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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 8, 2011

The Honorable Robert Gates
Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Mr. Secretary:

As part of the Subcommittee's ongoing oversight of contract management, I am writing to request additional information regarding the Defense Department's efforts to ensure that the contractor Kuwait and Gulf Link Transport (KGL) is in compliance with the Iran Sanctions Act. I also request that the Defense Department provide information regarding its efforts to determine whether KGL is currently involved in any business interests with entities designated by the Treasury Department as engaged in activities related to the proliferation of weapons of mass destruction.

The Subcommittee has repeatedly raised concerns about Defense Department contracts with KGL. On September 10, 2009, the Subcommittee sent a letter to the Defense Department relating to the Department's decision to approve KGL to bid on a new, multi-billion dollar contract to supply food in the Middle East. Then-Ranking Member Bennett and I raised concerns regarding KGL's present responsibility as a contractor based on KGL's conduct relating to the death of Lieutenant Colonel Dominic 'Rocky' Baragona, who was killed in 2003 in Safwan, Iraq, when his vehicle was struck by a truck being driven by a KGL employee. At the time of his death, KGL held a contract with the U.S. Army to deliver supplies into Iraq. The Army conducted an investigation and concluded that the accident was caused by the driver of the KGL truck, but took no further action. When Lieutenant Colonel Baragona's family brought suit against KGL for their son's wrongful death after the Defense Department failed to act, KGL refused to submit to the jurisdiction of the U.S. courts. The court dismissed the suit for lack of personal jurisdiction.¹

¹ Letter from Chairman Claire McCaskill and Ranking Member Robert Bennett to Defense Secretary Robert Gates (Sept. 9, 2010); *See also* Defense Supply Center Philadelphia, Defense Logistics Agency, Solicitation for Prime Vendor Kuwait/Iraq/Jordan (May 2, 2008) (SPM300-08-R-0061) and Amendment of Solicitation/Modification of Contract (May 29, 2008) (SPM300-08-R-0061 Amendment 18); *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, slip op. (N.D.Ga May 8, 2009).

On November 18, 2009, the Subcommittee held a hearing entitled "Accountability for Foreign Contractors: The Lieutenant Colonel Dominic 'Rocky' Baragona Justice for American Heroes Harmed by Contractors Act." The hearing examined legislation I introduced to enhance suspension and debarment authority and require foreign entities that enter into contracts with the government to consent to jurisdiction in certain cases. The legislation, which I re-introduced at the beginning of this Congress, is co-sponsored by Senator Casey, Senator Collins, Senator Nelson, and Senator Whitehouse.²

Other members of Congress have also raised concerns about KGL. On July 14, 2010, Representative Brad Sherman and Representative Ron Klein sent a letter to Secretary Gates regarding KGL's involvement in a joint venture with Al Fajr Valfajr, a business controlled by Islamic Republic of Iran Shipping Lines (IRISL), which has been placed on the Treasury Department's Specially Designated Nationals and Blocked Persons (SDN) list for engaging or attempting to engage in activities related to proliferation of weapons of mass destruction. Representative Sherman and Representative Klein also questioned whether KGL's business dealings with IRISL's subsidiary involved certain energy-related activities that could constitute a violation of the Iran Sanctions Act (ISA) and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA).³

In response, KGL informed the Army Legal Services Agency's Procurement Fraud Branch that it was on track to divest itself of any business interests in the company in question by August 2010. KGL also stated that it was not engaged in any activity for which sanctions could be imposed under ISA or CISADA.⁴

I recently received information showing that KGL may have business interests in another Iranian company controlled by IRISL, Hafiz Darya Shipping Company (HDS). The Treasury Department placed HDS on the SDN list in June 2010.⁵ I have also learned that the Defense

² S. 235.

³ Letter from Rep. Brad Sherman and Rep. Ron Klein to Defense Secretary Robert Gates (July 14, 2010).

⁴ Letter from KGL Chairman Ali Esmail Dashti to Pamoline McDonald, U.S. Army Legal Services Agency, Procurement Fraud Branch (July 22, 2010).

⁵ Exec. Order No. 13382, 70 Fed. Reg. 38567 (July 1, 2005); U.S. Department of the Treasury, Specially Designated Nationals List (online at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) (accessed April 7, 2011); U.S. Department of the Treasury, Treasury Targets Corporate Structures of the Islamic Republic of Iran Shipping Lines and Iran's Bank Mellat (online at <http://www.treasury.gov/press-center/press-releases/Pages/TG981.aspx>) (accessed April 7, 2011); Congressional Research Service, *Iran Sanctions* (April 4, 2011).

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Department Office of Inspector General is also assessing information regarding the business relationship between HDS and KGL.⁶

Despite these issues, KGL has continued to receive contracts from the government. On February 28, 2011, the Defense Logistics Agency awarded KGL a \$157 million contract to provide storage and distribution services. Under this contract, KGL will be responsible for providing labor, material, equipment, and more than 1.5 million square feet of indoor and outdoor storage space in Kuwait to support the Defense Department's operations in Iraq and Afghanistan.⁷

Given KGL's unsatisfactory record of integrity on previous government contracts and the importance of the recent contract award to U.S. military efforts, I have serious concerns regarding KGL's current compliance with United States laws, regulations, and policies related to Iran. As a result, I request that you provide information regarding the steps taken by the Defense Department to determine whether KGL has complied with the requirements of ISA and CISADA. I also request that you provide information regarding whether KGL has in fact divested itself of all business interests with entities owned or controlled by IRISL. I request that you provide this information as soon as possible but in no case later than **May 4, 2011**.

Please have your staff contact Sarah Garcia with the Subcommittee staff at (202) 224-1014 with any questions. Please send any official correspondence related to this request to Kelsey_Stroud@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Chairman
Subcommittee on Contracting Oversight

cc: Rob Portman
Ranking Member
Subcommittee on Contracting Oversight

Enclosures

⁶ E-mail from Department of Defense Office of Inspector General staff to Subcommittee on Contracting Oversight staff (April 7, 2011).

⁷ FedBizOpps.Gov, Contractor-Owned/Contractor-Operated (COCO) Storage and Distribution Capability Within Kuwait (Solicitation SP330010R0020) (online at https://www.fbo.gov/index?s=opportunity&mode=form&id=bdc20d601ace0220721e9163dbde82bd&tab=core&_cview=1) (accessed April 6, 2011).