



SECRETARY OF THE ARMY
WASHINGTON

AUG 31 2010

The Honorable Earl Blumenauer
United States House of Representatives
Washington, DC 20515

Dear Representative Blumenauer:

Secretary of Defense Robert M. Gates asked me to respond on his behalf to your July 14, 2010 request for information about the contract awarded to Brown and Root Services, a division of Kellogg, Brown, and Root, Inc. (KBR), under the Restore Iraq Oil (RIO) program, and KBR's ongoing litigation with members of the Oregon Army National Guard. I will address your questions in the order listed in your letter.

The U.S. Army Corps of Engineers, which directly oversees the RIO program, has confirmed that, to date, KBR has not asserted any claim under the RIO contract's indemnification clause. No other Army contract with KBR contains an indemnification clause. The unclassified portion of the RIO contract, DACA63-03-D-0005, including Task Order 3, with modifications, is enclosed for your review. Task Order 3 covers the work at Qarmat Ali and other sites. The specific indemnification provisions associated with this contract and task order remain classified and, thus, are not included in this response. As noted above, no other Army contract with KBR contains an indemnification provision.

Apart from the RIO contract with KBR, no other Army contracts awarded since 2001 to other companies for services provided in a contingency operation contain indemnification provisions. The Army, consequently, has made no payments as a result of indemnification provisions with contractors supporting contingency operations in Iraq, Afghanistan or elsewhere, and no claims for such payments are pending.

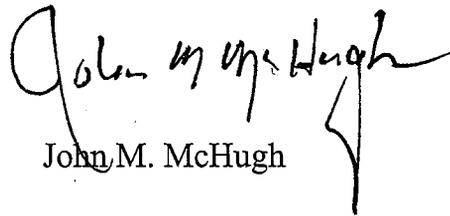
No congressional notification was provided in connection with the RIO contract's indemnification provision. The statute which authorizes the use of indemnification provisions, Public Law 85-804, and the implementing acquisition regulation under which indemnification actions are processed, Federal Acquisition Regulation Part 50 and Defense Federal Acquisition Regulation Supplement Part 250, do not specify a congressional notification requirement.

The Army considers the use of indemnification provisions only in extraordinary circumstances involving unusually hazardous risks. We will continue to insist that any indemnification request be fully documented in accordance with the acquisition regulations and will approve indemnification only upon a Secretarial determination that it facilitates the national defense. In those extremely narrow situations when an indemnification provision is included in an Army contract, the provision precisely defines

the scope of the unusually hazardous risk for which the Army agrees to assume potential liability. If a contractor were to submit a claim under such a provision, the Army would carefully scrutinize whether the events underlying the claim fall within the specified scope of the hazardous risk and would incur no liability whatsoever for contractor actions outside that scope. The Army also will continue to comply with all congressional notification and reporting requirements specified in statute and committee report language.

I trust that this information is helpful, and I thank you for your continued support for our Soldiers and Army. My point of contact for this action is Major Holly Bryant, 703-697-0277.

Sincerely,

A handwritten signature in black ink that reads "John M. McHugh". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

John M. McHugh

Enclosures