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United States Senate

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

MICHAEL L. ALEXANDER, STAFF DIRECTOR
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September 10, 2009

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

Dear Secretary Gates:

As part of the Subcommittee's ongoing oversight of contract management, we are writing to raise concerns relating to the Defense Department's potential award of new contracts to Kuwait & Gulf Link Transport Company (KGL), a Kuwait-based company.

As you may know, the Subcommittee has opened an investigation into the death of Lieutenant Colonel Dominic "Rocky" Baragona, an Army logistician from Ohio. This is a continuation of work Senator McCaskill's office has been doing in reviewing the Baragona case over the past two years and that has led Senator McCaskill's introduction of S. 526, the "Lieutenant Colonel Dominic 'Rocky' Baragona Justice for American Heroes Harmed by Contractors Act."

On May 19, 2003, Lt. Col. Baragona was killed in Safwan, Iraq, when his vehicle was struck by a truck being driven by a driver employed by the Kuwait & Gulf Link Transport Company (KGL), a Kuwaiti company.¹ Since 2000, KGL has received nearly \$44 million in prime contracts from the federal government.² KGL has also received approximately \$100 million from federal subcontracts, including multiple subcontracts under KBR's massive LOGCAP contract to support the troops in Iraq.³

On May 12, 2005, Lt. Col. Baragona's family brought a wrongful death claim against KGL in federal court in Georgia.⁴ After KGL refused to appear in the matter, the court entered a default judgment and ordered the contractor to pay \$4.9 million in damages to the Baragona

¹ *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, Opinion and Order (N.D.Ga. Nov. 5, 2007).

² Federal Funding Accountability and Transparency Act Information Center, online at (accessed August 25, 2009).

³ S. 526, 111th Congress (March 4, 2009).

⁴ *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, Complaint (N.D.Ga. May 12, 2005).

family.⁵ On February 15, 2008, KGL requested that the judgment be vacated on the grounds that the court has no personal jurisdiction over the company.⁶ On May 8, 2009, the court granted KGL's request.⁷ The Baragona family intends to appeal the ruling.

We recently learned that the Defense Department has approved KGL to bid on a new, multi-billion dollar Defense Department contract to supply food in the Middle East. The winner of the "prime vendor" contract will become the Defense Department's sole supplier of perishable and non-perishable food items for military and civilian personnel in Kuwait, Iraq, and Jordan for up to six years.⁸ The contract value is currently estimated at more than \$3.1 billion with a maximum dollar value of \$9.4 billion.⁹

The Federal Acquisition Regulations require that all prospective contractors meet a "responsibility" standard, including "a satisfactory record of integrity and business ethics."¹⁰ The Government Accountability Office has interpreted this standard to find that contractor actions which may not rise to the level of suspension or debarment may still merit a finding that the contractor is not responsible.¹¹

We have significant concerns regarding KGL's responsibility as a potential contractor for the "prime vendor" contract. First, KGL's refusal to submit to the jurisdiction of U.S. courts to answer the claims brought by the Baragona family raises questions about KGL's integrity.¹² Second, it appears that KGL may have failed to carry liability insurance for its active contracts and subcontracts, in violation of federal contract regulations.¹³

⁵ *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, Opinion and Order (N.D.Ga. Nov. 5, 2007).

⁶ *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, Defendant Kuwait & Gulf Link Transport Company's Memorandum of Law in Support of its Motion to Vacate Default Judgment (N.D.Ga. Feb. 15, 2008).

⁷ *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, slip op. (N.D.Ga. May 8, 2009).

⁸ Defense Supply Center Philadelphia, Defense Logistics Agency, Solicitation for Prime Vendor Kuwait/Iraq/Jordan (May 2, 2008) (SPM300-08-R-0061).

⁹ Supply Center Philadelphia, Defense Logistics Agency, Amendment of Solicitation/Modification of Contract (May 29, 2008) (SPM300-08-R-0061 Amendment 18).

¹⁰ Federal Acquisition Regulation § 9.1.

¹¹ *See, e.g., Drexel Industries Inc.*, BV-189344 (Nov. 6, 1977) (citing *Kennedy Van and Storage Company Inc.* B-180973 (June 19, 1974), finding that a determination regarding integrity need not be based on standards as rigid as suspension and debarment).

¹² Letter from Christine McCommas, Chief, Army Procurement Fraud Branch, to KGL Legal Affairs Director Ahmed Afifi (Dec. 4, 2008).

¹³ *Id.*; Federal Acquisition Regulation §28.3 *et seq.*

We urge you to consider these concerns when evaluating KGL's bid for the new "prime vendor" contract. Previous logistics and supply contracts in Iraq have been plagued by waste, fraud, abuse, and mismanagement. We need to ensure that we take every step possible to ensure that the next generation of contracts does not repeat the mistakes of the past.

We look forward to working with you in the future to ensure that this and other Defense Department contracts are truly in the best interests of the U.S. taxpayer. Please contact us or ask your staff to contact Margaret Daum with Senator McCaskill's Subcommittee staff at (202) 224-3230 or Molly Wilkinson with Senator Bennett's Subcommittee staff at (202) 228-3141 with any questions.

Sincerely,



Senator Claire McCaskill
Chairman
Subcommittee on Contracting Oversight



Senator Robert Bennett
Ranking Member
Subcommittee on Contracting Oversight