Senate Democratic Policy Committee Hearing

"An Oversight Hearing on Waste, Fraud, and Abuse in U.S. Government Contracting in Iraq"

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My name is Bunnatine H. Greenhouse. I have agreed to voluntarily appear at this hearing in my personal capacity because I have exhausted all internal avenues to correct contracting abuse I observed while serving this great nation as the United States Army Corps of Engineers ("USACE") senior procurement executive. In order to remain true to my oath of office, I must disclose to appropriate members of Congress serious and ongoing contract abuse I cannot address internally. However, coming forward is not easy. On June 24, 2005, I met with the acting General Counsel of the USACE. During the course of this meeting it was conveyed to me that my voluntary appearance would not be in my best interest. I was also specifically advised to clearly state that I do not appear as a representative of the Department of the Army or the United States Corps of Engineers.

I have been involved with government contracting for over twenty years. On June 9, 1997 I was sworn in as the Principal Assistant Responsible for Contracting ("PARC") for the USACE. Back then, the commander of the Corps asked me to do what I could to end what could be called casual and clubby contracting practices. To curb these practices I required Commanders to strictly follow the Federal Acquisition Regulations and began to institutionalize the contracting practices the Corps had to follow. However, as the command structure at the Corps changed, there was ever increasing pressure to return to the old ways. My determination to ensure that the Corps strictly adhere to contracting regulations was no longer viewed as an asset and I began to experience an increasingly hostile environment. The hostility peaked as the USACE was preparing contracts related to the Iraq War. At this juncture, the interference was primarily focused on contracting activity related to a single contractor, Halliburton subsidiary Kellogg Brown and Root ("KBR"). The abuse I observed called into question the independence of the USACE contracting process. I can unequivocally state that the abuse related to contracts awarded to KBR represents the most blatant and improper contract abuse I have witnessed during the course of my professional career.

The independence of the USACE contracting process was unquestionably compromised with respect to the issuance of the Restore Iraqi Oil contract, known as RIO. I observed, first hand, that essentially every aspect of the RIO contract remained under the control of the Office of the Secretary of Defense ("OSD"). This troubled me and was wrong. However, once the OSD delegated responsibility for the RIO contract to

the Department of the Army, control over the contracting process by the OSD should have ceased. However, the OSD remained in control over the contracting process. In reality, the OSD ultimately controlled the award of the RIO contract to KBR and controlled the terms of the contract that was to be awarded even over my objection to specific terms that were ultimately included in the contract.

As the ramp-up to the Iraqi War escalated I was increasingly excluded from contracting activity related to the war effort. However, given my position, it was simply impossible to completely exclude me from the process. When I did gain access to some of the high level planning meetings related to the implementation of the RIO contract I sensed that the entire contracting process had gone haywire. I immediately questioned whether the Corps had the legal authority to function as the Army's delegated contracting authority. The Corps had absolutely no competencies related to oil production. Restoration of oil production was simply outside of the scope of our congressionally mandated mission. How then, I asked, could executive agency authority for the RIO contract be delegated to the USACE? I openly raised this concern with high level officials of the Department of Defense, the Department of the Army and the U.S. Army Corps of Engineers. I specifically explained that the scope of the RIO contract was outside our mission competencies such that congressional authority had to be obtained before the Corps could properly be delegated contracting authority over the RIO contract. Exactly why USACE was selected remains a mystery to me. I note that no aspect of the contracting work related to restoring the oil fields following the 1991 Persian Gulf War was undertaken by the USACE, and there was no reason why USACE should take over that function for the prosecution of the Iraq War.

I further raised a concern over which contract authorized payment for pre-positioning work KBR was doing in anticipation of being awarded the RIO contract. I was generally familiar with the scope of the LOGCAP contract and was under the impression that the LOGCAP contract was being used to fund the initial preposition work being done by KBR before the Iraq War commenced. I specifically questioned whether using LOGCAP funding was legal and insisted that a new contract be prepared. My concern over this issue ended when I was apparently provided misinformation that a new contract had been issued. This is the first time I can recall being overtly misled about something as fundamental as the existence of an underlying contract authorizing work to be done.

I further raised a concern over the basis used to justify the selection of KBR as the sole source contractor for the RIO contract. I learned that a specific basis to be used for the selection of the contractor was a requirement that the contractor have knowledge of the contingency plan KBR prepared for the restoration of Iraqi oil. The inclusion of this requirement meant that the RIO contract would have to be awarded to KBR because no other contractor participated in the drafting of the contingency plan and no other contractor had knowledge of the contingency plan itself after it had been prepared by KBR. What was particularly troubling about this arrangement was that contractors who are normally selected to prepare cost estimates and courses of action, such as the work KBR did when it prepared the contingency plan, are routinely excluded from being able

to participate in the follow-on contract. The reasons for prohibiting the contractor responsible for preparing costs estimates and course of action from obtaining the follow-on contract is obvious. The fact that it was a no-bid, sole source contract meant that the government was placing KBR in the position of being able to define what the reasonable costs would be to execute the RIO contract and then charging the government what it defined as being reasonable. Given the enormity of the scope of work contemplated under the RIO contract, the exclusion of the contractor responsible for pricing out the scope of work to be done under the RIO contract should have been an imperative. Instead, it formed the basis of awarding the RIO contract to KBR.

Ultimately, I was most concerned over the continuing insistence that the RIO contract be awarded to KBR without competitive bidding for an unreasonable period of time -- two years plus the option to extend the contract an additional three years. I raised this concern with officials representing the Department of Defense, the Department of the Army and the Corps of Engineers. However, when the final Justification and Approval of the RIO contract was forwarded to me for signature -- after the draft had been approved by representatives of the office of the Secretary of Defense -- the five year, no-compete clause remained in place. I could not sign the document in good faith knowing that this extended period was unreasonable. However, we were about to prosecute a war and the only option that remained opened to me was to raise an objection to this requirement. Therefore, next to my signature I hand-wrote the following comment:

> I caution that extending this sole source effort beyond a one year period could convey an invalid perception that there is not strong intent for a limited competition.

I hand-wrote this comment directly onto the original document because experience had taught me that a separate memo outlining my concerns could inexplicably be lost. I wrote my comment on the original J&A to guarantee that my concern was not overlooked. Instead, it was just ignored.

The RIO contract was subjected to public scrutiny when, on December 11, 2003, the Defense Contract Audit Agency (DCAA) issued a draft report concluding that KBR over-charged for the purchase of fuel by $61,000,000. However, the firestorm over this issue was significantly dampened a week later when the Commander of the USACE, Lt. General Flowers, took the unusual step of issuing a waiver absolving KBR of its need, under the RIO contract, to provide "cost and pricing data." The Corps simply asserted that the price charged for the fuel was "fair and reasonable," thereby relieving KBR of the contract requirement that cost and pricing data be provided.

However, the manner in which the waiver request was prepared and finalized demonstrates that the USACE Command knowingly violated the AFARS by intentionally failing to obtain my approval, as the PARC. The evidence suggests that the reasons why I was intentionally kept from seeing the waiver request were politically motivated and driven by the DCAA's conclusion that KBR had overcharged the government for the fuel

by $61,000,000, rather than whether the granting of the waiver was in the interest of the government.

Significantly, it appears that a concerted effort was undertaken to ensure that I was kept in the dark about the waiver request. I have every reason to believe that the USACE knew I would object to the granting of the waiver if it had been presented to me for signature. So, I was specifically kept in the dark and did not learn of the existence of the waiver until I read about it in the press. Having reviewed the documentation used to justify the waiver, I can unequivocally state that I would not have approved it because the documentation relied upon to justify the fuel charges as "fair and reasonable" was grossly insufficient.

Eventually, a copy of the original J&A for the RIO contract was released in response to a Freedom of Information Act Request which prompted Time Magazine to attempt to find out why I felt it necessary to document my concern. Time Magazine contacted the USACE seeking permission for me to be interviewed. I later learned that this caused great consternation. According to sworn testimony given on October 15, 2004 by the Deputy Commander of the USACE, Major General Robert Griffin, the Department of the Army was figuring out how it was going to publicly respond and whether the Army would officially allow me to speak to a Time magazine reporter. According to MG Griffin, the problem was that I did not "know the Army's story" so the Army had to figure out who was going to respond. The difficult position the Army found itself in, according to MG Griffin, "was because she wrote this informal note at the bottom of this document, which actually makes my case, which is, you shouldn't write on official documents because they get taken out of context, somebody reads them and there you go." However, my comment was far from an informal note, and it was not being taken out of context. Rather, my concern had found its way to the light of day.

As public pressure mounted, my involvement and past actions related to the RIO contract became a thorn in the side of the USACE. As a result stating my concern in writing on the original RIO J&A and as a result of expressing other significant concerns over contracting matters related to KBR, I was eventually summoned to a meeting on October 6, 2004 at which time I was issued a memorandum notifying me that I was to be removed from the Senior Executive Service and from my position as PARC. At that point I knew that my ability to resolve the issues within the USACE had terminated. I had no other alterative at that juncture but to file a formal request for investigation with the then-Acting Secretary of the Army and to appropriate members of Congress.

In closing, I would like to thank my attorney, Michael Kohn, and the National Whistleblower Center, for the support and unbelievably hard work they have put forth. Without their effort I could not have survived the political firestorm that burns around me.