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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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February 29, 2008

The Honorable Condoleezza Rice  
Secretary  
U.S. Department of State  
2201 C Street, NW  
Washington, DC 20520

Dear Madam Secretary:

I am writing again about the new U.S. Embassy in Baghdad for three reasons: (1) to inform you of new information that I have received that raises questions about the quality of the construction of the Embassy; (2) to invite State Department officials to an Oversight Committee hearing on March 12; and (3) to advise you that if the State Department does not commit by the close of business on March 3 to provide by March 7 the documents the Committee has repeatedly requested and subpoenaed, I will initiate steps to require the Deputy Secretary to appear with the documents at the Committee's March 12 hearing.

On December 16, 2007, the State Department official overseeing the construction of the Embassy certified the "substantial completion" of construction. Under the Embassy construction contract, the project can be considered "substantially complete" only when it can be "occupied or utilized for the purpose for which it is intended, and only minor items such as touch-up, adjustments, and minor replacements ... remain to be completed." Subsequent inspections reports indicate that this certification of substantial completion was premature and suspect. This week, there are reports that the State Department is now trying to revoke the certification.

According to a February 13, 2008, inspection report I have received, State Department inspectors who visited the site in late January and early February identified "critical issues and ongoing work that would not be expected at a point where substantial completion has been met." This inspection report found that "there still remain deficiencies, both critical and non-critical, in most buildings" and that there are "major deficiencies in the infrastructure."

These construction defects are confirmed — and additional problems are identified — in a series of draft inspection reports recently prepared by Hughes Associates Inc., an inspection firm hired by the contractor that built the Embassy, First Kuwaiti General Trading & Contracting Company. The inspection reports from Hughes identify deficiencies in several of the Embassy's

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critical fire suppression systems, including the water supply systems, fire alarm systems, sprinkler systems, and kitchen suppression systems.

The inspection reports raise serious questions about status of the Embassy project and the December decision to certify substantial compliance. Additional questions are raised by evidence implicating key figures in the construction and certification of the Embassy in fraudulent and corrupt acts. The official who signed the certificate of substantial completion is Mary French. According to news accounts, her conduct is being investigated by the Justice Department for possible criminal misconduct. The managing partner of First Kuwaiti is Wadhi El Absi. According to Justice Department documents released by the Committee, he paid over \$200,000 in illegal kickbacks to a federal contractor in Iraq.

The Committee's hearing on March 12 will explore these issues. I ask that you make Richard J. Shinnick, Acting Director for the Office of Overseas Building Operations, available to testify at this hearing.

I also ask that you ensure the expeditious delivery of documents to the Committee. The Committee has been seeking documents from the State Department about construction problems at the Embassy since July 2007. Yet despite multiple requests in writing and your personal assurance at the Committee's October 25, 2007, hearing, virtually no responsive documents have been provided. It appears that the State Department is concealing from Congress basic information about the status of the Embassy project and the activities of the officials and contractors involved. This continued intransigence is inappropriate.

Currently, the State Department is in violation of a Committee subpoena issued on February 8, 2008, which required full production by February 15, 2008. You should know that unless the Committee receives a commitment in writing by the close of business on March 3 that the responsive documents will be provided to the Committee no later than March 7, I will initiate steps to require the Deputy Secretary of State to appear at the hearing and to bring with him the responsive documents.

### **Background**

On July 26, 2007, the Committee held a hearing to review the status of the Embassy construction project, including reports of substandard work by the prime contractor, First Kuwaiti General Trading & Contracting Company. At the hearing, State Department officials, including General Charles E. Williams, the director of the Office of Overseas Building Operations, dismissed these concerns.

At the time, the Embassy was scheduled for completion in September 2007 at a cost to the taxpayers of \$592 million. General Williams testified:

I am pleased to report, Mr. Chairman, that the project is on schedule and on budget. We are slated to complete the project in September of this year and personnel can begin to

move into offices and residences shortly thereafter. As to project quality, OBO is proud of its employees and contractors work on this project. We have received numerous accolades as to the extremely high quality of construction. It is among the best that OBO has managed.<sup>1</sup>

General Williams also vouched for the quality of the work of First Kuwaiti, testifying:

I have found with this contractor that there's never been any shyness on correcting what we bring to their attention. They want to get it right. They've tried very hard to get it right. ... We have a good process.<sup>2</sup>

General Williams's testimony turned out to be highly misleading. The Embassy did not come in on time and under budget in September. Although the price tag has increased to \$736 million, the Embassy is still not complete.<sup>3</sup>

On October 9, 2007, the Committee sent you a letter raising serious concerns about the fire protection systems at the new Embassy.<sup>4</sup> The Committee's letter quoted extensively from a report issued in September 2007 by State Department inspectors who documented widespread deficiencies in the Embassy's fire protection and electrical systems, including many that First Kuwaiti failed to repair despite repeated warnings.<sup>5</sup> According to this report, the inspectors documented hundreds of violations of the contract specifications and fire codes and regulations. These problems were so severe that the inspectors concluded that none of the buildings on the Embassy compound could be approved for occupancy.<sup>6</sup>

The Committee's October 9 letter also raised concerns about the involvement of Wadih El Absi in the construction project. Mr. El Absi is the managing director of First Kuwaiti. As described in the Committee's letter, Justice Department court filings allege that Mr. El Absi agreed to pay over \$200,000 in kickbacks to obtain subcontracts to provide logistical support to

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<sup>1</sup> House Committee on Oversight and Government Reform, *Hearing on Allegations of Waste, Fraud, and Abuse and the New U.S. Embassy in Baghdad* (July 26, 2007).

<sup>2</sup> *Id.*

<sup>3</sup> *Iraq Embassy Cost Rises \$144 Million Amid Project Delays*, Washington Post (Oct. 7, 2007).

<sup>4</sup> Letter from Chairman Henry A. Waxman to Secretary of State Condoleezza Rice (Oct. 9, 2007).

<sup>5</sup> U.S. Department of State, Office of Overseas Building Operations, Fire Protection Division, *Trip Report for Director Williams: Fire System Commissioning Trip – Baghdad NEC* (Sept. 4, 2007).

<sup>6</sup> *Id.*

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U.S. troops in Iraq. The individual with whom Mr. El Absi engaged in the kickback scheme pleaded guilty in federal court in July 2007.<sup>7</sup>

On October 25, 2007, you personally testified before the Committee regarding construction deficiencies at the Embassy. You responded:

I think anybody is familiar that when you take ownership of a construction project, you go and you find out what is wrong, and then the company remediates. ... It's a completely normal practice. The circumstances of Iraq are anything but normal, but we are not going to accept a building that these problems have not been dealt with.<sup>8</sup>

You were also asked about the evidence implicating First Kuwaiti in corruption. Both the Defense Department and the Justice Department appear to have known in 2003 about Mr. El Absi's involvement in the kickback scheme. Yet you told the Committee that State Department officials were not aware of Mr. El Absi's role until receiving the Committee's October 9, 2007, letter.<sup>9</sup>

On November 2, 2007, Ambassador Patrick F. Kennedy, the Under Secretary of State for Management, briefed Committee staff regarding the Department's plans for correcting the construction deficiencies at the Embassy. Ambassador Kennedy informed Committee staff that the Embassy was currently being inspected and that these inspections showed that the quality of First Kuwaiti's construction was "reasonably good." Ambassador Kennedy also assured Committee staff that the State Department would not accept the Embassy until the project was "done and done right."<sup>10</sup>

#### **Acceptance of Baghdad Embassy as "Substantially Complete"**

Contrary to repeated assurances from you and your staff, the Committee has now learned that the State Department accepted the Embassy as "substantially complete" last December despite critical ongoing construction deficiencies. The certification of substantial completion was signed by Mary French, the on-site project director for the Baghdad Embassy construction

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<sup>7</sup> *U.S. v. Anthony J. Martin*, No. 07-40042 (C.D. Ill. filed May 16, 2007) (Information); Department of Justice, *Press Release: Former KBR Employee Admits Violation of Anti-Kickback Act in Awarding Military Subcontract* (July 13, 2007).

<sup>8</sup> House Committee on Oversight and Government Reform, Testimony of Secretary of State Condoleezza Rice, *Hearing on the State Department and the Iraq War*, 110th Cong. (Oct. 25, 2007).

<sup>9</sup> *Id.*

<sup>10</sup> Briefing by Ambassador Patrick Kennedy, Under Secretary of State for Management, to House Oversight and Government Reform Committee Staff (Nov. 2, 2007).

project, on December 16, 2007.<sup>11</sup> According to news accounts, Ms. French is under criminal investigation by the Department of Justice for activities related to the Baghdad Embassy contract.<sup>12</sup>

The certification of substantial completion issued by Ms. French has significant contractual ramifications. According to the terms of the Department's contract with First Kuwaiti, "substantial completion" indicates the stage of completion at which the Embassy can be "occupied or utilized for the purpose for which it is intended, and only minor items such as touch-up, adjustments, and minor replacements or installations remain to be completed or corrected which (1) do not interfere with the intended occupancy or utilization of the work, and (2) can be completed or corrected within the time period required for final completion."<sup>13</sup>

These standards were not met when Ms. French certified the Embassy as substantially complete. As described below, subsequent inspection reports by both the State Department and a firm retained by the contractor have identified significant deficiencies in the construction at the Embassy. Two days ago, there were reports that the new head of the State Department's Overseas Building Operations, Richard Shinnick, is now trying to revoke Ms. French's certification.<sup>14</sup>

### **The February 13, 2008, Inspection Report**

I have obtained a report issued on February 13, 2008, by inspectors working for the State Department's Office of Overseas Building Operations. This document describes the results of an on-site inspection they conducted from January 25 to February 6, 2008. It indicates that the certification of the Embassy as substantially complete was unjustified.<sup>15</sup>

The report finds numerous construction defects at the Embassy that should have precluded a finding of substantial compliance. According to the report, "critical issues and ongoing work were noted that would not be expected at a point where substantial completion has

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<sup>11</sup> U.S. Department of State, Office of Overseas Building Operations, Fire Protection Division, *Assessment of Fire Protection System at the NEC — Baghdad, Iraq* (Feb. 13, 2007).

<sup>12</sup> *Justice Dept. Conducting Criminal Probe of Baghdad Embassy Contracts*, Washington Post (Nov. 16, 2007).

<sup>13</sup> *See, e.g.*, U.S. Department of State, Contract with First Kuwaiti General Trading & Contracting Company, sec. E.2.1 (Contract No. SALMEC-06-C-0049) (Sept. 26, 2005).

<sup>14</sup> *Another Review for Troubled U.S. Embassy in Baghdad*, McClatchy Newspapers (Feb. 27, 2008).

<sup>15</sup> U.S. Department of State, Office of Overseas Building Operations, Fire Protection Division, *Assessment of Fire Protection System at the NEC—Baghdad, Iraq* (Feb. 13, 2007).

been met.” The report says that “there still remain deficiencies, both critical and non-critical, in most buildings.” And it finds “major deficiencies in the infrastructure.”<sup>16</sup>

As part of their assessment of the fire protection systems, the inspectors conducted a building-by-building review, a partial visual inspection, and limited functional testing. In addition, the inspectors were tasked with determining the status of repairs to the widespread deficiencies they identified in 2006 and 2007. The report concludes that the fire systems are incomplete and that First Kuwaiti has failed to remedy major deficiencies.

For example, the inspectors found critical deficiencies in the fire alarm systems, many of which are outstanding from previous reports:

On-going work continues to be performed throughout the complex, primarily on the fire alarm systems. The fire alarm network is not functioning properly. ... Numerous network node failures do not allow for a complete network reset.<sup>17</sup>

The report also found critical deficiencies in the fire pump, which sends water through the underground mains to the buildings’ sprinkler systems. The inspectors stated: “The two major infrastructure concerns noted above (fire alarm network and fire pump) would preclude a final sign off on commissioning for any of the buildings on site.”<sup>18</sup>

The inspection report shows that additional critical deficiencies remain throughout the compound:

- “Ongoing work continued to be performed in many of the buildings thereby changing the status of the buildings each day.”<sup>19</sup>
- “On 01 February 2008, the team performed some limited functional testing of the fire alarm systems in SDA-1, SDA-5, and SDA-6 [State Department Apartment buildings]. However, these tests resulted in unexpected alarm and trouble conditions.”<sup>20</sup>
- “A demonstration of the commissioning process was performed on 02 February 2008 at the MSGQ [Marine Security Guard Quarters]. ... Several issues, both critical and non-

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

critical, were noted during the commissioning. Due to these outstanding issues, the building could not be commissioned.”<sup>21</sup>

In their report, the inspectors raise multiple concerns about Ms. French’s decision. One problem is that it apparently initiated a 45-day period during which PAE, the contractor that will assume responsibility for the operation and maintenance of the Embassy, could assess the Embassy complex. According to the report:

[T]he substantial completion signed by Mary French on 16 December 2007 ... started a forty-five (45) day clock in which PAE will evaluate the compound and take over responsibility for the maintenance and operation of all NEW buildings. This places a time burden on the USG to test and commission all systems.<sup>22</sup>

Currently, the Embassy is being maintained by First Kuwaiti under a new “bridge” contract worth \$4.5 million.<sup>23</sup> The inspection report concludes that the State Department should not send another commissioning team until all the fire systems are completed and functioning properly. The inspection report states:

[A] commissioning team should not be dispatched until the Contractor can assure that all work meets the specifications, codes, and standards set forth in the contract, and that all buildings, all fire protection systems, all supporting infrastructure such as the fiber optic network, fire pump, power supplies and controls are 100% complete, 100% tested, 100% functional, and ready for commissioning.<sup>24</sup>

### **The Hughes Inspection Reports**

I have also obtained several draft inspection reports from Hughes Associates Inc., the company hired by First Kuwaiti in November 2007 to evaluate the fire alarm and fire suppression systems for compliance with the project specifications and codes. Hughes performed on-site inspections of the fire protections systems from November 17, 2007, to December 17, 2007. In response to a Committee request on February 15, 2008, Hughes produced draft reports documenting the findings of its evaluation. The most recent of these reports were sent to First Kuwaiti on January 23, 2008.

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Briefing by Edward Alford, Management Counselor, Office of the U.S. Ambassador to Iraq, to House Oversight and Government Reform Committee Staff (Jan. 29, 2008).

<sup>24</sup> U.S. Department of State, Office of Overseas Building Operations, Fire Protection Division, *Assessment of Fire Protection System at the NEC–Baghdad, Iraq* (Feb. 13, 2007).

The Hughes reports identify widespread, critical deficiencies in the water supply systems, fire alarm systems, sprinkler systems, and kitchen suppression systems. For example, one report finds that the fire alarm panels are not currently functioning and that the alarm system is not yet operational. The report states:

In each tested building, the fire alarm system had not been properly integrated for interface with other building systems. Such integration includes initiating atrium smoke control and stair pressurization systems, elevator recall, interface with kitchen suppression systems, releasing secured egress doors, etc. In many cases, the fire alarm relay had been installed, but programming to other systems had not been completed.<sup>25</sup>

The Hughes report on the water supply systems finds that despite earlier warnings, First Kuwaiti and the State Department have not adequately repaired the underground fire mains. In September 2007, State Department fire inspectors found that First Kuwaiti was encasing the pipe fittings in the underground fire service mains with concrete, a method which was not in compliance with project specifications or applicable code.<sup>26</sup> In its January 23, 2008, report, the Hughes inspectors state:

NFPA 24 section 10.8.2.3 states that: “wherever possible, thrust blocks shall be placed so that the joints are accessible for repair.” Although joints for the newly installed hydrants were made accessible for repair, 63 existing joints were completely encased in concrete thrust-blocks. ... HAI also raised a concern about the potential settlement of the concrete blocks causing eventual pipe failure, and requested documented calculations to justify the installation of the thrust-blocks.<sup>27</sup>

### **The State Department’s Refusal to Provide Documents**

These inspection reports raise many questions about whether the Embassy is safe for occupation and why the State Department certified the project as substantially complete in December. Unfortunately, the Committee’s ability to investigate these issues has been hindered by the State Department’s ongoing refusal to respond to the Committee’s document requests.

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<sup>25</sup> Hughes Associates Inc., *Review of Selected Fire Protection Systems at the U.S. Embassy in Iraq (Draft): Notifier Fire Alarm Systems* (Jan. 23, 2008).

<sup>26</sup> U.S. Department of State, Office of Overseas Building Operations, Fire Protection Division, *Trip Report for Director Williams: Fire System Commissioning Trip — Baghdad NEC* (Sept. 4, 2007).

<sup>27</sup> Hughes Associates Inc., *Review of Selected Fire Protection Systems at the U.S. Embassy in Iraq (Draft): Fire Water Supply Systems* (Jan. 23, 2008).



The Committee's first document request was made on July 10, 2007, when the Committee sent you a written request for information and documents relating to substandard work involving construction at the new Embassy in Baghdad, including reports and inspections relating to the Embassy compound.<sup>28</sup> This request asked for the documents to be provided by July 19, 2007, so that they could be reviewed by members before the Committee's hearing on July 26, 2007. The State Department did not comply with this request. At the hearing, Ambassador Patrick Kennedy testified that the Department was working on the Committee's request and that "we have no intention of hiding anything from you."<sup>29</sup> Despite that assurance, the Department failed to produce any documents relating to the construction of the Embassy following the hearing.

On October 9, 2007, the Committee sent you another request for information and documents relating to construction deficiencies at the Embassy, as well as information about the role of Wadih El Absi, the managing director of First Kuwaiti, in the Embassy construction project.<sup>30</sup> The Committee requested these documents by October 19, 2007, so they would be available to members when you testified on October 25, 2007. The Department failed to provide documents by that date. At the hearing, you testified: "we will get the documents to you, Mr. Chairman."<sup>31</sup>

The Committee staff met and spoke with your staff repeatedly over the next four months to attempt to work out a schedule for document production. The Committee staff were unable to obtain any commitment from your staff about when the Committee would receive the documents. As a result, Committee issued a subpoena for these documents on February 8, 2008. The subpoena required full production by February 15, 2008.<sup>32</sup>

The Department failed to produce any documents by the subpoena deadline. Instead, the State Department sent a letter on February 15, 2008, from Assistant Secretary of State for Legislative Affairs, Jeffrey T. Bergner. This letter states:

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<sup>28</sup> Letter from Chairman Henry A. Waxman to Secretary of State Condoleezza Rice (July 10, 2007).

<sup>29</sup> House Committee on Oversight and Government Reform, *Hearing on Allegations of Waste, Fraud, and Abuse and the New U.S. Embassy in Baghdad*, 110th Cong. (July 26, 2007).

<sup>30</sup> Letter from Chairman Henry A. Waxman to Secretary of State Condoleezza Rice (Oct. 9, 2007).

<sup>31</sup> House Committee on Oversight and Government Reform, *Hearing on the State Department and the Iraq War*, 110th Cong. (Oct. 25, 2007).

<sup>32</sup> House Committee on Oversight and Government Reform, Subpoena to Secretary of State Condoleezza Rice (Feb. 8, 2008).

The Department is continuing its efforts to gather and review documents . . . . Unfortunately, there have been significant logistical difficulties in retrieving materials from Baghdad, where the bulk of such documents are located. Initially, concerns related to ongoing investigations related to this project had to be resolved, and then a large volume of documents had to be collected in Baghdad and packed up for shipment. We have been advised that these documents have been awaiting the next available cargo flight from Baghdad, which we expect will be next week, and that they will arrive in Washington in early March. When we have had an opportunity to review these documents and identify responsive materials, as well as to review other potentially responsive documents that are now being collected here in Washington, your staff will be advised.<sup>33</sup>

Mr. Bergner's response is insufficient for multiple reasons. It contains no deadline for document production. It does not explain why it would take over seven months to ship paper documents from Iraq to Washington, DC. It also does not provide any explanation for the extraordinary delay in providing to the Committee the many responsive documents that are located in Washington or are accessible through electronic means. The evaluation of bids relating to the new Embassy was done in Washington in 2005, before the Baghdad construction office was even established.<sup>34</sup> Many of the documents requested by the Committee are e-mail communications between State Department and contractor officials. These documents and the others available from Washington should have been provided to the Committee months ago.

#### Next Steps

The Committee will be holding a hearing on March 12, 2008, to assess the current status of the U.S. Embassy in Iraq. I ask that you make the Acting Director of Overseas Building Operations, Richard Shinnick, available to testify at that hearing.

I am also writing to advise you that the State Department should provide the Committee with a commitment in writing by the close of business on March 3 addressing the issue of document production. This commitment should specify that the documents responsive to the Committee's requests of July 10 and October 9, 2007, and the Committee's subpoena issued on February 8, 2008, will be provided to the Committee no later than March 7, 2008. The commitment should also include a complete account of the steps taken by the Department thus far to locate, collect, and review documents responsive to the Committee's requests.

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<sup>33</sup> Letter from Jeffrey T. Bergner, Assistant Secretary of State for Legislative Affairs, to Chairman Henry A. Waxman (Feb. 15, 2008).

<sup>34</sup> House Committee on Oversight and Government Reform, *Transcribed Interview of John Arczynski* (July 23, 2007).

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If the Committee does not receive a satisfactory commitment from the State Department, I intend to initiate steps to require the Deputy Secretary of State to appear in person at the hearing. He will also be required to bring with him a full set of the responsive documents.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. Information for witnesses appearing before the Committee is contained in the enclosed Witness Information Sheet.

If you have any questions, please contact me or ask your staff to contact Theodore Chuang or Margaret Daum of the Committee staff at (202) 225-5420.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive, slightly slanted style.

Henry A. Waxman  
Chairman

Enclosures

cc: Tom Davis  
Ranking Minority Member