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July 5, 2006

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Rumsfeld:

I am writing about the Army's plans to replace Halliburton's current monopoly LOGCAP contract with a new set of LOGCAP contracts that would foster competition among multiple contractors. I commend the Army for moving to terminate the current contract with Halliburton and for proposing important structural reforms. At the same time, I urge you to reassess the aspects of the new approach that fail to maximize competition and create the potential for serious conflicts of interest.

Background

The third Logistics Civil Augmentation Program contract (LOGCAP III) was awarded to Halliburton subsidiary KBR in 2001. Under this multi-year, cost-plus contract, Halliburton provides logistics support to U.S. troops around the world. As of April 2006, LOGCAP III was worth $16.4 billion.[1] The previous LOGCAP contracts were awarded to KBR in 1992 and Dyncorp in 1997.

I have been critical of the lack of price competition under the LOGCAP III contract. LOGCAP III is an Indefinite Delivery/Indefinite Quantity (IDIQ) contract, which means that the total amount of work and specific projects to be completed were unknown at the time of the bid and award. When an IDIQ contract is put out to bid, there is no real opportunity for price competition because the projects under the contract have yet to be defined. For this reason, federal procurement rules say that IDIQ contracts should be awarded to multiple contractors, thereby enabling the federal agency to solicit competing bids from more than one contractor

[1] Army Field Support Command, *Media Obligation Spreadsheet* (Apr. 20, 2006).

when specific projects are delineated.[2] However, the Army contravened these federal procurement rules and awarded LOGCAP III to a single contractor, Halliburton. As a result, it precluded meaningful price competition and effectively awarded a monopoly to Halliburton.

This approach has been exceptionally expensive for the taxpayer. Former Halliburton employees have testified about exorbitant costs, including $45 cases of soda and brand new $85,000 Halliburton trucks that were abandoned or "torched" if they got a flat tire or experienced minor mechanical problems.[3] The Defense Contract Audit Agency has identified over $1.1 billion in questioned and unsupported costs under the LOGCAP III contract.[4] I raised these and other concerns in a number of reports, letters, and hearings.[5]

It appears that the Army Materiel Command now recognizes that its flawed contracting approach led to serious performance and cost control problems. On June 2, Army Materiel Command's Executive Deputy, Chief Counsel, and LOGCAP Director briefed the staff of the Government Reform Committee on the Army's plans for the fourth iteration of LOGCAP, called "LOGCAP IV."[6]

The New Approach

The LOGCAP IV approach represents a major break from the current LOGCAP contract. According to the Army staff, an execution contract will be awarded to up to three contractors instead of just one. They will then compete for individual task orders to perform the actual logistics work. A separate "planning and support" contract will be awarded to another firm, which will help the Army oversee the execution contractors.

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[2] 48 CFR 16.504(c) ("the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources").

[3] House Committee on Government Reform, *Hearings on Contracting and the Rebuilding of Iraq: Part IV,* 108th Cong. (July 22, 2004).

[4] Minority Staff, House Committee on Government Reform, *Halliburton's Questioned and Unsupported Costs in Iraq Exceed $1.4 Billion* (June 27, 2005).

[5] *See, e.g.*, Minority Staff, House Committee on Government Reform, *Halliburton's Questioned and Unsupported Costs in Iraq Exceed $1.4 Billion* (June 27, 2005); Letter from Rep. Henry A. Waxman to Donald H. Rumsfeld, Secretary of Defense (Aug. 24, 2004); Letter from Rep. Henry A. Waxman to Rep. Tom Davis (June 14, 2004).

[6] Briefing by Kathyrn Szymanski, Executive Deputy to the Commanding General, Robert Parise, Acting Command Counsel, and James Loehrl, LOGCAP Program Director, for Staff of the House Committee on Government Reform (June 2, 2006).

Several features of this new approach are positive. By awarding the execution contract to multiple contractors who will compete for individual projects, the Army will end its reliance on a single monopoly contractor that can inflate its costs. The discipline of price competition will better ensure that the troops receive high-quality services at a reasonable cost.

The new contract will also allow for the termination of Halliburton's problematic LOGCAP III contract by early 2007. According to the Army staff, the Army Materiel Command plans to award the new LOGCAP contracts by the end of November 2006. Over the subsequent few months, the work being done by Halliburton under LOGCAP III will be completed, transitioned to the new LOGCAP IV contractors, or competed as separate sustainment contracts.

Concerns about the New Approach

Despite its promise, the new contracting approach also raises significant concerns. First, restricting the execution contract award to only three contractors limits the amount of price competition for specific task orders. Other Defense Department IDIQ contracts have been awarded to as many as ten contractors who then compete for individual projects.[7] Second, the Army staff explained that in the initial competition for the execution contract, contractors will not be asked to compete on the basis of price. The contractors will be asked to submit a cost proposal for a hypothetical task under the contract, but they will not be bound by the hypothetical submission and will not be required to compete against each other on the basis of the fees they will charge.

This approach squanders an important opportunity to force contractors to compete on the basis of their fees. In effect, the approach defeats one of the primary purposes of holding a competition. It may prove lucrative for the contractors, but it is likely to be expensive for the taxpayers.

I also have serious reservations about the plans to award a fourth contract to a private company to help manage and oversee the execution contracts. The Army staff who briefed the Committee said that the type of company that is likely to be considered seriously for this planning and support contract will be a large consulting firm. This creates the potential for conflicts of interest among the contractors because the winning bidder could have independent business relationships with the winning execution contractors.

The planning and support contractor will have crucial oversight responsibilities. According to the briefing we received, the contractor will assist the Army in establishing the government's requirements, writing "Statements of Work," evaluating proposals of the execution

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[7] *See, e.g.*, U.S. Army Corps of Engineers, *News Release: US Army Corps of Engineers Awards 10 Contracts for Potential Work in U.S. Central Command Area of Operations* (Jan. 13, 2004).

contractors, and reviewing the costs and technical performance of the execution contractors in the field.

Given these responsibilities, a paramount concern should be ensuring that the planning and support contractor is truly independent and has no pre-existing relationships with the execution contractors. But when my staff raised this concern at the briefing, the response was not reassuring.

The Army staff explained that this planning and support contract is "basically the same concept" as the oversight contracts for the reconstruction of Iraq. But as a report I released with Representative Dingell, Senator Dorgan, and others documented, the oversight contracts in Iraq have been plagued by significant conflicts of interest.[8] In numerous instances, the contractors hired to oversee the reconstruction contractors had ongoing contractual relationships with the construction contractors they were hired to oversee. For example, CH2M Hill was hired to oversee the reconstruction activities of Washington Group International at the same time that CH2M Hill and Washington Group International were "integrated partners" on a large Department of Energy contract in the United States.[9] Similarly, Parsons and another company were charged with overseeing the activities of Fluor even though Parsons and Fluor were partners in a $2.6 billion joint venture to develop oil fields in Kazakhstan.

Like the oversight contractors in Iraq, the large consulting firms that will compete for the LOGCAP IV planning and support contract are likely to have significant business relationships with the major construction contractors that will serve as the execution contractors. Relying on artificial internal firewalls, as the Army Materiel Command appears to contemplate, will not protect against these potential conflicts of interest or reassure the taxpayers. True independence between the planning contractor and the execution contractors is necessary.

Conclusion

While I commend the Army for moving away from Halliburton's LOGCAP contract and toward increased price competition, I urge you to rethink the aspects of the new contracting approach that limit price competition and create the potential for conflicts of interest. Halliburton's LOGCAP contract has been plagued by waste, fraud, and mismanagement. We need thorough reform, not partial steps that clean up only some of the procurement abuses that have been documented in Iraq.

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[8] Minority Staff, Committee on Government Reform, *Contractors Overseeing Contractors: Conflicts of Interest Undermine Accountability in Iraq* (May 18, 2004).

[9] Washington Group International, *CH2M Hill, Washington Group International, BWX Technologies Team Wins $314 Million Environmental Closure Contract in Ohio* (Dec. 6, 2002).

I look forward to working with you to ensure that the next set of LOGCAP contracts is truly in the interest of the U.S. taxpayer.

Sincerely,

Henry A. Waxman
Ranking Minority Member