

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 6, 2004

Lt. Gen. Robert B. Flowers
ATTN: Directorate of Military Programs
U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314

Dear General Flowers:

We are writing about the decision by the Corps of Engineers to waive the requirement that Halliburton provide data justifying its price for gasoline being imported from Kuwait into Iraq. This is an extremely unfortunate development. In effect, it sabotages the government's ability to determine whether the U.S. government is being overcharged by Halliburton or its Kuwaiti subcontractor, Altanmia.

Serious questions have been raised about the price Halliburton is charging to import gasoline from Kuwait into Iraq. In previous correspondence, we have documented that Halliburton is charging more than double what others charge to import gasoline.¹ These problems were confirmed by a draft audit issued in December by the Pentagon's own Defense Contract Audit Agency (DCAA). According to meetings with DCAA officials, the preliminary audit found that Halliburton had overcharged the U.S. government by as much as \$61 million as of September 30, with significant additional overcharges likely in the months thereafter.

As the *Wall Street Journal* reported today, however, on December 19 the Corps issued a waiver of Halliburton's requirement to provide "any cost and pricing data" relating to this

¹ Letter from Reps. Henry A. Waxman and John D. Dingell to National Security Advisor Condoleezza Rice (Dec. 10, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to National Security Advisor Condoleezza Rice (Oct. 29, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to U.S. Army Corps of Engineers Director General Robert B. Flowers (Oct. 21, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to Office of Management and Budget Director Joshua Bolten (Oct. 15, 2003) (all letters available online at www.house.gov/reform/min/inves_admin/admin_contracts.htm).

contract.² Federal regulations allow this type of waiver only in exceptional cases when a price can be determined as “fair and reasonable” through other sources. According to a copy of the waiver we obtained, the Army Corps determined that Halliburton “has been unable to secure any real competition for these services.”³ The waiver also states that “other trucking and oil distributors have made proposals to [Halliburton] on more favorable terms” than the current subcontractor.⁴ It is thus unclear what information the Army Corps is relying on to determine that Halliburton’s prices for Kuwaiti gasoline are fair and reasonable.

The waiver was issued at the request of Halliburton, just nine days after DCAA accused the company of refusing to turn over internal documents related to its investigation. In addition, the waiver was issued just four days after the *Wall Street Journal* reported that the civil service Army Corps employee overseeing the Halliburton contract had written two letters complaining about “political pressures” from the Bush Administration and the Kuwaiti government to negotiate fuel importation exclusively with a single Kuwaiti subcontractor.⁵ This subcontractor, Altanmia Commercial Marketing Company, had no prior experience transporting fuels or in the oil industry. A week later, the *Journal* reported that a senior Halliburton official confirmed that “he and his staff were subjected to ‘undue pressure’ from U.S. Embassy and Kuwait government officials to purchase gasoline from Kuwait as a political favor.”⁶

The Corps waiver will have a significant impact. Halliburton is operating under a cost-plus contract. The cost and pricing data at issue is crucial information that the contracting officer uses to assess whether the costs being billed to the U.S. taxpayer are “fair and reasonable.” It is also essential data that the Defense Contract Audit Agency uses to audit whether Halliburton or Altanmia has overcharged for the fuel imports. Without this information, the contracting officer has little way of determining whether the taxpayer is being overbilled, and DCAA will have its hands tied as it tries to complete its audit.

The Administration’s recent action is incomprehensible. At the very moment that serious questions are being raised by federal auditors about Halliburton, the Administration intervenes to excuse Halliburton from its obligation to justify its costs or pricing.

² *Army Corps Clears Halliburton in Flap over Fuel Pricing in Iraq*, Wall Street Journal (Jan. 6, 2004).

³ *Request for Waiver for Submission of Cost and Pricing Data*, U.S. Army Corps of Engineers (Dec. 19, 2003).

⁴ *Id.*

⁵ *U.S. Officials May Have Steered Halliburton to Kuwaiti Supplier*, Wall Street Journal (Dec. 15, 2003).

⁶ *Halliburton Unit Cites Pressure To Set Fuel Deals*, Wall Street Journal (Dec. 22, 2003).

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For the reasons outlined above, we urge you to rescind the waiver. We also ask that you provide all information submitted to you by Halliburton or others that led you to the conclusion that this waiver was appropriate.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform



John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce