

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

February 24, 2004

The Honorable Joseph E. Schmitz
Inspector General
U.S. Department of Defense
Washington, DC 20301

Dear Mr. Schmitz:

Late yesterday, your office announced that the Defense Criminal Investigative Service is investigating allegations of fraud on the part of Halliburton, including the potential overpricing of fuel delivered to Baghdad by a Halliburton subcontractor. As part of this investigation, we urge you to examine the unusual decision by the Army Corps of Engineers to waive the requirement that Halliburton provide data justifying its high gasoline prices. We have received information that indicates that this waiver may have been granted under false premises.

On December 11, the Defense Contract Audit Agency (DCAA) announced that its draft audit found that Halliburton had overcharged the U.S government by as much as \$61 million to import gasoline from Kuwait into Iraq as of September 30, with significant additional overcharges likely in the months thereafter. DCAA indicated that Halliburton “has not demonstrated . . . that they did an adequate subcontract pricing evaluation prior to award” of the subcontract to an obscure Kuwaiti company, the Altanmia Commercial Marketing Company.¹

One week after DCAA released its preliminary findings, the Corps took an extraordinary action. Rather than cooperate in the DCAA audit, the Corps on December 19 effectively blocked DCAA’s ability to pursue the audit by granting a waiver to Halliburton. This waiver unilaterally declared that the gasoline prices were “fair and reasonable” and simultaneously waived Halliburton’s requirement to provide “any cost and pricing data” from its Kuwaiti subcontractor, Altanmia. The waiver specifically applied to “submission of cost and pricing data pursuant to . . . Task Orders 0005, 0007, and subsequent task orders involving the purchase of fuels.”² These are the task orders under which Halliburton has been importing gasoline from Kuwait into Iraq since May 5, 2003.

The primary rationale for the Corps’ unprecedented action was that Kuwaiti law prohibited Altanmia from submitting certified cost and pricing data to Halliburton and the Corps of Engineers. The Corps expressly stated in the waiver document, “[the Department of State] as

¹ Defense Contract Audit Agency, *DOD News Briefing* (Dec. 11, 2003).

² U.S. Army Corps of Engineers, *Waiver for Submission of Cost and Pricing Data* (Dec. 19, 2003).

well as other defense agencies have verified ... that it is a violation of Kuwaiti law for contractors to submit cost and pricing data for fuel products.”³

We have learned, however, that this underlying premise appears to be false. Several independent sources have told us that Kuwaiti law does not prohibit the submission of certified cost and pricing data for fuel products.

A Library of Congress legal specialist who practiced law in Kuwait concluded that “initial research did not reveal the existence of any law prohibiting companies from releasing cost and pricing data for fuel products in Kuwait.” He also reported that the Kuwait Petroleum Corporation, which supplied the gasoline to Altanmia, and its subsidiaries “are private commercial institutions (as opposed to public government institutions), and as such, it is within their discretion to control the business data (including gasoline pricing, transportation costs, etc.) that should or should not be released.”⁴

Samad Al-Blouki, a former managing director of the Kuwait Petroleum Corporation in Europe, told Mr. Waxman’s staff that he is aware of no Kuwaiti law prohibiting the submission of certified cost and pricing data for fuel products.⁵ Another source with significant experience with Kuwait’s oil and fuels industry also informed Mr. Waxman’s staff that there is no Kuwaiti law prohibiting Kuwaiti companies from submitting certified cost and pricing data.

We have tried to learn how it is possible that a waiver exempting Halliburton from providing essential cost and pricing data could be granted on what appears to be a false premise. The State Department has told us that the U.S. embassy in Kuwait acted as an intermediary between the Kuwaitis and the Corps. According to the State Department, the Kuwaitis told embassy staff that Kuwaiti regulations prohibited the submission of certified cost and pricing data. The State Department also said that the Kuwaitis did not provide any specific citation to Kuwaiti law and that no one challenged their statement. According to the State Department, the embassy staff passed on this unverified information to the Corps or Halliburton.⁶

³ *Id.*

⁴ Library of Congress, *Kuwaiti Fuel Laws* (Jan. 15, 2004).

⁵ Telephone conversation between Samad Al-Blouki and Minority Staff, Committee on Government Reform (Jan. 20, 2004); Telephone conversation between Samad Al-Blouki and Minority Staff, Committee on Government Reform (Jan. 14, 2004).

⁶ Telephone conversation between Department of State Legislative Affairs and Minority Staff, Committee on Government Reform (Feb. 3, 2004).

We have also learned that criminal investigators working for the State Department Inspector General have been asked by your office to join in the criminal investigation of the fuel contract. According to the office of the State Department Inspector General, the State Department Inspector General received a request from the Defense Criminal Investigative Service to investigate the actions of officials at the U.S. embassy in Kuwait with respect to Halliburton's contract to import gasoline into Iraq.⁷

We do not know the full story behind the decision to grant Halliburton a waiver from cost and pricing data. But as you can see, what we have learned raises many questions about the waiver and the suspect rationale on which it was granted. We therefore request that your office examine this matter further as part of its investigation into Halliburton's potentially fraudulent overcharging for fuel delivered to Iraq by Altanmia.

Specifically, we urge you to investigate the following issues:

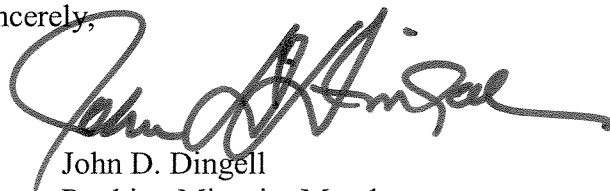
1. Whether Kuwaiti law prohibits Kuwaiti subcontractors from submitting certified cost and pricing data for fuel products to contractors and the U.S. government;
2. If Kuwaiti law does not prohibit the submission of cost and pricing data, who was responsible for telling the Corps that this prohibition existed; and
3. Whether anyone involved in granting or requesting the waiver was seeking to obstruct DCAA's investigation or otherwise to cover up evidence of wrongdoing by Halliburton, Altanmia, or others.

For months, Administration officials have been assuring the public that there was no overcharging by Halliburton and Altanmia for gasoline imports. The announcement of your criminal investigation makes those assurances now seem questionable. A broad and thorough investigation of this matter is clearly needed, and it should include close scrutiny of the waiver that the Corps' granted Halliburton.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform



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

⁷ Telephone conversation between Department of State Inspector General Legislative Affairs and Minority Staff, Committee on Government Reform (Feb. 3, 2004).

The Honorable Joseph E. Schmitz
February 24, 2004
Page 4

cc: The Honorable David M. Walker
Comptroller General of the United States
General Accounting Office