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June 20, 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:

I am writing to request that the Subcommittee issue a subpoena at tomorrow's hearing on the Development Fund for Iraq (DFI). Specifically, I ask that the Subcommittee order the production of all documents relating to the Defense Department's attempts to conceal Halliburton's overcharges in Iraq from the United Nations and Congress. The Subcommittee's repeated requests for this information have been ignored, and the Pentagon is now engaged in a pattern of blatant obstruction.

There have been more than a dozen congressional hearings on allegations of abuse in the Oil for Food program, which was run by the United Nations. Tomorrow's Subcommittee hearing will be the first to examine the DFI, the successor to the Oil for Food program that was controlled by U.S. officials. I commend you for holding this hearing and for your efforts to "follow the money" wherever it leads to ensure accountability.

Unfortunately, the Administration has obstructed inquiries into hundreds of millions of dollars in overcharges that Halliburton billed to the U.S. government and that U.S. officials charged to the DFI. On May 22, 2003, the U.N. Security Council passed Resolution 1483, which required the United States to spend DFI funds in a "transparent" manner for the benefit of the Iraqi people. Although the Defense Department used $1.6 billion in DFI funds to pay Halliburton under its oil reconstruction contract with the U.S. Army, the Administration has refused to provide the United Nations with copies of multiple Pentagon audits identifying overcharges under this contract. After months of repeated requests from the United Nations, the Pentagon did agree to deliver some of these audits, but they were so heavily redacted that the U.N. official in charge of monitoring the DFI concluded that "it was impossible to determine the extent of alleged overcharges."

The Administration also tried to obstruct Congress' efforts to investigate Halliburton's overcharges. After learning of the redactions to the Pentagon audits submitted to the United Nations, you and I made a joint request on October 5, 2004, for unredacted copies of these reports. Pentagon officials claimed for months that our request was being processed. When I obtained an unredacted version of one of the audits that revealed over $108 million in Halliburton overcharges, Pentagon officials disingenuously asserted we had never requested the unredacted audits. We finally received the complete audits five months after our initial request, and only after you had sent a second written request and your staff had intervened forcefully.

We now know that these audits, as updated by the Defense Contract Audit Agency, show more than $218 million in total overcharges by Halliburton, including more than $177 million in overcharges that were paid by the DFI. Yet every reference to every overcharge in every audit submitted to the United Nations was redacted. In total, references to overcharges and other questioned costs were blacked out more than 460 times.

In an effort to understand which Defense Department officials were responsible for approving these redactions and why they did so, we wrote to Secretary Rumsfeld on April 14, 2005, jointly requesting legal memoranda, correspondence, e-mails, and other documents relating to the redaction process. After getting no response, you sent a second letter, and our staffs followed-up repeatedly via e-mail, telephone, and in person. Yet more than two months later, the Department still has not provided a single document in response to these requests.

We did, however, receive a briefing last week that raised serious questions about the Department's conduct and the legality of its actions. At the briefing with Subcommittee staff, Pentagon officials confirmed that Halliburton requested extensive redactions in the audits and that Pentagon officials accepted all of Halliburton's suggested redactions without modification. Moreover, we were told that Halliburton's redactions were discussed extensively at "multiple meetings" within the Defense Department. Participants included officials from the Office of General Counsel, the Office of Deputy Secretary of Defense Wolfowitz, the Comptroller's Office, the Defense Support and Reconstruction Office, and the Army Corps of Engineers.

The ostensible rationale for accepting these redactions was that Defense Department officials were incapable of "second-guessing" Halliburton's assertion of what information within the audits was proprietary. Some officials at the Corps of Engineers urged the Department to conduct a "sanity check" of Halliburton's redactions. But the Department's lawyers determined that any disclosure of the overcharges would reflect unfavorably on Halliburton, impairing its ability to obtain future contracts.

We were also informed that Department officials were threatened if they considered disclosing any of the overcharges. According to those who attended the meetings, the General Counsel's office warned that any executive branch official who disclosed any part of the audits

— including the overcharges — without the express permission of Halliburton would face criminal penalties under the Trade Secrets Act.

The Defense Department's position appears indefensible. Multiple independent experts have told the Subcommittee that contractor overcharges are not "proprietary information" that can be legitimately withheld under any legal rationale. In effect, Defense Department officials acted as if they were working for Halliburton, not the federal government. They placed a higher priority on preserving Halliburton's future business prospects than on complying with the requirements of the U.N. Security Council resolution and protecting the interests of the taxpayer.

The actions of the Defense Department were seriously misguided and should be thoroughly investigated by the Subcommittee. In the face of the Department's continued obstruction, the Subcommittee's only alternative is to subpoena the records being withheld by the Department.

Concealing Halliburton's Overcharges from the United Nations

Under its no-bid Restore Iraqi Oil (RIO) contract with the U.S. Army Corps of Engineers, Halliburton subsidiary KBR charged approximately $2.5 billion for the importation of fuel, the preparation of war damage assessments, and the repair of oil facilities in Iraq.[1] All of the work under the contract was performed on a "cost-plus" basis, which meant that Halliburton received full reimbursement for its costs and additional fees of 2% to 7%.[2]

The Defense Department paid Halliburton with a mix of Iraqi and U.S. funds. Of the $2.5 billion Halliburton received, over $1.6 billion came from Iraqi oil proceeds deposited into the U.S.-controlled Development Fund for Iraq and $875 million came from U.S. Treasury.[3] The DFI expenditures were governed by U.N. Security Council Resolution 1483, which 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."[4]

To ensure that the United States administered the DFI in compliance with this requirement, the Security Council created the International Advisory and Monitoring Board (IAMB) to oversee U.S. stewardship of the DFI. The IAMB includes members representing the

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[1] 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).

[2] *Id.*

[3] *Id.*

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

United Nations, the International Monetary Fund, the World Bank, and the Arab Fund for Social and Economic Development.[5] The IAMB was envisioned as the primary vehicle for guaranteeing the transparency of the DFI and for ensuring that DFI funds were 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."[6] When the United States assumed responsibility for these funds, it explicitly agreed to these terms.[7]

Beginning on March 17, 2004, IAMB officials repeatedly sought information from the United States about Halliburton's no-bid RIO contract.[8] 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."[9] The IAMB Chairman also specifically requested copies of "a number of audits relating to these contracts" conducted by the U.S. government.[10]

Over the next several months, the Administration failed to respond to numerous additional requests for these audits.[11] In a September 8, 2004, statement, the international

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[5] *Id.*

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

[7] 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").

[8] 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).

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

[10] *Id.*

[11] *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

auditors explained that they still had "not received reports on audits undertaken by various U.S. agencies on sole-sourced contracts, despite repeated requests."[12] According to the statement, "The IAMB expressed its strong concern with these delays that hamper fulfillment of its mandate."[13]

The Administration finally provided the IAMB with "redacted copies of the DCAA audit reports on sole sourced contracts, at its meeting in October 2004."[14] However, 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.[15] 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."[16]

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contracts, including those by the Defense Contract Audit Agency" and noting "difficulties" with 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").

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

[13] *Id.*

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

[15] 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).

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

In addition to the audits described above, the Subcommittee has learned that the Defense Department is currently withholding in their entirety several additional, updated DCAA audits of Halliburton's overcharges. In February 2005, DCAA completed updated audits for five task orders under Halliburton's contract, all of which were funded through the DFI.[17] Yet the Defense Department has provided none of these updated audits to the United Nations, 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 the transparency requirement set forth in U.N. Security Council Resolution 1483.

Concealing Halliburton's Overcharges from Congress

After concealing Halliburton's overcharges from the United Nations, the Pentagon unsuccessfully attempted to conceal them from Congress. On October 5, 2004, you and I wrote jointly to Secretary Rumsfeld requesting unredacted copies of the DCAA audits submitted to the United Nations.[18] Although Defense Department officials provided us with redacted copies, they repeatedly claimed that our request for unredacted copies was being processed. These delaying tactics persisted for months as our staff made 12 separate follow-up 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]

During this period, I obtained an unredacted version of one of the DCAA audits, issued on October 8, 2004, showing that Pentagon auditors found overcharges of $108.4 million under

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[17] 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).

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

[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).

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. After I disclosed this information and requested the remaining audits, 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."[21] As a result, you sent a second letter to Defense Secretary Rumsfeld on March 15, 2005, requesting the audits "once again."[22] As you correctly noted in that letter, the Committee had been "repeatedly assured the unredacted documents were being prepared for transmittal."[23]

Finally, after a delay of five months and vigorous intervention by your staff, the Defense Department provided the unredacted copies of the DCAA audits that were provided to the United Nations. The Defense Department also turned over more recent, updated audits, as well as audits relating to task orders funded with U.S. appropriated funds.[24] The most recent versions of these audits identify questioned and unsupported costs of $279,126,961.[25] Of this amount, auditors

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[20] 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).

[21] Email from Staff, Office of the Secretary of Defense, Legislative Affairs, to Majority Staff, House Committee on Government Reform (Mar. 14, 2005). *See also* Letter from Reps. Henry A. Waxman and John D. Dingell to President George W. Bush (Mar. 14, 2005).

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

[23] *Id.*

[24] In addition to audits for Task Orders 5 through 10, the Subcommittee has now obtained audits for Task Orders 1 through 4. *See* Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil, Task Order No. 1* (Audit Report No. 3311-2004K17900011) (Mar. 19, 2004); Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil, Task Order No. 2* (Audit Report No. 3311-2004K17900009) (Apr. 9, 2004); Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil, Task Order No. 3* (Audit Report No. 3311-2004K17900056) (Oct. 2, 2004); Defense Contract Audit Agency, *Report on Audit of the Additional Funding Proposal for RIO I Task Order No. 04* (Audit Report No. 3311-2004K17900086) (Sept. 3, 2004). Last week, the Subcommittee learned that auditors issued another updated audit for Task Order 5 on April 16, 2005. Although the Subcommittee has not yet received this audit, the auditors reported that they have identified $84,446,016 in questioned costs.

[25] Government auditors at the Defense Contract Audit Agency (DCAA) draw a distinction between "questioned costs" and "unsupported costs." Questioned costs are billings that the auditors have concluded are excessive and should not be paid by the government. Unsupported costs are billings that the contractor has submitted for payment, but have not been

identified $218,793,196 in "questioned costs," which is the term DCAA uses for overcharges. They indicate that most of Halliburton's overcharges — $171 million — involved its fuel importation work.[26] The auditors also identified $60,333,765 as unsupported costs. Table A below sets forth Halliburton's questioned costs (overcharges) and unsupported costs identified by Defense Department auditors under the Iraqi oil contract.

TABLE A:
QUESTIONED AND UNSUPPORTED COSTS UNDER HALLIBURTON'S RESTORE IRAQI OIL (RIO) CONTRACT

TASK ORDER	QUESTIONED COSTS (OVERCHARGES)	UNSUPPORTED COSTS	COMBINED
1	904,146	0	904,146
2	199,804	0	199,804
3	12,239,343	41,456,016	53,695,359
4	12,483,195	1,216,216	13,699,411
5	84,446,016	0	84,446,016
6	16,552,846	17,661,533	34,214,379
7	35,681,321	0	35,681,321
8	22,780,683	0	22,780,683
9	19,902,697	0	19,902,697
10	13,603,145	0	13,603,145
TOTALS	**$218,793,196**	**$60,333,765**	**$279,126,961**

Of the $279,126,961 in total questioned and unsupported costs identified by the Defense Department auditors under Halliburton's contract, $195,174,068 were funded through the DFI. These included $177,512,535 in questioned costs, and $17,661,533 in unsupported costs.[27]

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able to document adequately. Questioned costs are equivalent to overcharges; unsupported costs require further review and documentation before they are classified as legitimate or questioned.

[26] Defense Contract Audit Agency, *Briefing Slides: DCAA Contract Audit Support for Iraq Reconstruction* (Apr. 15, 2005) (reporting that Halliburton "failed to support the reasonableness of prices paid for fuel purchased from a Kuwaiti supplier ($139 million)" and "inappropriately adjusted fixed prices for fuel purchased from a Turkish supplier ($32 million)").

[27] 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) (calculated using amounts noted under each task order as funded through the DFI, seized Iraqi assets, and U.S. appropriated funds).

Table B below sets forth the amounts of Halliburton's overcharges billed to both U.S. taxpayers and the Iraqi people under the DFI.

TABLE B:
HALLIBURTON'S OVERCHARGES BILLED TO THE DEVELOPMENT FUND FOR IRAQ (DFI)

TASK ORDER	QUESTIONED COSTS (OVERCHARGES)	BILLED TO U.S. TAXPAYERS	BILLED TO THE DFI
1	904,146	904,146	
2	199,804	199,804	
3	12,239,343	12,239,343	
4	12,483,195	12,483,195	
5	*84,446,016	6,889,668	68,991,843
6	16,552,846		16,552,846
7	35,681,321		35,681,321
8	22,780,683		22,780,683
9	19,902,697		19,902,697
10	13,603,145		13,603,145
TOTALS	**$218,793,196**	**$32,716,156**	**$177,512,535**

* Overcharges under Task Order 5 are greater than the sum of overcharges to U.S. and DFI funds because the Defense Department also used $8,564,504 in Iraqi seized assets to pay Halliburton's overcharges under this task order.

Many of the audits reported as their top finding under the executive summaries that Halliburton's proposals were "not acceptable for negotiation of a fair and reasonable price."[28] 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."[29]

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[28] *See, e.g., Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 8, supra* note 15, at 2.

[29] *See, e.g., Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 9, supra* note 15, at 4, 2, and 1.

The Redactions

In addition to obtaining the unredacted audits, the Subcommittee also discovered that the redactions were made at Halliburton's request. According to a letter Halliburton sent to the U.S. Army Corps of Engineers on September 28, 2004, Halliburton officials requested the redaction of not just proprietary business information, but all portions of the audits that they "believe are factually incorrect or misleading."[30]

Halliburton's extensive involvement with the redactions was confirmed at a briefing last week with Subcommittee staff. At the briefing, Defense Department officials confirmed that all of the redactions in the audits had been sought by Halliburton. They also stated that every redaction requested by Halliburton had been accepted without modification.[31]

We learned at the briefing that Halliburton's redactions were discussed extensively at "multiple meetings" within the Defense Department. Participating were numerous officials from the Office of General Counsel, staff from the Office of Deputy Secretary of Defense Paul Wolfowitz, Deputy Comptroller and Chief Financial Officer David Norquist, Deputy Director Joseph Benkert of the Defense Reconstruction Support Office, and several officials from the U.S. Army Corps of Engineers.[32]

We were told at the briefing that officials from the General Counsel's office instructed other Defense Department offices that Halliburton — and not the Defense Department — had ultimate authority to determine what information could be considered proprietary business information. In addition, the General Counsel's office advised that regardless of whether information was proprietary, Halliburton could withhold every word of these government audits, and it was merely due to Halliburton's "good graces" that anything was released to the United Nations at all.[33]

The stated rationale for this position was that Defense Department officials were incapable of "second-guessing" Halliburton's assertion of what information within the audits was proprietary. At the briefing, we were told that officials at the Corps of Engineers recommended that the Deparment conduct a "sanity check" of Halliburton's redactions. But this

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

[31] Meeting between Colonel Emmett DuBose, Deputy Commander of the U.S. Army Corps of Engineers, J. Joseph Tyler, Chief of the Program Management Division of the Army Corps of Engineers, and Majority and Minority Staff, Subcommittee on National Security, Emerging Threats and International Relations (June 15, 2005).

[32] *Id.*

[33] *Id.*

advice was rejected. Instead, the Department's attorneys determined that any disclosure of the overcharges would reflect unfavorably on Halliburton, thereby causing the company competitive harm.[34]

We were also informed at the briefing that the General Counsel's office warned that any Defense Department official who disclosed any part of the audits without the express permission of Halliburton would face criminal penalties under the Trade Secrets Act.[35]

As a legal matter, the position of the Department is highly dubious. According to national experts who testified before the Subcommittee, conclusions by government auditors about contractor overcharges are not proprietary information that can be withheld from the public. 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.[36] Mr. Leonard also said that he "would be hard pressed to readily come up with a rationale" for such a withholding.[37] Harold C. Relyea of the nonpartisan Congressional Research Service agreed, stating: "It's hardly proprietary information."[38]

Similarly, Thomas M. Susman, an attorney and regulatory expert who examined Halliburton's redactions in detail, explained that a contractor may not redact audit information with which it simply disagrees. According to Mr. Susman, Halliburton "proposed redacting

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[34] *Id.*

[35] *Id.*

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

[37] *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).

[38] *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."

anything that could be embarrassing to the company plus anything it disagreed with."[39] He added, "they apparently felt they could get away with this."[40]

The Ongoing Cover-Up

It now appears that Administration officials are actively obstructing Congress' investigation into the withholding of Halliburton's overcharges. After discovering the size of Halliburton's overcharges concealed from the United Nations, the Subcommittee began an investigation to determine who at the Defense Department was involved in this effort. On April 14, 2005, we sent a joint letter to Secretary Rumsfeld asking for the identity of officials who played a role in this process.[41] We also requested correspondence between the Defense Department and Halliburton, as well as internal Pentagon documents that would shed light on how these decisions were made. We asked for these documents by May 27, 2005, so they could be used at the Subcommittee hearing tomorrow.

After receiving no response, you sent a second letter on May 23, 2005.[42] This letter repeated the earlier request and noted again the due date of May 27, 2005, for the production of documents. Both of our staffs also made repeated efforts to obtain these documents, without success. My staff counted at least nine specific e-mail requests, although there were many more requests by telephone and in person.[43] Again, we received no information in response from the Department.

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

[40] *Id.*

[41] Letter from Reps. Christopher Shays and Henry A. Waxman, Ranking Minority Member, Committee on Government Reform, to Defense Secretary Donald H. Rumsfeld (Apr. 14, 2005).

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

[43] *See, e.g.,* E-mail from Minority Staff, Committee on Government Reform, to Office of the Secretary of Defense, Legislative Affairs (May 18, 2005); E-mail from Majority Staff, Committee on Government Reform, to U.S. Army, Legislative Affairs (May 18, 2005); E-mail from Minority Staff, Committee on Government Reform, to U.S. Army, Legislative Affairs (May 19, 2005); E-mail from Minority Staff, Committee on Government Reform, to U.S. Army, Legislative Affairs (May 20, 2005); E-mail from Minority Staff, Committee on Government Reform, to Office of the Secretary of Defense, Legislative Affairs (May 27, 2005); E-mail from Majority Staff, Committee on Government Reform, to Office of the Secretary of Defense, Legislative Affairs (June 1, 2005); E-mail from Majority Staff, Committee on Government Reform, to Office of the Secretary of Defense, Legislative Affairs (June 9, 2005); E-mail from Minority Staff, Committee on Government Reform, to U.S. Army, Legislative Affairs (June 9,

By anyone's definition, the Subcommittee has been patient with the Department. Yet today, more than two months after our written request, there is still no indication that the Department is taking significant action to produce the information we requested. With this background alone, the Department's record of dissembling and delay is a sufficient basis for a subpoena.

Conclusion

The position of the Defense Department in this matter is hard to justify. Officials appear to have inverted the proper roles of government and contractor, giving Halliburton unprecedented authority to withhold key parts of Defense Department audits. Moreover, the Department appears not to comprehend — or not to care — that a U.N. Security Council resolution requires the United States to disclose Halliburton's overcharges to the United Nations.

I understand that your policy as Chairman of the Subcommittee has always been to try to obtain information from the Administration through letter requests. Indeed, when considering a similar motion to subpoena the Defense Department at our October 5, 2004, hearing, you stated that "my inclination is always to write a letter first."[44] In this case, however, we have sent multiple letters, our staffs have made more than a dozen follow-up requests, and the Department is engaged in an established pattern of obstruction.

For these reasons, the Subcommittee should issue a subpoena tomorrow compelling the production of all documents relating to the Defense Department's attempts to conceal Halliburton's overcharges from the United Nations and Congress.

Sincerely,

Henry A. Waxman
Ranking Minority Member

2005); E-mail from Minority Staff, Committee on Government Reform, to Office of the Secretary of Defense, Legislative Affairs (June 9, 2005).

[44] Subcommittee on National Security, Emerging Threats and International Relations, *Hearings on "The U.N. Oil-for-Food Program: Cash Cow Meets Paper Tiger"* (Oct. 5, 2005).