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Iraq: Frequently Asked Questions About Contracting

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Summary

This report provides answers to frequently asked questions about contracts for the reconstruction and recovery in Iraq after Operation Iraqi Freedom (OIF), and questions about contracts for providing support services to the U.S. military during and after OIF. The report describes the governing authorities for federal government contracting policy in general, and Iraqi contracting policy in particular; the contracting process, issues, and challenges; the authority of individual federal agencies; contract awards and the identity of major prime contractors; the business procurement process, congressional oversight, and resources for additional information.

Due to the transfer of sovereignty on June 30, 2004, this report will not be updated again. For a more comprehensive discussion of Iraq, activities since the transfer of sovereignty, and overall Iraqi reconstruction issues, see CRS Report RL31339, *Iraq: U.S. Regime Change Efforts and Post-Saddam Governance,* and CRS Report RL31833, *Iraq: Recent Developments in Reconstruction Assistance.* For a fact sheet on the application of federal procurement statutes to contracts for the reconstruction of Iraq, refer to CRS Report RS21546, *Iraq Reconstruction Resources: Fact Sheet.* For a detailed discussion on the application of federal procurement statutes to reconstruction contracts in Iraq, refer to CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes.*

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Abbreviations:
FDT = Foreign Affairs, Defense, and Trade
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This report provides answers to key questions about contracts for reconstruction and recovery in Iraq, in the wake of Operation Iraqi Freedom (OIF) and questions about contracts for providing support services to the U.S. military during and after OIF. Given the multiple agencies, various contracting authorities, and the multiple congressional appropriations enacted into law for Iraqi reconstruction and recovery operations, as well as questions about laws governing contractor integrity in the face of allegations of questionable contractor behavior, some Members of Congress have raised questions about the size and scope of Iraqi contract awards, as well as the policies that govern how the contracting process works.

> This report describes contracting issues raised during the United States' occupation of Iraq. For a more comprehensive discussion of Iraqi activities since the transfer of sovereignty as well as overall Iraqi reconstruction issues, see CRS Report RL31339, *Iraq: U.S. Regime Change Efforts and Post-Saddam Governance*, and CRS Report RL31833, *Iraq: Recent Developments in Reconstruction Assistance; for* a fact sheet on the application of federal procurement statutes to contracts for the reconstruction of Iraq, refer to CRS Report RS21546, *Iraq Reconstruction Resources: Fact Sheet; and* for a detailed discussion on the application of federal procurement statutes to reconstruction contracts in Iraq, refer to CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes*, or contact the individual authors as listed in this report.

This report describes the governing authorities for federal government contracting policy in general, and Iraqi contracting policy in particular; the issues and challenges of the federal contracting process; federal agency authorities; past, present, and anticipatory contract awards, and major prime contractors; business problems, including oil fuel procurement; congressional oversight; and resources for additional information.

Frequently Asked Questions

Contracting Authority and Eligibility

What Are the Statutory, Regulatory, and Other Controlling Authorities for How Federal Government Contracts Are Awarded? In general, the authority for awarding federal government contracts can be found in the United States Code (U.S.C.) and the Federal Acquisition Regulation (FAR). The statute in the U.S. Code for the Competition in Contracting Act of 1984[1] explicitly states that the federal government "shall obtain full and open competition through use of the competitive procedures in accordance with the requirements of this title and the *Federal Acquisition Regulation*."[2]

The FAR, the Defense Federal Acquisition Regulation Supplement (DFARS),[3] and the United States Agency for International Development (USAID) Acquisition Regulation (AIDAR) outline seven different circumstances which permit DOD and USAID to use other than full and open competition in the awarding of federal government contracts. The Competition in Contracting Act cites the following exceptions to the use of full and open competition.

1. There is only one responsible source available to fulfill the contract requirements.
2. The federal agency's need for these goods or services is of such an unusual and compelling urgency that the federal government would be seriously injured if this contract were not awarded.
3. The federal government needs to ensure that suppliers are maintained in the event of a national emergency, or to achieve industrial mobilization, or to establish or achieve or maintain an engineering, development, or research capability.
4. The federal government has an international agreement to make this acquisition through means other than through full and open competition.
5. A statute specifically authorizes or requires that the contract be made through a specific source.
6. The use of full and open competition may compromise national security.
7. The public interest would be better served by use of other than full and open competition.[4]

The procedures for submitting written justifications to use other than full and open competition, including review requirements and delegation of authority, are outlined in DFARS, Subparts 206.303-1 and 206.304, and AIDAR 706.3.

The Bush Administration has set additional criteria for eligibility for contracting in Iraq. A memorandum issued by Deputy Secretary of Defense Paul Wolfowitz on December 5, 2003, states that he has determined that it is in the public interest to limit competitive bidding for the procurement of certain Iraqi Relief and Reconstruction prime contracts awarded by the Coalition Provisional Authority

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[1] 41U.S.C. 253. CICA can also be found in Title 10 U.S.C., Chapter 137, and was included in Section 805 of the FY2004 National Defense Authorization Act (P.L. 108-136).

[2] 41 U.S.C. 253 (a)(1)(A).

[3] The Defense Federal Acquisition Regulation and AIDAR are supplements to the FAR. See DFARS, Subpart 206.3, and AIDAR, Subpart 706.3, Other Than Full and Open Competition.

[4] For a more detailed discussion on the seven exceptions to the use of full and open competition, as outlined in the Competition in Contracting Act, see CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes*, by John R. Luckey.

(CPA) and DOD, on behalf of the CPA.[5] (See the next question for the rationale.) The statement can be viewed at [http://www.rebuilding-iraq.net].

What Countries' Businesses Are Eligible to Compete for Contracts Funded with U.S. Appropriated Reconstruction Funds? Contracts issued utilizing FY2003 appropriations were provided under sole source or limited competition procedures that ultimately benefitted U.S. firms. The national security interest was a key justification for excluding competition, domestic as well as foreign. However, as most contracts were then provided by USAID and treated as foreign assistance, they became subject to "buy America" provisions of law under the Foreign Assistance Act of 1961, and exempt from international procurement agreements.[6] Foreign countries could, however, participate as sub-contractors to the selected American firms, and are estimated to compose half or more of the total cost of these contracts.

Most FY2004 appropriations — managed by the CPA — are being treated somewhat differently. Under a previously mentioned December 5, 2003 "Determination and Findings" report issued by Deputy Secretary of Defense Paul Wolfowitz, prime contracts are subject to full and open competition only among U.S. firms and those of 62 other eligible countries, including Iraq, coalition partners, and force contributing nations. The rationale for barring other countries' firms is that it is "necessary for the protection of the essential security interests of the United States." Countries ineligible to compete for prime contracts may still participate as sub-contractors.

Some excluded countries, such as Germany and France, have protested the decision on the grounds that it may violate the WTO's Government Procurement Agreement (GPA). Some U.S. officials suggest that the contracting organization, CPA, is not covered by the GPA and need not allow open competition. Others point out that GPA rules and existing practice exempt much foreign assistance from their requirements. The strength of these arguments has been questioned. On January 13, 2004, President Bush announced that Canada — previously excluded as an opponent of the war, but a significant financial contributor — could compete for contracts that have not yet been open for bids.[7]

Will Israeli Businesses Be Eligible to Participate in Iraqi Contracts? Reflecting political sensitivities in the Middle East, Israeli businesses are not eligible for prime contracts resulting from FY2004 appropriations. Although it has consistently backed U.S. policy in Iraq, Israel did not express official support at the request of the Bush Administration. Israeli firms, however, are eligible to participate

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[5] The memo cites the authority as contained in 41 U.S.C. 253 (c)(7) and 10 U.S.C.(c)(7), as implemented by FAR 6.302-7.

[6] Section 604 of P.L. 87-195, as amended.

[7] "Pentagon Bars Three Nations from Iraqi Bids," *New York Times*, Dec. 10, 2003. "Trade Lawyers Pick Over Small Print in Treaty," *Financial Times*, Dec. 11, 2003. "Allies Angered at Exclusion From Bidding," *New York Times*, Dec. 11, 2003. "U.S. Pressed Over Iraq Contracts Ban," *Financial Times*, Dec. 12, 2003. "Iraq Contracts Open to Canadians," *Washington Post*, Jan. 14, 2004.

in Iraq reconstruction programs as sub-contractors. Reportedly, some are currently acting as sub-contractors in communications, water, security, and agriculture programs.[8]

Contracting Agencies

What Federal Agencies or Governing Bodies Are Involved in Contracting for the Reconstruction of Iraq? Primary authority for the awarding and administration of Iraq reconstruction contracts has been transferred to the U.S.-led Coalition Provisional Authority (CPA) [http://www.cpa-iraq.org/]. The CPA Program Management Office (PMO) [http://www.rebuilding-iraq.net/] is responsible for selecting projects and overseeing 25 Iraq reconstruction prime contracts worth up to $18.6 billion that were originally to be awarded by February 2004. However, slipped deadlines and the accelerated sovereignty schedule have led to a re-evaluation of the PMO's needs and capabilities. By the end of March 2004, only about $2.2 billion of the original $18.6 billion had been obligated. As of May, contracts potentially worth nearly $8 billion of the $18.6 billion in FY2004 supplemental funding had been awarded. Among recent reasons for the slow progress are the requirement for open and competitive bidding for most of the new reconstruction contracts and inter-agency disputes over control of the funds. Security concerns, escalating since March, have also delayed reconstruction further.

Previously, major contract awards and management for postwar Iraq reconstruction projects were administered by USAID [http://www.usaid.gov/iraq/activities.html]. Other federal agencies have taken steps in the awarding and/or disseminating of information on contracts and the contracting process, including the U.S. Army Corps of Engineers [http://www.hq.usace.army.mil/cepa/iraq/contracts.htm] and the U.S. Department of State [http://usinfo.state.gov/mena/middle_east_north_africa/iraq/iraq.html]. It is anticipated that USAID and the other federal agencies involved with Iraq's reconstruction will continue their roles in the contracting process as a complement to CPA's efforts. For additional information on federal agency solicitations, application procedures, and contact information, see CRS Report RS21546, *Iraq Reconstruction Resources: Fact Sheet.*

Under the Broader Question of Different Authorities, What Is the USAID Contracting Role in Iraq? USAID has been responsible for contracting the majority of FY2003 reconstruction appropriations in Iraq and the widest range of economic, social, and political development programs. To date, USAID has awarded contracts in seaport and airport administration, capital construction, theater logistical support, public health, primary and secondary education, personnel support, local governance, agricultural development, and higher education.

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[8] "Israel Hopes for Role in Iraq Deals Despite Snub," *Jerusalem Post*, Dec. 11, 2003. "Israel Working Behind Scenes to Get Iraq Contracts," *Globes [online]*, Dec. 11, 2003. "Israeli Firms to Participate in Iraq Reconstruction as Subcontractors," *BBC Worldwide Monitoring*, Dec. 15, 2003.

Although USAID was responsible for the FY2003-funded $1 billion construction contract awarded to Bechtel and an FY2004-funded $1.8 billion follow-on project, the CPA has control over most of the funding available for reconstruction-related activities, particularly in the infrastructure and security sectors. USAID appears likely to continue to carry out many of the non-construction development programs supported by FY2004 appropriations in areas such as education and democratization. As of May 18, 2004, USAID had obligated more than $3.5 billion in Iraq aid contracts and grants.[9]

Contractor and Contract Programs

Who are the Major Contractors Involved in the Iraq Reconstruction Effort? The Center for Public Integrity has completed an investigation of contract awards in Iraq and Afghanistan made by DOD, Department of State, and USAID; in the course of their inquiry, Center for Public Integrity officials filed Freedom of Information Act requests and agency appeals, studied Security and Exchange Commission filings and other news sources, studied contract award histories compiled by a database through the United States General Services Administration of unclassified contracts worth more than $25,000, and made contact with government and non-government officials who awarded and received contracts. The following information was excerpted from the Center for Public Integrity's website.

Table 1. The Top 20 Contractors, Ranked by Total Contract Value, for Activities in Iraq and Afghanistan

(from 2002 through May 20, 2004)

Contractor	Headquarters	Est. Contract value
Kellogg, Brown & Root (Halliburton)	Houston, TX	$4.678 billion
Bechtel Group Inc.	San Francisco, CA	$2.829 billion
Parsons Corp.	Pasadena, CA	$2.311 billion
Fluor Corp.	Aliso Viejo, CA	$2.254 billion
Washington Group International	Arlington, VA	$1.633 billion
Stanley Baker Hill L.L.C.	Muscatine, IA	$1.200 billion
Perini Corporation	Framingham, MA	$1.025 billion
Contrack International Inc.	Arlington, VA	$825 million

[9] U.S. Agency for International Development, *Iraq Reconstruction and Humanitarian Relief Weekly Update #32*, May 18, 2004.

Contractor	Headquarters	Est. Contract value
International American Products Inc.	Columbia, SC	$528.4 million
Research Triangle Institute	Research Triangle Park, NC	$466 million
Louis Berger Group	Washington, DC	$327.6 million
BearingPoint Inc.	McLean, VA	$304.2 million
Creative Associates International Inc.	Washington, DC	$217.1 million
Chemonics International Inc.	Washington, DC	$167.7 million
Harris Corporation	Melbourne, FLA	$165 million
Readiness Management Support LC (Johnson Controls Inc.)	Panama City, FL	$111.9 million
DynCorp (Computer Sciences Corp.)	El Segundo, CA	$93.6 million
Shaw Environmental & Infrastructure Inc.	Baton Rouge, LA	$75.7 million
Lucent Technologies World Services, Inc.	Murray Hill, NJ	$75 million
EOD Technology Inc.	Lenoir City, TN	$71.9 million

Source: The Center for Public Integrity's website, at [http://www.publicintegrity.org/], viewed on June 8, 2004. According to the Center's website, a total of 13 new companies have received contract awards (since the website's last update on March 31, 2004), and nine companies previously awarded contracts have seen contract increases totaling $5.8 billion.

The CPA Program Management Office announced on May 12, 2004, that no protests have been filed against the $5.1 billion in construction contracts awarded in March 2004.[10]

What is LOGCAP, and What Contracts Have Been Awarded under LOGCAP? The United States Army's Logistics Civil Augmentation Program (LOGCAP)[11] is an initiative to manage the use of civilian contractors who perform

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[10] Press Release from the Coalition Provisional Authority, Program Management Office, Baghdad, Iraq, May 12, 2004. According to federal government contracting regulations, there is a 10-day period following the award debriefing for unsuccessful bidders to file a formal protest. See [http://www.rebuilding-iraq.net].

[11] Department of the Army. Logistics Civil Augmentation Program (LOGCAP). Army (continued...)

services in support of DOD missions during times of war and other military mobilizations. It was established on December 6, 1985, with the publication of Army Regulation 700-137. LOGCAP is administered through the Army Materiel Command (AMC), Operations Support Command, and is a centrally managed program to coordinate efforts to negotiate pre-existing (such as contingency) contracts with vendors from the United States. LOGCAP has been used in a variety of military contingency operations, and provides for the awarding of contingency, or bridging contracts, or for the inclusion of contingency clauses in peacetime contracts. LOGCAP contracts have been previously awarded for work in Rwanda, Haiti, Saudi Arabia, Kosovo, Ecuador, Qatar, Italy, southeastern Europe, Bosnia, South Korea, and Kuwait.

LOGCAP contracts are "costs-plus award fee" contracts, meaning that there is a fee paid based on contract costs, in addition to the potential for incentive fees based on performance. Tasks administered under LOGCAP contracts are executed through "task orders." Task orders outline the specific actions that the contractor needs to perform. The scope and breadth of the tasks to be performed by the contractor are determined by the base commander. LOGCAP contracts allow task orders to be approved as needed, without having to compete. Tasks orders have the effect of acting as small contracts, are awarded without benefit of competition, and can be quite large. Reportedly, three of the LOGCAP task orders given to Halliburton/KBR under the LOGCAP III contract were each worth at least $60 million.[12] In an audit of several task orders issued under the Halliburton/KBR LOGCAP III contract, the Defense Contract Audit Agency found a number of deficiencies, such as pointing out that four task orders, totaling $227 million, did not show evidence of current, accurate and complete cost or pricing data. The report concluded that ... "Collectively, the deficiencies described above bring into question BRS'[13] ability to consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices. We recommend you contact us to ascertain the status of the BRS' estimating system prior to entering into future negotiations."[14]

The first LOGCAP contract (LOGCAP I) was awarded by the Army Corps of Engineers to Kellogg, Brown, and Root (KBR) in1992. The contract was used to support the United States military services and the United Nations military forces in Somalia. The second LOGCAP contract (LOGCAP II) was awarded to DynCorp in 1994. The third LOGCAP contract was awarded to KBR (now a subsidiary of

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[11] (...continued)
Regulation (AR) 700-137, Introduction, 1-1. Purpose, p. 1.

[12] See the OMB Watch website, at [http://www.ombwatch.org/article/articleview/1800]. The article, "Iraq Contracts Shrouded in Secrecy," was published on September 10, 2003.

[13] BRS is Halliburton subsidiary Kellogg, Brown and Root, or Halliburton/KBR.

[14] Status of Brown & Root Services (BRS) Estimating System Internal Controls. Memorandum For Corporate Administrative Contracting Officer, Defense Contract Management Agency San Antonio (DCMAW-GEHC), 4100 Clinton Drive, Mail Drop 01-660, Houston, TX 77020, Defense Contract Audit Agency, January 13, 2004, p. 3. The audit can be viewed on Rep. Henry Waxman's website.

Halliburton) in 2001. According to the LOGCAP Program Manager,[15] each of the three LOGCAP contracts was awarded competitively.

The third LOGCAP contract (LOGCAP III), a ten-year contract (one base year, followed by nine option years), was awarded in 2001 to Halliburton/KBR to perform a variety of tasks. Initial press reports indicated that this LOGCAP III contract would be for the development of a contingency plan for extinguishing oil well fires in Iraq; however, subsequent press reports include such tasks as providing housing for troops, preparing food, supplying water, and collecting trash. This contract was awarded under a cost-plus-award-fee, indefinite delivery/indefinite quantity contract.[16] The 2001 contract is based on specific task orders which are issued individually, and only for those services that DOD feels are necessary to support the mission in the near term. During 2003, the Halliburton/KBR LOGCAP III contract rose to more than $3.5 billion. According to one press account, Halliburton/KBR earns a fixed 1% profit above costs on LOGCAP III, with the possibility of an additional 2% as an incentive bonus,[17] while another press account reports that the Halliburton/KBR LOGCAP III contract is a cost-plus, award fee contract that earns a 2% fixed fee with the potential for an extra 5% incentive fee.[18]

In accordance with the Freedom of Information Act, the Center for Public Integrity has obtained portions of the LOGCAP III Iraqi oil repair contract, and such portions can be viewed on the Center's website, [http://www.publicintegrity.org/].

Was Halliburton Awarded a Sole-source Contract (A Contract Awarded Without Full and Open Competition)? On March 24, 2003, the Army publically announced that Halliburton's subsidiary Kellogg, Brown and Root (KBR) had signed a contract with the Army Corp of Engineers to extinguish oil well fires in Iraq as well as provide an assessment of the necessary repairs to the Iraqi oil infrastructure.[19] This contract was a sole-source contract to repair and operate oil wells in Iraq. According to the Army Corps of Engineers, KBR was selected for this contract because KBR was judged to be the only contractor that could begin implementing the contingency plan on such extremely short notice. DOD has asserted that KBR had equipment and personnel in the region, and requiring competition for the work would have delayed the response to the oil well fires in

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[15] CRS verified this information in a telephone conversation with Mr. Don Trautner, DOD's LOGCAP Program Manager.

[16] Indefinite delivery/indefinite quantity contracts, also known as IDIQ contracts, supply an indefinite quantity of supplies, goods, or materials, for an indefinite period of time. See FAR, Part 16, Types of Contracts.

[17] Jaffe, Greg and King, Neil, Jr. U.S. General Criticizes Halliburton. *Wall Street Journal*, March 15, 2004.

[18] See Center for Public Integrity's website at [http://www.publicintegrity.org/wow/] under the section for Kellogg, Brown & Root (Halliburton), last updated on March 31, 2004.

[19] York, Byron. "All Smoke, No Fire: The Administration's Critics Are Wrong About Halliburton and Iraq." *National Review*, Vol. LV, No. 13, July 14, 2003, p. 32.

Iraq.[20] This contract was expected to be used for an interim period, until the Army Corps of Engineers had an opportunity to award additional contracts to provide a broader range of services to execute more of the contingency plan. It appears that DOD justified the awarding of this contract based on an "unusual and compelling urgency" (see DFARS 206.302-2).

As a Result of Questions Raised over the Awarding of the Halliburton Sole-Source Contract, What Action Did the Army Corps of Engineers (Corps) Take? The Army Corps of Engineers made the decision to conduct a competition to award two new contracts to replace the sole-source Halliburton contract. The Corps conducted a competition for two new costs-plus-award fee, indefinite delivery/indefinite quantity contracts for a full range of services to assist the continued recovery operations in Iraq. The Request for Proposal (RFP) was issued on July 9, 2003, and closed on August 14, 2003. The Corps held a conference with all interested parties on July 14, 2003. The solicitation (Solicitation DACA63-03-R-0021, for the Repair and Continuity Operations of Iraq Oil Infrastructure) called for a total of two (2) contracts to be awarded, and that work under each of these two contracts could range from a minimum amount of $500,000 to not more than $500,000,000, during the life of the contracts. On Friday, January 16, 2004, the Corps awarded Halliburton subsidiary KBR the first of the two contracts, a competitive bid to rebuild the oil industry in Southern Iraq. Soon after, USAID announced that Bechtel had been awarded the second of the two contracts, a contract to repair bridges and roads, electrical power generators and grids, water and sewage systems, and airport facilities; the contract also calls for Bechtel to rebuild up to100 hospitals and 6,000 schools and may be worth up to $1.8 billion dollars over two years. The contract award information can be accessed from the Federal Business Opportunities website at [http://www.fedbizopps.gov/].[21]

What Has Replaced the Oil-for-Food Program (OFFP) Structure? Who Is Providing Oversight Authority? Security Council Resolution 1483, adopted on May 22, 2003, extended the OFFP for six months beyond its original expiration date of June 3, 2003, during which time the program was phased out. For information about the OFFP operations under the United Nations (U.N.), see [http://www.un.org/Depts/oip/background/latest] and CRS Report RL30472, *Iraq: Oil-For-Food Program, Sanctions, and Illicit Trade*, by Kenneth Katzman. The resolution ended sanctions against Iraq and permitted the CPA to use oil reserves for more long-term reconstruction purposes. It also shifted responsibility for oil profits from the U.N. to the United States by establishing the Development Fund for Iraq, which is held by the Central Bank of Iraq.[22]

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[20] Becker, Elizabeth. "Contract to Fight Oil-Well Fires Disputed; U.S. Vice-President Repeatedly Questioned About His Ties to Firm Where He Once Worked." *Hamilton Spectator*, Apr. 14, 2003, p. D09; David Pace. "Halliburton's Contracts in Iraq, Afghanistan at $600 Million and Growing." *The Associated Press State & Local Wire, Business News, Washington Dateline (Online)*, May 30, 2003.

[21] Harris, Shane. U.S. Awards Second Iraq Reconstruction Contract. *Government Executive*. Jan. 6, 2004, 2 p.

[22] For a more detailed background discussion, see CRS Report RL31339, *Iraq: U.S. Regime*
(continued...)

The OFFP was phased out on November 21, 2003 when the U.N. officially transferred operational responsibilities to the CPA. For information about the transfer and related links, see [http://www.state.gov/r/pa/prs/ps/2003/26540pf.htm]. Of the overall $46 billion allocated to the OFFP during the life of the program, $39 billion was in humanitarian assistance. The $8.2 billion of remaining assets and funds in the pipeline when the OFFP terminated were to be transferred to the Development Fund for Iraq. The CPA took over responsibility for the management of the multi-billion dollars' worth of supplies and equipment already designated for Iraq through the OFFP delivery system and for the authentication and payment of suppliers. As of March 31, $7.6 billion of these assets and funds had been transferred.

The CPA established a coordination center in Baghdad that took over issues previously handled by the OFFP. The website [http://www.cpa-iraq.org/oil_for_food] offers a section on frequently asked questions that is useful for contact information and details on contract funding, amendments, and prioritization. Terminating the OFFP also put a limit on contract applications for the export of goods to Iraq. With consideration of Iraqi views and needs, a priority system was developed. Categories of eligible and ineligible contracts are provided on the CPA website with details about specific suppliers listed in tables arranged by country.

Press reports in February and March 2004, apparently based on material released by the Iraqi Governing Council and in other news briefs attributed to documents found in Iraq by the CPA, refer to allegations of abuse of the OFFP by the Hussein government (and when the OFFP was under U.N. authority) including a list of individuals, companies, and organizations that may have received kickbacks.[23] Since nearly the beginning of the OFFP there have been allegations of program abuses, and audits have been conducted at different points over the life of the program. Apparently, U.S. officials were particularly concerned about whether Iraq was using the additional revenue to buy prohibited military and WMD technology.[24]

In March 2004, Secretary-General Koffi Annan suggested to the Security Council that an independent investigation into the allegations of corruption and fraud within the OFFP be undertaken.[25] This action was later endorsed by the Security Council. On April 21, Mr. Annan announced that the members of an independent

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[22] (...continued)
Change Efforts and Post-Saddam Governance, by Kenneth Katzman; CRS Report RL31833, *Iraq: Recent Developments in Reconstruction Assistance*, by Curt Tarnoff.

[23] See for example, "Hussein's Regime Skimmed Billions From Aid Program," *New York Times*, February 29, 2004; "U.N.'s Statement on Iraq Oil-for-Food Funds, Letter to the Editor," *Wall Street Journal*, Feb. 18, 2004; "The Cash-for-Saddam Program," *Wall Street Journal*, Mar. 8, 2004.

[24] For more detail on the alleged program abuses see CRS Report RL30472, *Iraq: Oil-For-Food Program, Sanctions, and Illicit Trade*, by Kenneth Katzman. See also, US GAO Report *United Nations Observations on the Oil for Food Program*, Statement of Joseph A. Christoff, Director, International Affairs and Trade, Testimony Before the Committee on Foreign Relations, U.S. Senate, April 7, 2004.

[25] "Annan Sends Letter to Security Council on Oil-for-Food Programme," U.N. News Service, Mar. 19, 2004.

panel, to be chaired by Paul Volcker, is expected to conduct a comprehensive investigation.[26] The Iraqis may be organizing an investigation of the allegations as well.

The latest potential scandal refers to dealings that may have happened during President Saddam Hussein's rule and is separate from the current contract management under the CPA. It appears that the number of Iraqis (roughly 60%) dependent on food assistance provided by the public distribution system has not changed since the termination of the OFFP. It is expected that the new Iraqi interim government will take responsibility for continuing the process of closing out the program and for managing food distribution, but specific details are not yet available.[27]

What Can Explain the Cost Differential in Halliburton/KBR Oil Fuel Purchases from Kuwait and Turkey? Halliburton/KBR, on behalf of the CPA, has purchased oil fuels for consumption by the Iraqi population. Gasoline has been purchased from Kuwait and Turkey, and delivered into Iraq by truck. While roughly 75% of the gasoline has come from Turkey, both the commodity cost of the fuel and the cost of transport from Kuwait are each more than twice as high as the corresponding charges associated with Turkish supplies. What can explain the cost differential in each element of this transaction? In most cases, fuels for Iraq were purchased in two geographically separate markets. Supplies came from both Turkish suppliers and international spot markets in the Mediterranean oil trading area. Offshore purchases were imported into the Mediterranean ports of Iskenderum and Mersin, and shipped overland by Turkish truckers to Iraq. In other cases, fuels were purchased from a Kuwaiti supplier not directly in the oil business, who also made transport arrangements.

Between May and October 2003, Halliburton imported about 179 million gallons from Turkey and 61 million gallons from Kuwait. Turkish supplies averaged $1.24 per gallon delivered; those from Kuwait averaged $2.64, including $1.21 for the fuel and the remainder transport and KBR fees.[28] This is the most recent price data available, despite purchases continuing through the end of March 2004.

Information on the quantities of gasoline obtained for Iraq were provided to the House Government Reform Committee by the Corps of Engineers for the whole

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[26] "Allegations on Oil-for-Food will be Probed 'Very Seriously,' Annan Says," U.N. News Service, Apr. 13, 2004. For details on the scope of the panel's authority see "Secretary-General Names Independent Panel to Probe 'Oil-for-Food' Allegations," U.N. Secretary-General, Apr. 21, 2004; and "Independent Inquiry will Yield Facts on Iraq Oil-for-Food Programme — Annan," U.N. News Service, Apr. 22, 2004. For further response to the allegations, see "Annan says Some Oil-for-Food Charges 'outrageous', Probe will Clarify Issues," U.N. News Service, Apr. 28, 2004; and "Probe Iraq Oil-for-Food Programme but Don't Forget Its Successes - U.N. Official," U.N. News Service, May 3, 2004.

[27] "Text of Draft U.N. Resolution Submitted by the United States to the Security Council," Paragraph 16, The Associated Press, May 24, 2004.

[28] Van Natta Jr., Dan. "High Payments To Halliburton For Fuel In Iraq." *The New York Times*, Dec. 10, 2003, Section A, p.1.

period of Halliburton fuel procurement management. The cheaper Turkish purchases — which comprised about 75% of a total of 464 billion gallons acquired[29] — may well have comprised all the available supply in that trading area; hence, perhaps the need for the higher priced supplies from nearby Kuwait.

However, certain factors might have contributed to higher Kuwaiti prices:

- *Dealing with Dangerous Transportation.* Over 60 vehicles have been destroyed or damaged, at least 3 people killed, and several more injured.
- *Using Short-term Supply Contracts.* The 30-day supply contract specified in the supply arrangement with Kuwait may have been too short to line-up additional trucks, which are apparently in short supply.
- *The Nature of the Existing Kuwaiti Supply Contract.* According to *Platts Oilgram News*, the Kuwait Petroleum Corp. refused to grant KBR permission to deal with any other supplier than the Altanmia Commercial Marketing Company to procure and deliver petroleum products from Kuwait to Iraq. Altanmia's main shareholder is Najeeb al-Humaizi, part of a prominent Kuwait family closely linked to the Kuwaiti government. Altanmia refuses to provide cost information, contending it is prohibited from doing so by Kuwaiti law.

Reacting to the fuel price controversy, the Pentagon decided, on December 30, 2003, to give the Iraqi fuel procurement job to the Defense Energy Support Center (DESC). DESC solicited bids for 6.6 million barrels of fuel on January 21, 2004; a contract is expected to be in place by April 1, 2004. KBR is also eligible to bid on new contracts.

Meanwhile, KBR supplied fuel while being under investigation for wrongdoing under the supply contract. The investigation continues, although no new developments have been announced. The Pentagon Inspector General made a preliminary finding that KBR had overcharged $61 million. On January 23, 2004, the *Wall Street Journal* reported that two Halliburton employees had admitted taking $6 million in kickbacks.[30] The company confirmed this. The *Wall Street Journal* went on to note specifically, that the kickbacks did not involve the gasoline purchases under scrutiny, although the employees involved worked in the same office in Kuwait that handled the gasoline contract. The Defense Contract Audit Agency (DCAA) has requested that the Inspector General findings be forwarded to Pentagon criminal investigators.

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[29] From an e-mail communication with the U.S. Army Corps of Engineers, April 13, 2004.

[30] King, Jr. Neil. "Halliburton Tells the Pentagon Workers Took Iraq-Deal Kickbacks." *Wall Street Journal*, Jan. 23, 2004, p. A1.

Have Halliburton/KBR Fuel Purchases Had an Undue Impact on the Spot Market Price of Gasoline in the Persian Gulf Area? Between October and December 2003, the spot market price of gasoline in the Persian Gulf area, as quoted in *Platts Oilgram Price Report*, increased from 71 cents per gallon to over $1.00 per gallon.[31] Has this thinly traded spot market been unduly affected by Halliburton/KBR fuel purchases? Spot market gasoline prices in the Persian Gulf trading area have risen from about $30 per barrel at the beginning of October, 2003 to about $44 per barrel in mid-January 2004. That $14 increase — the equivalent of 33 cents per gallon — represents a substantial hike, well exceeding that which might be attributable to crude oil increases.

Higher gasoline prices beyond increases in crude oil costs were likely caused by increased demand in the limited regional market where fuel is purchased for Iraq. After several months of unusual demand pressure from continuous short-term purchases, markets have responded in a way suggesting that local conditions could not support the Iraqi demand without escalating the cost of the Kuwait-Iraq procurement. As DESC prepares to take over this program, one clear consideration is to source future petroleum product purchases in more robust markets better able to accommodate the greater demand without such price increase.

In a December 30, 2003, press release, DESC announced it would support the Task Force-Restore Iraqi Oil (TF-RIO) through the Defense Logistics Agency. Requests for Proposals (RFPs) were initiated, and supply contracts were signed. On April 1, 2004, the DESC assumed sole responsibility for civilian fuel supplied to Iraq and procured from both Turkey and Kuwait. Halliburton/KBR loaded its last truck shipment in Kuwait on March 31, 2004, ending its involvement in fuel supply[32].

Procuring New Contracts

Which Product Areas and Sectors Are the Focus of Future U.S. Contracts? The Coalition Provisional Authority's Program Management Office has announced that, based on the awarding of over $5 billion during March 2004 alone, the United States has used up to approximately $8 billion of its 2004 supplemental appropriation for Iraqi reconstruction activities. Separate solicitations from the Pentagon Renovation Program for program management support are also anticipated. **Table 2** and **Table 3** provide information on CPA's awarded reconstruction contracts. The information from both tables was extracted from the April 2, 2004, press release issued by CPA-PMO and can be viewed at [http://www.rebuilding-iraq.net].

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[31] Landry, Cathy. "KBR Welcomes US Role in Iraq Fuel Supply." *Platts Oilgram News*, Jan. 7, 2004, p. 1.

[32] From an E-mail communication with the Office of Legislative Affairs, Defense Logistics Agency, April 15, 2004.

Table 2. FY2004 Contracts Awarded for Iraq Infrastructure Reconstruction, by Sector

Sector	Contract Value	Date Awarded	Contractor
Public Works and Water Projects	up to $600 million	March 11, 2004	Washington International/Black & Veatch Joint Venture, Idaho
Public Works and Water North, Public Works and Water South	North (up to $600 million) and South (up to $500 million)	March 23, 2004	Fluor AMEC, LLC, SC;Fluor, SC/Ca; AMEC, United Kingdom
Public Buildings, Education, and Health	up to $500 million	March 25, 2004	Parsons Delaware Inc., Pasadena, CA
Buildings, Education & Health Sector Program Management	$10,754,664	March 10, 2004	Louis Berger Group, Inc., Wash., DC; URS Group Inc., CA
Public Works & Water Sector Program Management	$28,494,672	March 10, 2004	CH2M Hill, CO; Parsons Water Infrastructure Inc., CA
Electrical Power Generation	up to $500 million	March 11, 2004	Fluor AMEC, LLC,SC; Fluor, SC/CA; AMEC, United Kingdom
Electrical Power Distribution & Transmission North	up to $600 million	March 23, 2004	Washington International Inc., NJ
Electrical Power Distribution & Transmission South	up to $500 million	March 23, 2004	Perini Corp., MA
Electrical Power Generation	$98,682,431	February 6, 2004	Fluor Intercontinental, NC
Electrical Power Generation	$33,078,193	February 6, 2004	Washington International/Black & Veatch

Sector	Contract Value	Date Awarded	Contractor
Electrical Power Generation	$12,705,000	February 6, 2004	CH2MHill/Dragados/Soluziona, Englewood, CO
Electrical Power Transmission	$56,281,864	February 6, 2003	Fluor Intercontinental
Electrical Power Transmission	$51,409,080	February 27, 2004	Kellogg, Brown & Root, VA
Electrical Services Sector Program Management	$43,361,340	March 10, 2004	Iraq Power Alliance Joint Venture Parsons Energy and Checmicals Group, PA; Parsons-Brickerhoff, Ltd., United Kingdom
Transportation	up to $325 million	March 23, 2004	Contrack/AICI/OCI/Archirodon Joint Venture, Arlington, VA; Contrack, Wash., DC; OCI, Egypt; Archirodon Joint Venture, Netherlands; Panama, United Arab Emirates
Transportation & Communications Sector Program Management	$8,458,350	March 10, 2004	Louis Berger Group, Inc., Wash., DC; URS Group Inc., CA
Communications	up to $75 million	March 23, 2004	Lucent Technologies World Services Inc., New Jersey
Security, Justice, and Safety	up to $900 million	March 26, 2004	Laguna Construction Company Inc., Laguna, New Mexico
Security& Justice Sector Program Management	$8,458,350	March 10, 2004	Louis Berger Group Inc., Wash., DC; URS Group, Inc., CA

Table 3. Other FY2004 Contracts Awarded for Iraq Infrastructure Reconstruction

Contract	Contract Value	Date Awarded	Contractor
Iraq Infrastructure II	up to $1.8 billion	January 6, 2004	Bechtel National Inc., CA
Oil Infrastructure North	up to $412 million	January 19, 2004	Parsons Texas, USA, Worley Group, Australia
Oil Infrastructure South	up to $412 million	January 19, 2004	Kellogg, Brown & Root, VA
Oil Sector Program Management	$8,416,985	March 10, 2004	Foster Wheeler, Co., United Kingdom
Renovation of An Numaniyah Military Base	$65,449,155	January 22, 2004	Earth Tech Inc., CA
Renovation of Taji Military Base & Recruiting Stations	$31,136,252	January 22, 2004	Parsons Infrastructure & Technology Group Inc., CA
Renovation of Al Kasik Military Base	$75,749,910	January 22, 2004	Shaw Environmental Inc., LA
Renovation of Umm Qasr Naval Base	$16,279,724	January 22, 2004	Weston Solutions Inc., PA
Program Management Office	$21,610,501	March 10, 2004	AECOM, California
Ministry of Defense Building	$19,536,683	March 26, 2004	Laguna Construction Company, Inc. Laguna, NM
Work on Iraqi Ports	$70,000,000	March 31, 2004	NANA Pacific, Alaska

Source: Extracted from data provided under the "News and Business" section on the Iraq Program Office website, at [http://www.rebuilding-iraq.net].

How Can U.S. Businesses Get Federal Government Contracts for Work in Iraq? Businesses and producers may bid for contracts to supply specific goods or services to the federal government. The General Services Administration (GSA) defines a "contract" as a mutually binding legal relationship with the seller furnishing the supplies or services and the buyer paying for them. A longer definition of a contract is found in the Federal Acquisition Regulation (FAR 2.101), with the full text of the regulations available at [http://www.arnet.gov/far].

A federal contract may be so large that a small business would have difficulty in providing the products or services required to meet the terms of the contract. In some cases, a prime contractor (the company that received the contract) may need to use subcontractors (other companies) to fulfill the contractual obligations of the required products or services of the original contract with the government. The primary contractor may hire subcontractors and pay these companies for their products or services in fulfillment of the contract. Iraq reconstruction prime contractors are responsible for choosing their own subcontractors. Companies are encouraged to access the contractors' websites for information on needs and bid requirements for subcontracting opportunities.

The Federal Business Opportunities (FedBizOpps) website is the single government location for posting federal procurement opportunities over $25,000, at [http://www.fedbizopps.gov]. Commercial vendors can search, monitor, and retrieve information on solicitations posted by the entire federal contracting community. Searches for contract information can be done under the button for "Find Business Opportunities." For example, a keyword search could be done for "Iraq." The searcher can select information on a contract award or a synopsis (a summary of a solicitation). A more precise search for contract information could be done by searching for a particular agency name, or for a product or service.

Aside from business opportunities with the federal government, there are other kinds of business opportunities concerning Iraq, including the following: 1) CPA and Iraqi Ministry solicitations; 2) working directly with Iraqi state-owned enterprises; 3) international institutions, such as the World Bank, the United Nations, and nongovernmental organizations; and 4) private enterprise.

For an overview of the contracts concerning Iraq, the Iraq Reconstruction Task Force website provides a listing of contract awards at the website, [http://www.export.gov/iraq/market_ops/contracts.html]. The tables list "Awarded Contracts and Grants," for Fiscal Years 2003 and 2004, with the names of the prime contractors and known subcontractors. A brief summary describes the scope of the contract and the country of the prime contractor that received the contract award.

Are There Additional Resources for Business Opportunities in Iraq? The Iraq Investment and Reconstruction Task Force website also provides the following resources:

- "Business Guide for Iraq." This frequently-updated document discusses the following areas: 1) commercial environment in Iraq; 2) existing laws and regulations; 3) international trade issues; and 4) key industry sectors, including issues affecting agriculture, oil, transportation, telecommunications, health, and energy sectors. Information relating to these topics may be found at [http://www.export.gov/iraq/bus_climate/businessguide_current.html].

- "Doing Business in Iraq FAQs." This document answers questions regarding the following areas: 1) travel and security concerns; 2) health issues; 3) international trade and investment issues; 4) job opportunities; and 5) business counseling by federal agencies. Information relating to these topics may be found at [http://export.gov/iraq/pdf/iraq_faq_current.pdf].

- "IraqAlert." A company can register to get email alerts on commercial developments and potential opportunities in Iraq, according to industry sectors or activities of interest. Information relating to these topics may be found at [http://ita-web.ita.doc.gov/iraqreg].

For information on more business opportunities, the Iraq Investment and Reconstruction Task Force website has links to other Iraq resources, including the CPA-PMO, at [http://www.rebuilding-iraq.net]. This site encourages vendors to register to receive more information, by email, on requests for proposals for Iraq reconstruction projects.

The Iraq Reconstruction Task Force at the Department of Commerce can be contacted by telephone at the Iraq Business Outreach Hotline, Tel: 1-866-352-4727, Fax: 1-202-482-0980, or email at IraqInfo@mail.doc.gov, or at the website, [http://www.export.gov/iraq/].

For additional resources on exporting to Iraq, the website of the Export-Import Bank of the United States (Ex-Im Bank) provides links to sources of information on federal agencies, Iraqi organizations, and international organizations involved in Iraqi activities, at [http://exim.gov/iraq.links.htm]. At this site, it is possible to register to receive future notifications of export opportunities to Iraq.

Congressional Oversight

What Are the Potential Congressional Oversight Actions to Address the Iraqi Contracting Situation? Both S. 2400, the proposed Department of Defense FY2005 Authorization Bill for Military Construction and the Department of Energy, and S. 2401, the proposed Department of Defense FY2005 Authorization Bill, would require the Secretary of Defense to 1) submit to Congress a report detailing a management and oversight plan covering contractor personnel who are managed by federal government personnel; and 2) submit to the House and Senate defense committees a report that outlines the rationale for and nature of the security, intelligence, law enforcement, and criminal justice activities performed by contractors in Iraq.

P.L. 108-136 (H.R. 1588, the FY2004 National Defense Authorization Act) requires DOD to fully comply with the Competition in Contracting Act[33] and other applicable procurement laws and regulations for any contract awarded for reconstruction activities in Iraq, and to conduct full and open competitions for such contracts (Section 805), and to require public disclosure of any contracts for the repair, maintenance, or construction of Iraq infrastructure that are awarded non-competitively or without full and open competition (Section 1442). The House and Senate Armed Services Committees, the Senate Foreign Relations Committee, the House International Relations Committee, the House Government Reform Committee, and the Senate Government Affairs Committee may play an oversight role on Iraqi issues, including contracting concerns.

On January 20, 2004, Representative James Leach introduced H.Res. 494. This resolution is a proposal to create a select committee to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism. The measure was referred to the House Rules Committee.

P.L. 108-106 (H.R. 3289, the FY2004 Emergency Supplemental Appropriations for Defense and for the reconstruction of Iraq and Afghanistan) created the position of Inspector General, Coalition Provisional Authority (CPA-IG). Stuart W. Bowen, Jr. was appointed as CPA-IG on January 20, 2004, and reports directly to the CPA Administrator. Under P.L. 108-106 and the Inspector General Act of 1978 (P.L. 95-452), the CPA-IG has statutory duties to promote economy, efficiency, and effectiveness in managing CPA/Iraq reconstruction activities.

In addition, Section 2001 of P.L. 108-106 requires the CPA-IG to submit to Congress quarterly reports on the activities of the Inspector General and the CPA. The first report was submitted during March 2004. In this report, which covers the first 70 days of his appointment, the CPA-IG has requested that future quarterly reporting dates be changed to July 30, October 30, and January 30. The report can be viewed at the CPA-IG's website, located at [http://www.cpa-ig.org/].

Another bill that, if enacted, could potentially affect contracts for Iraqi reconstruction activities was introduced in the House on October 8, 2003. H.R. 3275, the Clean Contracting in Iraq Act, would prohibit the awarding of sole-source contracts unless the Director of the Office of Management and Budget (OMB) approved a waiver under existing law; other provisions would required that larger contracts would be awarded to a minimum of two different contractors, to promote and ensure competition, and that each contracting agency could be required to develop a plan to minimize costs, including the use of Iraqi contractors if lower in costs. The measure, which has 25 co-sponsors, was referred to the House Government Reform Committee.

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[33] 10 U.S.C. 137.

For Additional Reading

CRS Report RL32017. *Circular A-76 Revision 2003: Selected Issues.*

CRS Report RS21489. *OMB Circular A-76: Explanation and Discussion of the Recently Revised Federal Outsourcing Policy*.

CRS Report RL32079. *Federal Contracting of Commercial Activities: Competitive Sourcing Targets*.

CRS Report RL31024. *The Federal Activities Inventory Reform Act and Circular A-76*.