WILLKIE FARR & GALLAGHER LLP

CLIENT MEMORANDUM

HALLIBURTON AND KBR ENTITIES TO PAY $579 MILLION, THE LARGEST PENALTY EVER PAID BY A U.S. COMPANY IN AN FCPA CASE

On February 11, 2009, Halliburton Co. ("Halliburton"), KBR Inc. ("KBR"), and Kellogg Brown & Root LLC ("KBR LLC") settled Foreign Corrupt Practices Act ("FCPA") charges and agreed to pay total penalties of $579 million. In settling criminal charges brought by the Department of Justice (the "DOJ"), KBR LLC will pay a $402 million fine. KBR and Halliburton agreed to settle related, civil charges brought by the Securities and Exchange Commission (the "SEC") by disgorging $177 million of profits. The penalties dwarf any previously paid by a U.S. company in an FCPA case and are second only to Siemens' $800 million settlement with the DOJ and SEC in December 2008. Prior to the Siemens settlement, the largest FCPA penalty was the $44.1 million assessed in 2007 against Houston-based oilfield services company Baker Hughes Inc.

KBR LLC pled guilty to one count of conspiracy to violate the FCPA's antibribery provisions and four counts of substantive violations of those provisions. The substantive antibribery charges relate to four sets of payments, totaling approximately $92 million, authorized by KBR LLC and made to two foreign consulting companies for use in bribing Nigerian government officials. The SEC charged KBR with violating the antibribery provisions of the FCPA and charged both KBR and Halliburton with violating the internal controls and books and records provisions of the FCPA. Halliburton will reportedly pay $382 million of KBR LLC's $402 million penalty under the terms of the separation agreement between Halliburton and KBR that led to KBR's spin-off as an independent public company in 2007. KBR LLC is a wholly owned subsidiary of KBR and the successor company to the series of corporate entities that engaged in the conduct subject to criminal charges.

As part of the settlement, KBR and KBR LLC agreed to retain an independent corporate monitor for a period of three years to review the companies' compliance with the terms of the settlements as well as their anticorruption compliance programs. Although Halliburton has divested the entity in which the illegal conduct occurred, its settlement with the SEC requires it to retain an independent consultant to review Halliburton's antibribery and foreign agent internal controls as well as its record-keeping and financial reporting policies as they relate to FCPA compliance. The Halliburton consultant will conduct one review within 60 days of being retained and a follow-up review approximately one year later.

The charges against the companies relate to a scheme that began in 1994 in which KBR LLC and its co-conspirators paid millions of dollars in bribes to Nigerian officials and a Nigerian political party to secure contracts to build liquefied natural gas ("LNG") facilities in Nigeria. Between 1995 and 2004, a joint venture formed by KBR LLC and three other companies was awarded contracts valued at $6 billion to build the facilities. The joint venture paid two consultants over $180 million, at least some portion of which was intended to be passed on to both high-level government officials, including top executive branch officials, and low-level officials, including employees of the partially government-owned entity that awarded the contracts. The conspiracy

included the joint venture and its members; a U.K.-based consultant; and two foreign consulting companies, one based in Gibraltar and the other in Japan. Former KBR LLC CEO Albert Jackson ("Jack") Stanley was KBR LLC's senior representative on the joint venture's steering committee. According to court papers, Stanley and others met with three successive holders of a top-level executive branch office and requested that the official designate representatives with whom the joint venture could negotiate bribes. Stanley pled guilty in September 2008 to conspiring to violate the FCPA. His plea agreement calls for a seven-year sentence, and he has agreed to cooperate with investigators.

The SEC alleged that Halliburton failed to devise and maintain adequate internal controls to govern the use of foreign sales agents; that it failed to maintain and enforce the internal controls that it had; and that its records relating to payments to the consultants were false in that they represented bribes as "consulting" and "services" fees. In its complaint, the SEC pointed out that Halliburton's policies governing agents did not specify what steps should be taken in conducting due diligence on an agent; did not require any specific description of the agent's duties; and did not require the agent to agree to any accounting or auditing of its fees. The SEC also noted that the attorneys who conducted due diligence on the Gibraltar-based consulting company did not question how the company's only active official would carry out his duties under the multi-million dollar consulting agreements, nor did they check all of the references provided by the U.K.-based consultant, some of which allegedly were false. In addition, the SEC alleged that senior Halliburton and KBR officials who signed an approval request for a proposed contract with the U.K. consultant did not undertake any independent review or ask any questions about the consultant. Finally, in observing that Halliburton conducted no due diligence on the Japan-based consulting company, whose contract was characterized as a "services" contract, the SEC stated that Halliburton's internal controls had no mechanism to test the characterization of contracts entered into by its business units or joint ventures.

The DOJ alleged that KBR LLC structured its participation in the projects through a series of complex corporate entities in order to attempt to avoid U.S. jurisdiction over its illegal activities. The joint venture that was formed to bid on and carry out the contracts related to the LNG facilities operated three special purpose corporations based in Madeira, Portugal. One of those special purpose corporations contracted with the consultants that served as conduits for the bribes. KBR LLC held its interest in that special purpose corporation indirectly, through a U.K. company, rather than directly as it did for the other two special purpose corporations. In addition, although U.S. citizens held seats on the boards of the other two special purpose corporations, KBR LLC did not place any U.S. citizens on the board of the special purpose corporation that hired the consultants.

According to court filings, the consultants also funneled payments to a political party in Nigeria and to government officials, including top executive branch officials and officials of both the Nigerian National Petroleum Corporation ("NNPC") and Nigeria LNG Limited ("NLNG"). NNPC was a Nigerian government-owned company and—at 49%—the largest shareholder of NLNG, the entity that awarded the contracts related to the LNG facilities. NLNG's other shareholders were multinational oil companies. According to the DOJ, both NNPC and NLNG

qualified as "instrumentalities" of the Nigerian government for purposes of the FCPA. The DOJ noted that although the Nigerian government did not own a majority of NLNG's shares, it exercised control of NLNG through the appointment of board members and its power to block NLNG's award of contracts.

This case highlights a number of issues relevant to FCPA enforcement and compliance. First, it is further evidence of an upward trend in fines in FCPA cases. In contrast to the Siemens settlement, which involved widespread bribery across many locations and business entities, this case involved activity that centered in one country and related to one, multi-stage project. However, the size of the fine in this case likely reflects the apparent number and level of the officials involved (including three different holders of a top executive branch office), the ten-year period of time over which the conduct occurred, the fact that participation in the scheme extended to the highest levels of KBR LLC, the enormous size of the bribes (nearly $180 million), and the profit that the companies received in return for them—which KBR LLC's plea agreement with the DOJ indicates was $235.5 million.

Second, this case emphasizes the importance of maintaining strong internal controls and enforcing the controls that are in place, for example, by conducting adequate due diligence on third party agents. The SEC faulted Halliburton for what it saw as a lack of detailed procedures for conducting due diligence on third parties, and highlighted senior officials' alleged failure to conduct any independent inquiry or ask questions when approving multi-million dollar contracts supported by incomplete due diligence.

Third, the case demonstrates that U.S. enforcement authorities take the view that even an entity that is not majority-owned by a foreign government can be an "instrumentality" of the government, making all of the entity's employees "foreign officials" for purposes of the FCPA. This presents companies subject to the FCPA with a difficult challenge in trying to assess whether minority government-owned entities should be treated as government instrumentalities for purposes of compliance policies and procedures.

It is unclear whether any additional enforcement actions will be brought in connection with this case. French and Nigerian authorities have reportedly conducted their own investigations, and a KBR spokesperson stated that a European investigation into the conduct is ongoing. Two other members of the joint venture, Snamprogetti (a subsidiary of Italian oil company ENI) and French company Technip, have disclosed in past SEC filings that they have cooperated with requests from the SEC in connection with its investigation. ENI and Snamprogetti also referred to requests from "other authorities" investigating the matter.

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