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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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October 16, 2008

The Honorable Robert M. Gates
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Mr. Secretary:

Last week, officials from the Defense Energy Support Center briefed Committee staff about allegations that the International Oil Trading Company (IOTC), which is owned by Harry Sargeant, has been overcharging the U.S. government under contracts to deliver fuel through Jordan into Iraq. If this briefing and the documents reviewed by the Committee are accurate, Mr. Sargeant's company appears to have engaged in a reprehensible form of war profiteering.

Over the last four years, IOTC has been paid over \$1.4 billion by U.S. taxpayers to deliver fuel through Jordan into Iraq and has earned a profit of over \$210 million. According to internal Defense Department documents, the prices IOTC has charged the government are not "fair and reasonable." A "price negotiation memorandum" assessing the company's June 2004 contract concluded that the price charged by IOTC, \$2.10 per gallon of jet fuel, was at least 36 cents per gallon too high, even taking into account transportation, storage, and other expenses.

Other contractors offered to deliver fuel at lower prices. When the Defense Department awarded IOTC the June 2004 contract, IOTC was the highest bidder of six offers, with an initial bid over twice as high as the lowest offer. None of the five lower bidders were awarded the contract, however, because they were unable to obtain a "letter of authorization" to transport fuel from the Jordanian government. As a March 2004 "Preaward Survey" reported, IOTC's "major strength is the backing of the Royal Family." In effect, this backing gave IOTC a monopoly on the delivery of fuel through Jordan.

Mr. Sargeant and IOTC appear to have taken full advantage of their ties to the Jordanian royal family. Under federal procurement law, it is illegal to award a contract to a company whose prices are not "fair and reasonable." Senior officials in the Defense Energy Support Center (DESC) twice made personal appeals to Mr. Sargeant to lower his \$2.10 per gallon price, but Mr. Sargeant refused. The price negotiation memorandum described one of these appeals:

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[The DESC division chief] asked Mr. Sargeant if there was any way IOTC could reduce the offered price. Mr. Sargeant advised that the offered price was as low as they could go and still insure proper performance. ... Mr. Sargeant was also advised of the possible public scrutiny associated with the award price in light of the recent controversy over fuel prices paid by KBR from Kuwait. Mr. Sargeant is aware of this risk and is comfortable that their price accurately reflects IOTC's cost of performance.

According to the documents provided to the Committee, U.S. Central Command was advised of IOTC's unreasonable prices but "maintained an urgent need for JP8 [jet fuel] sourced through Jordan." For this reason, "the IOTC pricing issue was elevated" to the chief procurement officer in DESC and the agency's director. They were informed that "the Contracting Officer (CO) and the Division Chief were unable to determine the offered price to be fair and reasonable in accordance with the requirements of the FAR," the federal acquisition regulation. Nonetheless, they approved the contract because "CENTCOM confirmed that it had an urgent military need for a JP8 supply route through Jordan."

The contract awarded to IOTC in June 2004 was rebid in March 2005 and December 2006. In neither instance was IOTC the low bidder, but the contracts were awarded to IOTC because it remained the only bidder with a letter of authorization from the Jordanian government. In April 2005, Mr. Sargeant advised a contracting official that the letter of authorization awarded to IOTC "is a sensitive issue in Jordan and they would prefer to keep it as low profile as possible."

At least twice, State Department officials and officials at the Jordanian Embassy in Washington inquired whether the Defense Department needed assistance in asking Jordan to issue letters of authorization to potential competitors of IOTC, but these overtures were rebuffed. In June 2004, Defense Department officials told an official at the Jordanian Embassy that "his assistance would not be necessary at this time."

I have been conducting oversight of procurement problems in Iraq since the war began over five years ago. The IOTC contracts stand out for the extent of the company's apparent profiteering. Of the \$210 million in profits received by the company, at least one third — \$70 million — appears to have benefited a single individual: Mr. Sargeant. If the IOTC contracts had been awarded to the lowest bidders, the taxpayers could have saved over \$180 million.

Background

The prolonged occupation of Iraq generated an unexpected need to import fuel into the country for use by U.S. troops and Iraqis. To meet this need, the Defense Department issued an emergency contract on May 3, 2003, to the Halliburton subsidiary KBR to purchase and import

fuel into Iraq, primarily from Kuwait and Turkey.¹ Overall, KBR charged the Defense Department more than \$351 million to import over 131 million gallons of fuel into Iraq and received a maximum fee of 7% of its costs.²

Beginning on October 15, 2003, I began raising concerns about KBR's exorbitant fuel charges.³ As I pointed out in multiple subsequent letters, independent experts expressed grave doubts about the reasonableness of KBR's price, calling it "highway robbery" and noting that they could not "construct a price that high."⁴ Ultimately, the Defense Contract Audit Agency questioned \$171 million in charges under this contract because KBR "failed to support the reasonableness of prices paid for fuel."⁵

¹ U.S. Army Corps of Engineers, *Information Paper: Business Case by USACE for the Use of Altanmia as a Supplier of Fuel under the RIO Contract* (Jan. 6, 2004).

² Minority Staff, House Committee on Government Reform, *Halliburton's Gasoline Overcharges* (July 21, 2004).

³ Letter from Reps. Henry A. Waxman and John D. Dingell to OMB Director Joshua Bolten (Oct. 15, 2003).

⁴ See, e.g., Letter from Reps. Henry A. Waxman and John D. Dingell to Lt. Gen. Robert Flowers, U.S. Army Corps of Engineers (Oct. 21, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to National Security Advisor Condoleezza Rice (Oct. 29, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to Lt. Gen. Robert Flowers, U.S. Army Corps of Engineers (Nov. 5, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell and Sen. Joseph Lieberman to Defense Department Inspector General Joseph E. Schmitz (Nov. 25, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to National Security Advisor Condoleezza Rice (Dec. 10, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to Defense Secretary Donald H. Rumsfeld (Dec. 19, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to Lt. Gen. Robert Flowers, U.S. Army Corps of Engineers (Jan. 6, 2004); Letter from Rep. Henry A. Waxman to National Security Advisor Condoleezza Rice (Jan. 15, 2004); Letter from Reps. Henry A. Waxman and John D. Dingell and Sen. Joseph Lieberman to Defense Department Inspector General Joseph E. Schmitz (Jan. 16, 2004); Letter from Reps. Henry A. Waxman and John D. Dingell to Defense Department Inspector General Joseph E. Schmitz (Feb. 24, 2004); Letter from Rep. Henry A. Waxman to Rep. Tom Davis, Chairman, Government Reform Committee (Nov. 10, 2004); Letter from Rep. Henry A. Waxman to Secretary of State Condoleezza Rice (Feb. 17, 2005).

⁵ See, e.g., U.S. Department of Defense, 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). See also Minority Staff, House Committee on Government

On December 30, 2003, the Defense Department relieved KBR of its fuel importation responsibilities and assigned this duty to the Defense Energy Support Center within the Pentagon.⁶ In order to diversify the sources of fuel being imported into Iraq, DESC issued solicitations for fuel importation from three countries: Kuwait, Turkey, and Jordan.⁷ Ultimately, Mr. Sargeant's company, the International Oil Trading Company (IOTC), would receive four contracts from DESC to deliver fuel to Iraq through Jordan.

IOTC is a privately held limited liability company registered in Florida. After news reports in May 2008 alleged the company was significantly overcharging U.S. taxpayers, the Committee wrote to the company president, Harry Sargeant, and the Secretary of Defense, Robert Gates, seeking information and documents about the company and its contracts.⁸ In response to these requests, the Committee received and reviewed over 11,000 pages of documents. The Committee staff met with representatives of Mr. Sargeant on September 17 and October 1, 2008, and with DESC officials on October 8, 2008.⁹

IOTC's First Contract

DESC first solicited bids on a contract to deliver fuel to Iraq through Jordan in January 2004.¹⁰ The value of this contract was estimated at \$77 million. Three companies submitted competitive bids on this contract. In March 2004, DESC awarded the contract to the low bidder, a Jordanian company known as Shaheen Business Investment Group (SBIG). SBIG, however, was unable to begin delivering fuel under the contract within one month. In April, DESC re-awarded the contract to Mr. Sargeant's company, which had the second-lowest bid.¹¹

Reform, *Halliburton's Questioned and Unsupported Costs in Iraq Exceed \$1.4 Billion* (June 27, 2005).

⁶ Defense Logistics Agency, *Defense Energy Support Center to Help Restore Iraqi Oil* (Dec. 30, 2003).

⁷ Defense Energy Support Center, *Fact Sheets* (Mar. 15, 2004).

⁸ Letter from Chairman Henry A. Waxman to Harry Sargeant, President of the International Oil Trading Company (June 17, 2008); Letter from Chairman Henry A. Waxman to Secretary of Defense Robert M. Gates (June 17, 2008).

⁹ At Mr. Sargeant's request, I also met with Mr. Sargeant on June 20, 2008.

¹⁰ Defense Department Solicitation SP0600-04-R-0054 (Jan. 21, 2004).

¹¹ Defense Energy Support Center, *Price Negotiation Memorandum*, SPO0600-04-D-0490, Trigeant, Ltd. (Apr. 8, 2004).

During the process of awarding the contract, DESC added an amendment to the contract requiring all bidders to obtain a "Letter of Authorization" from the Jordanian government allowing the company to transport fuel through the country. The amendment stated:

This contract shall not be binding until the contractor submits to the contracting office a letter from the Jordanian government which permits the contract to bring fuel through Jordanian territory in transit to Iraq.¹²

At the October 8, 2008, briefing, DESC officials told the Committee that they were informed by U.S. Embassy officials in Jordan that this requirement was based in Jordanian law.¹³ According to a report issued by the Library of Congress, however, Jordanian law does not require an authorization letter to transport fuel through the country.¹⁴ On the contrary, the report states that Jordanian law allows "goods of foreign origin" to be "transported through Jordan in transit from one entry to another exit point at the borders" without "restriction or prohibition."¹⁵ In fact, prior to 2004, the Pentagon had imported fuel directly through Jordan without being required to obtain a letter of authorization from the Jordanian government.¹⁶

Mr. Sargeant's company was the only non-Jordanian company to obtain an authorization letter. Mr. Sargeant reportedly formed a partnership with two Jordanians to bid on the contract: Mustafa Abu-Naba'a, who is listed as a co-owner of Mr. Sargeant's company, and Mohammad Al-Saleh, who is the brother in law of Jordan's King Abdullah II.¹⁷ Mr. Al-Saleh claims that he

¹² Defense Department Solicitation SP0600-04-R-0054, Amendment 11 (Mar. 9, 2004).

¹³ Defense Energy Support Center, Staff Briefing for Committee on Oversight and Government Reform (Oct. 8, 2008). *See, e.g.*, E-mail from Richard Eason, Economic Section, U.S. Embassy, Jordan, to John Walker, Contracting Officer, Defense Energy Support Center (May 21, 2007) (forwarding information from the Jordanian Energy Ministry confirming the existence of the letter of authorization requirement).

¹⁴ Memorandum from Library of Congress to Henry A. Waxman, Chairman, House Oversight and Government Reform Committee (Sept. 19, 2008) (LL File No. 2008-01528).

¹⁵ *Id.*

¹⁶ Defense Energy Support Center, Staff Briefing for Committee on Oversight and Government Reform (Oct. 8, 2008).

¹⁷ Fax from IOTC to Defense Energy Support Center submitting offer on Solicitation SP0600-04-OR-0054-0002 (May 16, 2004) (listing Mr. Sargeant, Mr. Al-Saleh, and Mr. Abu Naba'a as co-owners of IOTC); Florida Secretary of State, 2007 Limited Liability Company Annual Report for International Oil Trading Company, LLC (Apr. 26, 2007) (listing Mr. Sargeant and Mr. Abu Naba'a as "managers" of IOTC).

“arranged for the Jordanian Ministry of Energy and Mineral Resources to issue a letter of authorization to IOTC.”¹⁸

On March 4, 2004, the Defense Department official conducted a preaward survey of Mr. Sargeant’s company, which at the time was called “Trigeant.” This survey reported:

Trigeant’s major strength is the backing of the Royal Family. This backing was instrumental in the demonstration of Trigeant capability to meet the delivery date by securing approval to through put product.¹⁹

IOTC’s Second Contract

In May 2004, the Defense Energy Support Center began the bidding process on a second contract to deliver fuel through Jordan to Iraq, this time for use by U.S. troops. Six offers were submitted. Mr. Sargeant’s company, IOTC, submitted a bid of \$2.80 per gallon. This was the highest bid by far. The lowest bid was \$1.30 per gallon. The other four bidders all submitted bids less than \$1.60 per gallon.²⁰

None of the other five bidders were able to obtain an authorization letter from the Jordanian government, however, leaving Mr. Sargeant’s company as the only company permitted

¹⁸ *Al-Saleh v. Sargeant*, Case No. 2008CA010187XXXXMB (Fl. Cir. Ct. 2008) (Complaint) (Mr. Al-Saleh is now suing Mr. Sargeant and Mr. Abu-Naba’a, claiming that they “conspired to swindle [Mr. Al-Saleh] out of one-third of the profits from the group’s valuable contracts with the Government of the United States”). On June 17, 2008, the Committee requested from Mr. Sargeant all documents relating to efforts by him or his company to obtain an authorization letter from the Jordanian government. Letter from Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, to Harry Sargeant (June 17, 2008). In a meeting on October 1, 2008, Mr. Sargeant’s counsel suggested that there were no documents responsive to this request and that Mr. Sargeant knew very little about how the letter was obtained from the Jordanian government. Meeting between Mark Touhey, Counsel for IOTC, and Staff, House Oversight and Government Reform Committee (Oct. 1, 2008). Mr. Sargeant has provided no documents in response to the Committee’s request to show how he communicated with Jordanian officials to obtain the authorization letter.

¹⁹ Department of Defense, Preaward Survey of Prospective Contractor, Technical: Trigeant (Mar. 4, 2004).

²⁰ Defense Energy Support Center, Abstract of Initial Offers, Southern Iraq, RFP SP0600-04-F-0054-0002 (May 28, 2004).

to perform the contract.²¹ At one point, an official at the Jordanian Embassy in Washington, D.C., offered to help the Defense Department obtain an authorization letter on behalf of one of the other five bidders. In response, an official at the Defense Energy Support Center “advised that his assistance would not be necessary at this time because DESC did have competition and other viable offers.”²²

During May and June 2004, DESC conducted price negotiations with Mr. Sargeant. In these negotiations, Mr. Sargeant lowered his initial bid from \$2.80 to \$2.10 per gallon. Nonetheless, it became evident to DESC officials that Mr. Sargeant knew he had an exclusive arrangement with the Jordanians and was taking advantage of it. On June 17, 2004, a memo written by a DESC contracting official explained:

IOTC may have reasonably anticipated no competition and that no other offer could meet the requirements of the solicitation as the Jordanian Minister of Energy advised IOTC that the Ministry would not issue any additional letters authorizing the transport of jet fuel for this solicitation. ... [T]he Contracting officer cannot reasonably conclude that IOTC’s offer was submitted with the expectation of competition.²³

Because the contracting officer determined that Mr. Sargeant’s bid was made without true competition, the contracting officer requested a breakdown of Mr. Sargeant’s costs. She found that his price of \$2.10 per gallon was at least 36 cents higher than it should be, even taking into account all reasonable expenses.²⁴ Under the Federal Acquisition Regulation, the U.S. government is generally prohibited from issuing contracts unless the price offered is “fair and reasonable.”²⁵ The contracting officer concluded that Mr. Sargeant’s prices were too high to make an award. She wrote:

²¹ Defense Energy Support Center, Staff Briefing for Committee on Oversight and Government Reform (Oct. 8, 2008).

²² Defense Energy Support Center, Memorandum for Record on June 8, 2004, Telephone Conversation between DESC and Embassy of Jordan (June 16, 2004).

²³ Defense Energy Support Center, *Price Negotiation Memorandum*, Contract SP0600-04-D-0506 (June 17, 2004).

²⁴ *Id.*

²⁵ Federal Acquisition Regulation § 15.402(a).

[T]he Contracting Officer cannot determine IOTC's final offer price of \$2.10 per gallon reasonable as required by FAR [Federal Acquisition Regulation] 15.402.²⁶

After the contracting officer closed negotiations, the contracting officer's superior, a division chief at Defense Energy Support Center, contacted Mr. Sargeant personally to request that he lower his price, noting that he had an effective monopoly contract. Despite this direct entreaty, Mr. Sargeant refused. The "price negotiation memorandum" issued on June 17, 2004, describes this encounter:

[The DESC division chief] asked Mr. Sargeant if there was any way IOTC could reduce the offered price. Mr. Sargeant advised that the offered price was as low as they could go and still insure proper performance. ... Mr. Sargeant was also advised of the possible public scrutiny associated with the award price in light of the recent controversy over fuel prices paid by KBR from Kuwait. Mr. Sargeant is aware of this risk and comfortable that their price accurately reflects IOTC's cost of performance.²⁷

In the face of Mr. Sargeant's refusal to lower his prices, officials at the Defense Energy Support Center contacted military commanders at U.S. Central Command, who warned that the U.S. military had "an urgent need for JP8 [jet fuel] sourced through Jordan."²⁸ Because of this military urgency, the matter was elevated internally within DESC. Within four days, the chief procurement official met with Mr. Sargeant personally to ask again that he lower his price. Again, however, Mr. Sargeant refused. The chief procurement officer wrote a memo describing their meeting:

As CSPO [the center's senior procurement official] I conducted negotiations with IOTC to discuss the elements of their offered price. Mr. Sargeant reiterated and confirmed the various elements of price that were previously provided to the CO [contracting officer] and the Division Chief. ...

Mr. Sargeant expressed that to budget without demurrage (i.e. reducing offered price) would expose IOTC to significant liability and IOTC would not be able to perform (Mr. Sargeant stated he would rather not offer than take on this risk).²⁹

²⁶ Defense Energy Support Center, *Price Negotiation Memorandum, Contract SP0600-04-D-0506* (June 17, 2004).

²⁷ *Id.*

²⁸ *Id.*

²⁹ Memorandum of Conversation between Center Senior Procurement Official, Defense Energy Support Center, and Harry Sargeant (June 21, 2004).

After this conversation, the chief procurement official also concluded that “the offered price cannot be determined fair and reasonable in accordance with FAR 15.403-3(a)(4) and DLAD 15.404-2.”³⁰ Because of the military’s compelling need for the fuel, however, he forwarded this information to his superior, writing: “I am forwarding the packet with recommendation of award to the Director, Defense Energy Support Center.”³¹

The DESC director personally approved the award on June 22, 2004.³² In explaining his decision, the director issued a memorandum on July 21, 2004, setting forth the “justification for other than full and open competition” and specifically citing the “urgent military need” expressed by CENTCOM. The memo stated:

Six offers were received. However, only International Oil Trade Center (IOTC) was determined acceptable because it was the only offeror able to provide, prior to close of negotiations, the required letter from the Jordanian government authorizing it to transit fuel through Jordan to Iraq. CENTCOM confirmed that it had an urgent military need for a JP8 supply route through Jordan.³³

IOTC’s Third Contract

On March 15, 2005, the Defense Energy Support Center solicited bids on an extension of the June 2004 fuel contract. This time, four competitive bids were submitted. Although IOTC’s bid was the second highest, none of the other companies were able to produce an authorization letter, again leaving IOTC as the only eligible offeror.³⁴

During the bidding process, both the Jordanian Energy Minister and Mr. Sargeant urged DESC to keep IOTC’s authorization letter secret. On May 12, 2005, an official at the U.S. Embassy in Jordan sent an e-mail to a DESC contracting official explaining that Jordan’s Energy

³⁰ *Id.*

³¹ *Id.*

³² Defense Energy Support Center, *Price Negotiation Memorandum, Contract SP0600-04-D-0506* (June 17, 2004) (signed and approved by DESC director on June 22, 2004).

³³ Defense Energy Support Center, *Justification for Other than Full and Open Competition for an Alternate Supply Route for JP8 Through Jordan to Iraq Under Authority of 10 U.S.C. 2304(C)(2), Solicitation SP0600-04-R-0054-0002* (July 21, 2004).

³⁴ Defense Energy Support Center, Staff Briefing for Committee on Oversight and Government Reform (Oct. 8, 2008).

Minister “requested that we keep this information quiet for political reasons.”³⁵ On April 21, 2005, Mr. Sargeant sent an e-mail to the same contracting official explaining that “this is a sensitive issue in Jordan and they would prefer to keep it as low profile as possible!!”³⁶

When IOTC’s competitors began reporting difficulties obtaining letters of authorization, an official at the U.S. Embassy in Amman offered to help. On May 5, 2005, an official at the U.S. Embassy in Amman wrote to the DESC contracting officer in charge of the contracts:

My recommendation is that DESC proceed with the tendering process. Once DESC has reviewed the bid packets and agreed on a short-list, we can then seek LOAs [letters of authorization] from the Energy Minister. ... Please keep us posted on the bidding schedule and on when DESC has decided on a shortlist or a winning bidder. We will then seek LOAs from the Energy Ministry. We are eager to ensure that the flow of fuel supplies to our troops in Iraq remains steady.³⁷

In response, a DESC contracting official wrote:

Rather than have you seek LOAs from the GOJ [Government of Jordan] on any of these firms, I would ask that you confirm LOAs once we have received them from the offerors and again if possible find out if the current LOA for IOTC is considered valid by the Minister of Energy for the follow on contract should IOTC be in line for the award.³⁸

In April and May 2005, DESC contracting officials conducted price negotiations with IOTC. Although Mr. Sargeant offered a lower price per gallon than he had previously, his price was still outside the range deemed “fair and reasonable” in June 2004.³⁹ This time, however,

³⁵ E-mail from Richard Eason, Economic Section, U.S. Embassy, Jordan, to John Walker, Contracting Officer, DESC (May 12, 2005).

³⁶ E-mail from Harry Sargeant to John Walker, Contracting Officer, Defense Energy Support Center (Apr. 21, 2005).

³⁷ E-mail from Richard Eason, Economic Section, U.S. Embassy, Jordan, to John Walker, Contracting Officer, DESC (May 5, 2005).

³⁸ E-mail from John Walker, Contracting Officer, Defense Energy Support Center, to Richard Eason, Economic Section, U.S. Embassy, Jordan (May 9, 2005).

³⁹ IOTC offered a price of \$2.40 per gallon of jet fuel, which included \$1.43 to cover the cost of fuel and a \$.97 margin for IOTC’s profit and expenses. Defense Energy Support Center, *Price Negotiation Memorandum, Contract SP0600-05-D-0497* (May 26, 2005). In June 2004, DESC had determined that a margin of 84 cents was acceptable. Defense Energy Support Center, *Price Negotiation Memorandum, Contract SP0600-04-D-0506* (June 17, 2004) (finding that

DESC did not conduct a detailed analysis of IOTC's price. Instead, it deemed IOTC's price fair and reasonable because IOTC had submitted its bid with the "reasonable expectation" of "adequate competition."⁴⁰ On May 26, 2005, the DESC awarded IOTC the contract.⁴¹ DESC later exercised two six-month options on this contract, extending IOTC's contract through June 2007.

IOTC's Fourth Contract

On December 15, 2006, the Defense Energy Support Center solicited bids on a fourth contract to deliver fuel to Iraq through Jordan. Seven companies submitted bids, of which four were determined to be competitive. Of these four competitive bids, IOTC's price was the second highest. Once again, however, only IOTC could provide a letter of authorization, so IOTC was the only offeror eligible for the contract.⁴² On May 3, 2007, DESC awarded the contract to IOTC.⁴³

In January 2007, the U.S. Ambassador to Jordan, David Hale, spoke directly with the Jordanian Energy Minister about IOTC's letter of authorization.⁴⁴ However, the Committee has no evidence that Ambassador Hale asked the Energy Minister to waive the authorization requirement or issue authorization letters for IOTC's competitors.

One of IOTC's competitors, Intermarkets Global (IMG), filed protests with the Government Accountability Office. IMG argued it should have received the contract because its bid was approximately \$92 million less expensive than IOTC's.⁴⁵ IMG also argued that the

IOTC's price of \$2.10, which included 90 cents for fuel costs and a margin of \$1.20, was 36 cents higher than the acceptable price).

⁴⁰ Defense Energy Support Center, *Price Negotiation Memorandum, Contract SP0600-05-D-0497* (May 26, 2005).

⁴¹ *Id.*

⁴² Defense Energy Support Center, Staff Briefing for Committee on Oversight and Government Reform (Oct. 8, 2008).

⁴³ Defense Department Contract SP0600-07-D-0483 (May 3, 2007).

⁴⁴ E-mail from Richard Eason, Economic Section, U.S. Embassy, Jordan, to John Walker, Contracting Officer, Defense Energy Support Center (Jan. 18, 2007).

⁴⁵ Letter from Christopher M. Johnson, Counsel to IMG, to Government Accountability Office (May 14, 2007).

requirement for a letter of authorization was “unduly restrictive.”⁴⁶ In response to these protests, the Defense Energy Support Center agreed to reconsider the award. It then determined again that “IOTC USA was the only firm which provided required Letter of Authorization.”⁴⁷

When IMG again protested the decision, officials at DESC took several actions. First, they agreed to release a list from the Jordanian Ministry of Energy of companies that “would be eligible to receive a Letter of Authorization.”⁴⁸ Of the five companies on the list, four were Jordanian companies that did not bid on any of the four Defense Department fuel contracts. The fifth was IOTC.⁴⁹ Second, DESC agreed to issue a new solicitation rather than exercise the first one-year option under IOTC’s contract.

The new solicitation did not improve the situation, however. Both bidders on the new solicitation, including IMG and a second company, were unable to obtain letters of authorization. As a result, DESC abandoned the competition and decided to exercise its option to extend its contract with IOTC.⁵⁰

Once again, IMG protested.⁵¹ In an e-mail to DESC, an IMG official explained the problem:

Without specifying the reason or stating their requirements ... MEMR [the Jordanian Minister of Energy and Mineral Resources] refused to issue such a letter to companies

⁴⁶ Defense Energy Support Center, *Price Negotiation/Source Selection Memorandum, SP0600-07-R-0700, JP8, DT2, & MUJ from Jordan to Western Iraq* (June 8, 2007) (summarizing IMG’s protests and DESC’s responses).

⁴⁷ *Id.*

⁴⁸ E-mail from Farouq Al-Hiyari, Secretary General, Jordanian Ministry of Energy and Mineral Resources, to Kristen Pisani, Economic Section, U.S. Embassy, Jordan (Oct. 30, 2007).

⁴⁹ *Id.*

⁵⁰ Defense Energy Support Center, *Price Negotiation/Source Selection Memorandum, SP0600-08-R-0701, JP8, DT2, & MUJ from Jordan to Western Iraq* (Feb. 24, 2008).

⁵¹ IMG, Protest of Intermarkets Global, Defense Energy Support Center: Solicitation # SP0600-08-R-0701 – Supply and Delivery of JP8, Diesel Fuel and Gasoline from Jordan to Iraq (Mar. 12, 2008) (submitted to GAO); *see also* IMG, Protest of Solicitation # SP0600-08-R-0701 – Supply and Delivery of JP8, Diesel Fuel and Gasoline from Jordan to Iraq (Nov. 15, 2007) (submitted to DESC).

qualified by DESC to perform the solicitation. DESC has known through official channels since the prior procurement that only a particular source could obtain the LoA.⁵²

Eventually, IMG gave up its protests. In an e-mail explaining its decision, a company official wrote:

Intermarkets Global has come to realize the bitter truth that regardless of our efforts to offer alternative economical offer for the supply of different fuel products under subject solicitation, our efforts, costly as they may be, and the extensive work we do are just a waste of time and funds. It is now certain that certain parties would like to maintain a monopoly and do not allow any party a reasonable chance to compete. This has been evidenced by placing obstacles favoring one party over the others.⁵³

IOTC's Profits

According to documents provided to the Committee by Mr. Sargeant, the IOTC contracts have been exceptionally lucrative for IOTC. In total, his company has been paid over \$1.4 billion under the four contracts and has collected profits of over \$210 million.⁵⁴ The company's profit margin has been over 14%.

Under the first contract, Mr. Sargeant's company was paid \$41 million, but ended up with a net loss of \$2.4 million after DESC reduced its requirements and left IOTC with excess fuel.⁵⁵ Under the second contract, IOTC was paid \$154 million and made \$17 million in profits.⁵⁶ Under the third contract, IOTC was paid \$710 million and made \$121 million in

⁵² E-mail from Nimr Atiyeh, IMG, to John Walker, Contracting Officer, Defense Energy Support Center (Dec. 10, 2007).

⁵³ E-mail from Nimr Atiyeh, IMG, to John Walker, Contracting Officer, Defense Energy Support Center (May 19, 2008).

⁵⁴ IOTC, Trigeant/International Oil Trading Center/International Oil Trading Company Government Contracts 2004-2008 (undated chart).

⁵⁵ Defense Energy Support Center, Staff Briefing for Committee on Oversight and Government Reform (Oct. 8, 2008) (listing value of contract); IOTC, Trigeant/International Oil Trading Center/International Oil Trading Company Government Contracts 2004-2008 (undated chart) (listing IOTC's net profit).

⁵⁶ IOTC, Trigeant/International Oil Trading Center/International Oil Trading Company Government Contracts 2004-2008 (undated chart).

profits.⁵⁷ Under the fourth contract, which is ongoing, IOTC has been paid more than \$560 million and has made over \$74 million in profits.⁵⁸

Mr. Sargeant's personal gain from these four contracts may have been \$70 million or higher. According to Mr. Sargeant's former partner, Mr. Al-Saleh, Mr. Sargeant initially received one-third of the company's profits.⁵⁹ Mr. Al-Saleh alleges that Mr. Sargeant and the third partner, Mustafa Abu-Naba'a, improperly denied Mr. Al-Saleh his share of the profits. If this is true, this may have increased Mr. Sargeant's share of the profits to 50%.

The payments to IOTC significantly exceeded the amounts that would have been paid if DESC had awarded the contracts to the lowest bidders. The Committee staff has calculated that if DESC had awarded the contracts to the lowest bidders in June 2004 contract, June 2005 contract, and May 2007, the taxpayers could have saved \$183 million. This is over 87% of the profits made by IOTC and Mr. Sargeant.

Conclusion

When KBR was under contract with the Defense Department to import fuel from Kuwait into Iraq, the company's profits were limited to a maximum of 7% of costs. Even these profits were heavily criticized as excessive. But when IOTC assumed part of this work and began importing fuel from Jordan, the company more than doubled this profit margin to over 14%, collecting more than \$210 million under contracts worth \$1.4 billion. At least \$70 million of these profits appear to have gone to one person: Mr. Sargeant.

In 2004, DESC officials recognized that IOTC's charges were neither reasonable nor fair and personally intervened to ask Mr. Sargeant to lower his prices. He refused. His company had an effective monopoly over fuel shipments through Jordan, and it appears that he took deliberate advantage of this monopoly to enrich himself and his company at the expense of U.S. taxpayers and our military. If this is true, it represents the worst form of war profiteering.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Al-Saleh v. Sargeant*, Case No. 2008CA010187XXXXMB (Fl. Cir. Ct. 2008) (Complaint).

The Honorable Robert M. Gates

October 16, 2008

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I respectfully request that you investigate this matter and report back to the Committee on your findings and the steps you will take to protect the interests of U.S. taxpayers.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry A. Waxman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member