FOIA-2009-000242

Department of Energy

Washington, DC 20585

April 30, 2009

Mr. Ian Talley
Dow Jones Newswires
1025 Connecticut Ave, NW
Suite 800
Washington, DC 20036

Re: FOIA-2009-000242

Dear Mr. Talley:

This is in final response to your request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You asked for all correspondence between Congressional Offices and the Department of Energy regarding Vitol contracts, and any correspondence between DOE and Vitol between January 2009 to the present.

Your request was assigned to the Office of the Executive Secretariat and the Office of Fossil Energy for responsive documents. A search was conducted of the Electronic Document Online Correspondence and Concurrence System of the Office of the Executive Secretariat. This system tracks all correspondence to and from the Offices of the Secretary, Deputy Secretary, and Under Secretaries of Energy. The Office of the Executive Secretariat, in coordination with the Office of Fossil Energy, located one document responsive to your request. That document is enclosed, and described in the accompanying index.

You may challenge the adequacy of this search for responsive documents by submitting a written appeal to the Director, Office of Hearings and Appeals, HG-1/L'Enfant Plaza Building, U. S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. You should submit the appeal within 30 calendar days of receipt of this determination.

The written appeal, including the envelope, must clearly indicate that a Freedom of Information Act appeal is being made. The appeal must contain all the elements required by 10 C. F. R. § 1004.8 to the extent applicable. Judicial review will thereafter be available to you (1) in the District of Columbia, (2) in the district where you reside, (3) in the district where you have your principal place of business, or (4) in the district where the DOE records are located.

If you have further questions, please contact Cindy Luckett (202)586-0317. I appreciate the opportunity to assist you with this matter.

Sincerely,

Carol A. Matthews

Carol A. Matthews
Deputy Director
Office of the Executive Secretariat

Printed with soy ink on recycled paper

INDEX

Request from Ian Talley, Dow Jones Newswires for all correspondence between Congressional Offices and the Department of Energy regarding Vitol contracts, and any correspondence between DOE and Vitol between January 2009 to the present

Request #: FOIA-2009-000242

ES Control Number 2009-003164

1. Letter to Secretary Steven Chu from Representatives Brad Sherman, Mark Steven Kirk, Robert Wexler, Edward R. Royce, Ileana Ros-Lehtinen, Howard L. Berman and Robert E. Andrews, dated February 27, 2009, Subject: Requesting the Department to conduct a review of a contract awarded by DOE to buy oil for the Strategic Petroleum Reserve (SPR) from Vitol, the Swiss/Dutch energy trading firm. – 2 pages, *Release in its entirety*

    1a. DOE response letter to Representatives Brad Sherman from Secretary Chu, dated April 23, 2009 – 2 pages, *Release in its entirety* (Duplicate letters to Mark Steven Kirk, Robert Wexler, Edward R. Royce, Ileana Ros-Lehtinen, Howard L. Berman and Robert E. Andrews)

Exec-2009-003164

Congress of the United States
Washington, DC 20515

February 27, 2009

Hon. Steven Chu
Secretary
Department of Energy
1000 Independence Ave, SW
Washington, DC 20585

RE: January SPR Contract Awarded to Vitol

Dear Secretary Chu:

We are writing to respectfully request that the Department of Energy conduct a review of a contract awarded by the Department to buy oil for the Strategic Petroleum Reserve (SPR) from Vitol, the Swiss/Dutch energy trading firm, announced on January 16.

In November 2007, Vitol pleaded guilty to grand larceny in New York state court in connection with kickbacks paid to the Iraqi government during the Oil-for-Food program, and was ordered to pay a fine of $17.5 million. Prosecutors alleged that Vitol, through an associated entity or third parties, paid $13 million in kickbacks to Iraqi officials in connection with oil purchases under the program from June 2001 through September 2002, but allowed false representations to be made to the U.N. that no kickbacks were paid. These activities took place while Iraq was under United Nations Security Council sanctions.

The crime of larceny certainly *could provide* sufficient grounds for debarment from federal contracting, even if it does not necessarily require such action.

Accordingly, the review requested in this letter should ensure that Vitol did not make any inaccurate representations or fail to disclose information about its criminal activity in the Oil-for-Food scandal, and assess whether Vitol's conduct justifies debarment as a federal contractor.

We also note with concern the fact that Vitol is a major trading partner of Iran and is a key supplier of refined petroleum to Iran. While this is not grounds for denying a contracting opportunity under current law, it further demonstrates that this firm may not be the best business partner for the United States government.

PRINTED ON RECYCLED PAPER

We thank you for your consideration, and look forward to receiving your response to this request for a review of this contract and potential debarment of Vitol.

Sincerely,

BRAD SHERMAN
Member of Congress

MARK STEVEN KIRK
Member of Congress

ROBERT WEXLER
Member of Congress

EDWARD R. ROYCE
Member of Congress

ILEANA ROS-LEHTINEN
Member of Congress

HOWARD L. BERMAN
Member of Congress

ROBERT E. ANDREWS
Member of Congress

The Secretary of Energy
Washington, D.C. 20585

April 23, 2009

The Honorable Brad Sherman
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Sherman:

Thank you for your February 27, 2009, letter requesting that the Department of Energy (DOE) conduct a review of the contract awarded to Vitol Inc. to acquire oil for the Strategic Petroleum Reserve (SPR), as was announced by the previous Administration on January 16, 2009. Specifically, you requested DOE to ensure that Vitol Inc. did not make any inaccurate representations or fail to disclose information regarding its conviction in connection with the Oil-for-Food program, and to assess whether Vitol Inc.'s conduct between June 2001 and September 2002 justifies debarment as a Federal contractor.

I have been informed that the contract awarded to Vitol Inc. in January 2009 was for the purchase of one million barrels of oil to be delivered to the SPR in April 2009. In accordance with the requirements of the competitive solicitation, Vitol made the following disclosure in its offer to DOE:

> Vitol Inc., a Delaware corporation, was formed October 16, 2006, and effective January 1, 2007, succeeded to the U.S. business assets of Vitol S.A. Inc., the US branch office of Vitol S.A., a Swiss corporation. Vitol S.A. owned 100 percent of the shares of Vitol Inc. from January 1, 2007 through December 28, 2007, at which time the shares of Vitol Inc. were transferred to Vitol Holding SARL, a Swiss corporation, which continues to be the sole shareholder of Vitol Inc.
>
> On November 20, 2007, Vitol S.A. filed a guilty plea to a single count of grand larceny in New York State Supreme Court in the Oil-for-Food investigation. Neither Vitol Inc. nor its current sole shareholder, Vitol Holding SARL, have been convicted or had a civil judgment rendered against them as listed in subdivision (h)(2) of provision K.1 in the preceding three year period.

On January 13, 2009, the Contracting Officer determined that this information was not sufficient to render Vitol Inc., which now is a wholly-owned subsidiary of Vitol Holding SARL, ineligible for award of the contract. Moreover, the

Printed with soy ink on recycled paper

Contracting Officer also determined that Vitol Inc. was a responsible contractor (in the procurement regulatory sense of capability to perform), in accordance with Federal Acquisition Regulation (FAR) Part 9. Under these conditions, the Contracting Officer had authority to award the contract in accordance with the provisions of the solicitation, and did so on January 13, 2009.

Debarment from future contracting with the Federal Government must be determined in accordance with the FAR Subpart 9.4 – Debarment, Suspension, and Ineligibility, which cautions that, due to the seriousness of debarment, it should be imposed only when in the public interest and not for purposes of punishment. The FAR also states that the existence of a cause for debarment does not necessarily require that a contractor be debarred. The Contracting Officer determined that Vitol, Inc. should not be disqualified if its offer otherwise was in the best interest of the Government. My understanding is that this determination was based both on the Contracting Officer's own independent evaluation as well as on what the Department regarded as reliable and ethical conduct by Vitol S.A. and its subsidiaries as a supplier under the royalty-in-kind exchange program in 1999, 2004 and 2005, and in the 2000 competitive exchange to encourage heating oil production, and as a purchaser during the 2005 Hurricane Katrina drawdown sale.

While the contract award to Vitol predates this Administration, I understand and appreciate the concerns you raise. These are not trivial issues, and I take them very seriously. Rest assured that the Department will be closely monitoring the implementation of this contract, which will be complete by the end of April, and expects the highest standards of ethical and responsible conduct. The Department will scrutinize future proposals by prospective contractors, including Vitol, for work with the Department extremely carefully.

I hope this information addresses your concerns. If you require additional information, please contact me or Ms. Betty Nolan, Senior Advisor, Office of Congressional and Intergovernmental Affairs at (202) 586-5450.

Sincerely,

Steven Chu