

May 23, 2012

The Honorable Leon Panetta  
Secretary of Defense  
US Department of Defense  
1400 Defense Pentagon  
Washington, DC 20301-1400

Dear Secretary Panetta,

I am increasingly concerned that your department is allowing one of your contractors, Kellogg Brown and Root (KBR), to waste taxpayer money in an effort to deny responsibility for exposing American soldiers to toxic chemicals in Iraq.

As you are aware, in 2003, members of the Oregon National Guard were assigned to provide security for contractors from KBR in Iraq at the Qarmat Ali water treatment facility. These soldiers and others were exposed to dangerous levels of chemicals including sodium dichromate, which contains hexavalent chromium, one of the most carcinogenic chemicals on Earth. Currently, a group of exposed soldiers is involved in a lawsuit with KBR based on evidence indicating KBR managers were aware of the presence of the dangerous chemicals, but failed to warn the soldiers working in and around the plant. I'm afraid a lack of oversight by the military is providing KBR and their legal team a financial incentive to avoid a resolution on this issue for as long as possible.

A recently declassified indemnification provision in the contract between KBR and the U.S. military for work in Iraq passed all financial liability for misconduct from KBR to the U.S. taxpayer, even in cases of willful misconduct by KBR. These provisions also provided for unlimited reimbursement of legal costs incurred by KBR. Essentially, KBR was handed a blank check with the Pentagon's signature, and it seems clear to me that they intend to run up the bill as much as possible before cashing that check. I have received documentation of legal billing by KBR's legal team. Senior attorneys are billing at \$750 per hour, and junior associates are billing at \$300-\$400 per hour. KBR has also billed for "expert" testimony in excess of \$500,000, and KBR attorneys and consultants are flying first-class to hearings and depositions, which have thus far included numerous international trips. KBR experts have even admitted to billing for time when they are asleep. If KBR alone were paying for this extravagance, they would be entitled to do so. However, when the US taxpayer is on the hook I must object.

While KBR deserves a fair legal process, this spending has gone beyond fair. I strongly feel we must also consider our responsibility to the US taxpayer, who will ultimately foot the bill.

DoD's contract with KBR allows the Pentagon to oversee and even take control of the litigation process if necessary. The contract specifically requires KBR to "comply with the government's directions," and gives the government the ability to "direct" and "control" KBR's defense and settle the case if necessary.

What has DoD done to ensure that KBR is not taking advantage of taxpayers? Has DoD done a detailed audit of KBR's legal expenses so far? Has anyone at DoD checked to see if the legal expenses are excessive? Has any kind of cost-benefit been done to determine if it would be cheaper to direct KBR to settle the lawsuit?

I am also concerned by the apparent lack of effort on the part of KBR to settle the soldier's claims through the insurance policies KBR purchased with taxpayer funds, which were specifically intended to provide for personal injury or other liability claims resulting from KBR's work for the government. To me, this reinforces the idea that KBR wants to prolong this process as much as possible, which I find completely unacceptable considering the exposed soldiers' current health problems. As I'm sure you're aware, two of these soldiers have already died due to cancer. In addition to the questions on oversight and audit, I'd like to know if DoD has examined whether the insurance policy might provide a more timely resolution.

The Department of Defense needs to make sure it is doing the right thing for our servicemembers and for our citizens, and ensure we're not simply handing more money to KBR because of a secret contract written in haste almost 10 years ago.

Thank you for your swift attention to these important matters.

Sincerely,



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Ron Wyden  
United States Senator