

EARL BLUMENAUER  
THIRD DISTRICT, OREGON

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEES:

TRADE

SELECT REVENUE MEASURES

COMMITTEE ON BUDGET



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-3703**  
September 23, 2010

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

Dear Secretary Gates,

Thank you for directing Army Secretary McHugh to respond to my request for information about the 2003 Restore Iraq Oil (RIO) contract awarded to Kellogg, Brown, and Root, Inc. (KBR) in the opening days of the Iraq War. I appreciate that Secretary McHugh provided the unclassified portion of the RIO contract, including Task Order 3, in his response. However, the full scope of my inquiry remains unaddressed.

I remain concerned by the apparent lack of accountability for contractors such as KBR and the lack of information to which Congress and the American people have access. The Department should consider whether KBR's record of alleged negligence in this and other cases warrants a moratorium on future contracts until the Department can be assured its contractors meet all legal and ethical standards. In the case of the Oregon National Guard, the terms of indemnification included in the RIO remain classified. These terms may leave the Army – and by extension the U.S. taxpayer – responsible for lawsuits, health costs, and court fees resulting from KBR's alleged negligence. My priority is now twofold: to restore Congressional oversight of war contracts and to ensure that the American taxpayer does not bail out any contractor for consequences resulting from its own gross negligence and misconduct.

Therefore, I respectfully request the following information be provided to my office within 14 days.

1. I request for a second time the declassification of KBR's terms of indemnification in the RIO contract, and for my office to receive this information immediately.
2. I request for a second time a list of contractors that have been granted indemnification under PL 85-804, from not only the Army but from all procuring activities as defined by 48 CFR 2.101 under the authority of the Department of Defense, including each of the military departments and services within the departments, the list of lawsuits filed as a result of contractor actions, and the amount of taxpayer money the Federal government has paid out as a result of indemnity agreements with contractors.
3. It has come to my attention that contractors may have been granted indemnification using a second type of authority, granted annually since 2003 as part of the Defense Appropriations bill, whereby "contracts entered into under the authority of this section may provide for such indemnification as the Secretary determines to be necessary." Please immediately

provide a written justification of the need for this authority including, but not limited to, any legal opinions provided in support for this request, as well as a description of this authority's use since 2003. In addition, please provide a list of contracts and contractors that have been granted indemnification using this authority, the text of each contract's indemnification language, a list of lawsuits filed as a result of contractor actions, and the amount of taxpayer money the Federal government has paid out as a result of these agreements.

In his letter dated August 31, 2010, Secretary McHugh assured me that the Army uses indemnification provisions only in "extraordinary circumstances" and "extremely narrow situations." To ensure that Congress and the American public are able to judge this for themselves, I will introduce legislation to restore oversight to the indemnification process and clarify the instances in which contractors will not receive indemnification.

The U.S. government shoulders a heavy burden of responsibility when it indemnifies a contractor against future action. We must ensure that such indemnification does not insulate a contractor from accountability. No company that has done wrong can be allowed to hide behind the government. No government agency can be allowed to hide behind a veil of secrecy. That we are all ultimately held accountable is fundamental to our system of government and to our system of justice.

Congress must serve alongside the Department of Defense to ensure the safety of personnel, civilians, and taxpayer dollars. I hope you will stand alongside me to ensure reforms are instituted immediately.

Sincerely,



EARL BLUMENAUER  
Member of Congress