

Questions and Answers about Halliburton and the Basis for Suspension
by
HalliburtonWatch.org
CorporatePolicy.org

Q. How do the suspension and debarment sanctions work?

A. [Federal Acquisition Regulations](#) (FAR) establish standards of accountability for government contracting and procurement of goods and services from private companies. Under the FAR and specific regulations used to implement it, companies wishing to contract with the federal government are required to meet certain standards for “integrity and business ethics.” Explicit provisions related to suspension and debarment (e.g. bribery) are described in the regulations, while other standards are more general.

Specifically, FAR Regulations require that the federal government award contracts to “responsible prospective contractors only.”¹ Debarment of a contractor is permitted if a “preponderance of the evidence” shows a “[w]illful failure to perform in accordance with the terms of one or more contracts”² or a “history of failure to perform, or of unsatisfactory performance of, one or more contracts.”³ Debarment is also authorized for “any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.”⁴

Suspension, which usually precedes debarment, lasts only 12 months, with a possible extension for another 6 months, but may be extended further if legal proceedings against the contractor have been undertaken during that time. Debarment usually extends for 3 years, although it may be extended for specific violations.

Under FAR § 9.406-2(a)(3), FAR § 9.407-2(a)(3), 41 C.F.R. § 105-68.700(a), 41 C.F.R. § 105-68.800(a)(3), suspension is permitted “on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government’s interest.”

The suspending official is authorized to examine “the adequacy of the evidence” being investigated “and what inferences can reasonably be drawn as a result.” (Id.) If the evidence of wrongdoing is “adequate,” even though investigation or legal proceedings are not completed, suspension is permitted.

Under FAR 9.407-2, the GSA is also authorized to suspend contractors “suspected” of committing fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public contract or subcontract. (FAR § 9.407-2(a)(1).)

¹ FAR § 9.103(a).

² FAR § 9.406-2(b)(1)(i)(A).

³ FAR § 9.406-2(b)(1)(i)(B).

⁴ FAR § 9.406-2(c).

Other suspected offenses which qualify contractors for suspension are, *inter alia*, theft and bribery⁵ and “any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.”⁶

Suspension is also permitted if a contractor has a “history of failure” or “unsatisfactory performance” in carrying out contracts⁷, which is clearly the case here. In addition, wrongdoing by employees which is not directly attributed to the corporation may be imputed to the corporation for purposes of debarment and suspension if the improper conduct occurred in connection with the individual’s employment.⁸

Suspension is also permitted “on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government’s interest.”⁹ Numerous investigations into the company are still ongoing.

Both [suspension and debarment](#) are discretionary actions taken by federal contracting officials based on the contractor’s track record. Under the FAR, “the serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment.”

Q. Is there a precedent for taking action?

A. Yes. "Suspension from government procurements is appropriate where adequate evidence shows that a company or person has committed misconduct related to business ethics and integrity, or other irregularities relevant to their present responsibility, and where a pending investigation or legal proceeding is examining those questionable activities," the [General Services Administration](#) (GSA, which has responsibility for federal procurement policy) explained when it [suspended Enron and Arthur Andersen](#) from federal contracts in March 2002, months before either was convicted of a crime.

The government maintains a list of companies that are prohibited from bidding on federal contracts, but large corporations are not commonly debarred (usually a specific division of the company will be sanctioned). For example, in 2003 the Air Force barred three Boeing space contract units from federal contracts after company employees had been caught with thousands of proprietary documents stolen from rival Lockheed Martin. (Industry analysts say the lost contracts represent less than 1 percent of the giant contractor's projected revenues through 2009.)

⁵ FAR § 9.407-2(a)(3).

⁶ FAR § 9.407-2(a)(7).

⁷ 41 C.F.R. § 105-68.800(b)(2).

⁸ 41 C.F.R. § 105-68.630.

⁹ FAR § 9.407-1(b)(1). *See also*, 41 C.F.R. § 105-68.605. In particular, the regulations provide for suspension when “[t]here exists an indictment for, or other adequate evidence to suspect,” offenses such as bribery, fraud in obtaining or performing government contracts, bid rigging that violates federal or state statutes or “[c]ommission of any other offense indicating a lack of business integrity or business honesty...” See 41 C.F.R. § 105-68.700(a) and (b).

Q. What about the fact that many of Halliburton's contracts are war-related or issued under a designated emergency – isn't there a national security exemption to suspension and debarment of contractors in wartime?

A. There can be. The suspension sanction allows for a transition period. For example, Custer Battles was suspended for contract-related abuses in Iraq, while being allowed to complete its existing tasks.

In the case of Halliburton, this argument would in effect be an admission that the company's track record merits its suspension. Moreover, as has been documented by Rep. Henry Waxman and others, there are numerous other contractors able to do the same work that Halliburton has done, which is why the military has been criticized for providing the company with exclusive, no-bid contracts before the war. Furthermore, rather than doing the work itself, Halliburton has passed off much of the work to subcontractors. The GAO [reported](#) in 2004 that the provision of large contracts to companies like Halliburton has reduced contract oversight and increased costs. In the case of the company's work in Iraq, "[b]y eliminating the use of LOGCAP and making the LOGCAP subcontractor the prime contractor, the command reduced meal costs by 43 percent without a loss of service or quality." The GAO calculated that by eliminating Halliburton as a middleman for these services alone would save U.S. taxpayers "almost \$31 million a year."

Q. What is the Bush Administration's record with respect to FAR standards and enforcement?

A. FAR officials have suspended and/or debarred numerous contractors during the Bush administration but one of the administration's first acts was to repeal a contractor accountability standard which clarified Federal Acquisition Regulation (FAR) standards for "integrity and business ethics" that prospective bidders for federal contracts were required to meet.

Government officials admit that without the rule, specific decisions regarding suspension and debarment are left to individual agencies and FAR officers. Critics say the lack of a consistent standard has allowed politics to influence enforcement of acquisition regulations. The evidence for that, they say, is clear from the administration's debarment of a few small or more infamous companies (e.g. Enron) at the same time that other, highly-connected companies that have received less attention continue to receive federal contracts. Other companies that have been suggested for suspension or debarment include [Reliant](#), Titan and CACI.

The Bush administration's top procurement policy person at GSA, David Safavian, was recently arrested and charged with making false statements to a GSA ethics officer, along with obstruction of a GSA investigation associated with lobbyist Jack Abramoff.

Q. Why are you picking on Halliburton? Are they the only company that should be suspended or debarred?

A. Those who argue that attacks on Halliburton are politically motivated should be the first to push for a clear and consistent standard.

Although it is difficult to point to a federal contractor with a worse track record, other corporations with a record of multiple violations would also be disqualified if there were a clear standard, such as that outlined in the proposed "Contractors Accountability Act of 2003" (HR 2767).

The FAR standards revoked by President Bush would have established a clearer basis for suspension and debarment. A 2002 GAO [report on government contracting](#) concluded that the revoked standards would have affected just 39 of the 16,819 contractors awarded new federal contracts worth \$100,000 or more.

According to an [investigation](#) by the Project on Government Oversight, a non-profit public interest watchdog group that monitors defense contracts, between 1990 and 2001 the top 10 federal contractors had 280 instances of misconduct and alleged misconduct and paid more than \$1.97 billion in fines, penalties, restitution, settlements and cleanup costs. Four of the top 10 government contractors had at least two criminal convictions. Yet only one of the top 43 contractors was ever suspended or debarred from doing business with the government -- in that case for just five days.

Q. Who should suspend Halliburton?

A. Either the GSA and DoD could and should act as lead agency in suspending Halliburton.

Although most of Halliburton's contracts are with the Department of Defense (DoD), evidence indicates DoD is not competent to take the lead in debarment and suspension proceedings. The top civilian contracting official with the Army Corps of Engineers, Bunnatine H. Greenhouse, was recently demoted after testifying to Congress about contracting abuse¹⁰ by DoD officials, including abuse that violated Federal Acquisition Regulations (FAR).¹¹ For example, she objected to allowing Halliburton access to internal government meetings and information. At one point, "she was so disturbed" that she demanded that Halliburton officials leave a meeting convened to determine whether the

¹⁰ Erik Eckholm, "Army Contract Official Critical of Halliburton Pact is Demoted," *New York Times*, Aug. 29, 2005.

¹¹ FAR § 3.101-1 ("The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships").

company should be awarded a \$7 billion no-bid contract to repair Iraq's oil infrastructure.¹²

Ms. Greenhouse concluded that the line between Halliburton and DoD "had become so blurred that a perception of a conflict of interest existed."¹³ In a stinging indictment of this "clubby" relationship, she said, "I can unequivocally state that the abuse related to contracts awarded to [Halliburton] represents the most blatant and improper contract abuse I have witnessed during the course of my professional career."¹⁴

The seriousness of Ms. Greenhouse's allegations prompted the Federal Bureau of Investigation (FBI)¹⁵ and the DoD's inspector general¹⁶ to open investigations that are ongoing today.

Q. What other evidence of favoritism towards Halliburton was there?

A. Government policy generally forbids political appointees from taking a role in awarding contracts to corporations. But DoD admitted that the \$7 billion no-bid Iraqi oil contract was awarded to Halliburton after a "political appointee" from the Bush administration recommended the company for the job.¹⁷ An internal DoD email disclosed that the contract was awarded to Halliburton after "coordinated" action with Vice President Dick Cheney's office.¹⁸ It said Douglas Feith, the Under Secretary of Defense for Policy, got the "authority to execute" the contract from his boss, who was Deputy Defense Secretary Paul Wolfowitz, another political appointee.¹⁹

In January 2004, DoD awarded Halliburton a \$1.2 billion follow-on oil infrastructure contract despite receiving a warning from the Defense Contract Audit Agency (DCAA) not to enter future negotiations with the company without consulting with the auditors.²⁰ On December 31, 2003, DCAA issued a "Flash Report," alerting various Defense Department agencies about "significant deficiencies" in Halliburton's cost estimating system.²¹ According to the auditors, these deficiencies "could adversely affect the organization's ability to propose subcontract costs in a manner consistent with applicable

¹² Letter from Michael D. Kohn, Stephen M. Kohn, and David K. Colapinto, Counsel to Bunnatine H. Greenhouse, to the Honorable Les Brownlee, Acting Secretary of the Army, Oct. 21, 2004.

¹³ Id.

¹⁴ Testimony of Bunnatine H. Greenhouse before the Senate Democratic Policy Committee, June 27, 2005. http://www.halliburtonwatch.org/news/dpc_hearing062705.pdf

¹⁵ "FBI probes Halliburton's Pentagon contracts," Associated Press/*Newsday*, Oct. 28, 2004.

¹⁶ Letter from Rep. Henry Waxman, et al., to Secretary of Defense Donald H. Rumsfeld, Aug. 29, 2005 ("The DOD Inspector General's office has confirmed to our staff that its investigation of Ms. Greenhouse's allegations is 'open and ongoing'").

¹⁷ Letter from Rep. Henry Waxman to Vice President Richard B. Cheney, June 13, 2004 (Briefing between DoD officials and congressional staff "revealed that initial planning for the Iraqi oil work, as well as the selection of Halliburton to execute it, was led not by career civil service officials, but by political appointees within the Bush administration").

¹⁸ Timothy J. Burger and Adam Zagorin, "The Paper Trail: Did Cheney Okay a Deal?" *Time*, June 7, 2004.

¹⁹ Id.

²⁰ Eric Rosenberg, "Despite warnings, KBR got contract," *Houston Chronicle*, May 15, 2004.

²¹ "Flash Report on Estimating System Deficiency Found in the Proposal for Contract No. DAAA09-02-D-0007, Task Order No. 59," Defense Contract Audit Agency, Audit Report No. 3311-2004K24020001, Dec. 31, 2003.

government contract laws and regulations."²² DoD ignored this warning, providing further evidence of a conflict of interest.

The first sole-source contract that Halliburton received relating to Iraq's oil reconstruction was worth \$1.9 million and awarded under the troop support contract, or LOGCAP. A career attorney with the Army Materiel Command objected to the contract on the grounds that it would violate federal procurement law since LOGCAP is not authorized for oil-related work.²³ The attorney warned that oil reconstruction work had nothing to do with LOGCAP's mission of providing meals, laundry, and other logistical support to the troops and should therefore be awarded under a contract separate from LOGCAP. These objections were overruled, however, after the intervention of a senior DoD lawyer who worked with a political appointee of the Bush administration.²⁴ The Government Accountability Office (GAO) agreed that the oil contract was not "in accordance with legal requirements" because it "was beyond the scope of the [LOGCAP] contract."²⁵ GAO added that the work "should have been awarded using competitive procedures."²⁶

Another example of DoD's conflict of interest involves its protection of Halliburton from public disclosure of critical audits. At the request of Halliburton, DoD intentionally concealed evidence from the public of \$108 million in overcharges for gasoline imported into Iraq.²⁷ In releasing an internal audit to the United Nations, DoD made 460 redactions, including redactions of the following sentences: "KBR was unable to demonstrate the proposal was based on actual costs"; "We consider KBR's estimating system to be inadequate"; "KBR was unable to reconcile the proposed costs to its accounting records"; "KBR did not always provide accurate information"; "KBR has failed to demonstrate adequate competition in its procurement decision"; "KBR did not comply with the stated terms and conditions of its own subcontract clauses"; and "We found significant purchasing system deficiencies."²⁸

The conflict of interest between Halliburton and DoD makes it unlikely that any corrective action will be taken by DoD to protect the government's interests. Indeed, DoD awarded \$72 million in bonus payments²⁹ to Halliburton despite multiple criminal investigations and at least nine critical audits issued by the Defense Contract Audit Agency regarding the company's work in the Middle East.³⁰

²² Id.

²³ "Halliburton's Questioned and Unsupported Costs in Iraq Exceed \$1.4 Billion," House Committee on Government Reform, Minority Staff, June 27, 2005.

²⁴ Id.

²⁵ Testimony of David M. Walker, Comptroller General of the United States, before the House Committee on Government Reform, June 15, 2004.

²⁶ Id.

²⁷ Letter from Rep. Henry A. Waxman to Rep. Christopher Shays, June 20, 2005 (online at <http://www.democrats.reform.house.gov/Documents/20050620110738-07899.pdf>) (describing redactions process).

²⁸ Id. See also, HalliburtonWatch.org http://www.halliburtonwatch.org/news/conceal_overcharges.html

²⁹ "Halliburton Lands \$72 Million in Bonuses," Reuters, May 10, 2005.

³⁰ "Fact Sheet: Halliburton's Iraq Contracts Now Worth Over \$10 Billion," Rep. Henry Waxman, House Government Reform Committee, Dec. 9, 2004.

Q. How is bribery a basis for suspension in Halliburton's case?

Bribery qualifies contractors for debarment or suspension under FAR § 9.406-2(a)(3), FAR § 9.407-2(a)(3), 41 C.F.R. § 105-68.700(a), and 41 C.F.R. § 105-68.800(a)(3).

Halliburton admitted that its KBR subsidiary "may" have bribed the government of Nigeria for the purpose of winning a multibillion dollar construction contract.³¹ Investigators say the bribes were paid between 1995 and 2002 and totaled up to \$180 million. The Justice Department and the Securities and Exchange Commission have been investigating the suspected crime for over a year. A subpoena was issued to former KBR chairman, Jack Stanley, and another employee after some of the bribe money was found in a Swiss bank account controlled by Stanley. The Swiss government terminated the account which contained millions of dollars.³²

The magnitude of this offense, which Halliburton has not denied occurred, requires GSA to protect the government's and the taxpayers' interests and suspend the company until the Justice Department completes its investigation.

The U.S. Securities and Exchange Commission is investigating a second bribery case involving KBR's activities in Nigeria. Halliburton admitted that its employees paid a \$2.4 million bribe to a government official of Nigeria for the purpose of receiving favorable tax treatment.³³

Q. How do problems in Iraq constitute a basis for suspension?

See above. Also, under GSA's regulations, the suspending official may suspend a contractor whose employee is indicted for fraud in performing a government contract.³⁴ GSA regulations further state that indictments against employees may be imputed to the corporation for purposes of debarment and suspension "when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization."³⁵

An employee with Halliburton's KBR subsidiary was indicted by the Justice Department last March over a \$3.5 million fraud scheme involving the military.³⁶ Former KBR employee Jeff Mazon and Ali Hijazi, a managing partner at LaNouvelle General Trading and Contracting Co., are charged with rigging bids in 2003 to favor LaNouvelle over other subcontractors and then overcharging the U.S. military for fuel transport services at a Kuwait airport. The scheme cost the U.S. military \$5.5 million for services KBR

³¹ Dana Milbank, "Halliburton, the Second-Term Curse?" *Washington Post*, Nov. 9, 2004; see also "Halliburton admits bribes 'may have been paid' in Nigeria," Agence France Press, Nov. 8, 2004.

³² Associated Press, Dec. 3, 2004.

³³ Halliburton 2003 SEC Form 10-K.

³⁴ FAR § 9.407-2(b).

³⁵ 41 C.F.R. § 105-68.630(a).

³⁶ "Halliburton exec on fraud charges," BBC News, March 17, 2005.
<http://news.bbc.co.uk/1/hi/world/americas/4359765.stm>

initially estimated would cost just \$680,000, a markup of more than 700 percent. In exchange for this markup, Mr. Mazon allegedly received a \$1 million kickback from Mr. Hijazi.³⁷

Halliburton had cast further doubt on its business integrity when its representatives testified before Congress that the indicted employee was a low-level “administrative” worker and not a “manager.” But the indictment indicates the employee was indeed a manager.³⁸ At a July 22, 2004, hearing held by the House Government Reform Committee, Alfred Neffgren, a chief operations officer at KBR, was questioned about the authority and positions of the Halliburton employees being investigated. When asked whether these Halliburton employees were managers, Mr. Neffgren testified, “No, they weren’t.”³⁹ Instead, he asserted that they were “administrative people.” Upon further questioning, he testified that they were “senior subcontract administrators.” Mr. Neffgren also downplayed Mr. Mazon’s role in overseeing subcontracts, stating that there were “300 to 350” senior subcontract administrators in Iraq at the time. According to the indictment, however, Jeff Mazon held the managerial position of Procurement, Materials and Property Manager. Former Halliburton employees later informed Committee staff that there were far fewer than “300 to 350” managers with Mr. Mazon’s position in Iraq and Kuwait.

Q. What other problems in Iraq contribute to the case for suspension?

DCAA has issued numerous audits since 2003 showing Halliburton had repeatedly violated the FAR via “significant” and “systemic” deficiencies in how it estimates and validates cost.⁴⁰ As a result, the Defense Department Inspector General and the Justice Department opened a criminal fraud investigation.⁴¹ In describing the company’s billing system as “inadequate,”⁴² the DCAA reported that Halliburton had demanded payment for at least \$1.4 billion in “questioned” and “unsupported” expenses in the Middle East.⁴³

³⁷ “Halliburton Asked to Explain Discrepancies Between Testimony and Indictment,” Committee on Government Reform Minority Staff, May 2, 2005.

<http://www.democrats.reform.house.gov/story.asp?ID=839>

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Memorandum from Defense Contract Audit Agency to U.S. Army Field Support Command, Aug. 16, 2004 (DCAA “strongly encourages” the Army to withhold 15% of Halliburton’s payments because of “significant unsupported costs” and “numerous, systemic issues” with Halliburton’s cost proposals); *see also* “Status of Brown & Root Services (BRS) Estimating System Internal Controls,” Defense Contract Audit Agency, Jan. 13, 2004 (Halliburton’s systemic deficiencies “bring into question [Halliburton’s] ability to consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices.”); *see also* Rep. Henry Waxman’s memorandum to Democratic Members of the House Government Reform Committee, March 10, 2004.

⁴¹ Letter from Joseph E. Schmitz, Defense Department Inspector General, to Rep. Henry A. Waxman, Feb. 20, 2004; *see also* “Pentagon Opens Criminal Inquiry of Halliburton Pricing,” *New York Times*, Feb. 24, 2004; “Halliburton Faces Criminal Investigation: Pentagon Probing Alleged Overcharges for Iraq Fuel,” *Houston Chronicle*, Feb. 24, 2004.

⁴² *Wall Street Journal*, Aug. 11, 2004.

⁴³ “Halliburton’s Questioned and Unsupported Costs in Iraq Exceed \$1.4 Billion,” House Committee on Government Reform Minority Staff, June 27, 2005.

Nevertheless, the military agreed to pay the cost to Halliburton without any explanation on how the money was disbursed.⁴⁴

Most of the audits of the Pentagon's 77 contractors in Iraq have "found only minor cost" problems, reported the DCAA, and "the majority of these problems have been resolved by the contractors."⁴⁵ But this is not the case with Halliburton. According to DCAA, "major contract audit issues" are "limited to [the] largest Iraqi reconstruction contractor," which is Halliburton.⁴⁶

"Significant deficiencies" in billing

The Army awarded Halliburton a no-bid contract in March 2003 despite a secret DoD report which found the company had "significant deficiencies" that could lead to defrauding the government.⁴⁷ DoD's report was given to Hearst News Service under the Freedom of Information Act over Halliburton's objections.

DCAA also reported that Halliburton billed the government for 36 percent more meals than was actually served to the troops in Iraq while an internal Halliburton report said it had overcharged by 19 percent.⁴⁸ GAO reported that, when Halliburton acted as a middleman for the operation of dining halls, costs were over 40% higher.⁴⁹ DoD paid Halliburton for most of the overbillings despite the DCAA's recommendation to withhold 15 percent of the payments until the company verified the accuracy of the expenses.⁵⁰ DoD is currently withholding \$213 million in suspicious food expenses until Halliburton provides a sufficient explanation for them.⁵¹

Gasoline overcharges

The Criminal Division of the U.S. Department of Justice issued a subpoena to a former employee of Halliburton to determine whether the company criminally overcharged for gasoline imported into Iraq.⁵² The Defense Contract Audit Agency (DCAA) found Halliburton had overcharged on the fuel supply contract by \$212.3 million.⁵³ The company had been charging the military \$2.64 per gallon of gasoline while competitors

⁴⁴ Robert O'Harrow Jr., "Halliburton Payments Won't Be Withheld," *Washington Post*, Feb. 4, 2005.

⁴⁵ "Briefing Slides: DCAA Contract Audit Support for Iraq Reconstruction," Defense Contract Audit Agency, May 3, 2005; see also "Halliburton's Questioned and Unsupported Costs in Iraq Exceed \$1.4 Billion," House Committee on Government Reform Minority Staff, June 27, 2005. <http://www.democrats.reform.house.gov/Documents/20050627140010-82879.pdf>

⁴⁶ Id.

⁴⁷ Eric Rosenberg, "Despite warnings, KBR got contract," *Houston Chronicle*, May 15, 2004. <http://www.chron.com/cs/CDA/ssistory.mpl/world/2572529>

⁴⁸ Testimony of William H. Reed, Director, Defense Contract Audit Agency, House Committee on Government Reform, June 9, 2004.

⁴⁹ "Military Operations: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight," Government Accountability Office, July 2004.

⁵⁰ Robert O'Harrow Jr., "Halliburton Payments Won't Be Withheld," *Washington Post*, Feb. 4, 2005.

⁵¹ Halliburton SEC Form 10-Q, June 30, 2005.

⁵² Halliburton SEC Form S-4/A, July 19, 2004.

⁵³ "DOD Audits: Halliburton Overcharges Top \$212 Million," House Committee on Government Reform Minority Staff, April 11, 2005. <http://www.democrats.reform.house.gov/story.asp?ID=823>

were importing gasoline for less than half that price.⁵⁴ In one case, the overcharges exceeded 47% of the total value of the task order.⁵⁵

Overbilling in the Balkans

The U.S. Justice Department is also investigating Halliburton for possible over billing on government services work done in the Balkans from 1996 through 2000. The charges stem from a GAO report that found in 1997 that Halliburton billed the Army for questionable expenses for work in the Balkans, including charges of \$85.98 per sheet of plywood that cost \$14.06.⁵⁶ A follow-up report by the GAO in 2000 found inflated costs, including charges for cleaning offices up to four times a day.⁵⁷

Overbilling on hotel rooms, laundry, soda and troop housing

The inspector general for the U.S. Coalition Provisional Authority (CPA) found Halliburton charged the government \$2.85 million for hotel costs in Kuwait even though cheaper housing arrangements were available.⁵⁸ For example, one CPA official lived at the Kuwaiti Hilton for almost \$700 a night. The inspector general also criticized Halliburton for unreasonable charges for laundry work. A former logistician with Halliburton in Kuwait reported that the company and its subcontractor had been charging U.S. taxpayers \$100 per 15-pound bag of laundry and \$45 per one-pack of soda.⁵⁹ DoD has been withholding \$16 million in laundry costs from Halliburton for over a year because of the company's failure to sufficiently justify and explain those costs.⁶⁰ An additional \$2 million was withheld earlier this year for a total of \$16 million in currently withheld laundry costs.⁶¹

In June, DoD began withholding \$60 million from Halliburton for the cost of containerized housing for soldiers.⁶² Once again, DCAA recommended the withholding because of the company's failure to sufficiently justify and explain those costs. In admitting its failure to protect the taxpayers, Halliburton stated in a financial filing that "we believe the DCAA may recommend withholding additional costs as their reviews continue."⁶³

\$11 million to \$26 million in missing government property

⁵⁴ Don Van Natta Jr., "High Payments to Halliburton for Fuel in Iraq," *New York Times*, Dec. 10, 2003. <http://www.commondreams.org/headlines03/1210-07.htm>

⁵⁵ "DOD Audits: Halliburton Overcharges Top \$212 Million," *supra* note 65.

⁵⁶ Government Accountability Office, *Contingency Operations: Opportunities to Improve the Logistics Civil Augmentation Program*, Feb. 11, 1997.

⁵⁷ "Favoritism for Cheney's ex firm?" Associated Press/CBS News.com, April 8, 2003.

⁵⁸ Stuart Bowen, "Audit Report of the Inspector General," U.S. Coalition Provisional Authority, June 25, 2004. http://www.halliburtonwatch.org/news/fdc_hilton.pdf

⁵⁹ Testimony of Marie E. deYoung, former KBR employee, House Government Reform Committee Hearing, July 22, 2004.

⁶⁰ Halliburton SEC Form 10-Q, June 30, 2005.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

An investigation by the inspector general of the now-disbanded U.S. Coalition Provisional Authority (CPA) found that between 27 percent and 41 percent of government property managed by Halliburton, valued at between \$11.1 and \$26.2 million, had gone missing because of mismanagement.⁶⁴ About a third of the government items managed by Halliburton, including trucks, computers and office furniture had disappeared.

Dirty kitchens and spoiled food served to troops

DCAA repeatedly warned Halliburton that its food and the kitchens where it is prepared are "dirty," NBC News reported. At one point, auditors found that Halliburton's promises to clean up its food and kitchens "have not been followed through."⁶⁵

A former Halliburton employee described instances where the troops were fed outdated food or food that had expired over a year ago.⁶⁶ Company policy also required purchasing food even if it was spoiled when delivered. When the subcontractor dropped off food at Halliburton locations in Iraq, there was often no place to store it, so the food would sit in Halliburton freezers on the trucks until the fuel ran out. "[Halliburton] wouldn't refuel the trucks so the food would spoil," the former employee said. "This happened quite a bit."

This behavior works as an overcharge of DoD for food service since Halliburton is required to purchase additional food to replace the spoiled food.

Torching \$85,000 trucks with minor maintenance problems

Former truck drivers in Iraq testified that Halliburton failed to provide simple vehicle parts like oil filters. The company often declared oil changes "out of the question."⁶⁷ As a result, employees were forced to forever abandon brand new \$85,000 trucks in the middle of the desert whenever a minor equipment problem occurred. Since the roads are constantly riddled with enemy fire, there is no time to repair disabled trucks -- even if the only problem is an expired oil filter, flat tire or \$25 hydraulic line. "It was common to torch trucks that we abandoned ... even though we all carried chains and could have towed them to be repaired," testified a Halliburton convoy commander.⁶⁸ Former employees also testified that Halliburton removed spare tires on trucks so flat tires would necessitate abandonment of disabled trucks in the desert.⁶⁹ "In my time on the road," said one employee, "I saw disabled trucks -- or what was left of them -- abandoned on the side

⁶⁴ Stuart W. Bowen Jr., Office of the Inspector General Coalition Provisional Authority, Report to Congress, July 30, 2004. http://www.halliburtonwatch.org/news/cpaig_report.pdf

⁶⁵ Contractor served troops dirty food in dirty kitchens, Agence France Press/*Taipei Times*, Dec. 14, 2003.

⁶⁶ Testimony of Rory Mayberry, former KBR food production manager, Senate Democratic Policy Committee Hearing, June 27, 2005. <http://www.democrats.reform.house.gov/Documents/20050627170106-72589.pdf>

⁶⁷ Testimony of David Wilson, Halliburton convoy commander in Iraq, before the House Government Reform Committee, July 22, 2004.

⁶⁸ Id.

⁶⁹ Testimony of James Warren, Halliburton truck driver in Iraq, before the House Government Reform Committee, July 22, 2004.

of the road on a daily basis."⁷⁰ He also described situations where Halliburton would transport trucks without any cargo inside. "One time, we ran 28 trucks and only one had anything on it," he said.⁷¹ "Nobody knew why we were hauling around empty trucks, but it definitely caused extra wear and tear, which just made maintenance a bigger problem."⁷²

Q. Apart from Iraq and the Balkans and the Nigeria bribery case, are there additional reasons for suspension.

A. Bid rigging or other antitrust practices qualify contractors for debarment or suspension.⁷³ The Justice Department initiated a criminal inquiry into Halliburton for bid-rigging in connection with the company's work on foreign construction projects.⁷⁴ The company admitted that former KBR chairman, Jack Stanley, and other former employees "may" have criminally rigged bids on foreign contracts and that the illegal behavior "may" have been ongoing since the mid-1980s.⁷⁵

Q. What's the background on allegations that Halliburton is under investigation for violating foreign policy regarding trading with nations that sponsor terror?

Halliburton's dealings with nations that sponsor terrorism also contravenes the FAR's requirement that the military award contracts only to "responsible" contractors.

The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) is investigating the legality of Halliburton's business dealings in Iran, a nation believed to sponsor terrorism.⁷⁶ It is illegal for U.S. companies to directly conduct business with nations the president believes are involved in sponsoring terror.⁷⁷

Halliburton sells goods and services to Iranian companies through its Cayman Islands subsidiary.⁷⁸ But the sales appear to have violated the U.S. trade embargo against trading with Iran. The OFAC referred the case to the Department of Justice,⁷⁹ which is conducting a criminal investigation. In July 2004, Halliburton received from the U.S. Attorney for the Southern District of Texas a grand jury subpoena requesting the production of documents.⁸⁰

⁷⁰ Wilson, *supra* note 79.

⁷¹ Id.

⁷² Id.

⁷³ 41 C.F.R. § 105-68.800 (a)(2), DFAR § 209.403(2)(iii).

⁷⁴ Halliburton 2004 SEC Form 10-K.

⁷⁵ Halliburton SEC Form 10-Q, June 30, 2005.

⁷⁶ Halliburton SEC Form S-4/A, July 19, 2004.

⁷⁷ International Security and Development Cooperation Act, 22 U.S.C. § 2349aa-9, § 505; International Emergency Economic Powers Act, 50 U.S.C. § 1501; 31 C.F.R. § 560; Executive Orders 12613, 12957, 12959, and 10359.

⁷⁸ Halliburton press release, Jan. 25, 2004. <http://www.halliburton.com/news/archive/2004/report.jsp>

⁷⁹ Halliburton SEC Form S-4/A, July 19, 2004.

⁸⁰ Id

If Halliburton is found in violation of this law, it would cast further doubt on its business honesty and business integrity, thereby offering further evidence to justify initiating debarment and suspension proceedings. At a minimum, the government is required to suspend Halliburton until the Justice Department's investigation is completed.

Q. How do accounting problems at the company relate to other abuses?

Halliburton agreed last year to pay a \$7.5 million fine and to stop "committing or causing future securities law violations" when it settled a fraud complaint brought by the Securities and Exchange Commission (SEC).⁸¹ The SEC accused the company of providing "materially misleading" information to investors by artificially inflating the amount of revenues it experienced over a number of years.

In addition, four former employees of Halliburton filed a class action lawsuit last year, alleging the company engaged in "systemic" accounting fraud from 1998 to 2001.⁸² The former employees say Halliburton overbilled for services, overstated the amounts it was owed by customers and understated amounts it owed to vendors. A former employee in the accounting department said supervisors had told her to do "whatever it took" to make profit statements appear more profitable than was actually the case.

Halliburton's repeated violations of the FAR, systemic accounting irregularities, and the ongoing contract fraud investigations by DoD and the Justice Department are proof of the company's failure to possess the "necessary organization, accounting and operational controls" cited in the Enron case. In addition, Enron admitted its failures in controlling accounting procedures,⁸³ just as Halliburton did last year in an internal memo. In the memo, Halliburton admitted that its cost controls for government contracts are "antiquated" and "weak" and its procurement "disorganized" and marked by "weak internal controls."⁸⁴ The memo, which was leaked to the *Wall Street Journal*, contradicts the company's public statements which claim it has a rigorous system of internal controls for contracts in Iraq. According to the *Journal*, the memo is "a frank admission that [Halliburton's] critics are voicing valid concerns about the possibility of overcharges under the company's massive contract to supply U.S. troops."⁸⁵

As with Enron, suspension of Halliburton from new contracts is prudent and necessary until its accounting system is satisfactory and no longer prone to greater auditor scrutiny than other, less ethically challenged contractors.

⁸¹ SEC press release, Aug. 3, 2004. <http://www.sec.gov/news/press/2004-104.htm>

⁸² Gretchen Morgenson, "Suit Accuses Halliburton of Fraud in Accounting," *New York Times*, Aug. 6, 2004.

⁸³ *Id.*

⁸⁴ "Halliburton Unit Faults Its Cost Controls in Iraq," *Wall Street Journal*, Feb. 27, 2004.

⁸⁵ *Id.*

Q. Has anyone else called for Halliburton to be suspended?

A. Yes. Calls to suspend Halliburton have previously been issued by Sen. Frank Lautenberg⁸⁶ and the nonprofit Project on Government Oversight.⁸⁷

Contractors debarred or suspended by foreign governments qualify for debarment or suspension by DoD.⁸⁸ The Republic of Nigeria suspended Halliburton's KBR subsidiary in 2004 because of safety concerns.⁸⁹ Nigeria's President Olusegun Obasanjo approved the suspension because of Halliburton's negligence in causing the disappearance of two highly sensitive radioactive devices and for the company's refusal to cooperate with authorities in finding them. It was the first of two instances in two years that Halliburton lost hazardous radioactive material in Nigeria, creating fears of their use in a possible terrorist attack. In the second instance, Halliburton failed for four months to inform the Nuclear Regulatory Commission (NRC) of the missing radioactive material even though the law requires companies to notify the NRC either immediately or within 30 days, depending on the type of radiation involved.⁹⁰

In January, the U.S. embassy in Iraq threatened to terminate Halliburton's contracts because of serious cost overcharges and what it called "poor performance."⁹¹ It has been one year since the Army's chief of procurement policy, Tina Ballard, requested the Army "immediately" terminate Halliburton's troop support contract, or LOGCAP, by parceling the work out to a wider range of companies.⁹² A Halliburton spokesperson praised Ms. Ballard's request as "positive" and "expected." Although the chief executive officer, David Lesar, indicated Halliburton was prepared not to bid on new LOGCAP work,⁹³ he threatened taxpayers by saying, "If we do choose to rebid, we're going to jack the margins up significantly."⁹⁴

Mr. Lesar's comment is another illustration of how terminating Halliburton from the military's business will be beneficial for the government. DoD terminated Halliburton from an Iraqi gasoline importation contract and assigned it to an internal office known as the Defense Energy Support Center. The result was a 50 percent reduction in gasoline prices charged to U.S. taxpayers.⁹⁵

⁸⁶ Sen. Lautenberg press release, Jan. 23, 2004.

<http://www.lautenberg.senate.gov/~lautenberg/press/2003/01/2004123A54.html>

⁸⁷ Testimony of Danielle Brian, Executive Director, Project on Government Oversight, Senate Democratic Policy Committee hearing, Sept. 10, 2004.

⁸⁸ DFARS § 209.403(2)(iii)(B).

⁸⁹ BBC News World Edition, Sept. 20, 2004.

⁹⁰ "Lost Halliburton Nuclear Material Found," Associated Press/ABC News.com, Feb. 10, 2005. <http://abcnews.go.com/Politics/wireStory?id=490134>

⁹¹ Erik Eckholm, "Halliburton's unit in Iraq called 'poor'," *New York Times*, April 12, 2005.

⁹² Wall Street Journal, Sept. 7, 2004.

⁹³ Id.

⁹⁴ "Halliburton contract to be split up," Reuters/*Houston Chronicle*, Sept. 8, 2004.

⁹⁵ "Halliburton's Gasoline Overcharges," House Government Reform Committee Minority Staff, July 21, 2004.

