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April 11, 2005

The Honorable Christopher Shays
Chairman
Subcommittee on National Security,
Emerging Threats, and International Relations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Last month, I sent letters to you and President Bush about oil reconstruction efforts in Iraq. These letters disclosed (1) that government auditors had found $108 million in fuel-related overcharges by Halliburton and (2) that although Halliburton was paid in significant part from Iraqi oil proceeds in the Development Fund for Iraq, the Administration had concealed the overcharges from auditors at the International Advisory and Monitoring Board (IAMB) in violation of U.N. Security Council Resolution 1483.

Due to your efforts, the Subcommittee has now obtained additional audits of Halliburton's Iraqi oil reconstruction work. These audits, conducted by the Defense Contract Audit Agency (DCAA), reveal that both the amount of Halliburton's overcharges and the extent of the information withheld are much greater than previously known.

As part of my March 14, 2005, letter to President Bush, which I sent with Rep. John Dingell, I released a DCAA audit of one of Halliburton's ten task orders under its no-bid Restore Iraqi Oil contract. This audit showed that the Pentagon auditors identified overcharges and questioned costs of $108.4 million under Task Order 5, one of several task orders for the importation of fuel into Iraq.

The new audits obtained by the Subcommittee show that the amounts of overcharges are actually far higher. The Subcommittee has now obtained DCAA audits of Task Orders 5 through 10. In these reports, DCAA auditors identify overcharges and question costs of $212.3 million, doubling the total amount of known overcharges under Halliburton's Iraq oil contract. In one case, the overcharges identified by DCAA exceeded 47% of the total value of the task order.

In my March 15, 2005, letter to you, I provided evidence that Administration officials — acting at Halliburton's request — intentionally withheld information about the overcharges associated with Task Order 5 from the IAMB, the international auditors charged by the United Nations with monitoring the expenditures from the Development Fund for Iraq (DFI). The new audits obtained by the Subcommittee reveal extensive additional information that has been withheld by the Administration from the IAMB. My review shows that references to overcharges and other questioned costs were blacked out over 460 times in the versions of audits sent to the IAMB. Indeed, every reference to every overcharge in every audit submitted to the IAMB was redacted. In addition, at least five updated DCAA audits were withheld in their entirety from the IAMB.

The new DCAA audits add to the mounting evidence of waste, fraud, and abuse involving the DFI. According to recent findings by the Special Inspector General for Iraqi Reconstruction, U.S. officials failed to properly account for nearly $9 billion in Iraqi funds in the DFI, violating the terms of U.N. Security Council Resolution 1483.

With the exception of your efforts, however, congressional oversight of the expenditure of Iraqi oil proceeds has been marred by a double standard. There have been 11 congressional hearings to date on the U.N. oversight of the Oil for Food program, but no hearings on whether the United States itself mismanaged the DFI, the successor to the Oil for Food program. The result may be politically convenient for the White House. News coverage of the problems in the U.N.-run Oil for Food program has outnumbered coverage of the problems in the U.S.-run Development Fund for Iraq roughly 17 to 1. But the deliberate neglect of the DFI has come at a steep cost to congressional and public understanding of the actions of U.S. officials — and to Congress' reputation internationally.

I commend you for the steps you have taken to oversee the DFI, including the efforts by you and your staff to obtain the DCAA audits detailing Halliburton's extraordinary overcharges. And I urge you to take the next step of scheduling Subcommittee hearings to examine U.S. mismanagement of the DFI and the Administration's failure to comply with the terms of Resolution 1483.

Background

The Development Fund for Iraq is the successor to the U.N.'s humanitarian Oil for Food Program, which was intended to provide for the basic needs of the Iraqi people while U.N. sanctions were in effect. On May 22, 2003, U.N. Security Council Resolution 1483 formally transferred control of the Oil for Food assets to the DFI and placed them under the authority of the U.S.-controlled Coalition Provisional Authority (CPA). In addition to funds from the Oil for Food Program, the DFI also received proceeds from the sale of Iraqi oil, as well as repatriated funds and foreign donations. Resolution 1483 required the United States to use DFI funds "in a

transparent manner to meet the humanitarian needs of the Iraqi people ... and for other purposes benefiting the people of Iraq."[1]

To ensure that the United States administered the DFI in compliance with this requirement, Resolution 1483 also created the International Advisory and Monitoring Board (IAMB) to oversee U.S. stewardship of the DFI. The IAMB includes members representing the United Nations, the International Monetary Fund, the World Bank, and the Arab Fund for Social and Economic Development.[2]

The IAMB was envisioned as the primary vehicle for guaranteeing the transparency of the DFI and for ensuring that DFI funds are used properly. According to U.N. Secretary General Kofi Annan, the IAMB was intended to act as the "eyes and ears of the international community."[3] When the United States assumed responsibility for these funds, it explicitly agreed to these terms.[4]

During CPA's administration of the DFI, a total of $20.6 billion was deposited into the DFI account.[5] By June 28, 2004, approximately $19.7 billion of this total had been committed for reconstruction contracts and other purposes.[6]

The single largest private recipient of Iraqi oil proceeds under the DFI was Halliburton. Under the no-bid Restore Iraqi Oil (RIO) contract with the U.S. Army Corps of Engineers, a Halliburton subsidiary, KBR, charged approximately $2.5 billion for the importation of fuel for

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[1] United Nations Security Council Resolution 1483 (May 22, 2003) (emphasis added).

[2] *Id.*

[3] International Advisory and Monitoring Board, *Minutes of the Organizational Meeting* (Dec. 5, 2003).

[4] Coalition Provisional Authority, Memorandum No. 4: Contract and Grant Procedures Applicable to Vested and Seized Iraqi Property and the Development Fund for Iraq (Aug. 19, 2003) ("As steward for the Iraqi people, the CPA will manage and spend Iraqi Funds, which belong to the Iraqi people, for their benefit .... [T]hey shall be managed in a transparent manner that fully comports with the CPA's obligations under international law, including Resolution 1483").

[5] Coalition Provisional Authority, *Development Fund for Iraq: Financial Reporting Matrix* (June 26, 2004).

[6] *Id.*

the Iraqi people, the preparation of damage assessments, and the repair of oil facilities.[7] There were two sources of funding for this contract: approximately $875 million came from U.S. taxpayer funds and $1.64 billion came from Iraqi oil proceeds and other Iraqi assets in the DFI.[8]

The Defense Department issued ten different task orders to Halliburton under the RIO contract. Task Orders 1, 2, 3, 4, and 6 related to various oil infrastructure projects, while Task Orders 5, 7, 8, 9, and 10 involved the importation of fuel from Kuwait, Turkey, and Jordan. All of the work under each task order was performed on a "cost-plus" basis, which meant that Halliburton received full reimbursement for its costs and additional fees of 2% to 7%.[9]

Beginning on March 17, 2004, IAMB officials repeatedly sought information from the United States about Halliburton's no-bid RIO contract.[10] On April 5, 2004, Jean-Pierre Halbwachs, the Chairman of the IAMB and the Assistant Secretary General and Controller of the United Nations, sent a formal request to Ambassador Bremer asking for "further information on all sole-sourced contracts paid for using DFI funds," including "contracts amounting to $1.4 billion [that] were awarded to Halliburton."[11] The IAMB Chairman also specifically requested copies of "a number of audits relating to these contracts" conducted by the U.S. government.[12]

Over the next several months, the Administration failed to respond to numerous additional requests for these audits.[13] In a September 8, 2004, statement, the international

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[7] U.S. Army Corps of Engineers, *Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom* (Oct. 7, 2004) (online at http://www.hq.usace.army.mil/CEPA/Iraq/March03-table.htm).

[8] *Id.*

[9] *Id.*

[10] International Advisory and Monitoring Board, *Minutes of Meeting* (Mar. 17–18, 2004) (noting that "some contracts using DFI funds were awarded to Halliburton without competitive bidding" and directing its certified public accounting firm, KPMG, "to pay special attention" to this issue).

[11] Letter from Jean-Pierre Halbwachs, Chairman, International Advisory and Monitoring Board, to Ambassador L. Paul Bremer, III, Administrator, Coalition Provisional Authority (Apr. 5, 2004).

[12] *Id.*

[13] *See, e.g.,* International Advisory and Monitoring Board, *Minutes of Meeting* (Apr. 22–23, 2004) (reporting that the IAMB "followed up with the CPA on its earlier request to access audits of sole-sourced contracts funded by the DFI, including those by the Defense Contract Audit Agency"); International Advisory and Monitoring Board, *Minutes of Meeting* (May 24–25, 2004) (reiterating "earlier requests by the Board to obtain audit reports regarding sole source contracts, including those by the Defense Contract Audit Agency" and noting "difficulties" with

auditors explained that they still had "not received reports on audits undertaken by various U.S. agencies on sole-sourced contracts, despite repeated requests."[14] According to the statement, "The IAMB expressed its strong concern with these delays that hamper fulfillment of its mandate."[15]

The Administration finally provided the IAMB with "redacted copies of the DCAA audit reports on sole sourced contracts, at its meeting in October 2004."[16] These included DCAA audits of Task Orders 5 through 10 that were issued in August, September, and October of 2004.[17]

The DCAA Audits

On October 5, 2004, you and I wrote jointly to Secretary Rumsfeld requesting unredacted copies of DCAA audits for Task Orders 5 through 10.[18] Although Defense Department officials

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CPA officials); International Advisory and Monitoring Board, *Statement by the International Advisory and Monitoring Board* (May 25, 2004) (stating that the IAMB "looks forward to the imminent receipt of the audits on sole-sourced contracts being conducted by U.S. government agencies"); International Advisory and Monitoring Board, *Statement by the International Advisory and Monitoring Board* (June 22, 2004) (stating that the "IAMB regrets, despite its repeated requests, the delay in receiving reports on audits undertaken by various agencies on sole-sourced contracts funded by the DFI").

[14] International Advisory and Monitoring Board, *Statement by the International Advisory and Monitoring Board* (Sept. 8, 2004).

[15] *Id.*

[16] International Advisory and Monitoring Board, *Report of the International Advisory and Monitoring Board of the Development Fund for Iraq* (Dec. 14, 2004).

[17] Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 5* (Audit Report No. 3311-2004K17900055) (Oct. 8, 2004); Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 6* (Audit Report No. 3311-2004K21000028) (Sept. 16, 2004); Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 7* (Audit Report No. 3311-2004K21000007) (Sept. 17, 2004); Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 8* (Audit Report No. 3311-2004K21000008) (Aug. 31, 2004); Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 9* (Audit Report No. 3311-2004K21000011) (Aug. 30, 2004); Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 10* (Audit Report No. 3311-2004K21000012) (Aug. 31, 2004).

[18] Letter from Reps. Christopher Shays and Henry A. Waxman to Defense Secretary Donald H. Rumsfeld (Oct. 5, 2004).

provided us with copies of the redacted audits sent to the IAMB, they repeatedly claimed that our request for unredacted copies was being processed. These delaying tactics persisted for months as our staff made 12 separate followup inquiries. In fact, when a member of your staff informed the Defense Department in February that a subpoena was being prepared, a Defense Department official replied that "issuing a subpoena will not get the material released any faster."[19]

Last month, I obtained an unredacted version of DCAA's audit of Task Order 5. This audit, issued on October 8, 2004, showed that Pentagon auditors found overcharges and questioned costs of $108.4 million under Task Order 5, which was valued at $875 million.[20] The DCAA auditors found overcharges in nearly every area, including labor, material, subcontracts, and overhead. On March 14, 2005, Rep. John Dingell and I wrote to President Bush asking how he planned to recover these overcharges and return them to the U.S. taxpayer and Iraqi people.[21]

After Rep. Dingell and I wrote to the President, Defense Department officials argued for the first time that you and I had never requested the unredacted audits, claiming that "[w]e have all been waiting for a request in writing from the Chairman."[22] As a result, you sent a second letter to Defense Secretary Rumsfeld on March 15, 2005, requesting the audits "once again."[23] As you correctly noted in that letter, the Committee had been "repeatedly assured the unredacted documents were being prepared for transmittal."[24]

Finally, after a delay of five months, the Defense Department has now turned over full and unredacted DCAA audits for Task Orders 5 through 10. In total, these audits identified overcharges and questioned costs of $212.3 million, doubling the total amount of known Halliburton overcharges under the Iraq oil contract.

Specifically, the Committee has now obtained 11 DCAA audits detailing overcharges under Halliburton's Iraqi oil contract. These include ten audits of Task Orders 5, 7, 8, 9, and 10.

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[19] Email from Staff, Office of the Secretary of Defense, Legislative Affairs, to Majority and Minority Staff, House Committee on Government Reform (Feb. 28, 2005).

[20] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 5, supra* note 17, at 1.

[21] Letter from Reps. Henry A. Waxman and John D. Dingell to President George W. Bush (Mar. 14, 2005).

[22] Email from Staff, Office of the Secretary of Defense, Legislative Affairs, to Majority Staff, House Committee on Government Reform (Mar. 14, 2005).

[23] Letter from Rep. Christopher Shays to Defense Secretary Donald H. Rumsfeld (Mar. 15, 2005).

[24] *Id.*

DCAA conducted a first round of five audits in August, September, and October of 2004.[25] It conducted a second round of five updated audits in February of 2005.[26] These two rounds of audits had some differences in the amounts Halliburton proposed for reimbursement, as well as the amounts questioned by DCAA.[27] The Committee also obtained one DCAA audit detailing overcharges under Task Order 6, which did not involve fuel importation.[28]

DCAA's most recent conclusions regarding overcharges under Task Orders 5 though 10 are set forth in Table A (below).

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[25] *See supra* note 17.

[26] Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 5* (Audit Report No. 3311-2005K21000024) (Feb. 25, 2005); Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 7* (Audit Report No. 3311-2005K21000025) (Feb. 25, 2005); Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 8* (Audit Report No. 3311-2005K21000026) (Feb. 25, 2005); Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 9* (Audit Report No. 3311-2005K21000019) (Feb. 3, 2005); Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 10* (Audit Report No. 3311-2005K21000020) (Feb. 3, 2005).

[27] The audits indicate increases in some proposed costs and decreases in others. For example, the October 8, 2004, audit of Task Order 5 reviewed proposed costs of $875.3 million, while the February 25, 2005, audit of Task Order 5 reviewed proposed costs of $887.3 million. In contrast, the August 30, 2004, audit of Task Order 9 reviewed proposed costs of $64.8 million, while the February 3, 2005, audit of Task Order 9 reviewed proposed costs of $57.2 million. The audits also document increases in some overcharges and decreases in others. For example, the August 31, 2004, audit of Task Order 8 questioned costs of $21.9 million, while the February 25, 2005, audit of Task Order 8 questioned costs of $22.8 million. In contrast, the October 8, 2004, audit of Task Order 5 questioned costs of $108.4 million, while the February 25, 2005, audit of Task Order 5 questioned costs of $86.1 million.

[28] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 6, supra* note 17.

TABLE A: Overcharges Identified and Costs Questioned under Halliburton's Iraq Oil Contract

Task Order	Task Order Value	Overcharges and Questioned Costs	Percentage of Task Order Value
5	$887.3 million	$86.1 million	9.7%
6	$212.1 million	$34.2 million	16.1%
7	$324.9 million	$35.7 million	11.0%
8	$179.9 million	$22.8 million	12.7%
9	$57.2 million	$19.9 million	34.8%
10	$28.7 million	$13.6 million	47.4%
Total	**$1.69 billion**	**$212.3 million**	**12.6%**

According to these audits, most of Halliburton's overcharges and questioned costs — $174 million — involved its fuel importation work. In particular, unreasonable fuel costs from Kuwait accounted for $142 million, and improper retroactive payment increases to Turkish subcontractors accounted for $32 million.

DCAA auditors found unreasonable costs for Kuwaiti fuel under all of Halliburton's fuel importation task orders. The auditors criticized Halliburton for failing to negotiate better pricing for the fuel and transportation costs, concluding that Halliburton failed to provide "adequate documentation to demonstrate the reasonableness of the Kuwait fuel prices over the life of the purchase orders."[29]

The auditors also repeatedly criticized Halliburton for making unnecessary retroactive payments to its Turkish fuel subcontractors. DCAA noted that Halliburton had negotiated "fixed-unit-rate" and "firm-fixed-price" subcontracts with various Turkish subcontractors to import fuel into Iraq. During the term of these subcontracts, the market price of the fuel increased. DCAA reported that the Turkish companies asked Halliburton "to increase the unit price of the fuel to compensate for losses due to market increases."[30] According to DCAA,

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[29] *See, e.g., Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 5, supra* note 26, at 2.

[30] *See, e.g., Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 7, supra* note 26, at 2.

Halliburton "agreed to pay the higher prices retroactively."[31] DCAA concluded: "We do not believe it was appropriate to retroactively adjust the fuel unit prices of KBR's fixed-unit-rate and firm-fixed-price subcontracts when there are no provisions in the subcontracts to do so."[32]

All the DCAA audits — from both the first and second rounds of examination — reported as their first findings under the executive summaries that Halliburton's proposals were "not acceptable for negotiation of a fair and reasonable price."[33] DCAA found that Halliburton's cost and pricing submissions were "not adequate" because they were not prepared "in accordance with applicable Cost Accounting Standards and appropriate provisions of FAR," the Federal Acquisition Regulation, because "proposed" costs "exceed recorded costs," and because Halliburton's proposals "did not contain data to support the reasonableness of the negotiated purchase orders."[34]

The $212.3 million in overcharges identified by DCAA is likely to increase. DCAA did not evaluate the reasonableness of Halliburton's base and award fees, which are calculated as 2% to 7% of the company's underlying costs. Since DCAA identified overcharges in Halliburton's costs, its fees are likely to be overstated also. In addition, the Subcommittee has not received any audits of Task Orders 1 through 4, which have a total value of approximately $800 million.[35] Any overcharges related to these task orders would further increase the total.

Information Withheld from the United Nations

In my March 15, 2005, letter to you, I compared the redacted and unredacted versions of DCAA's audit of Task Order 5. This comparison showed that the Administration had concealed references to $108 million in Halliburton's overcharges, as well as key auditor findings, from the IAMB.

Now that the Subcommittee has obtained the unredacted audits for Task Orders 5 through 10, a more thorough analysis of the information withheld from the IAMB is possible. This review reveals that the amount of information concealed from the international auditors is

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[31] *Id.*

[32] *Id.*

[33] *See, e.g., Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 8, supra* note 26, at 2.

[34] *See, e.g., Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 9, supra* note 26, at 4, 2, and 1.

[35] U.S. Army Corps of Engineers, *Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom* (Oct. 7, 2004) (online at http://www.hq.usace.army.mil/CEPA/Iraq/March03-table.htm).

significantly greater than previously known. Indeed, every reference to every overcharge in every audit submitted to the IAMB was redacted. In total, references to overcharges and other questioned costs were blacked out at least 463 times by Halliburton and U.S. officials.

Examples of overcharges and other questioned costs that were redacted include the following:

- In DCAA's audit of Task Order 5, $62 million in "unreasonable costs" related to fuel imported from Kuwait.[36]

- In DCAA's audit of Task Order 6, $17.6 million in "[u]nsupported costs" due to Halliburton's "failure to perform adequate costs or price analysis as required by FAR [Federal Acquisition Regulation] 15.408."[37]

- In DCAA's audit of Task Order 7, $4.9 million in costs DCAA questioned because Halliburton "failed to use the correct purchase order change orders for the Turkey purchase orders."[38]

- In DCAA's audit of Task Order 8, $2 million in proposed LPG cancellation fees that Halliburton "has not been able to identify or support."[39]

- In DCAA's audit of Task Order 9, $23 million in "questioned … material and subcontract costs primarily due to KBR's failure to demonstrate reasonable pricing for the Kuwaiti fuel and transportation costs."[40]

- In DCAA's audit of Task Order 10, $10 million for kerosene purchased and delivered after the Army contracting officer directed Halliburton "to stop all kerosene imports from Kuwait."[41]

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[36] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 5*, *supra* note 17, at 10.

[37] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 6*, *supra* note 17, at 3.

[38] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 7*, *supra* note 17, at 2.

[39] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 8*, *supra* note 17, at 2.

[40] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 9*, *supra* note 17, at 8.

Without any overcharge figures, the redacted audits were essentially useless to the international auditors charged with monitoring U.S. disbursements of DFI funds. After examining the redacted audits, Mr. Halbwachs, the chair of the IAMB, reported that "it was impossible to determine the extent of alleged overcharges because the figures had been redacted."[42]

Throughout the redacted versions of the DCAA audits, crucial auditor findings regarding the reasonableness of Halliburton's prices and the continued deficiencies in the company's systems were also blacked out. The redacted findings include the following:

- The conclusion that Halliburton "did not demonstrate the prices for Kuwaiti fuel and transportation were fair and reasonable" was redacted from DCAA's audit of Task Order 5.[43]

- The conclusion that Halliburton was "unable to furnish sufficient, competent evidential matter to enable a definitive conclusion regarding the reasonableness of the proposed costs" was redacted from DCAA's audit of Task Order 6.[44]

- The conclusion that that Halliburton's "procurement files do not include adequate documentation to justify the selection of other than the lowest bidder" was redacted from DCAA's audit of Task Order 7.[45]

- The conclusion that Halliburton "did not take appropriate action to negotiate better pricing for the fuel and transportation costs" was redacted from DCAA's audit of Task Order 8.[46]

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[41] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 10*, *supra* note 17, at 2.

[42] *U.N. Board Cites U.S. Contractor in Iraq*, Washington Post (Dec. 15, 2004).

[43] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 5*, *supra* note 17, at 12.

[44] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 6*, *supra* note 17, at 10.

[45] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 7*, *supra* note 17, at 14.

[46] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 8*, *supra* note 17, at 1.

- The conclusion that Halliburton's "purchase order files submitted to us do not include adequate documentation to demonstrate the reasonableness of the Kuwait fuel prices over the life of the purchase orders" was redacted from DCAA's audit of Task Order 9.[47]

- The conclusion that "[w]e consider KBR's estimating system inadequate" and "[w]e have found significant purchasing system deficiencies during related audits" was redacted from DCAA's audit of Task Order 10.[48]

In addition to the audits described above, the Subcommittee obtained DCAA audits that were withheld in their entirety from the IAMB. In February 2005, DCAA completed updated audits for Task Orders 5, 7, 8, 9, and 10.[49] The Defense Department provided none of these updated audits to the IAMB, even in redacted form. In fact, it does not appear that the Defense Department ever informed international auditors of the existence of these audits. The Administration has provided no explanation for how withholding these updated audits from the IAMB complies with U.N. Security Council Resolution 1483.

The Administration has also prevented the IAMB from making its own attempts to examine Halliburton's sole-source contract. Frustrated by the Administration's repeated failure to produce audits of Halliburton's Iraqi oil contract, the IAMB decided at its June 22, 2004, meeting to exercise its authority under Resolution 1483 "to commission a special audit to determine the extent of sole-sourced contracts."[50] This special audit could not proceed, however, until the Administration awarded a contract for the work. On September 8, 2004, the IAMB announced that "[t]he special audit requested by the IAMB ... has yet to be commissioned."[51] Even now, more than nine months after the IAMB's decision, the Administration has yet to award the contract.[52]

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[47] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 9*, *supra* note 17, at 10.

[48] *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 10*, *supra* note 17, at 24-25.

[49] DCAA Audits, *supra* note 26.

[50] International Advisory and Monitoring Board, *Press Release* (June 22, 2004).

[51] International Advisory and Monitoring Board, *Press Release* (Sept. 8, 2004). *See also* International Advisory and Monitoring Board, *Press Release* (Dec. 14, 2004) (noting that nearly six months after the IAMB ordered a special audit, the Administration had merely provided the IAMB with "terms of reference" for the audit).

[52] *See, e.g., Now You See It: An Audit of KBR,* New York Times (Mar. 20, 2005) (quoting Pentagon spokeswoman as stating: "Procuring the services of an internationally recognized auditing firm to conduct the special audit is ongoing").

Lack of Explanation on Withholding Information on Overcharges

In my March 15 letter, I presented evidence that the Administration allowed Halliburton to make the improper redactions to the DCAA audits provided to the IAMB. Specifically, Halliburton sent a letter to the U.S. Army Corps of Engineers on September 28, 2004, stating that Halliburton officials had redacted not just proprietary business information, but all portions of the audits that they "believe are factually incorrect or misleading."[53]

According to national experts, conclusions by government auditors about contractor overcharges are not proprietary information that can be withheld under the Freedom of Information Act. For example, J. William Leonard, the Director of the Information Security Oversight Office of the National Archives and Records Administration, testified that he has "never encountered" a case in which the government has withheld as proprietary business information the actual amount a company overcharged the government, as determined by government auditors.[54] Mr. Leonard also said that he "would be hard pressed to readily come up with a rationale" for such a withholding.[55] Harold C. Relyea of the nonpartisan Congressional Research Service agreed, stating: "It's hardly proprietary information."[56]

Similarly, Thomas M. Susman, an attorney and regulatory expert who examined Halliburton's redactions in detail, explained that FOIA does not permit a contractor to redact audit information it simply disagrees with. According to Mr. Susman, in this case Halliburton "proposed redacting anything that could be embarrassing to the company plus anything it disagreed with."[57] He added, "they apparently felt they could get away with this."[58]

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[53] Letter from Michael K. Morrow, Contracts Manager, KBR, to Gordon A. Sumner, Contracting Officer, U.S. Army Corps of Engineers (Sept. 28, 2004).

[54] Subcommittee on National Security, Emerging Threats, and International Relations, *Hearings on Emerging Threats: Overclassification and Pseudo-Classification*, 109th Cong. (Mar. 2, 2005).

[55] *Id.* Indeed, the Pentagon itself previously treated Halliburton's overcharges under this contract as public information. At a December 11, 2003, press conference, DCAA officials publicly announced their preliminary findings of a $61 million overcharge by Halliburton for the gasoline imported from Kuwait. *See* U.S. Department of Defense, *News Briefing* (Dec. 11, 2003).

[56] *Id.* Both Mr. Leonard and Mr. Relyea also agreed that it would be improper for an agency to abdicate the responsibility to make its own assessment on the propriety of such redactions. Mr. Relyea characterized an agency's uncritical acceptance of a company's redactions as "a terrible abrogation of responsibility."

[57] *Now You See It: An Audit of KBR,* New York Times (Mar. 20, 2005).

[58] *Id.*

Since Halliburton's overcharges became public, neither Halliburton nor the Administration has provided a satisfactory explanation for why they concealed these overcharges from U.N.-sanctioned auditors. Halliburton spokesperson Wendy Hall stated that FOIA allows Halliburton to redact "confidential commercial information."[59] Similarly, Army Corps of Engineers spokesperson Carol Sanders stated that the audits contained "confidential commercial information."[60] While both statements are technically accurate, they do not justify efforts to conceal government auditor conclusions that Halliburton overcharged under the contract. They also fail to explain why the Administration withheld multiple audits in their entirety.

Conclusion

For the past year, multiple congressional committees have been investigating the failings of the U.N. Oil for Food Program in minute detail. Since April 7, 2004, there have been 11 congressional hearings on allegations of U.N. malfeasance related to the program. Another hearing is scheduled tomorrow in the Subcommittee. Yet during the same period — despite growing evidence of waste, fraud, and abuse — there have been no congressional hearings into the U.S. administration of the DFI, the successor to the Oil for Food program. Even the January 2005 report of the Special Inspector General for Iraqi Reconstruction, which found that U.S. officials could not properly account for nearly $9 billion in DFI funds, failed to trigger congressional hearings.

This double standard has affected congressional and public understanding of the two programs. Since May 22, 2003, the date the DFI was established, there have been over 2,700 articles in major newspapers that cite the Oil for Food program, compared to fewer than 170 articles that cite the DFI. Congress' reputation among our allies has also suffered from the perception that Congress is eager to draw attention to U.N. faults but reluctant to examine the mistakes and mismanagement of a Republican Administration.

Under your leadership, the Subcommittee has been an exception to the double standard. In addition to subpoenaing DFI records from the Federal Reserve Bank of New York, you and your staff pushed the Pentagon to turn over the full and unredacted DCAA audits discussed above. As a result of your efforts, we now know that Halliburton's overcharges have doubled to over $212 million and that the efforts to conceal these overcharges from the U.N. were more widespread than previously known.

Given these new developments, I renew my request that the Subcommittee hold hearings on the Administration's mismanagement of Iraqi oil proceeds in the DFI and its failure to

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[59] *Halliburton Charged Too Much for Fuel, Say Auditors*, Reuters (Mar. 15, 2005).

[60] *Pentagon Says Halliburton Paid Too Much for Fuel*, Washington Post (Mar. 15, 2005).

comply with U.N. Security Council Resolution 1483. I commend you for the steps you have taken and look forward to working with you on this important matter.

Sincerely,

Henry A. Waxman
Ranking Minority Member