

6

FAX COVER

COMMITTEE ON GOVERNMENT REFORM

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DATE: October 21, 2003

TO: Lt. Gen. Robert Flowers

FAX: [REDACTED]

FROM: Rep. Henry A. Waxman

SUBJECT: _____

NO. OF PAGES: 8
(INCLUDING COVER SHEET)

COMMENT:

07-F-0577
Doc 6



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

October 21, 2003

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:

On October 15, 2003, we wrote to Joshua Bollen, Director of the Office of Management and Budget, to express our concern about indications that Halliburton has been overcharging the taxpayer for importing gasoline into Iraq. Since then, we have received significant new evidence of overcharging by Halliburton. We are writing to urge you to investigate and take appropriate action.

Our letter to OMB Director Bollen was based on a comparison between the prices Halliburton has charged to import gasoline and the prices independent experts told us would be reasonable. The Congressional Research Service informed us that Mideast gasoline costs about 71 cents per gallon. Other experts told us transportation costs should be no more than 25 cents per gallon, bringing a reasonable total cost to around 96 cents per gallon. Our letter pointed out that Halliburton has been charging an average price of at least \$1.59 per gallon to import gasoline into Iraq, far more than the experts said was reasonable.

Halliburton's response was to dispute that gasoline could be imported into Iraq for as little as 96 cents. According to Dave Lesar, the CEO of Halliburton, the prices Halliburton charges are "fair and competitive."¹

We now have concrete evidence that Halliburton is wrong and that gasoline can be — and indeed has been — imported into Iraq for under \$1.00 per gallon. We contacted Iraq's state-owned oil company, the State Oil Marketing Organization (SOMO), to determine what prices it pays to import gasoline into Iraq. We learned that SOMO pays between 90 and 98 cents per gallon to import gasoline into Iraq, almost exactly what the experts told us would be reasonable. In comparison, the price Halliburton is charging is at least 65% — and as much as 88% — more expensive than SOMO's prices.

We have also confirmed from the Coalition Provisional Authority that SOMO buys its gasoline from the same countries as Halliburton, transports its gasoline into Iraq by truck just like Halliburton, and delivers its gasoline to the same central depots as Halliburton.

¹ *Halliburton's Mission*, Wall Street Journal (Oct. 17, 2003).

Lt. Gen. Robert B. Flowers
October 21, 2003
Page 2

Finally, we have learned that some of the funds paid to Halliburton are coming from the humanitarian funds transferred from the U.N. Oil for Food Program. This raises serious questions about our relationship with the United Nations and our allies. Under the terms of U.N. Security Council Resolution 1483, an independent board called the International Advisory and Monitoring Board was supposed to ensure that the U.N. Oil for Food funds were spent for the benefit of the Iraqi people. Not only has this board not been created, it now appears that part of the \$1 billion transferred from the U.N. Oil for Food Program has been squandered by paying inflated prices to Halliburton.

Based on these concerns, we urge you to take three specific actions: (1) investigate overcharging by Halliburton that already may have occurred; (2) seek reimbursements for any inflated amounts paid to Halliburton; and (3) if you confirm that Halliburton has been overcharging for gasoline, disqualify Halliburton from receiving either of the two new oil reconstruction contracts that the Corps is close to awarding.

The rest of this letter explains these concerns in more detail.

Evidence of Halliburton's Overcharges

As you know, a significant component of Halliburton's work under the sole-source oil contract has been to import gasoline and other petroleum products, such as LPG and kerosene, into Iraq. According to data provided by your staff, as of September 18, Halliburton had received task orders worth \$378,931,314 to import these products into Iraq.² Of this amount, Halliburton was paid \$304,486,577 to import 191,965,150 gallons of gasoline.³ On a per-gallon basis, Halliburton charged the U.S. government \$1.59.

This amount does not include Halliburton's "profits," which are calculated separately.⁴ Because the Administration agreed to a "cost-plus" contract, the government reimburses

² E-mail from U.S. Army Corps of Engineers to Minority Staff, Committee on Government Reform (Sept. 23, 2003).

³ *Id.* According to the e-mail, 727,140,721 liters of gasoline had been delivered as of September 18, 2003. At a conversion rate of 0.264 gallons per liter (or 3.785 liters per gallon), the total number of gallons is 191,965,150. The cost of \$304,486,577 was calculated by assuming a conversion rate of 1,500 Iraqi dinars per U.S. dollar.

⁴ U.S. Army Corps of Engineers, *Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom* (Oct. 3, 2003) (online at www.hq.usace.army.mil/cepa/iraq/faq.htm) ("It is an Indefinite Delivery/Indefinite Quantity, cost-plus type contract. The government

Lt. Gen. Robert B. Flowers
October 21, 2003
Page 3

Halliburton for its costs and then provides an additional award of between 2% and 7%.⁵ When this additional award is taken into account, the cost to the taxpayer increases to between \$1.62 and \$1.70 per gallon. Although Halliburton claims its profits are included in the \$1.59 per gallon price,⁶ your staff confirmed for us last week that this is not the case.⁷

Numerous experts told us Halliburton's prices were "outrageously high," that they were potentially "a huge ripoff" to taxpayers, and that Halliburton could be guilty of "price gouging."⁸ They estimated a more reasonable cost of about 96 cents per gallon. According to the Congressional Research Service, the average price for "Arab Gulf" gasoline in the Middle East was about 71 cents per gallon between April and September, not including the cost to transport the gasoline into Iraq.⁹ One expert said that under ordinary conditions, it should be possible to transport gasoline into Iraq for costs ranging from 15 to 25 cents per gallon.¹⁰ Another expert said it might be possible to transport gasoline into Iraq for as little as 10 cents per gallon.¹¹ Even assuming the most expensive transportation estimate, Halliburton's total per-gallon costs should not exceed 96 cents.

⁵ *Id.* ("The contractor is guaranteed a fee of two percent and can make a maximum of seven percent, depending on performance").

⁶ *Press Release: Halliburton Refutes Statements Made about Fuel Procurement and Delivery in Iraq* (Oct. 17, 2003) (claiming the \$1.59 figure includes the company's profits).

⁷ Telephone conversation between Janice Rasgus, U.S. Army Corps of Engineers, and Minority Staff, Committee on Government Reform (Oct. 17, 2003).

⁸ Telephone conversation between Philip K. Verleger, Jr., President, PKVerleger LLC, and Principal, Battle Group, and Minority Staff, Committee on Government Reform (Oct. 10, 2003). Other experts, including individuals with detailed knowledge of Iraq's oil markets, expressed similar views, although they asked that their identities not be revealed. One said: "There is no way on earth Halliburton should be buying gas for 80 cents and selling it for \$1.70 — that's highway robbery."

⁹ Congressional Research Service, *Average of Recent Gasoline Prices in the Persian Gulf* (Oct. 14, 2003) (surveying Platts Global Energy's *Oilgram Price Report* for the average sales price of "Arab Gulf" gasoline between the fall of Baghdad on April 9, 2003, and the last date for which the Army Corps of Engineers provided information, September 18, 2003).

¹⁰ Telephone conversation between Gordon Schremp, Senior Fuels Specialist, California Energy Commission, and Minority Staff, Committee on Government Reform (Oct. 14, 2003) (assuming 400 miles between Kuwait and Baghdad).

¹¹ Telephone conversation with Philip K. Verleger, *supra* note 8.

Lt. Gen. Robert B. Flowers
October 21, 2003
Page 4

The New Information from SOMO

When Halliburton contested the views of the experts we consulted, we sought information directly from SOMO, the Iraqi state-owned oil company, about what it costs to import gasoline into Iraq. We learned that SOMO has been importing gasoline into Iraq from the same countries as Halliburton and doing so at a fraction of the cost that Halliburton has been charging.

The minority staff of the Government Reform Committee contacted Mohammed M. Al-Jibouri, the General Manager of SOMO. Although Mr. Al-Jibouri would not comment on whether Halliburton was inflating its prices, he provided our staff with the prices SOMO pays to import gasoline. According to Mr. Al-Jibouri, SOMO pays between \$324 to \$347 per metric ton of gasoline imported into Iraq.¹² Converted to dollars per gallon, the price paid by SOMO is between 90 and 98 cents per gallon.¹³

According to Mr. Al-Jibouri, the specific price paid by SOMO depends on the source of the imported gasoline and its destination inside Iraq. The most expensive gasoline purchased by SOMO is the gasoline imported from Turkey and delivered to Baghdad. According to Mr. Al-Jibouri, "gasoline price from Turkey cost USD 347 per m. ton delivered to Baghdad which is about USD 0.98 per gallon."¹⁴ The least expensive gasoline is gasoline imported from Kuwait and delivered to Basrah, which costs just 90 cents per gallon. Gasoline imported from Kuwait and delivered to Baghdad costs 97 cents per gallon.

The enormous difference between the prices charged by Halliburton and the prices at which SOMO can import gasoline is not explained by differences in source countries, mode of transport, or delivery locations. In comparing the Halliburton imports to SOMO imports, the Coalition Provisional Authority (CPA) confirmed that "[b]oth KBR and SOMO are bringing in

¹² Letter from Mohammed M. Al-Jibouri, General Manager, State Oil Marketing Organization, to Minority Staff, Committee on Government Reform (Oct. 16, 2003). Because SOMO does not have cash to make these purchases, they enter into barter transactions to trade fuel oil for gasoline.

¹³ According to the Congressional Research Service, metric tons of gasoline can be converted into gallons by multiplying the number of metric tons by 8.53 to get the number of U.S. barrels and then multiplying this number by 42 to get the number of gallons. Memo from Lawrence Kumins, Congressional Research Service, to Minority Staff, Committee on Government Reform (Oct. 16, 2003).

¹⁴ Letter from Mohammed M. Al-Jibouri, *supra* note 12.

Lt. Gen. Robert B. Flowers
October 21, 2003
Page 5

imports from Turkey and Kuwait." The CPA also confirmed that "KBR and SOMO fuel imports are generally being delivered to the same depots and distribution systems."¹⁵

Although Halliburton has raised security concerns as a possible explanation for its higher prices, the CPA also confirmed that "[f]uel truck convoys are required to be escorted by coalition military forces regardless of ownership."¹⁶ Since the U.S. armed forces provide security for fuel convoys traveling through Iraq, this cost is being borne largely by the military, not Halliburton or SOMO.

Halliburton's actions are not simply a matter of past overcharging. The Administration has requested an additional \$2.1 billion in oil reconstruction funds for Iraq. The largest component of this supplemental is a request for \$900 million to import petroleum products. If Halliburton's overcharging for gasoline is not halted, between \$286 and \$339 million of this \$900 million could be needlessly wasted.¹⁷

The Use of U.N. Oil for Food Funds

We have recently learned that a significant portion of the funds used to pay Halliburton's inflated prices for importing gasoline comes from the Development Fund for Iraq, which is the successor fund of the United Nations' humanitarian Oil for Food Program.

The Oil for Food Program was created to provide for the basic needs of Iraqis while U.N. sanctions were in effect against Iraq. After the end of the war, U.N. Security Council Resolution 1483 formally transferred control of the assets in the Oil for Food Program to the CPA and placed these assets in the Development Fund for Iraq. On May 28, 2003, the Development Fund received \$1 billion in assets from the Oil for Food Program.¹⁸

¹⁵ E-mail from Office of Secretary of Defense to Minority Staff, Committee on Government Reform (Oct. 16, 2003) (attributing responses to Larry Rogers, Deputy for Program Management, Task Force RIO).

¹⁶ *Id.*

¹⁷ The low-end figure presumes that Halliburton obtains the gasoline at the highest price available to SOMO and receives the minimal 2% fee on top of its reimbursed costs. The high end figure presumes that Halliburton obtains the gasoline at the lowest price available to SOMO and receives the maximum 7% fee.

¹⁸ Open Society Institute, *Keeping Secrets: America and Iraq's Public Finances* (Oct. 2003).

Lt. Gen. Robert B. Flowers
October 21, 2003
Page 6

According to the Corps's website, \$600 million from the Development Fund has been used to pay Halliburton for importing fuel into Iraq through October 16.¹⁹ This raises significant issues about how the CPA is administering these funds. Money from the Development Fund was supposed to be used "in a transparent manner to meet the humanitarian needs of the Iraqi people . . . and for other purposes benefiting the people of Iraq," not to enrich Halliburton.²⁰ Misuse of these funds threatens to undermine U.S. efforts to convince our allies to help fund Iraqi reconstruction and likely will increase mistrust of the Administration among Iraqis.

Security Council Resolution 1483 also mandated the creation of an International Advisory and Monitoring Board (IAMB) to oversee Development Fund disbursements. The Board was to be comprised of four members representing the United Nations, the International Monetary Fund, the World Bank, and the Arab Fund for Social and Economic Development.²¹ The IAMB was intended as "the primary vehicle for guaranteeing the transparency of the DFI and for ensuring that DFI funds are used properly."²² Five months later, however, the CPA has yet to establish the IAMB. Without an operational IAMB, there is no international auditor to ensure that Development Fund monies are being spent properly. Not surprisingly, potential donor countries are dissatisfied with the resulting lack of transparency and international involvement.

Although it initially appeared that Halliburton was gouging only American taxpayers, it now seems that the company is overcharging the humanitarian Oil for Food Program and the Iraqi people as well. This significantly compounds the implications of Halliburton's actions.

Requested Actions

In light of the evidence of Halliburton's overcharging outlined above, we request that the Army Corps of Engineers take three specific actions. First, we request that you conduct a joint investigation with the Defense Contract Audit Agency, the Defense Finance and Accounting Service, and the Defense Department Inspector General to determine what amounts Halliburton is paying for gasoline, what amounts it is paying for transportation, and why these amounts are so high.

¹⁹ U.S. Army Corps of Engineers, *supra* note 4.

²⁰ United Nations Security Council Resolution 1483 (May 22, 2003); Coalition Provisional Authority Regulation Number 2 (June 15, 2003).

²¹ United Nations Security Council Resolution 1483 (May 22, 2003).

²² Open Society Institute, *supra* note 18.

Lt. Gen. Robert B. Flowers
October 21, 2003
Page 7

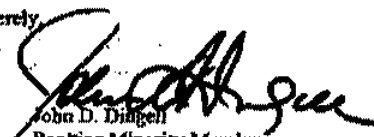
Second, if the results of this investigation confirm overcharging, we request that you seek reimbursements or refunds for any inflated amounts paid to Halliburton, including amounts overpaid by both U.S. taxpayers and the United Nations.

Third, if the results of the investigation confirm overcharging, we request that the Corps disqualify Halliburton from future oil reconstruction contracts in Iraq. The Corps has sought to address concerns about the manner in which Halliburton was awarded the no-bid oil infrastructure contract by splitting the contract into two competitively bid oil reconstruction contracts — one for northern Iraq and one for southern Iraq.²³ According to statements from the Corps, these new contracts could be awarded later this month.²⁴ Halliburton should not be rewarded with either of the two new contracts if overcharging has in fact occurred.

We urge you to give this matter the high priority that it deserves.

Sincerely,


Henry A. Waxman
Ranking Minority Member
Committee on Government Reform


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

²³ U.S. Army Corps of Engineers, *Bid Solicitation* (July 9, 2003) (online at <http://ehs.rwL.usace.army.mil/>).

²⁴ Meeting between Rep. Henry A. Waxman and Lt. Gen. Robert B. Flowers (June 11, 2003).