



June 18, 2009

BYRON L. DORGAN  
CHAIRMAN

**Via Facsimile:** (309) 782-4236

Major General Robert M. Radin  
Commanding General  
U.S. Army Sustainment Command  
1 Rock Island Arsenal  
Rock Island, IL 61299-6500

Dear General Radin:

As you know, the Department of Defense (DoD) has already determined that much of KBR's electrical work in Iraq is defective and will require major re-work to ensure that installations comply with applicable code and are safe for our troops.

I am writing to request information related to the manner in which Kellogg, Brown and Root Services (KBR) was compensated for this electrical work, which was performed under the LOGCAP III contract, particularly in instances where KBR failed on one or more occasions to do the work properly.

Please provide me with answers to the following questions regarding this re-work:

- 1) Was KBR paid for labor and material costs in instances where KBR failed on one or more occasions to fix an electrical problem in Iraq? Were such costs included in the calculation of KBR's base fees and award fees?
- 2) More specifically, has KBR been paid for costs associated with the multiple failed attempts in 2007 and 2008 to fix the electrical problems reported at the shower facility in the Radwanayah Palace Complex where Staff Sergeant Ryan Maseth died? Were these costs included in the calculation of KBR's base fees and award fees?
- 3) Upon completion of the contract, will the Defense Contract Audit Agency (DCAA) audit the costs associated with all re-work performed by KBR and issue a determination as to whether these costs were reasonably incurred? If DCAA determines that costs were not reasonably incurred, will the contracting office recover those costs?

Also, I have reviewed Amendment/Modification 03 to LOGCAP III Task Order 159 dated October 21, 2008. Provisions in this contract modification raise serious questions concerning DoD's commitment to efficient performance under this contract:

- 1) On page two of this modification under paragraph six, where the capture of costs for electrical work is discussed, a distinction is made between re-work and O&M work. In signing the contract modification and agreeing that re-work could be considered O&M upon acceptance by the government, did DoD agree to allow KBR to seek base fees and award fees for work that had been done incorrectly the first time? What is the Army's reasoning for capturing costs in the manner provided in the contract modification?
- 2) What was the benefit to the government of agreeing to the modification provisions that provide that "beneficial use or occupancy by the Army equals acceptance" of KBR's work, and that "questions cannot be raised at a later date" with respect to such work? If the Army has waived the ability to find latent defects, issue Corrective Action Requests, and require re-work after acceptance, why has this been done?
- 3) To date, what is the dollar amount and percentage of work completed that has been captured as re-work and as O&M under the modification?
- 4) Has DoD rendered legal opinions or other interpretations of this modification? What were the conclusions of these opinions or interpretations?
- 5) Who wrote the contract modification on behalf of the government? Who in the chain of command approved the modification?

I appreciate your assistance in answering these questions. Please provide me with your response as soon as possible, but no later than June 26, 2009. If you have any questions or comments, please contact me or Leslie Gross-Davis at the Democratic Policy Committee at (202) 224-3571. I look forward to your prompt attention to this important matter.

Sincerely,



Senator Byron L. Dorgan  
Chairman, Democratic Policy Committee

cc: Secretary Robert M. Gates  
Secretary of Defense

Secretary William J. Lynn  
Deputy Secretary of Defense

Under Secretary Ashton B. Carter  
Under Secretary of Defense for  
Acquisition, Technology & Logistics