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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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MEMORANDUM

February 7, 2007

To: **Members of the Committee on Oversight and Government Reform**

From: **Majority Staff**

Re: **Additional Information for Hearing on Private Security Contractors**

One novel feature of the war in Iraq has been the heavy reliance on private contractors to provide security services. According to estimates from the Special Inspector General for Iraq Reconstruction, 12.5% of the federal spending on Iraq reconstruction – which would equal $3.8 billion in taxpayer funds – has been expended on security services. Some estimates say that there are close to 50,000 private security forces operating in Iraq.

Today's hearing provides an opportunity for the Committee members to ask three basic questions about the extensive use of private security services: (1) Are private security contractors operating in Iraq doing an adequate job? (2) How much are they costing the federal taxpayer? And (3) is the federal government providing sufficient oversight?

The hearing will focus in particular on the operations of Blackwater USA, one of the largest private security contractors operating in Iraq.

I. GROWING RELIANCE ON PRIVATE SECURITY CONTRACTORS

The Bush Administration has increasingly relied on private security contractors to support and replace traditional military functions in Iraq. Under direct contracts with the government and subcontracts with reconstruction firms, private security contractors perform a wide range of security functions, including: site security for military bases, the Green Zone, and critical infrastructure; cash transport; weapons demolition; surveillance; the guarding of key personnel, contractors, and civilian dignitaries; armed escorts for supply convoys; intelligence

gathering; psychological warfare; covert operations; and the training of Iraqi security forces.[1] The Administration does not know how many private security contractor employees are operating in Iraq. In March 2006, the director of the Private Security Company Association of Iraq estimated that there were 48,000 employees from 181 security firms operating there.[2] That is the equivalent of three U.S. Army divisions. The Department of Defense estimated that at least 60 security contractors were operating in Iraq with as many as 25,000 employees.[3] Major security contractors operating in Iraq include Aegis, Blackwater, Dyncorp, Erinys, and Triple Canopy.

GAO has found that security costs represent a significant portion of the total funds spent under major reconstruction contracts. Eight of the 15 reconstruction contracts examined by GAO in July 2005 had security costs in excess of 15% of the total contract billings. Security costs exceeded 25% under three of these contracts. These rates do not reflect all of the security costs under these contracts because they largely exclude the security costs of subcontractors. Salaries for private security personnel are as high as $33,000 a month, according to GAO.[4]

Similarly, a recent survey of contracts by the Special Inspector General for Iraq Reconstruction reported that 12.5% of federal spending on reconstruction projects was consumed by security costs.[5] Extrapolating this percentage to the more than $30 billion spent on the reconstruction to date produces an estimate that $3.8 billion in taxpayer funds has been expended on private security services. This figure does not include any estimate of the costs of security services associated with military support contracts.

While the Pentagon does not track nonmilitary casualties, it is believed that private security contractors have suffered hundreds of deaths and casualties in Iraq. Various non-military sources have counted at least 312 security contractors killed in Iraq.[6]

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[1] Government Accountability Office, *Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers* (July 2005) (GAO-05-737).

[2] Committee on Government Reform, Subcommittee on National Security, International Relations, and Emerging Threats, *Hearings on Private Security Firms: Standards, Cooperation and Coordination* (June 13, 2006).

[3] Government Accountability Office, *Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers* (July 2005) (GAO-05-737).

[4] *Id.*

[5] Special Inspector General for Iraq Reconstruction, *Fact Sheet on Major U.S. Contractors' Security Costs Related to Iraq Relief and Reconstruction Fund Contracting Activities* (Jan. 30, 2007) (SIGIR-06-044).

[6] See *Private Security Workers Living on Edge in Iraq*, Washington Post (Apr. 23, 2005) (reporting that 240 security contractors had been killed in Iraq as of April 2005); *see also* Iraq Coalition Casualty Count (online at icasualties.org/oif/Civ.aspx) (accessed on Feb. 5, 2007) (documenting 72 additional security contractor deaths since April 2005).

Thus, by many measures, the role of private security contractors in Iraq is unprecedented in its size and scope. According to Peter Singer of the Brookings Institution, "Iraq is not just the biggest US military commitment in generations, it is also the biggest market for private military services — ever."[7] There have been reports of misconduct by private security forces in Iraq. In February 2005, NBC reported that four former private security contractors working for Custer Battles had alleged that other Custer Battles security personnel "terrorized civilians" by shooting into a car to clear a traffic jam and gunning down an unarmed teenager walking by the side of a road.[8]

The conduct of private security contractor personnel has not been subject to a clearly defined and practically effective legal regime. The Coalition Provisional Authority granted foreign contractors immunity from Iraqi law while working within the boundaries of their contracts, a rule which remains in effect today. Although U.S. contractor employees may be prosecuted under American criminal law, the Department of Justice has not pursued any prosecutions to date. The defense bill passed in October 2006 included a provision that subjects all security contractors in Iraq to the Uniform Code of Military Justice, but it has yet to be applied in a particular case.[9]

II. ARE THE PRIVATE SECURITY CONTRACTORS DOING A GOOD JOB?

There has been no comprehensive assessment of the quality of the work done by private security contractors. At the hearing, members will have an opportunity to begin to address this question by examining a disastrous incident in Fallujah involving Blackwater.

On March 31, 2004, four Americans working as private security personnel for Blackwater USA — all of whom were veterans of the U.S. armed forces — were ambushed and killed in Fallujah while on a protection mission. This incident was a turning point in public opinion about the war, as photos of their burned and mutilated bodies were widely displayed in the U.S. media. The killings prompted the First Battle of Fallujah, a major U.S. military offensive into Fallujah that began on April 4, 2004, and resulted in the deaths of 27 U.S. servicemen and approximately 800 insurgents and Iraqi civilians. Military observers have credited the intensity of the U.S. offensive in Fallujah with aggravating the negative Iraqi sentiment towards the coalition occupation and fueling an escalation of the insurgency.[10]

Family members of the four individuals killed in Fallujah are now raising questions about the performance and motivations of Blackwater. They allege that Blackwater sent their family

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[7] Peter W. Singer, *The Enron Pentagon* (Oct. 19, 2003).

[8] *U.S. Contractors in Iraq Allege Abuses*, NBC Nightly News (Feb. 17, 2005).

[9] *Contractors in War Zones Lose Immunity,* Boston Globe (Jan. 7, 2007).

[10] *See, e.g., Changing the Army for Counterinsurgency Operations,* Military Review (Nov. 2005).

members into Fallujah unprepared — without armored vehicles, a rear gunner for each vehicle, or heavy automatic machine guns to defend against attacks — in violation of contractual obligations. They allege that Blackwater even refused to provide the personnel with a map of the area. In their view, it is dangerous to rely on for-profit contractors to provide military services because the private contractors have an economic incentive to cut expenditures on safety equipment to maximize profits.

In preparation for the hearing, the Committee received over 100,000 pages of documents from Blackwater and other sources. Some of the documentary evidence received by the Committee raises questions about whether Blackwater adequately equipped the contractors sent into Fallujah.

III. ARE THE TAXPAYERS BEING OVERCHARGED?

The reliance on private security contractors is expensive. As mentioned above, salaries for private security personnel can be as high as $33,000 a month, which would amount to $396,000 on an annual basis.

A review of the contracts received by the Committee shows that the cost to the government of Blackwater private security personnel can be even higher. In the contracts examined by the Committee, Blackwater was providing security services to ESS Support Services Worldwide (ESS), which was in turn providing dining services and construction for other contractors such as KBR and Fluor Corporation. Although Blackwater paid its security personnel $500 per day, it billed these personnel at between $815 and $1,075 per day. On an annual basis, this amounts to $297,475 to $392,375 per employee. This did not include the costs of food, housing, and insurance, which were covered separately by ESS.

Blackwater was providing security services to ESS in conjunction with a Kuwaiti company, Regency Hotel & Hospital Company. Regency added on a markup of $285 to $425, bringing the cost actually billed to ESS to $1,100 to $1,500 per day. On an annual basis, this is equal to between $401,500 and $547,500 per year per security personnel.

Under this particular contracting arrangement, the actual costs to the taxpayer may have been even higher. Although ESS provided services under fixed price contracts, it factored security costs into the prices it negotiated. In addition, because prime contractors such as KBR had cost-plus contracts, the cost to the government for these services effectively increased by an additional 1% to 3%, not counting overhead or general and administrative costs.

These costs are significantly higher than the direct costs that would be incurred by the military. The security services provided by Blackwater would typically be performed by an Army Sergeant, whose salary, housing, and subsistence pay range from approximately $140 to $190 per day, depending on rank and years of service. These equate to an annual salary ranging

from approximately $51,100 to $69,350 per year.[11] The Blackwater costs are four to ten times higher.

Blackwater has told the Committee that because of contract disputes, Blackwater was not paid by Regency. ESS has confirmed that there was a dispute about the security services provided by Blackwater, causing ESS to issue cure notices. ESS informed Committee staff, however, that it paid Regency for the security services it believed were provided, and ESS billed KBR and Fluor for its full array of services, which included private security services. If this is accurate, it would appear that the taxpayer paid for the security services provided by Blackwater, as marked up by Regency, regardless of whether this money actually was paid by Regency to Blackwater.

Defenders of private security contractors say that using private security contractors saves the government money because it avoids the need to train, equip, and support troops. There is evidence, however, that the reliance on private contractors is actually increasing the government's training costs. According to one expert, private security firms inflate cost to the taxpayer by using "public funds to offer soldiers higher pay, and then charge the government at an even higher rate, all for the services provided by the human capital that the military itself originally helped build."[12]

Another concern is overcharging and double-billing by private security contractors. A January 2005 audit of a Blackwater security contract by the State Department Inspector General found that Blackwater was charging the government separately for "drivers" and "security specialists," who were in fact the same individuals.[13] The audit also revealed that Blackwater was improperly charging profit as part of its overhead costs, which results "not only in a duplication of profit, but also a pyramiding of profit because, in effect, Blackwater is applying profit to profit."[14]

IV. IS THE FEDERAL GOVERNMENT PROVIDING ADEQUATE OVERSIGHT?

The Committee's investigation suggests that there is little federal oversight of the private security contractors. On November 30, 2004, then-Ranking Member Waxman wrote to the U.S. Army Field Support Command requesting basic information about private security services provided under KBR's LOGCAP contract, including "how much the individuals providing the

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[11] U.S. Department of Defense, *Regular Military Compensation Calculator* (online at www.dod.mil/militarypay/pay/calc/index.html) (accessed on Feb. 5, 2007).

[12] Peter Singer, Outsourcing War, *Foreign Affairs* (Mar. 10, 2005).

[13] U.S. Department of State, Office of the Inspector General, *Agreed-Upon Procedures Review of Daily Direct Labor, Aerial Support Equipment and Indirect Expense Rates Proposed by Blackwater Security Consultants, Incorporated* (Jan. 31, 2005) (OIG-AUD/IQO-05-13).

[14] *Id.*

security services were paid and how much KBR and each of the subcontractors involved charged for overhead, profits, and other components."[15]

For over 18 months, the Defense Department refused to answer this inquiry. When a response was finally provided, it did not provide the requested accounting, but instead offered erroneous assertions about the contracting arrangement itself. In a July 14, 2006, letter, the Secretary of the Army represented that the Defense Department was "unaware of any services under the LOGCAP contract that were provided by Blackwater USA."[16] It appears, however, that security services were provided by Blackwater under the contract. According to ESS, the company did utilize Blackwater to provide private security under the LOGCAP contract.

The Secretary of the Army also asserted that "KBR has stated they have no knowledge of any subcontractor utilizing private armed security under the LOGCAP contract."[17] ESS, however, has now provided Committee staff with documents establishing not only that ESS used private security contractors under LOGCAP, but that KBR was made aware of such arrangements.

The more the staff has investigated private security contracts, the more questions and uncertainties arise. To this day, almost three years after the incident in Fallujah, there remains a dispute about the identity of the prime contract under which the four Blackwater personnel were conducting their mission at the time of their deaths. Initially, press reports and Blackwater itself took the position that the mission was conducted under KBR's LOGCAP contract. In November 2006, however, ESS informed Committee staff that the mission was conducted under a contract held by Fluor Corporation. Fluor, however, has taken the position that the mission was not conducted on its behalf. The Defense Department has provided no independent information that would resolve this dispute.

Likewise, there is disagreement about the legality of the use of private security subcontractors on certain contracts. In the July 14 letter, the Secretary of the Army asserted that "[u]nder the LOGCAP contract, the U.S. military provides all armed force protection for KBR unless otherwise directed" and that "the LOGCAP contract states that KBR personnel cannot carry weapons without the explicit approval of the theater commander."[18] KBR and ESS have taken the position that these provisions apply only to KBR, not to its subcontractors. In contrast, Fluor, which had a comparable provision in its contract, views these rules as applying to subcontractors as well.

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[15] Letter from Henry A. Waxman, Ranking Minority Member, House Committee on Government Reform to Brigadier General Jerome Johnson, Commander, U.S. Army Field Support Command (Nov. 30, 2004).

[16] Letter from Secretary of the Army Francis J. Harvey to Rep. Christopher Shays (July 14, 2006).

[17] *Id.*

[18] *Id.*

Last year, the Defense Department seemed to take the position that contractors were bound by this restriction against using private security subcontractors. In the July 14, 2006, letter, the Secretary of the Army stated: "To date, KBR has not pursued any requests under the LOGCAP contract for personnel to carry weapons nor has the theater commander directed or authorized KBR or any LOGCAP subcontractor to carry weapons."[19] This year, however, after receiving information that Blackwater conducted work under KBR's LOGCAP contract, the Defense Department informed Committee staff that it is reassessing the meaning of these provisions.

V. CONCLUSION

The Fallujah incident was highly publicized and had a significant impact on the course of the war in Iraq. It would be reasonable to expect that nearly three years after the incident, the Defense Department would be able to answer basic questions about the existence of private security subcontracts, the contracts and contractors involved, and the costs to the taxpayer. The fact that the Defense Department is unable to answer even these simple questions suggests that federal oversight of private security contracts is unsatisfactory.

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[19] *Id.*