence shows Corps personnel violated FAR provisions that normally ensure fair play and did so repeatedly; my written testimony includes a list.

Third, there were plenty of opportunities for the contracting staff at the Corps’s Fort Worth District to do the right thing, but they did not. Instead, they misled Halliburton’s competitors and delayed the competition again and again, for one flimsy reason after another. Meanwhile, KBR was completing more and more of the RIO work and becoming more and more entrenched with the Iraqi Ministry of Oil and its operating companies. By all reports, the Corps has transferred none of the RIO work from Halliburton’s sole-source contract to the Sons of RIO contracts, which they finally awarded January 16, 2004. In fact, Halliburton could get an additional \$1.2 billion worth because the Corps gave it the larger of the two new contracts.

The evidence is contained in the official procurement documents the Corps posted on its website last summer for the bidders, and entire world, to see. The key evidence is in two documents. One is the solicitation, more commonly known as the request for proposal or RFP, which the Corps issued July 7, 2003, to start the Sons of RIO competition. The other is the *Restoration of Iraqi Oil Infrastructure Final Work Plan*, the document I referred to earlier, in which the U.S. and Iraqi governments agreed all American support of the Iraqi Ministry of Oil would be through Halliburton KBR. The *Plan* was developed that spring by Corps and KBR personnel, even though it wasn’t signed until July 24.

The Corps didn’t provide the *Plan* to Halliburton’s competitors until August 1, just 13 days before their proposals were due, despite the FAR provision that required the Corps to “promptly provide all bidders with any information known to one bidder if the lack of such information would be prejudicial to the uninformed bidders.” And it certainly was. Another FAR provision says such information must be provided no later than the next “general release of information” in order to avoid creating an unfair advantage. There were 10 such releases between the time the Corps and KBR developed both the essence and details of the plan and August 1: the presolicitation notice on June 23, the RFP on July 7, RFP amendments on July 9, 21, and 25, and five sets of questions and answers posted separately on July 21, 22, and 23. Yet not a single

release mentioned the existence of the *Plan* or any of its contents. If one had, the Pentagon would not have had the competition it needed to appease the critics. Here's why.

According to the *Final Work Plan*, the only oil field work not committed to Halliburton KBR by the Corps, CPA, and Ministry of Oil was a small percentage committed to the Ministry directly. The *Plan* consisted of 220 projects the U.S. and Iraqi governments agreed would return the oil fields to their pre-war production capacity and thereby fulfill the U.S. commitment. The projects were based on KBR's damage assessments, and those reports not only described the damage but outlined the repairs required and their costs. The *Plan's* detailed spreadsheets specified the cost, completion date, and responsible party — either KBR or the Ministry — for each of the 220 projects (6 more projects were added later).

The total costs in the *Plan* are very close to the rough order of magnitude cost estimate dated June 3, which the Corps included in its RFP 5 weeks later. That, in combination with the level of detail and certain statements in the *Plan*, prove it was developed months before it was signed on July 24. Government review and approval cycles take time, too.

Nearly 200 people attended the bidders meeting conducted by the Corps in Dallas on July 14, but the Corps still failed to mention the *Final Work Plan* or its essential elements. The Corps failed to mention that all U.S. commitments to the Iraqi Ministry of Oil would be made through Halliburton's contract. So complete was the Pentagon's commitment to Halliburton that KBR was embedded with the Corps, CPA, and Ministry of Oil on the executive board and in every single box, or function, in the organization charts in the *Plan*.

The Corps failed to mention the 3-day workshop in Baghdad July 6, 7, and 8 where 128 Corps, Halliburton, CPA, CENTCOM, and Iraqi Ministry of Oil personnel discussed how the *Final Work Plan* would be executed. The *Plan* required all subcontracts and purchases of equipment and materials to go through KBR's procurement and accounting systems, so Halliburton would get a fee — and profit — on every RIO project, even those done by the Ministry. The *Plan* said those systems had been audited and approved many times over the years to ensure they met the Pentagon's stringent requirements. Interestingly, they're the same systems later dubbed "antiquated" by the Pentagon Comptroller and blamed for tens of millions of dollars of overcharges in Iraq (Ref. 2). The *Plan* said KBR would conduct the initial procurement work in Kuwait and move to Baghdad as soon as possible. KBR was in Baghdad by May, another reason we know the *Plan* was not only conceived but written long before July.

At the bidders meeting in Dallas and in questions e-mailed to the Corps, Halliburton's competitors repeatedly asked for clarification regarding the scope of work of the new contracts, suspecting there wouldn't be much left for them, especially since there was no scope of work in the RFP. The original RFP was missing that section, Section C. But the Corps's attempts to clarify — or hide — the true scope were contradictory and confusing. Two examples:

(1) When bidders questioned the Section C omission, the Corps said their scope of work was in an attachment entitled "Contracting Strategy," but that document outlined the responsibilities and procurement considerations of the Corps itself, not a new contractor. If the Sons of RIO contracts had not been fictitious, the Corps would have written a real scope of work, which becomes part of the contract. But they didn't waste their time and tried passing off their own

contracting strategy as the new contracts' scope. The problem was, it talked about what Iraq oil field work the contractor would do under LOGCAP and what the same contractor would do under RIO, and no contractor has a LOGCAP contract except Halliburton.

(2) On August 6, the Corps posted its response to a question from a bidder still struggling to understand the scope: "We are unable to provide any clarification at this time with the exception of the *Final Work Plan* which has been provided." In its response to the very next question that day, the Corps contradicted itself, saying, "The *Final Work Plan* is not the statement of work for the services to be performed under the two new contracts." With only a week left before their proposals were due, the bidders, those who hadn't dropped out, hadn't a clue as to what they were supposed to be bidding on.

If you read the official transcript of the bidders meeting or the account in my book, *Shock and Awe in Fort Worth*, you'll quickly see how Corps personnel misled Halliburton's competitors repeatedly, violating the FAR requirements for open exchange of information again and again. Federal contractors can spend hundreds of thousands to millions of dollars preparing a proposal for a large contract. That's serious money, and they would not have wasted it or their time if the Corps had revealed the basics of the *Final Work Plan* when the FAR required. But the Corps displayed as little respect for the bidders as they did for the law. When someone at the bidders meeting asked whether a single contractor could win both contracts, the Corps's Legal Counsel, Morris Tanner, answered, "The solicitation says 'two contracts'; it doesn't say 'two contractors.' ...I got a quarter. You want to flip it now or later?" His flippant response may have been the most honest response from the Corps all day.

Finally, on August 13, the day before the bidders' proposals were due, a Corps spokesman as much as admitted the competition was a sham. He told the press, "There might not be enough emergency repair work to merit additional contracts...the main reason the Corps was accepting bids for two new oil contracts was the possibility of more looting and sabotage" (Ref. 3). So none of the work committed to KBR under the sole-source contract and in the *Final Work Plan* would be available to new contractors. Halliburton's competitors, Congress, the media, and the public had all been misled.

Although the Corps originally promised to award the new contracts by October 15, they announced delay after delay for one very weak reason after another for the next 3 months. They had bidders resubmit their proposals on November 5, with only 1 week's notice, based on two sample task scenarios, instead of the original one. The sample task involved deploying oil firefighting equipment and personnel, which KBR had already been paid \$65 million to do. As it turned out, less than 10 oil wells were set on fire, and they were extinguished long before the Corps started the Sons of RIO competition.

It would have made more sense, fairness issues aside, if the Corps had made the sample task some type of reconstruction work that was not already a Halliburton fete accompli. This was another source of questions from Halliburton's competitors, both in July and November. At neither time did the Corps provide enough details for the bidders to develop realistic approaches and cost estimates for the sample task — except for one bidder, Halliburton KBR, which had already done the work.

The Corps refused to provide Halliburton's competitors with KBR's damage assessment reports, which gave KBR an unfair advantage and violated the FAR. The sample task included damage assessments and emergency repairs, as well as firefighting, and the bidders asked for KBR's reports, which contained information critical to developing competitive approaches and costs for performing the sample task. The Corps refused, even though the reports were government contract deliverables, paid for by taxpayers, not proprietary KBR documents. In contrast, during the Iraq civil reconstruction follow-on competition, USAID provided all bidders with Bechtel's comprehensive assessment report and implementation plan.

As the uproar over Halliburton's overcharging for delivering fuel in Iraq intensified, the Corps delayed the Sons of RIO awards again, and the value of the "Mother RIO" contract continued to grow. By the first of December, it was approaching \$2 billion, which was significantly more than the \$1.144 billion cost estimate for the 220 projects in the *Final Work Plan* but far less than the \$7 billion contract limit.

On January 13, General Flowers postponed the awards again, citing the investigation into the fuel overcharges. He said, "We can't bar KBR; we took pains so there would be a level playing field, so there wouldn't be a marked advantage" (Ref. 4). This was the only time I ever saw a contract award delayed for such a reason. Normally, when a bidder's performance on a previous contract is in dispute, the evaluators simply disregard that contract and score past performance on the basis of other work. If the Corps had really wanted to level the playing field and eliminate KBR's marked advantage, they would have provided the damage assessments and a sample task that was both realistic and fair. If they had wanted to follow the federal laws, regulations, and procedures that normally ensure fair play, they would have provided Halliburton's competitors with the *Final Work Plan*, a legitimate scope of work in the RFP, and honest answers to their questions.

Just 3 days after General Flowers announced the delay, probably until March, he suddenly announced the awards: another \$1.2 billion to Halliburton for work in the southern oil fields and \$800 million to a Parsons-Worley team for work in the northern fields. By all reports, KBR continues to perform work already committed to it under its sole-source contract, including work in the north, as well as the south (Ref. 5). In its January 16 press release, the Corps said the new contracts are only for "future work," so, the Sons of RIO contracts did not replace Halliburton's sole-source contract, as General Flowers promised Mr. Waxman, the media, the taxpayers, and Halliburton's competitors.

In fact, the original RIO contract probably won't end for quite some time if an internal report the Iraqi Ministry of Oil showed Reuters in June is true, that work had begun on only 119 of the 226 RIO projects, that not a single one had been completed, and most of the problems were not security-related (Ref. 6). Ministry personnel blamed Halliburton's "disorganized work" and said, "We have major problems with KBR; we have been unable to meet our pre-war production levels because of them" (Ref. 7). "A reasonable timetable for completing that list of projects was 12 to 18 months," according to Phillip Carroll, former head of Shell Oil and the CPA's Senior Oil Advisor, who signed the *Final Work Plan* on the CPA's behalf (Ref. 5).

I was surprised to hear that, since Corps officials and others involved in the RIO program had claimed success in restoring Iraqi oil production to its pre-war capacity, even before the Sons of

RIO contracts were awarded. For example, Vice President Cheney made the claim last December. The head of Task Force RIO, General Robert Crear, declared the RIO mission complete in his final monthly status report, posted on the Web on February 2. He wrote, "...the RIO team has successfully stood up the Iraqi north and south oil companies... we made the Iraqi oil infrastructure operational again in spite of conditions, obstacles and sabotage." Both General Crear and General Flowers testified to that success before the House Government Affairs Committee, and Halliburton's RIO Program Director, Stoney Cox, confirmed the December milestone when KBR executives testified before the House Government Reform Committee.

You're probably wondering why you haven't heard anything about the corruption in the Sons of RIO competition until now — or until you read *Shock and Awe in Fort Worth*. There are several reasons, and they are important in understanding not only the charges I've made but the problems in federal contracting as a whole. First, Halliburton's competitors who know what happened have not complained for fear of jeopardizing their chances of winning future Pentagon work. Second, although the evidence was right there on the Web, government contracting documents, regulations, and procedures are probably difficult and too time-consuming to understand if you're not involved with them on a regular basis. Third, perhaps the reason you didn't know the competition turned out to be a sham is as simple as, after all the outcry over the sole-source award, no one ever dreamed Pentagon officials would be arrogant enough to con us again!

Pentagon officials have made many misleading statements about their actions, the various contracts, and our federal procurement laws, regulations, and procedures. They may have sounded reasonable at the time or in isolation, but taken together, they reveal a clear pattern of improprieties that served only one purpose — to keep the critics at bay while Halliburton's claim on the RIO work became more and more entrenched. I believe the lower-level contracting staff at the Fort Worth District and their Legal Counsel were pressured by some person or persons higher in the chain of command to do what they did, but pressure is no excuse. I have touched on some of the evidence here today; there is much more in my book.

The Problems in Federal Contracting

I hope what happened in the Sons of RIO competition is unique in its extent, but many of the other contracting problems we've seen in Iraq are not. In closing, I must point out that it does a great disservice to taxpayers when contractors, including Halliburton, are automatically demonized whenever anything goes wrong. Government personnel have allowed their contractors to take the heat for cost overruns, schedule delays, and other problems caused by their own management failures. I certainly don't condone contractors' overcharging, but the responsibility, for ensuring taxpayers' bucks are well spent, stops with the civil servants who oversee contractor performance.

A lot of the reconstruction problems in Iraq were caused by turf wars within the government, including the one between the Pentagon and USAID. The resulting "division of the spoils" eliminated the centralized coordination and prioritization so desperately needed. But I'll leave that discussion to other witnesses, or for you to read in my book, along with why I believe the government's traditional responses to calls for better management and integration just don't work, why they're just smoke and mirrors that make contractor oversight problems worse.

Suffice it to say, if federal agencies can't work together, it's no wonder they don't know how to work successfully with their contractors.

But they better learn. The government's dependence on private industry has been growing dramatically, both at home and at war. At the same time, the number of government employees selecting and overseeing contractors has been decreasing at an even more dramatic rate — by over 50% at the Defense Department in the last 10 or 12 years alone, and more than half of those remaining are due to retire in the next few years. It doesn't take a rocket scientist to see that these two trends are on a collision course, and the fallout will be devastating for all of us, for anyone needing government services, not just our military troops or nations we try to rebuild.

We've got to improve how the government oversees its mega-contracts, especially cost-reimbursable ones like those in Iraq and those that will be needed in the future in the ongoing war on terrorism. Obviously, we must start holding government contracting staff accountable — with their salaries and their jobs — when the contracts they're responsible for fail, when they allow overcharges to slip by, and so forth. I'd like to see a pool of elite contracting officers, who rotate between DoD, DOE, and other agencies' mega-contracts every year or two. This would maintain their edge and get rid of poorly performing contractors who become entrenched in dysfunctional agencies that would rather suffer than switch. It would also stop the replacement of topnotch contractors for appearance sake or when administrations change, which also occurs. They should report to an independent, preferably nonpartisan body, perhaps the GAO, to reduce the problems we've seen when the allegiance of a department's contracting staff is internally controlled, to someone or something other than taxpayers or the law. I know this is a radical idea, fraught with all sorts of legislative and administrative difficulties, but these are radical times.

Thank you again for the opportunity to speak to you today about the Sons of RIO competition and my views.

References

- (1) All of the official procurement documents associated with the Sons of RIO competition were posted on the Corps of Engineers' website; however, the files were rather cryptically named; for easier access, they can be downloaded quickly at www.BookRegime.com as a single, self-extracting zip file in which the individual documents are clearly named.
- (2) Government Executive, "No Iraq Supplemental Bills Expected in 2004," 12/17/03, on www.govexec.com
- (3) David Streitfeld, "New Iraq Contracts Offer Just 'Scraps,'" Los Angeles Times, 8/14/03
- (4) Jackie Spinner, "Corps of Engineers Defends KBR Deal," Washington Post, 1/17/04
- (5) David Ivanovich, "Firms Staying to Help Oil Flow," Houston Chronicle, 6/26/04
- (6) Reuters, "Delays Dog U.S.-Funded Iraq Oil Projects," 6/14/04, on www.reuters.com
- (7) Glen Carey *et al.*, "Iraq Oil Infrastructure Repair Shows Mixed Progress," Engineering News-Record, 5/10/04

FAR Provisions Violated by Pentagon Officials during the Sons of Rio Competition

Subpart 1.6, Career Development, Contracting Authority, and Responsibilities

§1.602-2: Contracting officers shall...ensure that contractors receive impartial, fair, and equitable treatment.

Subpart 3.1, Standards of Conduct, Improper Business Practices, and Personal Conflict of Interest

§3.101-1: Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.

Subpart 3.3, Reports of Suspected Antitrust Violations

§3.303(a): Agencies are required by 41 U.S.C. 253b(i) and 10 U.S.C. 2305(b)(9) to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws.

Subpart 9.5, Organizational and Consultant Conflict of Interest

Organizational conflicts of interest (OCIs) fall into three broad categories (definitions below from <http://www.wifcon.com/pd9500.htm>), and all three were violated:

- (1) “Biased ground rules” situations in which a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract and, by virtue of its special knowledge of the agency’s future requirements, has an unfair advantage in the competition for those requirements (FAR §§9.505-1,9.505-2)
- (2) “Unequal access to information” situations in which a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract (FAR §9.505-4)
- (3) “Impaired objectivity” situations in which a firm's work under one government contract could entail its evaluating itself or a related entity, either through an assessment of performance under another contract or an evaluation of proposals (FAR §9.505-3)

Subpart 14.2, Solicitation of Bids

§14.208(c): Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders as an amendment to the invitation (1) if such information is necessary for bidders to submit bids or (2) if the lack of such information would be prejudicial to uninformed bidders.

Subpart 15.2, Solicitation and Receipt of Proposals and Information

§15.201(b): The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government’s requirements, and enhancing the Government’s ability to obtain quality supplies and services...

§15.201(f): When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information

must be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage.