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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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May 23, 2012

Stephen Orenstein
Jean M. Contant
Michael Schuster
Supreme Foodservice GmbH
Turbinweg 2
8866 Ziegelbruecke
Switzerland

Michael Schuster
Supreme Logistics
Supreme Foodservice GmbH
Level 8, Le Solarium Building
Dubai, United Arab Emirates

Dear Messrs. Orenstein, Contant, and Schuster:

The Subcommittee on National Security, Homeland Defense and Foreign Operations is conducting an investigation into the Defense Logistics Agency (DLA) Troop Support division and its Subsistence Prime Vendor contract in Afghanistan with Supreme Foodservice GmbH (Supreme), one of the Department of Defense's largest contractors in Afghanistan.

We are writing today to request documents and information relating to a letter DLA sent to Supreme on December 9, 2011, demanding that the company repay more than \$750 million that the Defense Department apparently overpaid as part of Supreme's contract to deliver food to hundreds of locations in Afghanistan between December 2005 and September 2011.¹

The Subcommittee has a responsibility to ensure that taxpayer dollars are being properly expended. To this end, the Subcommittee continues to have concerns about the Subsistence Prime Vendor contract in Afghanistan given the size and scope of the contract, the length of

¹ *Pentagon Seeks \$756.9 Million Overpayment Refund from Supreme Foodservice*, Bloomberg (Dec. 13, 2011) (online at www.bloomberg.com/news/2011-12-13/pentagon-seeks-756-9-million-refund-from-supreme-foodservice.html).

performance, the undefinitized nature of the contract, the history between the parties, and ultimately, the extent of the alleged overpayments at issue.

When it was first awarded on June 3, 2005, the contract required Supreme to deliver food to four locations in Afghanistan. Within three months, DLA radically expanded the contract to include an additional 64 forward operating bases in isolated and hard-to-reach locations. Today, the number of sites has swelled to 265.

According to information supplied to the Committee, DLA and Supreme apparently never agreed on pricing terms for delivering food and supplies to the additional sites despite having agreed to expand the contract. After performing on the contract for six months, Supreme sent DLA a bill with proposed rates for transportation to the additional sites. Concerned that Supreme could not justify those charges, DLA paid Supreme only 75 percent of the requested amount starting in August 2006. DLA subsequently reduced that amount to 50 percent of the charges in August 2010. To determine whether Supreme's rates were reasonable, DLA requested an audit of Supreme's proposed charges by the Defense Contract Audit Agency (DCAA). Two separate audits released in 2008 and 2011 found that Supreme's proposed rates were not sustainable. Specifically, the 2008 DCAA audit found that, "[b]ecause the noncompliances and inadequacies are considered to have a significant impact on the proposal taken as a whole, we do not believe the proposal is an acceptable basis for negotiation."²

After repeated, failed attempts to negotiate fees with Supreme over five-and-a-half years, DLA unilaterally definitized the distribution rates to additional locations based on actual costs and reasonable profit. Although DLA had already paid Supreme \$1.38 billion for distributing food and supplies to the additional locations, DLA determined that it had still overpaid Supreme by \$756.9 million. In response, Supreme has stated that rates should be based on commercial, market rates for transportation in Afghanistan. Calculated this way, Supreme would be owed a total of \$2.46 billion, or \$1.08 billion more than DLA has already paid.

Despite a billing dispute as wide as \$1.64 billion, DLA is now preparing to grant a five-year follow-on contract that will be worth \$10 to \$30 billion.³ DLA has yet to make an announcement about the new contract award, and Supreme remains one of four contractors under consideration.

As many questions remain unanswered about the Subsistence Prime Vendor contract, the Subcommittee continues to have concerns over the use of taxpayer funds for Department of

² Defense Contract Audit Agency, *Audit Report No. 2191-2008M17200001* (Dec. 19, 2008).

³ Defense Logistics Agency, *Subsistence Prime Vendor Support in Afghanistan* (Solicitation No. SPM300-11-R-0063) (online at www.troopsupport.dla.mil/subs/pv/regions/mideast/11R0063.pdf).

Defense contracts in Afghanistan.

To assist the Subcommittee in its investigation, please provide the following information regarding the Subsistence Prime Vendor contract:

1. All communications regarding any proposed or requested expansion of the contract to include additional forward operating bases as delivery destinations;
2. All communications regarding proposed rates for distribution to forward operating bases, otherwise known as Premium Outbound Transportation;
3. All communications between Supreme and DLA regarding any audit of Supreme's proposed rates;
4. An explanation and supporting documents of Supreme's decision to provide DCAA with limited supporting documents in response to its audits of the contract, including, but not limited to:
 - a. An explanation of Supreme's decision to transfer records to Dubai, United Arab Emirates, that a DCAA Iraq branch office had requested;
 - b. An explanation of Supreme's inability to provide adequate, supporting documentation related to its fuel costs;
5. An explanation and supporting documents of Supreme's position that the DLA contract is not subject to the requirements of FAR Part 31;
6. An explanation of the basis that Supreme used or proposes using to determine the "market" for Premium Outbound Transportation rates in Afghanistan;
7. An explanation of Supreme's corporate structure, including, but not limited to:
 - a. A listing of all of Supreme's subsidiaries and all related entities, as well as their principal place of business and jurisdiction of incorporation, and their relationship with each other; and
 - b. A listing of Supreme's senior leadership, including, but not limited to, senior executive officers, managing directors, members of the board of directors, as well as any such person's nationality, country of residence, and principal place of business; and
8. A listing of all subcontractors who performed for Supreme in connection with the contract in Afghanistan, and point of contact information.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

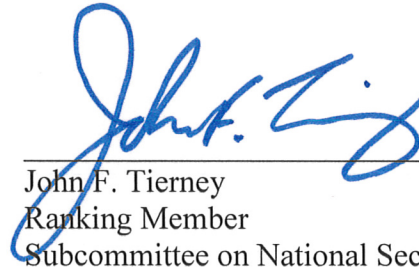
We ask that you provide the requested documents and information as soon as possible, but no later than June 4, 2012. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions, please contact Tom Alexander of the Majority staff at 202-225-5074, or Carlos Uriarte of the Minority staff at 202-225-5051.

Sincerely,



Jason Chaffetz
Chairman
Subcommittee on National Security,
Homeland Defense and Foreign Operations



John F. Tierney
Ranking Member
Subcommittee on National Security,
Homeland Defense and Foreign Operations