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IRAQ RECONSTRUCTION: LESSONS LEARNED IN CONTRACTING

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

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WEDNESDAY, AUGUST 2, 2006

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Voinovich, Coburn, Chafee, Warner, Levin, Akaka, Carper, Dayton, Lautenberg, and Pryor.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. The Committee will come to order. Good morning.

Today, the Committee will examine the status of the U.S. Government's contracting efforts in the relief and reconstruction programs in Iraq. Our witness is Stuart Bowen, who has been the Special Inspector General for Iraq Reconstruction since October 2004.

The focus of this hearing is the "Lessons Learned" report on Iraq contracting, as well as the IG's newest *Quarterly Report,* both of which have just been released. The "Lessons Learned" report provides a chronological review of the contracting experiences in Iraq. It is a story of mistakes made, of plans either poorly conceived or overwhelmed by the ongoing violence, and of waste, greed, and corruption that have drained dollars that should have been used to build schools and health clinics, improve the electrical grid, and repair the oil infrastructure.

What I found particularly remarkable about this report is how many of the lessons apply to any massive reconstruction undertaking. Iraq and the hurricane-ravaged Gulf Coast present some similar challenges. In both cases, massive public and private efforts, indeed more than $112 billion combined, have been mobilized to repair infrastructure, to care for people in need, to rebuild communities, and to reinvigorate the economy. In both cases, the Federal Government has awarded many contracts both large and small. In both cases, mistakes, mismanagement, and abuse led to unacceptable waste of taxpayer dollars and prolonged suffering.

During this Committee's Hurricane Katrina investigation, the Inspector General for the Department of Homeland Security stressed that what we often call "lessons learned" are really only lessons recognized until the lessons are actually implemented.

Last September, this Committee approved a proposal that Senator Lieberman and I developed that would have expanded the authority of the Special Inspector General for Iraq Reconstruction to include oversight of Gulf Coast relief and reconstruction. It is unfortunate that our proposal was blocked by the Administration. Had it been enacted, I believe that the thorough audits, extensive investigations, and vigorous oversight that have characterized the Inspector General's Iraqi experience would have helped to prevent the widespread waste, fraud, and abuse that have plagued assistance and recovery programs in the Gulf Coast.

The report before us today lists 10 lessons learned regarding contracting in Iraq. Although I will leave it to our witness to explain them in detail, I believe that they can be summed up as describing the need for better planning and greater coordination in anticipation of what was known to be a massive reconstruction effort. From the failure to involve procurement personnel in the preliminary planning to the lack of portable and tested systems to an overreliance on non-competitive and expensive design-to-build contracts, the lessons of Iraq are in many ways similar to the lessons of Hurricane Katrina.

The six recommendations in the Inspector General's report also support the recommendations that this Committee made in the aftermath of its Hurricane Katrina investigation. In fact, our post-Hurricane Katrina legislation, which was approved by this Committee just last week, would implement four of the recommendations.

From Iraq to our own Gulf Coast, recent events have shown that the existing procurement structure is inadequate for mounting a quick, effective, and accountable relief and reconstruction effort. The lessons that have been learned the hard way have resulted in wasted tax dollars and unfinished projects.

We will also discuss today the latest *Quarterly Report* by the Inspector General, which has been just released. I have been briefed quarterly by the Inspector General on his findings and have worked closely with his office on oversight. Due in part to his office's aggressive oversight, the Iraq reconstruction effort is going better, but there is still so much room for improvement. It is in many ways a good-news/bad-news story.

For example, in the electricity sector, electricity generation rose above pre-war levels for the first time in more than a year. In the oil and gas sector, oil production reached the pre-war level of 2.5 million barrels per day for 1 week in mid-June, but unfortunately it then decreased for the following 2 weeks. The report also reveals cost overruns, accounting irregularities, unfinished projects, and evidence of waste, fraud, and corruption.

One notable failure was in the health care sector where the Basrah Children's Hospital project used an accounting shell game to hide ballooning costs and significant schedule delays. Originally budgeted at $50 million, a recent assessment identified several options to complete the hospital, and the most recent cost-to-completion estimates range from $150 million to $170 million. In addition, the most recent projected completion date is now July 31, 2007, which is 576 days late.

During this past quarter, the Inspector General completed 10 audits and 12 project assessments that provide important new recommendations. In addition, the IG has opened 40 new investigations of alleged fraud and corruption and continues to pursue investigative leads in Iraq and throughout the Middle East, Europe, and the United States.

Mr. Bowen's previous work has led the Department of Justice to file a plea agreement in which an army lieutenant colonel pled guilty to felonies. This plea is tied to two previously reported convictions—those of the CPA comptroller and an American citizen named Phillip Bloom. The three conspired to steer millions of dollars worth of construction contracts to Mr. Bloom's company.

Another part of the IG's report raises a red flag that I find very troubling. Nearly $21 billion has been provided to the Iraq Relief and Reconstruction Fund since the start of this effort. As of the date of the *Quarterly Report,* $1.7 billion remains unobligated. Now, why is that of concern? It is of concern to me because the rush is on to obligate the remaining funds before they expire at the end of the fiscal year on September 30. As we have seen over the years, a rush to obligate and spend monies prior to the end of the fiscal year often produces projects that are wasteful and of questionable worth. The plan, according to the IG's report, is to obligate these funds now for projects that are not fully fleshed out and then to de-obligate them in the next fiscal year for other Iraq projects. This seems to me to be completely unacceptable and an invitation to waste.

Never has the phrase "haste makes waste" sounded more ominous. To have almost $2 billion floating around this way is utterly unacceptable and will undoubtedly lead to wasteful spending, questionable obligations, and excessive costs.

Our country has made a tremendous investment to promote freedom and democracy in Iraq, in the lives of our brave men and women in uniform, in the lives lost of civilian contractors, and in a tremendous expenditure of taxpayer dollars. In this time of transition, the success of the new Iraqi Government depends to a considerable extent upon the success of the ongoing reconstruction effort. Yet the reports of the Inspector General indicate that while billions of dollars have been spent, reconstruction has fallen far short of promised outcomes. I look forward to hearing from our witness today.

Senator Levin, we are very pleased to have you in the role of the Ranking Member today in the absence of Senator Lieberman. Actually, it is a role that you could have chosen at any point, I guess, given your seniority.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you very much, Madam Chairman. Thank you for calling this hearing, and thank you for your long-standing and strong commitment to congressional oversight. It has been so critically important in the work of this Committee and other committees on which you serve, and we are very grateful for it. And, most important, the Nation is very much in your debt for what you do in the area of oversight.

Over the last 3 years, the U.S. taxpayers have spent almost $20 billion for the reconstruction of Iraq. An additional $30 billion of Iraq funds was expended under the control of the U.S. Government for the same purpose. And before I continue with my opening statement, I do want to note what the Chairman said about this hurry-up, year-end spending, which is being proposed.

Going way back in time, way, way back in time, I believe that one of the facts which produced the Competition in Contracting Act, on which our Chairman worked in an earlier capacity, was this problem of hurry-up, year-end spending, which proves to be so wasteful. And I was glad that our Chairman highlighted that, because it is unacceptable that we are going to hurry up and try to obligate money because if it is not obligated, it will not be spent. We cannot proceed in that fashion. It is very wasteful, and, again, I think our Chairman is very wise to point that out as being unacceptable.

The area which our Chairman has identified is an area that just cries out for strong congressional oversight. We have had any number of reports in the press about contract mismanagement, abuse, and even outright fraud in Iraq contracting. For example—and these are just examples—the following questions have been raised by published articles about two multi-billion-dollar contracts awarded to the Halliburton KBR subsidiary. Why was the initial contract for reconstruction of the Iraqi oil industry awarded on a sole-source basis to Halliburton? And why did that contract, which was supposed to be a "temporary bridge contract," have a term of 2 years, with 3 optional years, and a dollar value of up to $7 billion?

Why were the prices that Halliburton charged the Coalition Provisional Authority for oil so much higher than market prices? And did Halliburton benefit by overcharging the CPA by several hundred million dollars on oil purchased in Kuwait and delivered to Iraq?

Why did Halliburton charge the Department of Defense for thousands of meals that were not actually served? And was this practice permitted by the Halliburton contract?

Did Halliburton knowingly supply our troops with spoiled food and unsafe drinking water? And did the company intentionally withhold information from the government to avoid raising questions about the quality of its performance?

Now, those two Halliburton contracts are by far the largest contracts that we have awarded in Iraq, but they are not unique. Both contracts are what we call "indefinite delivery, indefinite quantity contracts," or IDIQ contracts. And what we did with these contracts and what we have done with most of our other Iraq contracts is to award a huge contract to a single company before we know what work the contractor will be asked to perform. These single-award IDIQ contracts basically give a single contractor the right to the sole-source award of innumerable, highly lucrative projects.

That kind of contract, that IDIQ contract, lends itself to abuse because when we finally decide what work we want done, when we do that, we will have no competition. As a result, we pretty much have to take whatever estimate the contractor offers. Sometimes

we can do the work on a fixed-price basis, but more often we end up paying the contractor whatever it "costs."

We are now starting to see the results of contracting without competition. The Special Inspector General for Iraq Reconstruction, who will be testifying before us today, has identified what he calls a "reconstruction gap"—the difference between what we set out to do in the area of Iraq reconstruction and what we have actually been able to accomplish.

For instance, the Inspector General has reported that we set out to build 150 primary health care centers, then reduced that number to 141; but, unfortunately, the contractor completed only six of these health care centers, and the contract has now been terminated for default.

This shortfall is not unique to health care centers. Last week, the Inspector General released a report on the construction of a prison facility in Nasiriyah, Iraq. According to the report, we originally planned to build a new prison to house up to 4,400 inmates. Because the prison was to be located in a rural area, with no utilities, we would have to build an on-site power generation plant, water treatment plant, and wastewater treatment facility. The contractor's first estimate for this work came in at $118 million. The second was $201 million. We tried to reduce the cost by reducing the capacity of the prison by more than half, to 2,000 inmates. The estimate was still too high, so we reduced the capacity to 800 inmates, less than 20 percent of the original planned size. We then entered into a definitized contract, which called for the work to be done by March 2006 at a cost of $45 million.

Despite these reductions in the scope of the contract, the contractor proved unable to complete the required work. Construction delays resulted in a 410-day schedule slippage and a projected cost overrun of $23 million. A month after the scheduled delivery date, the project was only 28 percent complete, and we now have initiated actions to terminate the contract with the prison still far from built.

Today's hearing gives us an important opportunity to examine a few of these issues, but it is only a beginning. Every sign that we have points to significant waste, fraud, and abuse in Iraq contracting. The subject merits a series of hearings, and indeed, many significant issues regarding Iraq contracting, including many of the questions about the contracts awarded to Halliburton, apparently do not fall within the purview of the Special Inspector General for Iraq Reconstruction, who is before us today, or they have not been addressed by the Inspector General for a number of reasons.

So I do hope that as we dig into this issue we can produce some significant reforms, and, again, I very much want to congratulate and thank our Chairman for her leadership and her tenacity when it comes to the very critical subject of congressional oversight.

Thank you, Madam Chairman.

Chairman COLLINS. Thank you, Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Madam Chairman. Thank you for holding this hearing today to discuss the Special Inspector Gen-

eral for Iraq Reconstruction's report, "Lessons Learned in Contracting."

Since September 11, 2001, the U.S. Government has spent over $437 billion to fund military operations, base security, reconstruction, foreign aid, embassy costs, and veterans health care. Iraq reconstruction has cost up to $30 billion. We have heard from the Inspector General that only part of it has been spent, and we are worried about rapid, quick spending. I think that we also have to recognize that these costs are going to continue to rise unless we can get more of our allies to pitch in to help with the reconstruction costs.

I think it is important that we realize that we are involved in what I refer to as the "Fourth World War," with the Islamic extremists who want to deny the Iraq people the freedom that is the right of all mankind. They have hijacked the Quran and attempted to do us harm, and I think the American people should know that Osama bin Laden has declared holy war on us, and Islamic extremists will not rest until they have taken over the entire Middle East. I think we sometimes don't put this war in Iraq in the context of this war that is going to go on for a long time.

The men and women of our armed forces are putting their lives on the line to build a better future for the people of Iraq and the greater Middle East, and these sacrifices will continue to advance the security of our country and the principles upon which it was founded. Those are monies that we have to spend, and they are monies that we have to take care of.

On the other hand, we owe it to the American taxpayer and our children and grandchildren to do everything we can to ensure that the money for reconstruction is spent wisely. While we have rightfully spent billions of dollars in response to these events, we continue to squeeze the nondefense discretionary budget. I think sometimes we forget about that. I believe that people are concerned about these cuts in the nondefense discretionary budget.

So given these sacrifices, we must be sure that we have strict accountability for every dollar that is spent in the war and reconstruction efforts. I think one of the reasons the American people are concerned about Iraq, besides the loss of lives and those injured, is this enormous sum of money that we are spending. When they hear about horror stories of fraud, waste, and abuse, they are livid. It is one of the reasons why I think they are so angry; they read about the way this money is being spent. And I think they have a right to be.

Mr. Inspector General, I would like you to know that the work that you and your team are doing is vital to protecting America's financial future and to respond to the concerns of the American people.

Chairman COLLINS. Thank you. Senator Akaka.

Senator LAUTENBERG. Madam Chairman, I thought we were doing early-bird arrival. I was here at 5 minutes to 10, and it was just the Inspector General and me. Perhaps we should have started the hearing at the time.

Chairman COLLINS. Senator Lautenberg, the rule of the Committee is when the Committee is gaveled, those Members who are there at the time are recognized according to seniority. After the

gavel falls, then it becomes an early-bird rule. That has always been the rule. I followed it today, and Senator Akaka is next.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you, Chairman Collins, for scheduling today's hearing to examine contracting and procurement issues in Iraq. Our Committee is responsible for government oversight, and nothing facing our Nation is in greater need of review than the costs of Iraq's reconstruction.

I want to commend the Chairman for her opening statement and tell her that her statement justifies this hearing today.

I want to also welcome you, Mr. Bowen, and to thank you for the important service you are providing to our Nation as the Special Inspector General for Iraq Reconstruction. Your reports remind us that just as war and crisis motivate citizens to heed the call of government and government service, others see it as an opportunity to enrich themselves unjustly at the government's expense. In these trying times, auditors and investigators are often the best protection the government has against these unprincipled individuals.

Approximately $40 billion has been appropriated for the security and rehabilitation of Iraq. Given this tremendous sum, it is critical that there is oversight on how taxpayers' dollars and Iraqi funds have and will be spent.

The first reason for the high cost of reconstruction in Iraq is the Administration's failure to plan for the post-war period. This has led to large-scale waste, fraud, and abuse, as the Chairman mentioned. During the debate on whether the United States should go to war, I said that the President lacked a strategy for winning the peace. I fear that the problems and abuses with contracts and procurements today bear out my concern.

A second reason for the high cost of reconstruction in Iraq is the Administration's lack of truthfulness with the American people. Congress and the American people were told that Iraq's oil wealth would fund the rebuilding of the country's infrastructure; this was not true. That the American taxpayer would not be funding the reconstruction of Iraq; this was not true. That the Iraqi people would stand and put their own house in order; this has not happened yet.

A third reason for the high cost of reconstruction in Iraq is the Administration's failure to oversee how money is spent. Mismanagement and misuse of American and Iraqi funds are commonplace. Auditors cannot account for over $9 billion in Iraqi funds. Contractors are providing incomplete and inadequate services or are overcharging for their services.

For example, in February 2006, the Defense Contract Audit Agency found over $200 million in overcharges by Halliburton for its contract to import fuel and repair oil fields. I am appalled that large, highly recognizable American companies are abusing government contracts. Is the culture of corruption in our country so endemic that publicly known companies feel complacent during a time of war to defraud the government without any concern?

We are now over 3 years into this conflict, and the taxpayers demand and deserve accountability. Make no mistake. What we un-

dertake today determines the future. Given the stakes, there remains no room for error.

Madam Chairman, the government's past failures in Iraq cannot be undone, but the lessons learned from yesterday should ensure that fraud and inadequate oversight do not reoccur tomorrow.

Thank you again for holding this hearing, Madam Chairman. You are providing a great service to all Americans.

Chairman COLLINS. Thank you.

Senator AKAKA. Mr. Bowen, I look forward to your testimony.

Chairman COLLINS. Senator Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Thank you, Madam Chairman, for having the hearing, and Mr. Bowen, thank you for your service and that of all your staff. You have done an excellent job, and I appreciate it. I just have a very few short comments.

Your recommendations are excellent from your report. Senator Obama and I recognized some of the defects that we saw in what happened in Iraq, and that is why we recommended a CFO for Hurricane Katrina. It was flatly rejected not only by Congress but by the President. But basically in your recommendations that is what you are saying, is you need somebody in charge, somebody that everything flows through, that the Executive Branch can have a handle on. My hope is that as we go through this hearing, we will all understand the purpose of making one person accountable.

You have done a great job in looking at it after the fact, but billions of dollars could be saved in Iraq had we had a financial manager with responsibility and authority on the ground to oversee this. And it is my hope that the Committee will join as a group from the lessons that we have seen and heard and make the appropriate changes in the future so that we do not have a repeat of this or a repeat of the waste, fraud, and abuse that we saw in Hurricane Katrina. Thank you.

Chairman COLLINS. Thank you. Senator Lautenberg.

OPENING STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Madam Chairman, I am glad that we are finally holding this hearing, and as you are aware, I sent in eight written requests for hearings over the last 3 years. We are obviously long past due for a detailed investigation of 3 years of waste, fraud, and abuse in Iraqi war contracts. And perhaps some significant savings for the American people might have occurred had we stepped up on time. We did diploma mills and credit card interest and DOD travel, but we could not find time in those 3 years to have a hearing on what was happening with no-bid contracts.

I brought the amendment to the floor on a DOD authorization bill in May 2003 to make sure that there were no more no-bid contracts. The first step must be to understand what has taken place, and then to make sure contractors are held accountable for any wrongdoing.

I am pleased to see Inspector General Bowen here. He has distinguished himself, and he will be able to help us shed light on some of the abuses in Iraq.

There are many offenders, but the poster child for profiteering from this war is Halliburton, the company formerly run by Vice President Dick Cheney and from which he profited substantially with his stockholdings and his income from there. Halliburton has received more than $16 billion in cost-plus and no-bid contracts in Iraq, and the Defense Department auditors have identified more than $1.5 billion in questioned or unsupported costs.

Auditors, whistleblowers, have caught Halliburton risking lives and U.S. property by driving empty trucks around Iraq. They have caught them overcharging for laundry and food services. And they have caught them serving spoiled meals to our soldiers. Those were some of the findings of the Pentagon's auditors, but today we have new allegations to discuss, and this information is coming from our witness, Inspector General Bowen.

We will hear that Halliburton ignored the advice of its engineers and botched the restoration of an oil pipeline. We will hear that this negligence cost the Iraqi Government as much as $1.5 billion in lost oil revenue. We will hear that Halliburton could not account for more than a third of government property that the Inspector General examined. And we will hear about the Defense Department's incompetence in providing oversight of these contracts.

Today's hearing is a good start, but it is only a start. We have a lot of ground to cover to make up for 3 years of no Committee oversight.

Inspector General Bowen has done a great job. The surface is hardly scratched regarding the possible contract abuses in Iraq. For example, of Halliburton's more than $16 billion in Iraqi contracts, the Inspector General has examined only about $140 million. That is 1 percent of the total amount of these contracts. At our next hearing, which I am pleased that you are already planning, Madam Chairman, we should hear from the Defense Contract Auditing Agency whistleblowers, like Bunnatine Greenhouse, and the accused companies themselves.

Today we begin to fulfill our constitutional duty to conduct vigorous oversight of the Iraq war contracts. It is about time, but we must not rest until we finish the job.

Chairman COLLINS. Senator Chafee.

OPENING STATEMENT OF SENATOR CHAFEE

Senator CHAFEE. Thank you, Senator Collins, and I would like to welcome the witness here today. I believe you appeared before the Foreign Relations Committee a few months ago, on which I serve, and I look forward to any changes that have occurred since then. And I know some of the questions are going to be between how much your Department has prosecuted some of the cases as opposed to whistleblowers instigating the prosecution.

So welcome, and I look forward to your testimony.

Chairman COLLINS. Thank you. Senator Dayton.

OPENING STATEMENT OF SENATOR DAYTON

Senator DAYTON. Thank you, Madam Chairman, and thank you for holding this very important hearing.

I also want to give proper credit to Senator Byron Dorgan, the Chairman of the Democratic Policy Committee, who has for the last

3 years been holding various hearings on this very important subject and has done more, I believe, than anybody else in the Senate to bring the truth about these misdeeds to his fellow Senators and to the American people.

I would just like to reference excerpts from some of those hearings. One involved reports that KBR, a subsidiary of Halliburton, had been providing contaminated water, nonpotable but still used for bathing, washing, and the like by American soldiers in Iraq, putting their lives on the line, and knowingly did so for several months, or perhaps longer.

On March 24, 2005, an e-mail was sent from the water control expert for KBR in Iraq to other members of KBR's administrative team, and it said, "He had by inspection seen 'small worms' moving in the toilet bowl. I went to inspect this myself and saw what I believe were mosquito larvae. During the same time, I went to the military ROPU site to inquire about the chlorination of the nonpotable water. I was informed they do not chlorinate this water at all. It is my opinion that the water source is, without question, contaminated with numerous microorganisms, including coliform bacteria. There is little doubt that raw sewage is routinely dumped upstream of intake much less than the required 2-mile distance."

Four months later, in July 2005, a response from one of the public relations people in KBR Halliburton said, "It is possible we could receive some queries on this if these former employees decide to go to the press. Therefore, can you please run some traps on this and see what you can find out? I don't want it to turn into a big issue right now."

The next day she got a response from the man who was in charge of KBR operations in Iraq, who said, "Fact. We exposed a base camp population, military and civilian, to a water source that was not treated. The level of contamination was roughly two times the normal contamination of untreated water from the Euphrates River. Duration of exposure undetermined. Most likely, though, it was going on throughout the entire life of the camp up until 2 weeks after my investigation concluded, in other words, possibly a year. I am not sure if any attempt to notify the exposed population was ever made."

That is from the KBR water quality, so-called, for Iraq.

Last week, Senator Dorgan had a hearing—and I ask, Madam Chairman, for 2 more minutes to conclude my remarks

Chairman COLLINS. Certainly.

Senator DAYTON. I thank the Chairman. Regarding another company, Parsons, presented by an Iraqi physician, who said, "Parsons is said to have taken a tender of over $4 million to reconstruct a hospital in Iraq. Parsons' local subcontractor did not perform the essential tasks like fixing the hospital's roof, which was weak and cracked because of the weather and other factors. Because of this flaw, rainwater is likely to damage the painting that Parsons did inside the hospital and possibly the flooring as well. The worst failure of the reconstruction efforts at the hospital is the lack of medical equipment, including incubators. The hospital has 14 in the NCU, 2 in the ICU, and 1 in the ER. All of those are old models, made in 1970, and many of them are broken and in very bad condition. Last, but not least, from my own observations and my con-

versations with hospital officials, it appears that Parsons did not do the most essential work necessary in any building—a fire alarm system. I don't know if Parsons can build a hospital in the United States without installing a fire alarm, but in Diwaniyeh, they did so because they said it was not part of the reconstruction's scope of work."

And, finally, there are other examples. Last week, it was also reported that the United States had dropped Bechtel, the American construction company, from a project to build a children's hospital in the southern Iraqi city of Basrah after the project fell nearly a year behind schedule and exceeded its expected cost by as much as 150 percent.

The tragedy of these incidents—and these are just a few of many—is first of all that the Iraqi people are let down; and, second, that when they feel understandably angry toward the United States for its failure, our soldiers, who are putting their lives on the line in Iraq, bear the brunt of that. This is not only immoral, it should be illegal, it should be prosecuted to the maximum extent possible, but then they ought to have to face up to the families of the Americans who are maimed or killed in Iraq and explain to them why they have failed under these contracts to fulfill their responsibilities and why the sons and daughters and husbands and wives of Americans are left to bear those consequences. It is unpatriotic, and it is disgraceful, and, again, Madam Chairman, I look forward to the testimony, and I thank you for holding this hearing.

Chairman COLLINS. Senator Pryor.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Thank you, Madam Chairman. I want to thank you for holding this hearing, and certainly I know that Senator Lieberman has been a real leader on this, as well as Senator Levin, and I want to thank the witness for being here today. I share the concerns of the Committee. Some of the reports I hear about waste, fraud, and contractor abuse are very disturbing. I think a lot of Americans feel like some of these contractors are soaking the taxpayer, and we are not getting our money's worth. But even more fundamentally than that, this is not good in the long term for Iraq. And I think that most Americans want to see us succeed in Iraq. They want us to transform that country into a democracy. But when you have circumstances like this around DOD contracting, I think a lot of Americans really scratch their heads and ask, Can we possibly get the job done with this type of abuse going on inside Iraq?

So, Madam Chairman, I want to thank you for your commitment in trying to see this issue through, and I want to thank the witness for his testimony and his hard work. Thank you.

Chairman COLLINS. Thank you.

Mr. Bowen, you have been very patient sitting through all these opening statements. We look forward to hearing from you now.

TESTIMONY OF STUART W. BOWEN, JR.,[1] SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

Mr. BOWEN. Thank you, Madam Chairman, Ranking Member Levin, and Members of the Committee. Thank you for this opportunity to address you today on the important matters regarding the U.S. role in the reconstruction of Iraq.

Oversight works, and it's at work in Iraq in the 50 SIGIR personnel—auditors, inspectors, investigators—that today are carrying out the mission that you have assigned us. My Deputy Inspector General, Ginger Cruz, returned this week after 2 months in Iraq, and her work is emblematic of what we have been doing. She made 28 trips outside the Green Zone. You cannot find out what is going on from inside the walls of the U.S. Embassy there.

My Assistant Inspector General for Audit, Mickey McDermott, just returned this morning from Iraq. He spent the last quarter there. He oversees 28 auditors who are carrying out the very extensive and focused audits that SIGIR has underway.

We have completed 65 audits with well over 100 recommendations, and fulfilling my mission, what I have told my auditors to do, and that is, make a difference in real time. As you discover a finding, take it to the managers of Iraq reconstruction, whoever has oversight, bring that issue to their attention and change the way they are doing business. And I believe that is how we can best steward the taxpayers' dollars that are at work over there.

Today, we are releasing our report, "Iraq Reconstruction: Lessons in Contracting and Procurement," the second in our Lessons Learned Initiative. The first one addressed human capital management. The third one will address project management, how the program has been executed, and that will be out at the end of the year. We have also released our 10th *Quarterly Report,* and that encapsulates 10 audits, 12 inspections, and the progress on 84 investigations going on there.

In January 2004, I was appointed the Inspector General of the Coalition Provisional Authority. We were assigned then to provide oversight of CPA programs and operations with about a dozen staff in Baghdad. It was a big job, and it was primarily overseeing the Development Fund for Iraq, Iraqi money that the U.N. put under CPA stewardship for essentially the restart of that country's government.

In October 2004, the Office of the Special Inspector General was created, 2 months before the scheduled termination of the CPA Inspector General. It renewed and extended our mandate to cover the Iraq Relief and Reconstruction Fund, the $21 billion in grants Congress has appropriated for Iraq. Our job is to work on the ground in Iraq to promote economy, efficiency, and effectiveness and to prevent and detect fraud, waste, and abuse in the programs there.

SIGIR reports, interestingly, jointly to the Secretary of State and the Secretary of Defense, keeping them fully informed about the problems and deficiencies in IRRF programs, the need for and progress or corrective action, and we also report to six congressional committees.

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[1] The prepared statement of Mr. Bowen appears in the Appendix on page 41.

Of note, there is already response in the Department of Defense to our Iraq lessons learned on contracting. The Deputy Secretary of Defense has created a task force on Iraq contracting, appointed Paul Brinkley Deputy Under Secretary of Defense for Business Transformation to address exactly the issues that SIGIR has identified in this report.

SIGIR is a temporary organization overseeing a finite set of programs. We will exist until 10 months after 80 percent of the Iraq Relief and Reconstruction Fund is disbursed.

We have gone beyond the traditional purview of Inspectors General, as I was saying, beyond just issuing report cards, but into real-time consultative oversight that, when it identifies a problem, seeks to have it fixed well before any written report comes out.

Most of our reports document the problems that we have detected, but they also show that we have corrected them. Virtually all of our findings have been concurred with and in most times resolved by the time the written report comes out.

The Lessons Learned Initiative arose from the recognition that the situation in Iraq must direct improvement within the government system, an adjustment in how we approach contingent operations. Indeed, Secretary Rice said this spring that we must learn our lessons from the Iraq experience, and that is exactly the mandate that we are seeking to carry out through this process.

We began the Lessons Learned Initiative in late 2004. We reached out to those who served in Iraq and collected information from documents and hundreds of interviews with individuals with on-the-ground experience in Iraq.

Our research also encompasses the audits and inspections and investigations of other oversight organizations, other studies, after-action reports, and interviews by other entities that are conducting Lessons Learned programs.

Each report, like this one, is preceded by a forum which draws together the leading experts on the issue, and with respect to the contract one, we had two forums. We had one that addressed the government experts, those who actually were involved in contracting from the government side, but we also had a second forum in this case that pulled together contractors because we wanted to get the other side of the story, what was the experience of contractors in working with government contracting personnel. It was very insightful and broadened our perspective in this report.

The report tracks the evolution, as you pointed out, Madam Chairman, of the contracting experience from pre-war planning through the Organization for Reconstruction and Humanitarian Assistance, ORHA, their brief existence in the spring of 2003, through the succeeding organization, the Coalition Provisional Authority, until June 2004, and the experience of contracting since then driven by Joint Contracting Command-Iraq and other contracting entities.

We examine the creation, deployment, and contracting activity of ORHA, how CPA stood up through the appointment of a head of contracting activity, how they managed the Development Fund for Iraq, how there were several different sets of regulations at work in Iraq regarding contracting, and the issues and problems that arose from that.

After the termination of CPA in the summer of 2004, we look at the problems that were associated with transition to State Department management and how those problems were addressed. And, indeed, as I say in the overview of this report, the story of contracting in Iraq reconstruction is a story of progress. There were issues unanticipated and the structures left uncreated to address the contracting problem that was presented in the summer and fall of 2003. The United States responded by developing entities over time that addressed it, and contracting is significantly better today than it was even just a year ago.

Our key lessons learned are divided into strategy and planning, policy and process.

From a strategy and planning perspective, SIGIR observes that we should include contracting and procurement personnel in all planning stages for post-conflict reconstruction operations. The predeployment interagency working groups for Iraq reconstruction did not adequately include contracting and procurement personnel.

The U.S. Government must clearly define, properly allocate, and effectively communicate essential contracting and procurement roles and responsibilities to all participating agencies. The failure to define these roles at the outset of the Iraq contracting experience resulted in a fragmented system, foreclosing opportunities for collaboration and coordination in contracting and procurement.

The U.S. Government must emphasize contracting methods that support smaller projects in the early phases of contingency reconstruction programs. The Commander's Emergency Response Program and similar initiatives proved the value of relatively small, rapidly executable projects that meet immediate local needs.

The U.S. Government must generally avoid using sole-source and limited-competition contracting actions. These exceptional contracting actions should be used as necessary, but the emphasis must always be on full transparency in contracting and procurement. The use of sole-source and limited competition contracting in Iraq should have virtually ceased after hostilities ended.

In the realm of policy and process, these are the lessons:

The U.S. Government should establish a single set of simple contracting regulations and procedures that provide uniform direction to all contracting personnel in contingency environments. The contracting process in Iraq reconstruction suffered from the variety of regulations applied by diverse agencies, which caused inconsistencies and inefficiencies, thus inhibiting management and oversight.

The U.S. Government must develop deployable contracting and procurement systems before mobilizing for post-conflict efforts and test them to ensure that they can be effectively implemented in contingency operations. Contracting entities in Iraq developed ad hoc operating systems and procedures which limited efficiency and led to inconsistent documentation, a fact demonstrated repeatedly in our audits during CPA.

The U.S. Government must designate a single unified contracting entity to coordinate all contracting activity in theater. A unified contract review and approval point would help secure the maintenance of accurate information on all contracts and enhance management and oversight. The fragmented oversight, the fragmented

management really has made it extremely difficult for SIGIR to get our arms around all the contracting that is going on. There are so many different forms of it that have occurred.

The U.S. Government must ensure sufficient data collection and integration before developing contract or task order requirements. This means, know what you are contracting for before you go contract. That is a challenge, admittedly, in a complex situation, but, nevertheless, be diligent and close those gaps, those information gaps on contracting. The lack of requirements, which is what it is called in contracting terms, resulted in waste.

Let me just divert this discussion just for a moment to say that fraud has not been a pervasive component and is not a pervasive issue within the U.S. reconstruction program today. Waste is the chief issue that I think that these lessons that we need to learn can help address.

Now, there has been egregious fraud, and we continue to pursue 84 cases, and we will prosecute and ensure the imprisonment of those who violated the law. But I want to be sure that the Committee understands that, as a percentage of the total experience in Iraq, it is very small.

The U.S. Government should avoid using expensive design-build contracts to execute small projects. It seems self-evident, but it was not the experience in Iraq. The use of large construction consortia may be appropriate for very extensive projects, but most projects were small in Iraq and could have been executed through fixed-price direct contracting. More to the point, those kinds of contracts energize the economy in Iraq and build capacity because they put Iraqis to work.

The U.S. Government should use operational assessment teams and audit teams to evaluate and provide suggested improvements to post-conflict reconstruction contracting processes and systems. That is the SIGIR experience. Real-time auditing that provides consultative advice that changes the way things are going on on the ground can save taxpayer dollars. That is my experience in Iraq. These oversight entities, as I said, should play a consultative role because the rapid pace of reconstruction in a contingency operation cannot easily accommodate the normal process of 9-month audits. By the time such an audit comes out, the situation is completely changed on the ground in the contingency situation.

We have six recommendations, some of which, as Chairman Collins noted, are being addressed in legislation, some of which are being addressed by the DOD task force on contracting, some of which are being addressed by proposed amendments to the FAR under Part 18. Collectively, though, these efforts need to capture these recommendations and make them real for contingency planning.

Recommendation No. 1. Explore the creation of an enhanced Contingency Federal Acquisition Regulation, the CFAR. This is the first thing that General Casey told me when I met with him last November and said we are doing a Lessons Learned Program on contracting. He said: Great, we have a problem. We have regulations all over the board, and our contracting officers are operating off a whole variety of menus of regulations. We need to consolidate them and make it easy for them so that we don't have this drawn-

out process, confused process pointing to, ultimately, waste. Thus, it is No. 1 on our list.

Although the existing FAR provides avenues for rapid contracting activity, the Iraq reconstruction experience suggests that the FAR lacks ease of use. Moreover, promoting greater uniformity through a single interagency CFAR, Contingency Federal Acquisition Regulation, could improve contracting and procurement practices in multi-agency contingency operations, which, by definition, is a contingency operation. They are always multi-agency. An interagency working group led by DOD should explore developing a single set of simple and accessible contracting procedures for universal use in post-conflict reconstruction situations.

FAR Part 18 as proposed leaves it up to agency and department heads to decide what special regulations to use. Thus, I think it is a good start, but it needs to push beyond that. There needs to be uniformity in situations like Iraq.

Recommendation No. 2: Pursue the institutionalization of special contracting programs. This is CERP. SIGIR has done two audits of the Commander's Emergency Response Program. It is a program that pretty much evolved on the ground amongst Army units that arrived in the spring and summer of 2003 and saw immediately what the needs were in the Iraqi villages that they were occupying, and they, up the chain, asked for funds, "We want to fix this water treatment facility, we want to build this school, we want to repair this hospital," and that money came down. And you know what? It worked. And as a result, then word got up to Ambassador Bremer. He created it, formalized it through a CPA organization, giving it the name CERP, and eventually almost $2 billion have been spent. And our audits show that these represent the most successful programs and, indeed, mind- and heart-changing programs in Iraq. They meet the Iraqi needs at the ground level, which is what is happening now through the Provincial Reconstruction Development Councils and the Provincial Reconstruction Teams.

Recommendation No. 3: Include contracting staff at all phases of planning for contingency operations. Again, should be self-evident. Did not happen. Because of the classified nature of the pre-war planning, contracting was not deemed important. There may be other issues connected to that, too, but as a rule, they should be included in all planning from the start for contingency operations.

Recommendation No. 4: Create a deployable reserve corps of contracting personnel who are trained to execute rapid relief and reconstruction contracting during contingency operations. There has been a reduction over the past 10 years in the number of Federal contracting officers. I think we paid a price for that in Iraq, the lack of personnel available who were up to speed to do the kind of work necessary. As part of the State Department's movement to plan better for future contingency operations, contracting should be a part of it, and planning for a contracting contingent within the civilian reserve corps, which is a recommendation in our human capital management report, should be part of that.

Recommendation No. 5: Develop and implement information systems for managing contracting and procurement in contingency operations. Again, axiomatic perhaps, but not present in the Iraq experience. In fact, our audits revealed that there was no system in

place for managing contracts. It was difficult to account for them. We found missing contracts, lack of documentation. That's improved. The Joint Contracting Command-Iraq has helped put order on top of that driven by our audits, as we have been told. But that should be done before contingency operations begin.

Finally, pre-compete and pre-qualify a diverse pool of contractors with expertise in specialized construction areas. In Iraq, as this report points out, the Project Management Office, when things got going, had to wait for the competition on these design-build contracts to be completed, which took months. So they went searching for existing IDIQs and found one within the Air Force in San Antonio and began using that to build projects. Well, that kind of ran at cross-purposes, when I first learned about it, with what Congress was saying—be sure that all Iraq contracting is properly competed for Iraq. We did an audit of that. There were some issues with it. But in order to avert that kind of expediency, there should be a set of approved and competed construction entities before contingency operations begin so you do not have to go searching for mechanisms on an ad hoc basis.

I see that my time is almost up. Our *Quarterly Report* is also out, and it addresses a number of issues that are significant and contemporary, and we can address them in the question-and-answer period, but the primary issues I will just briefly go over.

As the year of transition continues—we are past the midpoint—security continues to be the biggest challenge limiting efforts on all sides. Corruption in Iraq is a major issue. When I talk about that, I mean within the Iraqi system, and we are working to improve that. We have an audit of the anti-corruption program on the U.S. side, and the Embassy has concurred with our findings there.

There needs to be more coordination in transition. Capacity building is a continuing issue, and it needs to be pushed. The PRTs are pushing that as part of Ambassador Khalilzad's issue. And to me, the most important issue as we move forward in this next phase of Iraq reconstruction is to multilateralize the reconstruction effort. A compact is under consideration, managed by the U.N., that will try and realize the promise of Madrid. We have talked about the lack of participation by other donor nations in the reconstruction effort today. Indeed, Madrid promised $13 billion, just over $3 billion has come forward, mostly from the Japanese and the British. The rest have stood on the sidelines, perhaps because of the security and the corruption situation. But, nevertheless, the United States has carried the ball on reconstruction, well over $21 billion. It is time to multilateralize the effort and finally move it into what will be the long-term relief and reconstruction in Iraq, which must be executed by Iraq with Iraqi funds.

Madam Chairman, thank you for the opportunity to appear before you, and I would be pleased to answer any questions.

Chairman COLLINS. Thank you very much for your excellent testimony.

We are now going to begin a round of questions limited to 6 minutes each. I want to inform my colleagues that we will have a second round, so I would appreciate their cooperation in abiding by the time limits.

Senator Levin has made a request to me that he be allowed to question first, so I am going to accommodate him and defer to him for the first round of questioning.

Senator LEVIN. Madam Chairman, thank you very much for switching positions with me on this because of a scheduling problem.

Mr. Bowen, thank you for being here. I raised and pointed out a number of questions about Halliburton's performance in Iraq in my opening comment. I made reference to questions such as why was the contract, which was supposed to be a temporary bridge contract that had a term that was supposed to be very temporary, end up with a term of 2 years, with 3 optional years, and a dollar value up to $7 billion. What about the prices that Halliburton charged for oil that were so much higher than market prices? What about the charges of Halliburton for meals that were not actually served? Why did Halliburton receive a follow-on contract for the reconstruction of the Iraqi oil industry when the Defense Contract Audit Agency had warned that the company's systems were not up to the challenge of running two multi-billion-dollar contracts in Iraq? Did Halliburton knowingly supply our troops with spoiled food, unsafe drinking water? Did they withhold information intentionally from the government?

Now, those issues are not covered, for the most part, in your report, and I am wondering why. Is there something about your jurisdiction or something else that did not include those issues?

Mr. BOWEN. Well, we do cover the evolution of KBR's receipt of the initial oil task order under LOGCAP. Then the no-bid oil contract and then the competitively bid oil contract for the southern region in Iraq. But let me answer the global question you ask about jurisdiction, and you are right, SIGIR has oversight of the Iraq Relief and Reconstruction Fund. Most of the money that KBR has received in Iraq has come through MILCON funding under LOGCAP or through Task Force Restore Iraqi Oil (Task Force RIO).

Senator LEVIN. And who has jurisdiction for the oversight of those particular contracts?

Mr. BOWEN. That is the Department of Defense Inspector General's Office.

Senator LEVIN. And so you did not include those in your report, except as you have indicated.

Mr. BOWEN. That is right. We did not get into the details of all that KBR has been involved in contracting-wise. As I said, we addressed the oil issue, which I think was——

Senator LEVIN. Except for that——

Mr. BOWEN [continuing]. In the report because it was the first contracting event in preparation for Iraq reconstruction.

Senator LEVIN. All right. So it is the DOD IG. Is there any other IG that should be reporting to Congress on those other issues?

Mr. BOWEN. The Defense Contract Audit Agency has been looking fairly regularly at KBR, so any discussion of KBR's involvement in Iraq should include DCAA.

Senator LEVIN. All right. Thank you.

Now I would just like to discuss for a moment the so-called reconstruction gap, which you have identified as the gap between what the Administration promised to do with the $18 billion allo-

cated for Iraq reconstruction and what it has actually done. I made reference to the construction of a prison facility in Nasiriyah, Iraq. I went through in my opening statement some of the problems with that deal where we were supposed to build a prison for 4,400 inmates that ended up being reduced to one-fifth of that, about 800 inmates. And yet the original cost for the work, the original estimate of $118 million for that larger prison ended up costing us, with the overrun—I believe we have already spent almost $50 million, and it is only one-third completed. So we have ended up spending $48 million, according to your report, for less than one-third of the work.

Now, that is under a definitized contract, which means that we are supposed to know specifically what we are getting for what price. Is that true?

Mr. BOWEN. That is actually under the Parsons IDIQ contract, which a task quota was issued for that prison that had a budget, but it was not definitized. So the costs were not all the way because—indeed, we have an audit in this latest quarterly addressing the issue of definitization, and I think it is a significant issue because the view that we uncovered was that definitization was voluntary under IDIQs and not required. And I think that raises real questions in a cost-plus environment about waste.

But I visited the Nasiriyah——

Senator LEVIN. Well, let me finish because I have one minute left.

Why did we tolerate, why did you find that we spent $48 million larger than the price of the contract was finally supposed to be for one-third of the work?

Mr. BOWEN. I asked that exact question in May in Nasiriyah of the commander of the Gulf Region South for the Corps of Engineers, and I said: You started out to build for 4,400 prisoners, you are down to 800, but the cost of the project was not concomitantly reduced. And I did not get——

Senator LEVIN. But why did we pay—we ended up agreeing to pay for the smaller prison that was supposed to be $45 million, we ended up spending $48 million for a third of the work?

Mr. BOWEN. This is one of the problems associated with cost-plus contracts.

Senator LEVIN. But who is responsible? Who is being held accountable? Did anyone screw up here that should be held accountable? That is the bottom line.

Mr. BOWEN. The project is managed by the Corps of Engineers Gulf Region Division. So if you are looking for a place to apply accountability, that is it.

However, in examining that issue, the cost of security—when I was touring that prison in May, we were walking through it, and let me say first off that the prison itself, the construction that I saw, and as our inspection of it indicates, is quality, and it will provide a very modern facility, even though much smaller than expected. But the security was extraordinary; we had 15 guards walking with us, and there were only two Parsons personnel assigned to oversee that site.

So I was concerned, and I raised it at the time, that the scope of extra costs related to security may be enormous in connection

with that project, which may be emblematic for the entire program; and, second, the lack of oversight presence on the ground at sites is an issue that we have repeatedly identified.

Senator LEVIN. Oversight by whom?

Mr. BOWEN. By the contractor and the Corps of Engineers. But in that case, the Corps was present because Nasiriyah is fairly close to the headquarters of the Gulf Region South.

Senator LEVIN. Just to conclude, this is not a question, but if you take a look at Modification No. 2 dated March 11, 2005, it did definitize the task order, according to the document that I have. We will give you a chance to answer that for the record as to the apparent difference on this.

Mr. BOWEN. OK.

Senator LEVIN. Because I am out of my time.

Mr. BOWEN. Right.

Senator LEVIN. Thank you. Thank you, Madam Chairman.

Chairman COLLINS. Thank you.

Senator Warner also is leaving with Senator Levin for the same important meeting. I would like to give him one minute, literally.

OPENING STATEMENT OF SENATOR WARNER

Senator WARNER. Yes, one minute. Thank you, Madam Chairman. I recall when we were on the floor in the debate with the Armed Services annual bill, I recommended that this Committee get into this very important subject. You have the staff, the breadth, the historical perspective to look into this type of work. And I have had the opportunity now to work with Mr. Bowen, and you are just back. The last I saw you, you were on the way over.

Mr. BOWEN. And I am leaving on Monday again.

Senator WARNER. Leaving on Monday again.

Mr. BOWEN. Yes, sir.

Senator WARNER. Well, perhaps between now and Monday we could spend a few minutes together by phone.

Mr. BOWEN. Yes, sir.

Senator WARNER. I would appreciate that because I am very appreciative of your hard work, and I want to follow it.

Mr. BOWEN. Thank you.

Senator WARNER. Thank you. I thank the Chairman.

Chairman COLLINS. Thank you.

Mr. Bowen, I want to get back to one of the audits that you just referred to that has to do with the pervasive use of what I would call a letter contract. I guess you can call it an undefinitized contract, but I think most people know it as a letter contract. And those are contracts issued by letter where the terms, important terms, such as the complete scope of the work, the cost, the performance standards, the schedule for completion, have not been spelled out.

Now, I understand that letter contracts may be necessary in certain urgent circumstances, but you identified an overuse, it seems to me, of letter contracts that ultimately did not have the important information filled in within the amount of time that procurement regulations require.

You also identified 194 task orders issued under indefinite duration, indefinite quantity contracts valued at some $3.4 billion,

which were not definitized. In other words, those critical details were not filled in.

I am alarmed that so much money could be spent on contracts that lack basic terms. It seems to me that opens the door to wasteful spending and to a lack of expectations and understanding on exactly what is going to be delivered.

What is necessary to fix that problem? Do we need new regulations? Do we need new legislation? What is the answer to the overuse of open-ended letter contracts?

Mr. BOWEN. First let me address the issue on the ground in Iraq today, and I think the problem has been addressed by the Joint Contracting Command-Iraq and Ambassador Khalilzad's emphasis on moving from design-build IDIQs to direct contracting. That shift began a year ago and has had enormous effect, particularly over the last 6 months. Virtually all contracting has moved to direct contracting; it is not being done by the design-build. And, second, a lot of the design-build contracts are being canceled and re-bid as direct contracts, most of them to Iraqi firms. So as a practical matter on the ground, the contracting managers have addressed the issue.

But you are asking from a planning perspective. How do we adjust the system to avoid repeating this kind of situation, and I think it is a careful examination, perhaps a regulatory framework, for the appropriate use of cost-plus contracts in contingency situations, whether it be administrative guidance or time-driven legislation that requires definitization regardless of situation by a certain date. I don't know the precise solution, but you put your finger on the problem, and that is, the use of cost-plus contracts means that the taxpayer pays for everything. Successes, failures, whatever happens in the duration of that cost-plus contract is billed, and there is not a legal basis for challenging it.

Definitization is supposed to help give notice to managers about how much money is going to be needed. Cost to complete, which you asked for in the legislation and which we did three audits on and it never really was complied with, is the other regulatory tool to try to control spending under cost-plus contracts. So cost-to-complete and requiring definitization and enforcing it, really, I think are the keystones.

Chairman COLLINS. Thank you. I mentioned in my opening statement my concern about the enormous cost overruns and schedule delays for completing the children's hospital in Basrah. Congress specifically authorized $50 million for this project. It is way over cost. It is way behind schedule. There is also, though, a disturbing issue about information related to the cost overruns being reported in an accurate and timely way to Congress.

In your judgment, was there a deliberate effort by USAID to conceal the extent of the cost overruns?

Mr. BOWEN. I don't think there was—I can't speak to the motivations. What I can tell you is that in the Section 2207 Report, which is the *Quarterly Report* due to Congress about progress on Iraq reconstruction projects, there was insufficient reporting about overhead costs associated with the Basrah Children's Hospital that failed to notify you of the actual cost of the project.

Second, there was insufficient reporting as there should have been, in that *Quarterly Report* to you, about delays. The project was supposed to have cost $50 million and should have been done last December. It is going to cost $150 million and will not be done until a year from today. We did not find out about that until our audit.

Chairman COLLINS. And it is very difficult for us to exercise oversight if accounting games are being played and if there is not information that is accurate and timely.

Senator COBURN. Madam Chairman, will we have an opportunity to submit questions for the record?

Chairman COLLINS. Absolutely.

Senator COBURN. I have to leave, and so I will submit my questions to the record. Thank you.

Chairman COLLINS. Thank you, Senator. Senator Akaka.

Senator AKAKA. Thank you, Madam Chairman.

Mr. Bowen, there have been some improvements in Iraq's reconstruction. For example, outputs in electricity have risen above prewar levels for the first time in a year. But much work remains to be done. Your July 2006 report notes that 178 projects within the electricity sector have not been started, even though Congress appropriated more than $4.2 billion of the IRRF funds to the sector. This 30 percent gap represents the largest percentage of projects not started for all of Iraq's critical infrastructures.

Why is there a delay in implementing projects and programs for the electricity sector? And are these delays caused by security issues or mismanagement issues?

Mr. BOWEN. I think security issues certainly affect everything that goes on in Iraq and have accounted for the delays. But the other issues I don't think are mismanagement, I think that as the move toward direct contracting has developed away from design-build contracting, the contracting entities in Iraq and the project contracting office that manages this sector must identify Iraqi firms that can perform contracts, and that process has taken time.

Moreover, there is a schedule of programs that are spaced out over time to coordinate so that different pieces of the electrical system that are being constructed are produced and connect up. That has been a problem in our oversight, as you know. For instance, in Basrah we had inspections of five transfer substations that were done, were perfectly well done, but the connecting wires were not part of the project so they are not providing electricity to the citizens of Basrah.

I think that the electrical sector is trying to respond to that need for coordination and, thus, carefully reviewing the projects ahead to ensure that the grid gets the most benefit.

Senator AKAKA. What improvements will we see in the electrical infrastructure throughout Iraq as the remaining $2 billion of IRRF–2 is applied?

Mr. BOWEN. Well, there are some significant generation and transmission projects that will come online over this quarter. The al-Dura project will be completed, and that will put additional megawatts on the grid. As long as infrastructure security is maintained—and we have a classified audit we produced this quarter that addresses this issue and notes progress—then I think we can

expect the output on the grid to continue to stay above pre-war levels. But I say as a cautionary note, the lack of security last year caused it to drop below and stay below pre-war levels for over a year.

Senator AKAKA. Thank you. I believe one of the major problems with assessing the progress of reconstruction in Iraq is that there is no overall strategy. There is no big picture that links reconstruction efforts with counterinsurgency efforts, and despite the Administration's National Strategy for Victory in Iraq, many strategic questions remain.

How confident are you that the overall reconstruction strategy has improved the two critical areas of security and infrastructure in Iraq?

Mr. BOWEN. I think the strategy has significantly improved under Ambassador Khalilzad's leadership. Most importantly is the development of the Provincial Reconstruction Teams, which advise Provincial Reconstruction Development Councils, Iraqis at the local level that make decisions about what projects need to get done. That is a process that mirrors, I think, the CERP program and is aimed at winning hearts and minds, which will have a pacifying effect in the long term and ultimately energize local economies.

Senator AKAKA. Reconstruction programs and projects will fail unless the Iraqi Government can sustain these programs without continued American technical assistance and funding. Your new report discusses how the sustainment and transfer of critical reconstruction programs and projects remains a challenge for the new Iraqi Government.

Mr. BOWEN. Yes.

Senator AKAKA. An earlier SIGIR report found no overall strategic plan for turning over control to the Iraqi Government. What are the key issues that are standing in the way of transferring so many reconstruction programs?

Mr. BOWEN. Sustainment is an enormous issue. It is one that SIGIR has been focusing on since our October report of last year. The Iraq Reconstruction Management Office in the Embassy responded to that audit by creating a Sustainment Office. Sustainment is now discussed at every strategy meeting. There is a working group that addresses sustainment every week. So the issue is on the front burner. It is a matter of funding and capacity building—funding to ensure that what the United States has provided continues to operate after those assets are transferred, and capacity building which seeks to ensure that Iraqis are able to operate that new infrastructure.

Our review of the advanced first responders network in this *Quarterly Report* is a caveat, a cautionary tale about the failure to ensure sustainment. That system is not working. It is too complicated really for the Iraqis to operate, and it requires more funds than they have budgeted to continue.

Senator AKAKA. Thank you, Madam Chairman.

Chairman COLLINS. Thank you. Senator Voinovich.

Senator VOINOVICH. Thank you, Madam Chairman.

I have been thinking about the big picture here, and if you go back in our history, I don't know that we ever had the kind of post-conflict challenges that we have had in Iraq. If you go back maybe

to the Second World War, the Marshall Plan, and then I don't think we had anything up until this. Not even Afghanistan is like what we have in Iraq.

When I think back to when I was governor of Ohio, there was very careful deliberation prior to the Persian Gulf War. We took a lot of time, figured it out, trained the forces, tried to anticipate the future. But there was not any contemplation at the time of reconstruction of Baghdad because the decision was made that we were not going to go into Baghdad.

I have to believe that from a historical point of view, this miscalculation or failure to calculate the post-conflict challenges is one that will go down as a major mistake. I cannot help but think, Madam Chairman, that before the Senate Foreign Relations Committee, of which I am a member, we had witness after witness talking about what are you going to do after you win the war. If you really think about it, somebody should have put a sign up, "Stop, look, and listen," and started thinking about all of these things that we are now dealing with today. In other words, we really did not properly plan and prepare for Iraq's needs: Security, infrastructure, the utilities, water, sewer, electricity, and general governance. We are paying the price for it today. Hopefully, should this occur in the future, we will be better prepared.

Obviously we did not have the right people with the right knowledge and skills at the right place and at the right time. That gets back into human capital again, which is something that I have been focused on for the last 8 years. We now know that we did not have the right people on board after this happened.

What is the status of the workforce today, the procurement and the contracting staff?

For example, what is the longevity of somebody that is over there doing this kind of work?

What kind of help are we giving to the Iraqi Government? Somebody asked the question: Are we letting them take over? Well, the main thing is are they competent to take over.

I will never forget when I became mayor of Cleveland, we started looking at contracting and some management concerns. We had commissioners that did not have the necessary skills to get the job done, so we brought in the private sector to provide training. My main concern is that reconstruction has to start providing more electricity, more water, more sewers, more hospitals, and more schools. Otherwise, the local Iraqis are just going to throw up their hands and lose faith in our efforts.

What is the status of the contracting workforce in Iraq and the training for these individuals?

Mr. BOWEN. Good question, Senator Voinovich. We are several orders of magnitude better than we were 2 years ago. The turnover issue is still there, but it was uncontrolled 2 years ago. Now we have a Joint Contracting Command-Iraq. We have 70 contracting officers working in there, at least. We had three working in CPA's head of contracting office.

Senator VOINOVICH. What are the incentives for them to continue in their job?

Mr. BOWEN. Well, most of them are military, and there has been a move by the commander of JCC–I to achieve more uniformity.

But you are right, the problem with turnover is still there. But back 2 years ago, the Air Force was there for 2 to 3 months, the Navy for 4 to 6 months, the Marines for 6 months or a year, and the Army. So there was a lack of uniformity. There was a constant turnover and, thus, there were contracts that were left unmanaged, as our audits revealed.

Our study on "Lessons in Human Capital Management," released in January of this year, tells this unfortunate story in detail. But it also acknowledges the fact that under JCC–I, Joint Contracting Command-Iraq, the issue has been recognized and addressed. There is now training that is effective. Indeed, the commander of JCC–I now gives this report to every new contracting officer who comes into the country so they understand what came before. There is strategic planning going on for it, and there is sufficient predecessor/successor handoff to ensure that the gaps in contracting oversight don't recur.

Chairman COLLINS. Thank you. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman. Thanks, Mr. Bowen, for your comments and your work.

Mr. BOWEN. Thank you.

Senator LAUTENBERG. It is very important that we recognize what is taking place there, and though you said there is not too much fraud, the fact is there is plenty of waste. I learned something when I was but a buck private in the Army and I had KP on a train, and as we neared our destination—this was in America. As we neared our destination, the cook said, "OK, now throw everything overboard."

Well, I came from a poor family, and I was unaccustomed to throwing out jars of pickles, or whatever it was, cans of pineapple. So I said, "Sarge, why are we doing this?" He said, "Because if we don't get rid of it now, when we put in our next order, we're not going to get as much as we got this time." So I think that attitude still exists, and it is too bad.

How many permanent staff members does DOD Inspector General have in Iraq?

Mr. BOWEN. Right now, none.

Senator LAUTENBERG. Zero?

Mr. BOWEN. That is right. I talked to the Acting DOD IG yesterday, and he is in the process of deploying some auditors. We have made space for them in the Embassy, and I expect their arrival soon.

Senator LAUTENBERG. Does it surprise you that they do not have any personnel there on scene? You described it as there is nothing like being there to understand what is taking place?

Mr. BOWEN. I think I welcome their presence in the oversight effort.

Senator LAUTENBERG. When you audited the Halliburton subsidiary, KBR's use of government property vehicles, generators, under its contract, could they account for all the government property that they had?

Mr. BOWEN. No, they didn't. Our audit pointed out—and we did several audits of KBR's support to CPA, in part of our mission as CPA IG, and found that they could not account for over a third of

the property that they had on their books for CPA, including a generator, an expensive power generator.

Senator LAUTENBERG. I am glad they did not work for me when I was in the industrial world.

Did your audits find missing property and problems that DOD did not identify in its investigations?

Mr. BOWEN. You are referring to the Kuwaiti Hilton issue or the property accountability issue?

Senator LAUTENBERG. The property accountability issue.

Mr. BOWEN. Well, again, we just focused on CPA, which is a small fraction of the LOGCAP support in Iraq. And we did two audits of that. We did an audit of property accountability in Baghdad, property accountability in Kuwait. We did an audit of the support services to the Kuwaiti Hilton, and we did an audit of Task Order 44, which was——

Senator LAUTENBERG. What did you find?

Mr. BOWEN. Well, we found them wanting in every case—shortfalls, missing property. The Kuwaiti Hilton story is an issue. When I first visited Iraq—this is about being on the ground, as you saw in your shipboard experience. When I arrived at the Kuwaiti Hilton and I looked around and I saw how many things were free—free laundry, the food was free, and it was being given to contractors and others—it raised concerns. So I immediately got with my Director of Audit and said we need to review this, it does not seem appropriate. Indeed, our audits held them accountable on that front, and during the next visit, they were no longer free. There were signs up that said, "Unless you qualify, you do not get this service."

Senator LAUTENBERG. In your third audit of Halliburton's LOGCAP contract, you found this and said, "During the initiation of our field work, we found we could not effectively address the overall audit objective due to the weaknesses in the KBR cost reporting process." You used plain English, KBR, accounting system so bad you were not able to do an audit, you did not have the basic information that you needed to do an audit?

Mr. BOWEN. That was a problem with KBR in several areas in Iraq that they had the same issue with respect to their southern oil contract. Cost accounting procedures were inadequate, and they were put on notice by the Defense Contract Audit Agency. For a full report on that, I would direct you to the DCAA as they have done a fairly extensive review of KBR's cost accounting procedures and have documented their shortfalls.

Senator LAUTENBERG. Other than outrage, it is hard to understand what it is that would have people so careless with the resources that the American taxpayers provide, soldiers putting their lives on the line, all kinds of awful occurrences taking place there, and these folks not worried enough about how they are spending the money to make it look like they are part of this serious effort.

What proportion of Halliburton's more than $16 billion in contracts in Iraq have you examined?

Mr. BOWEN. We only look at the part that falls under the Iraq Relief and Reconstruction Fund. You talked about four audits we did of KBR during CPA. That was the LOGCAP support. We are currently performing an audit of their support to the Department

of State, Task Order 130—in other words, the follow-on to Task Order 144, and that was done at the request of Ambassador Engle, who was Director of Management at the Embassy and was very concerned and raised those concerns to me directly about cost issues related to KBR's provision of services to the Embassy. We will have that report out in the next quarterly.

Senator LAUTENBERG. So what portion do you think you had a chance to look at, what portion of the $16 billion worth of work?

Mr. BOWEN. I will have to get back to you on a percentage number, but as I said most of the KBR dollars are MILCON or LOGCAP money, and they fall under the ambit of the DOD IG or DCAA.

Senator LAUTENBERG. Madam Chairman, we have more questions, and I would ask that we keep the record open long enough for us to submit those questions in writing.

Chairman COLLINS. The record will remain open for 15 days for the submission of any additional questions. In addition, we are going to do a second round of questions, as I explained earlier.

Senator LAUTENBERG. OK.

Chairman COLLINS. Senator Dayton.

Senator DAYTON. Thank you, Madam Chairman.

First of all, Mr. Inspector General, I want to say that for your staff to go even once outside of the Green Zone, much less 28 times, to perform on-site audits takes a lot of courage and a lot of dedication, and to you and to all of them, I would say I really respect that enormously, having been in Iraq myself and recognizing the real risks that are involved in that. Thank you.

Mr. BOWEN. Thank you, Senator.

Senator DAYTON. You said at the beginning of your remarks that oversight works, and as a former State auditor, I agree with you about that. My father said that in business you get what you inspect, not what you expect, and that is true in other aspects of life, too.

Mr. BOWEN. That is right.

Senator DAYTON. So I am taken by what you just said, and I want to ask if you would clarify this because I was just returning from another hearing when Senator Lautenberg asked you are there any—is this correct?—Department of Defense auditors currently in Iraq auditing projects, and you said none. Could you clarify what——

Mr. BOWEN. DOD IG is what I said.

Senator DAYTON. OK.

Mr. BOWEN. The Department of Defense has more auditing entities. There are and there have been since the beginning of the program Defense Contract Auditing Agency auditors on the ground in Baghdad and other places across Iraq.

Senator DAYTON. Do you believe that the oversight—you are issuing this report today. These contracts from their inception have been underway for almost 3 years now, various lengths of time but some of them. Do you believe that there has been proper oversight—setting aside your work—has there been proper oversight into these projects on an ongoing basis? What is being performed, the work being performed on a daily basis? What quality of work is being performed?

Let me just qualify it. Some of these overcharges or some of these statements made about shoddy work, the lack of contractors and subcontractors, employees actually on site performing work, the number of meals that supposedly have not been provided, whatever, I mean for months on a scale that it would seem that anybody who is providing proper, ongoing supervision would be aware of that.

Mr. BOWEN. Well, we know about the overcharge for meals, we know about the overcharge for fuel because of oversight on the ground in Iraq. DCAA discovered——

Senator DAYTON. But how long has it been going on before that oversight either occurs or at least before these reports are brought to light and we find out about them?

Mr. BOWEN. Well, those two issues were discovered early on, but the point you are making is beyond that, what has not been uncovered, and I think that the oversight presence, an aggressive oversight presence on the ground has a twofold effect: One, it deters wrongful conduct. I remember when I first showed up in Iraq, and I was walking down the halls of the Embassy, just appointed, and walking behind somebody, and they were talking about something. I did not hear what they were talking about, but I heard this sentence: "We cannot do that anymore; the Inspector General is here." And that told me that I had a big job ahead of me. And I think that is true.

The point is this: It has deterrent effect. And, therefore, I am not here to point fingers at any oversight entity. I am here to say that oversight works, and it works when it shows up.

Senator DAYTON. With all due respect, I agree with everything you have just said, but one of the problems I think exists because you and your counterparts are unwilling to point fingers at any other oversight entity. I respectfully disagree with what you said earlier about the extent of sufficient oversight on these projects. Again, I do not have time to put into these comments all of the back-up information that has come to light, where these e-mails and reports and other whistleblowers, employees of these companies on site are aware of these serious deficiencies: Hospitals not being built, roofs not being repaired, water leaking in, incubators from the 1970s provided, the lack of fire codes, and the like. And this is not just one instance. These are repeated. And as I said earlier, this puts our troops at greater risk, no question about it, not to mention if they are using water for washing or whatever purposes that is contaminated by raw sewage dumped in less than 2 miles upstream, and they are not even told about it, even after they come back to the United States. These matters are not brought to light. Somebody is looking the other way. Somebody either does not know and should know, someone knows and does not care, or somebody is not performing their responsibilities. And then everybody—by the time the reports come out, months or even years have gone by. Some of the perpetrators, I think some of the corporate entities are starting to be held accountable, but very little accountability by the Department of Defense.

Again, I am not saying you, but I am saying those who are responsible for administering these contracts, for standing up to these companies, I think some of this has been made more prob-

lematic by the fact that Halliburton is a major contractor and the Vice President used to be the CEO. I do not blame the Vice President for the conduct of Halliburton after he left that position. The chief executive and the other executive members and the board of Halliburton are responsible for the company after that time. And they are not the only perpetrators—Bechtel, Parsons, whoever else. But they have not been held accountable, and not only have they not been held accountable, they get another sole-source contract, or they just go on and contract somewhere else in the Department of Defense.

There is not nearly enough accountability. There is very little consequence other than maybe a bad story that somebody hires a public relations outfit or internally deals with, and then that passes. And it is just more business as usual. And it is endemic throughout the whole system, and it is even more apparent in a place like Iraq, and it is even more consequential in a place like Iraq because those failures count and are used against our own best efforts there.

It is frustrating because it is very hard to manage an Executive Branch agency from the Legislative Branch. I have been in Executive Branch agencies in State and local government. I have been in the Legislative Branch now here in Congress. It is very hard for us to do anything more than appropriate money, hold oversight hearings, which we properly should, but the day-after-day responsibility is in the Executive Branch, and these failures are so egregious and so ongoing and so consequential in their magnitude in dollars and in effects and in human lives that it is a national disgrace. And, meanwhile, things will just continue as normal tomorrow. Thank you.

Chairman COLLINS. Thank you. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Mr. Bowen thank you for being with us today. Just initially just a question about how often do you go to Iraq? When you are there, what do you do? Who do you meet with?

Mr. BOWEN. I go on my 13th trip this Monday. My rhythm currently is to go every third month, although this trip will be for 7 weeks. I meet with senior leadership—Ambassador Khalilzad; General Casey, Commander of MNF–I; General McCoy, Commander of the Gulf Region Division; and then down to their deputies; the Deputy Chief of Mission, Ambassador Speckhard; the Director of the Iraq Reconstruction Management Office, Ambassador Saloom, whom I have been dealing with regularly on the phone and I think is doing a great job in his new appointment. And then I go down and I meet with each sector, the contractors that are managing oil and gas, water facilities, health, and spend hours with them debriefing. And I have been doing those debriefings every visit now for over a year. And that has provided the meat for Section 2 in this report. Section 2 of our *Quarterly Report* gives a detailed breakdown of how taxpayer dollars are being spent in Iraq. Project by project, program by program, which is what the statute that you all have directed us to do provides.

And then I travel outside the wire, and I visit sites. I visited the Nasiriyah prison, as I said, this last quarter. I visited the Erbil

water treatment plant. I visited the Basrah airport, which we report on in this report as well. And I will be doing the same thing this trip, making trips out with my inspectors to see what we have actually gotten for our investment in Iraq reconstruction.

Senator CARPER. When you look at the areas we have been investing our money in, a lot of it, and you feel that the money has been especially well invested, what are some of those areas? And when you look at some of our investments where we are not getting what we ought to be getting, what might they be?

Mr. BOWEN. I think the schools, the school program has been very effective. Thousands of schools have been built. The vaccination program, extremely successful. USAID's vaccination program has eliminated polio and other serious infectious diseases from Iraq, period. And I think that we see progress at the airports. Five airports are now functioning, and they were not at the end of the war. We have a lot of facilities that are ready to operate if security would permit. There are around 90 railway stations refurbished, 25 engines ready to work, but they are not running because of the security situation.

There have been shortfalls in health care. The primary health care clinic program is the most notorious among them. The hospital program is not much more successful, and the prison program. Those are all Parsons' projects. It is my intent to do an audit of all of Parsons' work in Iraq and provide a listing of what they have produced, how much it cost, what the value of what they have produced is, and what the delta is.

Senator CARPER. Would you talk with us a little bit about the part of your operation that touches on the development of Iraq's oil capabilities and their ability to ship oil around the world and sell it?

Mr. BOWEN. Yes, we did an audit this quarter of infrastructure security, an issue we raised in January as a significant challenge to the oil sector. Last year, attacks on the pipelines accounted for the drop of production below pre-war levels. They have been below pre-war for over a year until they rose above them, 2.5 million barrels per day in mid-June. It was down to 1.7 million in January.

Senator CARPER. What is the potential? Is it roughly twice that?

Mr. BOWEN. Potential capacity? I will have to get back to you on the exact number for that, but it is much higher. But exports have resumed out of the northern pipeline, which has been the subject of many attacks, to Turkey, and that accounts for the increase in revenue into the treasury, which is essential because the Iraqis ultimately, as I said earlier, must fund and execute the ultimate relief and reconstruction of their own country.

Our program, the U.S. program, has gotten them off to a good start. The multilateral phase, which is just beginning, will be a bridge to the phase that must be Iraqi driven.

Senator CARPER. Initially, I had heard that a big part of the problem with the inability to produce oil to their capacity was laid at the feet of those who were sabotaging the pipelines. More recently, I have read that the problem is as much corruption and thievery as sabotage.

Mr. BOWEN. Well, you are exactly right. Corruption in Iraq, as we point out in this *Quarterly Report,* is endemic. We call it a pan-

demic. And, indeed, the focus of it has been primarily in the Ministry of Oil and the Ministry of Defense. The Ministry of Oil is beset by smuggling problems and by sheer thievery.

The new Minister of Oil is, I am told, a man of integrity and a man who recognizes the problem. The Deputy Prime Minister, Barham Saleh, recognizes the problem. The Prime Minister Maliki recognizes the problem. There are efforts to build institutions to fight that problem. The Minister of Oil IG has issued his own report giving us all the details of it.

So I think those are positives that, in light of the big negative of corruption, there is some fighting going on.

Senator CARPER. I don't mean to be rude in interrupting, but it seems like we have a pretty good idea what the problem is. Whose job is it to fix it?

Mr. BOWEN. Our audit of the anti-corruption effort in Iraq has found it wanting. It is my expectation that the Embassy's concurrence with our findings will mean there will be more funding to bolster and train Iraqis to fight corruption.

Senator CARPER. Who is tasked with fixing this problem, on our side or on the Iraqi side?

Mr. BOWEN. It is a joint effort. I mean, the Iraqis ultimately have to fight the battle. It is our task to teach them how.

Senator CARPER. Yes, but who? Who is tasked with that responsibility on our side and on the Iraqi side?

Mr. BOWEN. The anti-corruption working group in the Embassy is a working group comprised of representatives from all agencies operating in Iraq. On the Iraqi side, it is the Commissioner on Public Integrity. It is the Board of Supreme Audit, the President of the Board of Supreme Audit, and it is 29 Inspectors General.

Senator CARPER. All right. Madam Chairman, thanks very much. I have other questions I would like to submit for the record, if I might.

Chairman COLLINS. Without objection.

Senator CARPER. Thanks very much.

Chairman COLLINS. Thank you.

In your report, you talk about the reconstruction gap. You have just outlined several successes, but there are also many projects that are left unfinished in this year of transition. You state in one of your audits, you concluded that, "There is no overall strategic plan for transitioning the reconstruction projects and assets to the Iraqi Government."

Now, this would be less of a problem if we did not have the reconstruction gap, if the projects that had been contracted for actually had been brought to completion before the handover.

What do you believe are the potential consequences of a lack of a plan for transitioning these projects?

Mr. BOWEN. There are three I can think of right off the bat. One is breakdown. The lack of a coordinated plan to ensure operations and maintenance training and funding for the assets we are handing over means that they will not operate as expected or needed for Iraq's infrastructure.

Two, the lack of a plan means there are pieces within that infrastructure that need to be there that are missing, caused by the reconstruction gap, and that means that the outputs on the infra-

structure, particularly in electricity and oil, will be less than optimal.

And, three, the breakdown, the lack of connectivity, the lack of strategic connectivity within infrastructure planning means more money will have to be invested. That means donor money, and that means perhaps U.S. funding as part of the donor plan, and ultimately Iraqi funds to fix—to pay for shortfalls in planning.

Chairman COLLINS. To get to an issue that several of us have mentioned, whose job was it to come up with a strategic plan to guide the transitioning of these half-finished projects?

Mr. BOWEN. Well, the Ambassador has the lead under NSPD–36 for all Iraq reconstruction planning, but it is a collective effort among the DOD, the Corps of Engineers, USAID, the Department of State, and other participating entities, as well as the contractors, to draw together all the issues connected to transition and develop a strategic plan that pushes them forward.

Chairman COLLINS. I guess the reason that many of us keep asking you who is accountable, who is going to fix the problem, is you have identified some very serious problems, ranging from inadequate planning to wasteful spending. And our frustration is that we do not know who is going to fix those problems, who is going to hold contractors accountable if they have fallen down on the job, who is going to ensure this does not happen again, who is going to take the remedial steps that your reports outline.

It is a frustration on our part because you have done a great job identifying the problems, but that does not fix anything.

Mr. BOWEN. Well, part of our effort is to apply lessons learned in real time, and this is a good area where it is happening. We have raised this issue in the course of performing this audit, and as a result, there is a working group meeting weekly and now coordinating on asset transfer, specifically just on this issue, Asset Transfer Working Group, to address sustainment and O&M costs.

There is a real challenge on Iraqi capacity. The capacity within ministries is very inconsistent. The Oil Ministry has more capacity over time, but Health much less, just as an example. And so there is no one-size-fits-all solution. What needs to be done is the analysis to recognize which area needs focused effort to ensure sustainment.

Chairman COLLINS. Let me turn to a specific case. I mentioned in my opening statement my concern that there is $1.7 billion left that, if it is not obligated by September 30, within the next 2 months, will expire. It will revert to the Treasury. That is going to produce a use-it-or-lose-it mentality, a rush to obligate the funds in ways that may not be wise, or a rush to obligate the funds for projects knowing that those are not really the projects the money is going to be used for ultimately because the money can be reobligated later. But the whole focus is to prevent this money from lapsing.

You have raised a red flag about that. I am grateful that you have. But who is going to ensure that nearly $2 billion is not frittered away in an attempt to prevent the money from expiring? Who are you going to be working with or sharing your concerns with to make sure that does not happen?

Mr. BOWEN. We already have shared our concerns with the Commander of the Joint Contracting Command-Iraq, who has primary responsibility for managing this contracting process. He is aware of the issue, and he is aware of our concerns and of our intent to audit the issue down the road. So I expect that will serve—I hope it serves as an appropriate deterrent or motivating factor in ensuring that your worries are not realized.

Chairman COLLINS. And you will continue to audit this money as well?

Mr. BOWEN. Yes, we will.

Chairman COLLINS. Thank you. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman.

Mr. Bowen, we had a DPC hearing last year, and we heard testimony from a former Halliburton employee, Rory Mayberry, and he said that when he was going to talk to auditors, he was threatened that he should not do it, and as a result of his challenge, he was sent to another location under fire in Fallujah.

Have you heard anything that says that people were asked, prohibited, directed not to talk to you?

Mr. BOWEN. No, we haven't, and indeed we have talked to whistleblowers specifically from KBR, and we have ongoing cases. Beyond that I cannot say anything.

Senator LAUTENBERG. But the guy in the hall who let you know that the fox was in the chicken coop had to kind of behave a little bit differently.

Mr. BOWEN. I think oversight provides deterrence.

Senator LAUTENBERG. I agree with you. Do you think the fact that the LOGCAP contract was cost-plus contributed to KBR's lax attitude toward controlling costs?

Mr. BOWEN. I think the cost-plus issue needs review, not just in the context of LOGCAP but as a general policy matter.

Senator LAUTENBERG. Senator Dayton mentioned some overcharges at the Kuwait Hilton. What did your audit find that they overcharged for such things, let's say for laundry? If controlling costs were not an issue at all, would Halliburton have used the expensive hotel laundry services, do you think?

Mr. BOWEN. Well, I cannot speculate what they might have done. What I can tell you is that when I saw what I believed was inappropriate service provision, I ordered an audit, and that audit, I think, provided the appropriate deterrence.

Senator LAUTENBERG. How egregious was it? Just give us a clue on what kind of advantage was being taken advantage of.

Mr. BOWEN. Well, the free laundry services, the food provision was generally free, and that changed after our audit. Certain services were removed, and regulations were put in place, and in my subsequent visits, I was satisfied that corrective action was appropriate.

Senator LAUTENBERG. Services you say were free, but they were paid for by somebody.

Mr. BOWEN. That is correct.

Senator LAUTENBERG. And there were significant overcharges in your review, enough that you commented on them.

Mr. BOWEN. That is right.

Senator LAUTENBERG. And I asked for any recall that you might have had. What was the size of the overcharge?

Mr. BOWEN. I will have to give you that answer for the record to give you details on the numbers.

Senator LAUTENBERG. It is a small issue, but I think it is demonstrative of what was taking place.

You did some work overseeing KBR's rebuilding of the Al Fatah oil pipeline project under the Tigris River. What happened, briefly, on that project?

Mr. BOWEN. That was an attempt to—at the Al Fatah crossing, which is a critical oil and gas node in Iraq, 13 pipelines crossed there going from Bayji to Baghdad to Turkey. Some are export pipelines; some are refined fuel pipelines; some are crude pipelines. So it is just a critical—perhaps the most critical node in Iraq.

There was a bridge actually that was taken out during the war. One of the pipelines was attached underneath it. That pipeline had to be rebuilt. The proposal was to drill under the river and put that in, rather than separate the river as normally done and lay it.

Because of the consistency of the soil, that became virtually impossible to do. The point you are alluding to, though, is that KBR was advised by its subcontractor not to pursue that approach because of the sandy soil issue, and a lot of money was wasted while the horizontal drilling project was pursued anyway.

Senator LAUTENBERG. So how much money was thrown away as a result of that misadventure?

Mr. BOWEN. Well, I will have to give you that exact number for the record, but it was millions of dollars that was wasted on the horizontal drilling part of the program until finally it was recompeted or actually the project was given over to Parsons International Joint Venture, and they proceeded to pursue the pipeline laying in the manner that I described earlier.

Senator LAUTENBERG. Did you see any evidence that DOD paid Halliburton, KBR, or other contractors for work that was not done?

Mr. BOWEN. We do not look at KBR DOD contracts. We only look at IRRF contracting, and so I don't have any answers for you on the DOD KBR LOGCAP.

Senator LAUTENBERG. Any way you could get that information for us, or is that just out of province?

Mr. BOWEN. That would be the Defense Contract Audit Agency, I think, would have answers on that matter, and the Department of Defense IG has purview of it.

Senator LAUTENBERG. Thanks very much. Thank you, Madam Chairman.

Chairman COLLINS. Senator Voinovich.

Senator VOINOVICH. Mr. Bowen, I want to thank you very much for the sacrifice that you have made to serve your country.

Mr. BOWEN. Thank you, Senator.

Senator VOINOVICH. And thanks to your family for the sacrifice they make so you can do this job. It is important that we restore the American people's confidence in our mission in Iraq, and I really believe that reconstruction of the infrastructure there may be more important than anything else.

Does Prime Minister Maliki understand how important this is substantively and politically for a successful future?

Mr. BOWEN. Yes, sir, I believe he does.

Senator VOINOVICH. How about the people that he has hired to do the work? Are they competent?

Mr. BOWEN. I cannot give a general answer to that. I can tell you that the Deputy Prime Minister Barham Saleh is very competent and comprehends these issues in detail.

Senator VOINOVICH. One of the things that I am concerned about, and you are, is the high turnover of the American civilian workforce in Iraq. I would like to have for the record the number of people that we have there and how long they have been there. I also would be interested to know your suggestions on what might be done to provide some stability within that workforce.

Mr. BOWEN. Yes, sir. We have some recommendations in our Human Capital Management Lessons Learned report.

Senator VOINOVICH. Another concern I have is funding. We were led to believe that we were going to get financial help from some of our allies for reconstruction. I think that if you look back to Desert Storm, about 80 percent of that war was paid for by our allies, and during this conflict we are picking up almost the entire tab. What is the status of financial commitments from other countries for reconstruction? Are there any joint projects with our allies underway?

Mr. BOWEN. Yes. Multilateralizing the reconstruction process is essential to the future success of Iraq. Getting the political and economic buy-in of a broad scope of donor nations will move the country forward, the fledgling democracy forward.

The promise of Madrid 2003 has not been realized by any stretch—$13 billion was pledged; between $3 and $4 billion has come forward.

The U.S. pledge, by the way, was our IRRF, and we have come fully forward with that, of course, as we have been talking about.

The compact, which is under discussion now, is the key to the multilateral phase, and it is also essential to realizing the promise of Madrid and ultimately achieving that international political and economic buy-in.

Senator VOINOVICH. I would say that their performance based on the pledge and what they have done is not that encouraging.

Mr. BOWEN. That is true. The security situation and the corruption situation would probably account for the disinclination of donor nations to have advanced more funds than they have to date.

Senator VOINOVICH. Madam Chairman, I recall that when we provided the money for Iraq reconstruction, we are supposed to get reports about the participation of our allies. Have we ever gotten those reports, do you know?

Chairman COLLINS. I don't know.

Mr. BOWEN. There is in this *Quarterly Report* a detailed explication of how donor nations have contributed or not contributed to the program.

Senator VOINOVICH. What is the State Department doing to encourage our allies to fulfill their promise?

Mr. BOWEN. The compact for the future of Iraq is the initiative that is driving that issue.

Senator VOINOVICH. Are you making any progress?

Mr. BOWEN. Yes, sir, they are. It is an issue that has been ongoing since the spring, and I think we will be seeing reports of progress on that front soon.

Senator VOINOVICH. You were saying that the State Department ought to have a deployable reserve corps of contracting personnel trained to execute reconstruction contracting and contingency operations. Do you want to elaborate that?

Mr. BOWEN. Well, it was not so much the State Department having—the State Department has a new Office of Stability and Reconstruction, and they, along with DOD, are taking the lead in systemic adjustments to the U.S. Government to prepare for future contingency operations. Part of that planning must include contracting.

Our Lessons Learned Report on Human Capital Management proposed this civilian reserve corps. This report says, as a part of that civilian reserve corps, there should be a contingent of contracting officers.

Senator VOINOVICH. Well, it is tough to get them.

Mr. BOWEN. It is. Yes, sir. The reality is that the government has reduced the number of contracting officers over the last 10 years, and to a certain extent, we are suffering the consequences of that, both in Iraq and in the Gulf Coast.

Senator VOINOVICH. It gets back to the nondefense discretionary budget. If you look at some of the budgets of the departments, they are getting less money than they got last year and being asked to do more. It just does not make any sense at all.

Thank you very much.

Mr. BOWEN. Thank you, Senator.

Chairman COLLINS. Thank you, Senator. Senator Dayton.

Senator DAYTON. Thank you, Madam Chairman. Again, I want to thank you for holding this very important hearing, and I want to follow up on your line of inquiry, which I think is a very important one, about how do we go forward and make these efforts more effective. How do we avoid this catch-22 situation where, if we turn more of the responsibility, as we must and should have been able to do already, to the Iraqi Government, and they—you talk about the rampant corruption, which others have also cited within the government, the Iraqi subcontractors, and the like. And they mismanage these projects as badly or even worse than they have been heretofore, so the projects don't forward or they are substandard or whatever, the Iraqi people, directly or indirectly, blame the United States for those continuing failures, problems. For example, I am told electricity in Baghdad is about 8 hours a day, and in many parts of the country, it is less than it was previously under Saddam Hussein. I was in Iraq along with the Chairman when it was 115 degrees in the middle of the summer and without electricity. That is no air conditioning, no refrigeration, in some of the cities no sewer or no running water and sanitation, and now we are in the fourth summer since the military deposed Saddam Hussein. Understandably, people there are extremely unhappy. And, again, our soldiers bear the brunt of this, and that is what disturbs me most of all.

So they are in a sense held hostage, given the President's policy, which I accept as the necessity in this current predicament of not

allowing the country to fall into civil war and a bloodbath or anarchy. But the longer these projects fail, the longer somebody is going to be consigned to be there to hold the glue of the country together.

So how are we going to get beyond this? As you hand these projects over—not you, but as our government hands over these projects to the Iraqi Government, who is your successor indigenous to the country that is going to try to pursue these and see that they do not fall apart?

Mr. BOWEN. Let me say this first about Iraqi subcontractors. When proper oversight is provided, they have done very well, and they have done well at less cost than the cost-plus contractors. But as you say, oversight is an essential component to proper conduct and effective outcomes.

The keystones for that in Iraq are the Ministry IGs, 29 Inspectors General that were created by the CPA. They need more training. They need more coordination. They need funding. And they need law, actually, to ensure their continuation. They are not protected by any current law in Iraq.

Second, the Commissioner of Public Integrity is essentially their FBI. He has hundreds and hundreds of cases involving corruption, upwards of $5 billion. Those need to be prosecuted. All investigations are window dressing until someone is prosecuted and put in prison. Then deterrence kicks in. There have been very few convictions to date for corruption in Iraq. The central criminal court of Iraq is in charge of that. Their procedures have tended to limit progress there as well as their limited number of judges. There is an effort to expand that, but that is still an ongoing capacity-building issue.

Third, the Board of Supreme Audit, that is their GAO. And let me say, GAO has been very aggressive and present on the ground in Iraq providing good oversight. Their GAO, the Board of Supreme Audit, we have met with him. He seems like a good man. They have the legacy of having existed under Saddam's reign and served as a cover. So they are going to have to overcome that burden of history, of their own history, but they have an important and a central role, the one you are pointing to, to play in Iraq, and that is to make sure oversight works. You cannot do that unless you develop credibility through meaningful audits that change behavior.

Senator DAYTON. Well, I hope that we can look ahead with some of the cautious optimism that you have noted here. Again, there was a hearing of the Democratic Policy Committee that Senator Byron Dorgan of North Dakota chairs last week, one of several that he has held on these contracting abuses. And one of the witnesses was Dr. Richard Garfield, a professor of nursing at Columbia University, who had been involved with the efforts in the health care system in Iraq. He said that, "The first post-CPA Iraqi Minister of Health believes he has largely rooted out corruption in the medicine supply system, while people in the system say it became more corrupt than under Saddam Hussein." So I think that is indicative of the magnitude of the problems, and that is just one segment of their society. Again, my concern is that there are limits to what we can do to affect this, especially as we turn these responsibilities over. But to the extent that we are turning them over and they are not being followed through, that there is no oversight, as I say, our

troops will suffer and our efforts there will suffer. And so whatever you can do to help us, if we can play any role here in designing and funding systems to help assure that, I certainly would ask you to do so.

Thank you, Madam Chairman.

Mr. BOWEN. Thank you.

Chairman COLLINS. Thank you.

Mr. Bowen, I want to thank you for being here today and for all of your hard work. I want to echo the comments made earlier by the Senator from Minnesota about the courage that you and your staff have exhibited.

Mr. BOWEN. Thank you.

Chairman COLLINS. I have been to Iraq twice. I know how dangerous it is to go beyond the Green Zone, and I noticed that many people associated with the American Government stay within the Green Zone. And your staff has been the exception to that rule, going out to actually inspect projects to see what is occurring and getting the kind of ground truth that is really essential for you to do your work effectively. But you do so at considerable risk to your personal safety, and I want to join my colleague in acknowledging your courage and thanking you. The work that you are doing is extremely important, and we want to continue to work closely with you.

I am also grateful that you have given me quarterly updates on all of your work. I found those briefings to be very helpful. So we wish you well, and we all urge you to be safe as you return to Iraq. And, again, my gratitude to your staff as well. The work you are doing is enormously important, not only to this Committee but to the American taxpayer. So thank you for your efforts.

This hearing record will be held open, as I mentioned earlier, for 15 days for the submission of questions and any additional materials.

Mr. BOWEN. Thank you, Madam Chairman.

Chairman COLLINS. This hearing is now adjourned.

[Whereupon, at 12:24 p.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR LIEBERMAN

I thank the Chairman for holding this essential hearing examining our reconstruction contracts in Iraq.

In virtually every past war, shameless profiteers have swindled the government for an easy buck. Investigations led to shocking revelations after both World Wars. It is the Federal Government's job to do its utmost to prevent these abuses, to detect them when they occur, to punish the guilty, and to shed light on the offenses so that we can learn from them. Already, the Administration's failure to ensure the integrity of the contracting process in Iraq has caused immeasurable harm, and gross neglect by contractors and by agencies responsible for overseeing them has undermined our war effort.

I supported our war in Iraq but I have always questioned the way it was being executed. From the beginning, I have called on the Administration to engage in better advance planning and to commit resources more effectively to ensure a successful reconstruction and transition to democracy. Instead, it has been a much rockier road than it had to be—a just cause marred by poor planning and implementation. For years I and others in Congress have criticized the Administration's failure to ensure sound contracting practices with respect to Iraq reconstruction, but the problems continue. Our hearing today is focusing on lessons we can learn for the future, and our witness, the Special Inspector General for Iraq Reconstruction, has provided a valuable set of recommendations that this Committee should seriously consider.

Waste, mismanagement, and fraud have occurred on a massive scale. Billions of taxpayer dollars have been squandered. Our soldiers in the field have been shortchanged, and the war effort impeded. And the only beneficiaries of waste and fraud are the same bad apples who are responsible for it. Halliburton, for one, has overcharged the government over $1 billion, with the apparent approval of the agency responsible for overseeing the contracts. U.S. Government employees have colluded with contractors in flagrant embezzlement schemes. Some have been prosecuted, but how many other crimes have gone unpunished?

The Special Inspector General has done an exceptional job bringing to light many of the abuses we do know about. Stuart Bowen quickly established a large office in Baghdad, and he and his staff courageously travel throughout Iraq to inspect projects large and small. In one report he documented that the Coalition Provisional Authority could not account for nearly $9 billion it distributed to Iraqi ministries. He documented how Halliburton wasted $75 million on a failed pipeline river crossing project, after the company and the Army Corps of Engineers ignored the determination of its engineering consultant that the complex soil conditions required further study. Just this week, the IG released a damning report describing how the U.S. Agency for International Development resorted to accounting tricks to hide huge cost overruns from Congress.

Unfortunately oversight has been lacking elsewhere, and the IG has found few allies in this Administration. The Department of Defense Inspector General has never maintained a permanent presence in Iraq. Although the Department of Justice established a task force and announced a zero tolerance policy with respect to Hurricane Katrina fraud, the Department's investigative work on Iraqi contracts fraud has been less than zealous. I'm unaware of DOJ having initiated any criminal prosecutions other than those cases it received from the Special Inspector General. And the Administration has been attempting to phase out the office of the Special Inspector General for some time.

Poor policies and practices have marred every aspect of the contracting process in Iraq. In many instances U.S. agencies awarded contracts without using competitive procedures at great expense to the Treasury and, ultimately, the American taxpayers. For example, the Department of Defense improperly awarded Halliburton a

$7 billion contract for reconstructing Iraq's oil sector, without first opening the award to competitive bidding. Similarly, USAID waived regulations requiring competition in its reconstruction contracts, an action it could have avoided with better planning. Our government contracting system relies on fair and open competition to ensure the best products and services will be provided at the best price, and in Iraq that principle was too readily abandoned.

Agencies also have failed to oversee contracts they awarded. The CPA lacked contracting regulations or trained contract officers, and the contracting environment there remained chaotic until the CPA's dissolution. More inexcusable, established agencies sometimes seemed more interested in protecting their contractors than exercising their responsibility to oversee them.

The collusive relationship between the Army Corps of Engineers and Halliburton provides a telling example of this phenomenon. In December 2003, a DOD auditing agency made a preliminary finding that Halliburton was overcharging the U.S. and the Iraqi people tens of millions, if not hundreds of millions of dollars, for importing fuel into Iraq; the final audits determined that the contractor's overcharges amounted to $263 million. The Army Corps went to great lengths to suppress the results of the audits and to ignore their findings. First, the Corps waived the regulatory requirement that Halliburton justify its prices with supporting data, in a transparent effort to negate the auditors' findings. When the U.N. oversight board responsible for safeguarding Iraqi funds requested a copy of the final DOD audits, the Pentagon allowed Halliburton to redact all of the audits' negative findings before turning them over. Finally, the Corps rejected the audits' findings and paid Halliburton for 96 percent of the costs that had been challenged by DOD auditors.

This incident and similar ones starkly illustrate a central problem that has plagued the contracting environment in Iraq. The combination of lack of competitive bidding, poor oversight, and absence of accountability eliminated the safeguards designed to prevent waste and fraud by contractors. These safeguards are doubly important in time of war, as poor contractor performance can imperil our troops and undermine the war effort.

Committing troops to battle is the most consequential decision our government can make. When it does so, it must take no shortcuts in formulating and executing its strategy. When it came to planning and implementing the reconstruction of Iraq, this Administration took far too many shortcuts. We continue to suffer the consequences, as do the Iraqi people.

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STATEMENT OF STUART W. BOWEN, JR.

SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

BEFORE THE

U.S. SENATE COMMITTEE ON

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

HEARING ON:

IRAQ RECONSTRUCTION:
LESSONS LEARNED IN CONTRACTING AND PROCUREMENT

WASHINGTON, D.C.

AUGUST 2, 2006

Introduction:

Madam Chairman, Ranking Member Lieberman, and members of the Committee—thank you for this opportunity to address you today on important matters regarding the United States' role in the reconstruction of Iraq.

The Congress has tasked my office, the Special Inspector General for Iraq Reconstruction (SIGIR), to provide oversight of this substantial and challenging endeavor. I am here today to provide you with the most current reporting on SIGIR's oversight efforts in Iraq. I hope for a productive exchange of views and ideas in this hearing regarding Iraq reconstruction.

This is a significant week in the work of the office of SIGIR, one in which we have released two major reports concerning the reconstruction of Iraq. On Monday, we submitted our tenth Quarterly Report to the U.S. Congress. Today, this hearing provides the official release of our report, "Iraq Reconstruction: Lessons in Contracting and Procurement."

Today, I will be pleased to address both reports, with an emphasis on the contracting lessons learned study, as you have requested.

I was appointed as the Inspector General of the Coalition Provisional Authority in January 2004 and began oversight of the CPA programs and operations with about a dozen staff in Baghdad in March of that year. Our work began only a few months before the June 28 disestablishment of the CPA. The Office of the Special Inspector General was created in October 2004, only two months before the scheduled termination of the CPA Inspector General. This renewed and extended our mandate to promote economy, efficiency and effectiveness, and to prevent and detect waste, fraud and abuse in the administration of programs and operations supported by the Iraq Relief and Reconstruction Fund (IRRF).

SIGIR reports jointly to the Secretaries of State and Defense to keep them fully informed about problems and deficiencies in IRRF programs and operations, as well as the need for and progress of corrective action. Our reports are provided directly to the Congress and made available to the public.

In addition to the 10 Quarterly Reports we have provided to Congress, since our initial report in March 2004, we have issued 120 audit and inspection reports. Today, SIGIR criminal investigators are working on 82 cases. Their work has, thus far, resulted in five arrests and two convictions, and another 23 cases are awaiting prosecution.

We could have limited our work to the more traditional inspector general functions of audits, inspections and investigations. However, as the SIGIR is a temporary office, overseeing a finite set of programs and operations instead of continual ongoing government operations, we have chosen a different path.

The traditional approach to audits and inspections is for inspector general staff to conduct their inquiries, and then prepare and deliver their reports some months later. This method, while providing oversight, may often permit wasteful practices to continue for some time until managers receive recommendations for correction from the report of an inspector general.

We found that this approach was not appropriate for the programs and operations of Iraq reconstruction, which will span a relatively short period of time. Iraq reconstruction managers do not have the luxury of waiting months to receive recommendations on how they could be saving money. Nor can we afford to permit them to continue inefficient or wasteful practices.

Accordingly, the SIGIR approach is for our auditors and inspectors to provide on-the-spot guidance to management as soon as problems are discovered to begin corrective action. We call this our "real-time" method. As a result, most of our reports largely document how problems were detected, and corrected, through interactions between SIGIR and reconstruction managers.

Beyond our approach to audits and inspections, we believe that SIGIR should leave behind more than a large stack of retrospective reports of waste, fraud and abuse. We felt an obligation to take advantage of our role in Iraq reconstruction to derive the lessons of the experience and provide guidance to policymakers with future challenges. This was the conception of the SIGIR Lessons Learned Initiative.

In February, we published our first such report, "Iraq Reconstruction: Lessons in Human Capital Management." Today we release of our second report covering lessons in contracting and procurement. The third and final in this series, Lessons in Program and Project Management, will be published in the fall.

While these reports are not traditional work products of inspectors general, they should carry the authority you would expect of the work of an inspector general. I want to assure the committee that they have been produced through appropriately rigorous processes.

The Lessons Learned Initiative began in late 2004, when we began reaching out to people who served in Iraq and received information on the experiences and views of hundreds of individuals. From these, we distilled three categories of significant issues for Iraq reconstruction. These were, Human Capital Management, Contracting and Procurement, and Program and Project Management.

SIGIR began researching each process area, interviewing people with first-hand experience and policy perspectives. For the report on contracting and procurement, about 30 interviews were conducted with key contracting officials. As well, our research included:

- Audits of SIGIR and other oversight organizations,
- Studies by government, independent organizations and academia
- After-action reports and assessments, and
- Interviews conducted by the CPA historian.

A draft discussion white paper was provided to a 30-member expert panel, made up of senior executives and experts from the U.S. government, industry, and academia–many with first-hand experience in Iraq. This panel was convened for a day-long forum centered on the white paper, to evaluate findings and provide recommendations to increase the effectiveness of U.S.-led stabilization and reconstruction operations in Iraq and to inform future reconstruction efforts.

For the report on contracting and procurement, we conducted two forums last December. The first included senior officials from key U.S. government agencies and distinguished members from the academic and independent research communities. The result of the full-day session was a set of findings and recommendations.

A second forum included about 20 individuals from large contracting companies to smaller non-governmental organizations supporting the reconstruction mission in Iraq. Our intent was to gather the contractors' perspective on the contracting process relating to Iraq reconstruction.

The forum discussions led SIGIR staff to perform additional research, including follow-up interviews. Staff then revised the paper, incorporating comments from the forum transcripts, information from follow-up interviews, and additional research.

The revised paper was released to key contributors and forum participants. About 110 people received the contracting paper for review and comments, to ensure that the paper was accurate

and complete, and accurately the comments of individuals. Responses from the contributors and participants were considered and incorporated into the next draft, which also included new interviews with senior DOD, State and USAID officials for comments on specific recommendations. The new draft, with more specific recommendations, was circulated to key organizations for review, including DOD, State, USAID, US Army Corps of Engineers and the Office of Management and Budget. This paper was also provided to key Iraq reconstruction organizational leaders. The majority of these individuals and agencies responded to the formal paper. Revisions were made based on their comments and the final report was prepared.

The report tracks the evolution of reconstruction contracting and procurement processes from the summer of 2002, before the creation of the Office of Reconstruction and Humanitarian Assistance (ORHA), through to the present. For example, we present a detailed chronology of events and decisions related to contracting, including the expansion of the DOD LOGCAP program beyond its original purpose, the minimal role for the State Department in initial planning, and how security considerations limited the coordination of inter-agency planning.

We examine the creation, deployment and disestablishment of ORHA, and the creation of the CPA. The report discusses the use of the Development Fund for Iraq (DFI) for CPA contracts, the first U.S. appropriated reconstruction funds, and the development of requirements for much more appropriated support. We report on how the management of entire effort came down to the creation of a wholly new organization, which was denied adequate support for months, and had to reach out to other government contracting offices for support. The creation of a strategy for acquisition management, which used a design-build approach giving contractors oversight over infrastructure sectors, is discussed in detail.

After the termination of the CPA in the summer of 2004, this report looks at the problems of the transition to State Department management, and how the contracting processes are slowed by security and information problems, and the continuing evolution of contracting methods. Special contracting programs, such as the Commanders Emergency Response Program (CERP) are examined, as well.

The key lessons we have distilled for contracting and procurement in Iraq provide insight for policy and planning, as well as for policies and processes.

Strategy and Planning Key Lessons:

- **Include contracting and procurement personnel in all planning stages for post-conflict reconstruction operations.** The pre-deployment interagency working groups for Iraq reconstruction did not adequately include contracting and procurement personnel.

- **Clearly define, properly allocate, and effectively communicate essential contracting and procurement roles and responsibilities to all participating agencies.** The failure to define contracting and procurement roles and responsibilities at the outset resulted in a subsequently fragmented system, foreclosing opportunities for collaboration and coordination on contracting and procurement.

- **Emphasize contracting methods that support smaller projects in the early phases of a contingency reconstruction effort.** The Commander's Emergency Response Program (CERP) and similar initiatives in Iraq proved the value of relatively small, rapidly executable projects that meet immediate local needs.

- **Generally avoid using sole-source and limited-competition contracting actions.** These exceptional contracting actions should be used as necessary, but the emphasis must always be on full transparency in contracting and procurement. The use of sole-source and limited competition contracting in Iraq should have virtually ceased after hostilities ended (and previously sole-sourced limited competition contracts should have been promptly re-bid).

Policy and Process Key Lessons:

- **Establish a single set of simple contracting regulations and procedures that provide uniform direction to all contracting personnel in contingency environments.** The contracting process in Iraq reconstruction suffered from the variety of regulations applied by diverse agencies, which caused inconsistencies and inefficiencies that inhibited management and oversight.

- **Develop deployable contracting and procurement systems before mobilizing for post-conflict efforts and test them to ensure that they can be effectively implemented in contingency situations.** Contracting entities in Iraq developed *ad hoc* operating systems and procedures, limiting efficiency and leading to inconsistent contracting documentation.

- **Designate a single unified contracting entity to coordinate all contracting activity in theater.** A unified contract review and approval point would help secure the maintenance of accurate information on all contracts, enhancing management and oversight.

- **Ensure sufficient data collection and integration before developing contract or task order requirements.** The lack of good requirements data slowed progress early in the reconstruction program.

- **Avoid using expensive design-build contracts to execute small scale projects.** While the use of large construction consortia may be appropriate for very extensive projects, most projects in Iraq were smaller and could have been executed through fixed-price direct contracting.

- **Use operational assessment teams and audit teams to evaluate and provide suggested improvements to post-conflict reconstruction contracting processes and systems.** Oversight entities should play a consultative role (along with their evaluative role), because the rapid pace of reconstruction contingency programs cannot easily accommodate the recommendations of long-term assessments or audits.

Our Study has resulted in six recommendations:

1. **Explore the creation of an enhanced Contingency Federal Acquisition Regulation (CFAR).** Although the existing FAR provides avenues for rapid contracting activity, the Iraq reconstruction experience suggests that the FAR lacks ease of use. Moreover, promoting greater uniformity through a single interagency CFAR could improve contracting and procurement practices in multi-agency contingency operations. An interagency working group led by DOD should explore developing a single set of simple and accessible contracting procedures for universal use in post-conflict reconstruction situations. Congress should take appropriate legislative action to implement the CFAR, once it is developed by the interagency working group.

2. **Pursue the institutionalization of special contracting programs.** In Iraq, smaller scale contracting programs, like the Commander's Emergency Response Program (CERP) and the Commanders Humanitarian Relief and Reconstruction Program (CHRRP), achieved great success. Congress should legislatively institutionalize such programs for easy implementation in future contingency operations.

3. **Include contracting staff at all phases of planning for contingency operations.** Contracting plays a central role in the execution of contingency operations, and thus it must be part of the pre-deployment planning process. Whether for stabilization or reconstruction operations, contracting officials help provide an accurate picture of the resources necessary to carry out the mission.

4. **Create a deployable reserve corps of contracting personnel who are trained to execute rapid relief and reconstruction contracting during contingency operations.** This contracting reserve corps could be coordinated by the DoS Office of the Coordinator for Reconstruction and Stabilization as part of its civilian ready reserve corps. An existing contingent of contracting professionals, trained in the use of the CFAR and other aspects of contingency contracting, could maximize contracting efficiency in a contingency environment.

5. **Develop and implement information systems for managing contracting and procurement in contingency operations.** The interagency working group that explores the CFAR should also review current contracting and procurement information systems and develop guidelines and processes for enhancing these existing systems or, if necessary, creating new ones to meet unique contingency operational needs.

6. **Pre-compete and pre-qualify a diverse pool of contractors with expertise in specialized reconstruction areas.** These contractors should receive initial reconstruction contracts during the start-up phase of a post-conflict reconstruction event.

As mentioned, the tenth SIGIR Quarterly Report to the U.S. Congress, which also meets the requirements of the Inspector General Act for semiannual reporting, was submitted on July 31. This report evaluates the reconstruction process as it is reaches the mid-point of the Year of Transition. Most notably, the first permanent, democratically elected government of Iraq took office. In addition, the production of electricity, oil, and gas climbed above pre-war levels for the first time in over a year. But many challenges remain, most notably, reversing the deteriorating security situation. This report provides significantly more information than any of our previous submissions, including analyses of each of the seven infrastructure sectors.

- **The Year of Transition.** Closeout and transition highlight the halfway mark in this year of transition. At the end of June 2006, $18.94 billion of IRRF 1 and 2 had been obligated, and $14.85 billion had been expended. The U.S. government's authority to obligate IRRF money expires September 30, 2006, so any IRRF dollars not under contract by that date will revert to the U.S. Treasury. Contracting entities consequently are focused on rapidly obligating all remaining IRRF dollars.

- **Security Challenges Remain.** Repeated violence and the incessant danger that accompanies it continue to impede reconstruction efforts, slowing progress on projects, restricting the movement of personnel, and diverting dwindling resources from reconstruction. The lethal environment has greatly complicated the important work of the Provincial Reconstruction Teams to build capacity in the provincial governments.

- **Corruption in Iraq.** Corruption continues as a serious threat to Iraq's fledgling democracy. Iraqi officials estimate the cost of corruption at $4 billion a year, and the Commission for Public Integrity has more than 1,400 criminal cases involving about $5 billion. A poll conducted this quarter found that one-third of Iraqis reported that they have paid bribes for products or services this year, and that they mistrust police and the army. More resources and stronger support will be needed for Iraq's nascent anticorruption entities to battle corruption effectively. SIGIR sees some positive signs in the Prime Minister's recent supportive commitment for anticorruption and a World Bank-sponsored anticorruption workshop for Iraqis and international donors.

- **Leadership of Interagency Coordination.** Three years into the reconstruction effort, coordination among the implementing agencies of reconstruction in Iraq needs improvement. The Iraq Reconstruction Management Office (IRMO) has responsibility for setting priorities, coordinating among agencies, centralizing reporting, and managing ministry advisors, but has yet to bring all agencies together. It should be empowered to do so.

- **Capacity Building.** The fall of Saddam's regime ended four decades of a state-controlled economy. This has left inexperienced local officials to manage the delivery of provincial government services and created the need for programs to develop their capacities. The Provincial Reconstruction Team (PRT) program leads the effort to help local officials develop a sustained capacity to govern and promote security, rule of law, political

participation, and economic development. Currently, the PRT program faces serious challenges, including security threats, insufficient staffing, and limited resources. SIGIR has announced an audit of the PRT program.

- **Multilateralizing Reconstruction.** A significant development this quarter was the Iraqi government's request to the UN for help in negotiating a financial compact with the international donor community. Under the compact, Iraq would pledge to undertake reforms in exchange for political and economic support. The goal of the compact is to build a framework to transform Iraq's economy and integrate it into the regional and global economy. Success in negotiating the compact would energize the next phase of reconstruction.

1. **SIGIR Activities.**

    a. **Audits:** SIGIR issued 10 audits this quarter with 50 recommendations for program improvements. The audits focused on a broad range of issues, including health care projects, security, and anticorruption activities. One audit reviewed the Basrah Children's Hospital Project, which is behind schedule and over budget.

    b. **Inspections:** SIGIR completed 13 inspections this quarter and has now completed 56 project assessments, 96 limited on-site inspections, and 172 aerial assessments. SIGIR found that most projects visited this quarter showed high-quality workmanship and effective quality-control and quality-assurance programs.

    c. **Investigations:** SIGIR currently has 82 open investigations into alleged fraud, corruption, bribery, kickbacks, and gratuities. Currently, 25 cases are awaiting prosecution at the Department of Justice; two of those cases have resulted in convictions and are pending sentence, and another has agreed to a guilty plea. SIGIR recently entered into a partnership with the Federal Bureau of Investigation's Criminal Investigations Division to enhance investigative operations in Iraq and the United States.

Field work for this report occurred principally in Iraq, where nearly 50 SIGIR personnel operate daily in perilous conditions to provide oversight of the U.S. taxpayers' investment in Iraq.

SIGIR remains committed to meeting the expectations of the U.S. Congress, the Secretaries of State and Defense, and the American public with timely and helpful information on U.S. progress and performance in Iraq reconstruction.

I look forward to your questions.

Post-Hearing Questions for the Record
Submitted to Stuart W. Bowen, Jr.
From Senator Tom Coburn

"Iraq Reconstruction: Lessons Learned in Contracting"

August 2, 2006

1. If we were to start over today in Iraq, would there be a need for sole-source, no-bid contracting?

Response of Stuart W. Bowen, Jr.

Our report, *Iraq Reconstruction: Lessons in Contracting and Procurement* expresses our views on sole-source, no-bid contracting in contingency operations, stating that they should generally be avoided. We also addressed this with our recommendation to pre-compete and pre-qualify a pool of contractors with expertise in specialized reconstruction areas should receive appropriate initial reconstruction contracts during the start-up phase of a post-conflict reconstruction event.

There may be circumstances when non-competitive contracting may be justified. For example, our limited attestation engagement concerning the Award of Non-Competitive Contract DACA63-03-D-0005 to Kellogg, Brown, and Root (Report No. SIGIR 05-019) determined that prior to awarding the contract; USACE properly prepared and submitted its justification for the non-competitive contracting action.

The accuracy and completeness of the justification was certified by the contracting officer. The justification specifically stated that the requirement was restricted to a sole source due to the necessity that a contract be immediately available to implement the Contingency Support Plan (CSP), in case armed conflict with Iraq occurred before a competition could be conducted. The execution of the CSP would see to the repair and continuity of operations of the Iraqi oil infrastructure. USACE emphasized that complete familiarity with the CSP and access to proprietary essential elements was necessary to maintain and implement the CSP.

In addition, because the CSP was and remains classified, any other contractor would require substantial time to assure appropriate facilities and personnel clearances to enable their review of the CSP. KBR already had a cadre of individuals cleared for the plans classified aspects. As such, KBR, which developed the CSP under a previously competitively awarded contract, was the only contractor able to satisfy the requirements for immediate execution of the CSP.

As required by United States Code, Title 41, Section 253, for contracting actions in excess of $50 million, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) approved the award of the sole source contract on February 28, 2003.

2. What other contractors were available to the United States government for the services provided by Halliburton and its subsidiaries?

Response of Stuart W. Bowen, Jr.

In the example of our limited attestation engagement concerning the Award of Non-Competitive Contract DACA63-03-D-0005 to Kellogg, Brown, and Root. (Report No. SIGIR 05-019), due to the necessity to have a contract immediately available to execute the CSP, USACE did not make an effort to obtain multiple offers for contract DACA63-03-D-0005. According to the Justification and Approval document, only a few contractors had the capability to perform the requirement, but they would require substantial time to assemble project teams, assure appropriate security clearances for personnel and facilities, acquire a familiarity with the CSP and related plans, and to prepare a proposal. The classified nature of the requirement prevented discussions with firms not already cleared and read in on the project.

3. Recommendation #4 in the report states that the Department of State should coordinate the development of a "contracting reserve corps" as a part of its civilian ready reserve corps. Why the Department of State? You stated in your testimony that the Department of Defense performed well implementing the Commanders' Emergency Response Program (CERP) and the Commanders' Humanitarian Relief and Reconstruction Program. Also, many of the contractors working in Iraq traditionally work with DOD. Please explain why this should not be a function of the Department of Defense?

Response of Stuart W. Bowen, Jr.

The Department of Defense has a significant role in Stabilization and Reconstruction operations. Within the past year, the Administration has formalized responsibilities for Stabilization and Reconstruction operations, giving the lead to the Secretary of State.

National Security Presidential Directive-44 of December (NSPD-44), signed December 7, 2005, empowers the Secretary of State to improve coordination, planning, and implementation of reconstruction and stabilization assistance for "foreign states and regions at risk of, in, or in transition from conflict or civil strife." NSPD-44 institutionalizes an interagency office within the Department of State (DoS) — the Coordinator for Reconstruction and Stabilization2

(S/CRS)—and tasks that office to coordinate and lead integrated U.S. government reconstruction and stabilization efforts.

NSPD-44 also requires S/CRS to harness the expertise of other federal departments and agencies and to encourage these federal entities to build global capacity through international partners. NSPD-44 notes that operations can be conducted with or without U.S. military engagement. When the military is involved, the directive calls on the Secretary of State and the Secretary of Defense, when appropriate, to integrate contingency plans for stabilization and reconstruction with military contingency plans. NSPD-44 also creates the framework for integration of planning responsibilities, especially between DoS and DoD.

Department of Defense Directive 3000.05 (issued on November 28, 2005), establishes how DoD will address and develop functions for security, stabilization, reconstruction, and transition. It also commits DoD to supporting reconstruction and stabilization efforts as a core U.S. military mission—a mission to be given priority comparable to combat operations. The DoD directive states that stability operations are conducted to help establish order that advances U.S. interests and values. The immediate goal often is to provide the local populace with security, restore essential services, and meet humanitarian needs. The long-term goal is to help develop indigenous capacity for securing essential services, a viable market economy, rule of law, democratic institutions, and a robust civil society.

Although DoD recognizes that "many stability operations tasks are best performed by indigenous, foreign, or U.S. civilian professionals," the directive notes that U.S. military forces "are to be prepared to perform all tasks necessary to establish or maintain order when civilians cannot do so." The success of stability operations is linked with securing a lasting peace and facilitating a timely withdrawal of U.S. and foreign forces.

This directive is an effort to integrate military and civilian efforts. To that end, DoD will work closely with other government departments and agencies, international and nongovernmental organizations, and the private sector. In particular, DoD will provide advice and assistance for other government departments and agencies for developing stability operations capabilities; it will also seek appropriate advice and assistance from these same sources.

Post-Hearing Questions for the Record
Submitted to Stuart W. Bowen, Jr.
From Senator Lincoln D. Chafee

"Iraq Reconstruction: Lessons Learned in Contracting"

August 2, 2006

1. Former employees of Custer Battles, citing fraud, filed a lawsuit against the company and won a $10 million federal judgment. Even when the company was suspended from receiving more military contracts because it had submitted millions of dollars in fake invoices, a new lawsuit charges that the owners of Custer Battles tried to get around the suspension by setting up sham companies. Further, the lawsuit alleges that this company colluded with high-ranking Navy officials in this effort. Is this type of behavior an exception from the norm in your review of contractors? Or is this behavior more widespread?

Response of Stuart W. Bowen, Jr.

If there were a lawsuit as cited in the question, it would likely be a matter under seal in a federal court; accordingly, we could have no comment on the details stated. Generally, behavior of this type was more common during the period of Coalition Provisional Authority (CPA) control in Iraq. For most of the May 2003 – June 2004 period, there was essentially no effective independent oversight of the programs and operations of the CPA.

An inspector general (the predecessor to SIGIR) was not even appointed until January 2004 and because the CPA Inspector General could not begin to acquire staff until then, it was not until March 2004 that the first auditors and investigators arrived in Iraq. The CPA was disestablished on June 28, 2004. As a result, the imposition of oversight came too late to deter waste, fraud and abuse during the CPA period. Following the termination of the CPA, and the re-designation the CPA Inspector General as SIGIR, tighter contracting controls have been enforced, and fraud is currently not pervasive in government contracting in Iraq. This demonstrates that oversight works.

2. This case, and others have come to light through whistleblowers and suits filed by civilians, rather than through government investigation and prosecution. Why is that?

Response of Stuart W. Bowen, Jr.

SIGIR has referred about 25 criminal cases to federal prosecutors. Four SIGIR cases have resulted in convictions, thus far. Individuals, who as contractors or government employees, have exceptional vantage points from which to report waste, fraud and abuse as whistleblowers. Congress itself recognized this as far back as

the Civil War period when it instigated the False Claims Act, which allows any individual to bring charges on behalf of the government, known as *Qui Tam* actions. Outside investigators and independent auditors can never see a company from the inside like the company's own employees do. We have to subpoena documents and evidence that employees often have lying on their desks. While inspectors general have systems, such as hotlines, to receive allegations from employees, the whistleblower that succeeds through a *Qui Tam* action is eligible for a reward.

3. What is being done by our government to root out this type of abuse?

Response of Stuart W. Bowen, Jr.

During the last quarter, SIGIR investigations opened 40 new preliminary and criminal investigations involving a variety of offenses, ranging from contract fraud, bribery, and larceny to kickbacks and gratuities. During the same time period, SIGIR investigators determined that 25 cases were not substantiated and these were closed. Currently, SIGIR has 85 open preliminary and criminal investigations. Twenty-five of those cases are currently awaiting prosecution at the Department of Justice (DoJ). Four of those cases have resulted in convictions and are pending sentence, and DoJ is reviewing two additional cases to determine whether to prosecute.

SIGIR has started working with the Federal Bureau of Investigation's Headquarters Public Corruption/Governmental Fraud Unit to enhance investigative operations in Iraq and the U.S. SIGIR investigators continue to work closely with: Iraq's Commission on Public Integrity; the Department of State Office of Inspector General; the U.S. Army Criminal Investigation Command, Major Procurement Fraud Unit; Department of Homeland Security, Office of Immigration and Customs Enforcement; Internal Revenue Service, Criminal Investigations Division; and other partners participating in the Special Investigative Task Force for Iraq Reconstruction.

Post-Hearing Questions for the Record
Submitted to Stuart W. Bowen, Jr.
From Senator Joseph I. Lieberman

"Iraq Reconstruction: Lessons in Contracting and Procurement"

August 2, 2006

1. The July 30, 2006 quarterly report of the Special Inspector General for Iraq Reconstruction (SIGIR) indicates that SIGIR audits have challenged payments of $306.9 million, which include possible duplicate payments, overpayments, and payments for work that was not completed. Of this total amount, how much has been recovered by agencies responsible for overseeing the contracts? Do you believe that U.S. agencies have been aggressive enough in recovering challenged payments? If not, what changes should agencies undertake to achieve a better rate of recovery?

Response of Stuart W. Bowen, Jr.

Not enough has been recovered by agencies responsible for overseeing government contracts because, in addition to lack of security, the government agencies responsible for administration were often partly at fault for failure to properly administer the contracts. We've seen this in the responses from contractors after being notified that they were in default. This failure in administration of contracts has restricted the government ability to recover from contractors for termination by default. Instead, the government terminates for convenience and forfeits the ability to recover payments made to the defaulting contractor.

2. A January 27, 2006 SIGIR report detailed extensive and costly problems with a task order issued to Kellogg Brown and Root (KBR) by the U.S. Army Corps of Engineers (USACE) to complete an oil pipeline river crossing at Al Fatah, Iraq. The SIGIR found that both KBR and USACE failed to perform additional research on subsurface geologic conditions at Al Fatah after a consultant's study indicated that loose gravel and cobbles likely would make it impossible for the horizontal directional drilling (HDD) technique employed by KBR to retain boreholes for large diameter pipes. After expenditures of $75.7 million, the KBR project (which was only 28% completed) was discontinued and replaced with a contract awarded to Parsons Iraqi Joint Venture at a cost of $29.7 million.

    a. Based on your review of the task order issued to KBR, do you believe that USACE has any recourse to recover a portion of the $75.7 million expended out of the Development Fund for Iraq for a project that was ultimately a failure?

Response of Stuart W. Bowen, Jr.

It is unlikely that the USACE has any recourse in this matter. The cost plus task order imposed all management responsibility and liability on the government. Any potential recourse for liquidated damages on the fixed-price subcontract issued to Willbros was apparently lost because there were no established performance requirements in the subcontract.

b. If not, what flaws in the procurement process allowed KBR to collect such high fees when, as your report concluded, "the geological complexities that caused the project to fail were not only foreseeable but predicted"?

Response of Stuart W. Bowen, Jr.

We were told by the USACE that no award fee was given to KBR for the HDD work, which left only the base fee. In our view, the following flaws in the procurement process caused the project to fail:

- **The decision to use HDD was perceived by the USACE and KBR as an order from the RIO Commanding General and both organizations simply followed orders.**
- **Although KBR followed appropriate administrative procedures to award the subcontract they did not take adequate management responsibility to insure the project would be successful or to mitigate the risk of failure. For example,**
    - **They did not alert the USACE that the Fugro study recommended further geological analysis.**
    - **They did not negotiate an appropriate contract with Willbros, one with a phased approach, which would have provided goals and milestones to measure progress. This would have enabled a determination early in the project that the HDD process would be unsuccessful.**
    - **KBR's award of a firm fixed price contract to attempt to drill holes, provided no incentive to Willbros for success.**
- **USACE did not provide for adequate program management. Although the contracting organization followed administrative procedures, they did not include appropriate contract clauses to mitigate risk, measure performance, or establish a program management team.**
    - **Risk mitigation clauses should have required a phased approach such as completing the geological study, completing borehole analyses, mobilization, etc.**
    - **Earned value management techniques should have been used to measure progress.**

- **This was considered one of the most important projects in the country. Accordingly, USACE should have assigned a single program manager with full responsibility.**
- **During the inspection, we were told by USACE technical support personnel that communications at the site between Willbros representatives and KBR were inadequate, preventing problem recognition and resolution. USACE should have taken a stronger management role and required frequent progress meetings attended by KBR and Willbros representatives.**

c. The SIGIR report indicates that KBR's subcontractor mitigated its financial risk by requiring a six month firm fixed price contract with no performance requirement to complete any holes. The report also found no evidence that USACE formally consented to the subcontract. Do you believe that the award of subcontracts without sufficiently specific performance requirements is prevalent in Iraqi reconstruction contracts?

Response of Stuart W. Bowen, Jr.

SIGIR has not specifically audited the use of performance standards in subcontracts for Iraq reconstruction and consequently is not in a position to comment on the prevalence of its use at this time. However, we have recently become aware of other instances, such as the Basrah Children's Hospital, in which project completion was adversely impacted by the lack of performance standards. As a result, SIGIR is considering this subject in its future audit planning.

d. What measures should U.S. agencies take to improve oversight over subcontracts?

Response of Stuart W. Bowen, Jr.

There are requirements for government contract administrators to consent to subcontracts. Given that the government's contracting organization is sufficiently staffed with competent people, these procedures should be sufficient. In this case, it appears that USACE contracting the staffs, at the Southwest District and in Iraq, were overwhelmed, and were unable to meet the demanding administrative requirements.

e. USACE management and oversight of the Al Fatah river crossing project was deficient in many respects. USACE failed to follow up on recommendations from a consultant to perform additional geological studies before committing to the HDD project, failed to mitigate the

government's risk for the project, and failed to perform adequate on-site technical management that would have identified technical problems early in the process. Do you believe these failures are the result of an insufficient number of procurement personnel in Iraq, insufficient training of procurement personnel, simple abdication of responsibility by procurement personnel, or some combination of factors?

Response of Stuart W. Bowen, Jr.

I believe it is a combination of the three, and one other factor. The war imposed significant increases in workload for the contract management staff. We were told that the Southwest District staff was working weekends for a number of months to meet the demand. USACE staff in Iraq was working in a war zone under stressful conditions with unprecedented requirements. In some cases, people who may not have been adequately trained were given emergency warrants. Due to the overwhelming workload, it appears that much of the responsibility was abdicated to contractors simply to keep things moving. In the Al Fatah case, USACE appears to have abdicated its full responsibility to KBR, and then failed to provide sufficient program management. Another factor was the inability of the bureaucracy to segregate critical from mundane projects and focus appropriate management resources to the critical work. At Al Fatah, USACE appears to have used the same management techniques as for any other project, and could not react to the impending failure.

f. What types of remedial or disciplinary actions should be taken when poor management and oversight by procurement officials contribute to cost overruns or project failures?

Response of Stuart W. Bowen, Jr.

It is the role of an inspector general to find and report on waste, fraud and abuse in government operations. Had our inspection developed indications of potential fraud, I would open a criminal case on this matter. However, we found no indications of fraud, so any discipline or remedial action would be administrative and under the purview of the USACE, the Army and Secretary of Defense to evaluate our findings and conclusions and determine how individuals should be held accountable for their performance.

3. In your report "Iraq Reconstruction: Lessons in Contracting and Procurement," you state that the use of sole-source and limited competition contracts in Iraq should have virtually ceased after hostilities ended and that such contracts should have been re-bid promptly. In several instances detailed in your report, sole-source or limited competition contracts were re-bid with the result being that the original recipient of the sole-source or limited competition contract won the competition due to the company's experience in Iraq. In other words, despite the

appearance of a full and fair competition, the contractor who previously benefited from the lack of competition goes into the bidding process with an advantage over other contractors. What steps could be taken in the procurement process to mitigate this "boot-strap" effect?

Response of Stuart W. Bowen, Jr.

Provisions in the Federal Acquisition Regulations (FAR) provide a mechanism for actually excluding a particular potential bidder in the interest of fostering alternative sources if necessary. These provisions provide methods for procurement officials to equalize the competition opportunities, and maintain fair and open competition.
Where one company has an overriding advantage in prospective procurement, the FAR provides a mechanism of equalizing the competition by establishing and maintaining alternative sources.
FAR 6.202 provides that:

> **(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would (1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition; (2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization.**

The decision to utilize such flexibilities must be balanced against the urgency of the Government's needs and the practical realities of the acquisition environment. In addition, there are many situations where such a procedure is not practicable.

Post-Hearing Questions for the Record
Submitted to Stuart W. Bowen, Jr.
From Senator Daniel K. Akaka

"Iraq Reconstruction: Lessons in Contracting and Procurement"

August 2, 2006

1. It is clear that there was no oversight of reconstruction spending in place until you were appointed Coalition Provisional Authority (CPA) Inspector General in January 2004, despite billions of dollars at stake. Although you have undertaken significant audits and investigations, billions of dollars remain at risk. What additional controls are needed to oversee the billions being spent on reconstruction?

Response of Stuart W. Bowen, Jr.

Oversight should have been in place from the beginning, when funds were appropriated. This is a key lesson from our experience. In the ten months between the establishment of the CPA and the appointment of a CPA Inspector General, there was little to deter those who, in a stressful environment far from their homes, and in the presence of millions of dollars of loose cash, could not resist the temptation to enrich themselves. It was also a period during which there was no independent and authoritative entity to assess vulnerabilities, and recommend better management practices and controls. By the time that a dozen CPA-IG auditors and investigators had arrived in Baghdad, in the spring of 2004, wasteful and fraudulent practices had already occurred.

It has been challenging and complicated for SIGIR to retroactively root out CPA-era problems. Yet, our investigations into fraud allegations have netted numerous arrests and four convictions to date. We estimate that about 70 percent of the fraud in Iraq reconstruction occurred during the CPA era, and do not find it to be a pervasive problem for the current State Department management.

SIGIR has played an important role in assisting those who are responsible for program management today to be more effective and efficient. Our audit and inspection reports frequently document the "real-time" guidance and counsel we have provided to reconstruction leaders and managers, contributing to increasing success. Appearing before congressional committees, representatives of the State Department have repeatedly cited the value of SIGIR oversight to the effective management of Iraq reconstruction.

Had an independent oversight entity such as SIGIR been in Iraq from the beginning, we believe that much of the waste, fraud and abuse might have been avoided. Today, we have built our capabilities in Iraq to maintain the necessary

oversight as long as it is deemed necessary by Congress.

2. In November 2005, the Administration unveiled the National Strategy for Victory in Iraq, which was to provide a unified plan for stabilization and reconstruction. Was your office consulted on the drafting of the National Strategy? If not, do you believe you should have been consulted prior to the announcement of the Strategy, and has any consultation taken place?

Response of Stuart W. Bowen, Jr.

The Office of SIGIR has not been consulted directly on the National Strategy for Victory in Iraq. This is appropriate, as inspectors general have an independent oversight role which could be compromised if an IG joins directly in the policymaking process.

Nonetheless, our reports on the work that we have done to promote economy, efficiency and effectiveness in reconstruction programs, while preventing and detecting waste, fraud and abuse, have been routinely made available to policymakers. We hope our work products provided information or insight to those drafting the strategy, but we do not know if these were considered.

3. Your investigations have found shocking examples of enormous sums of cash being handled and spent by U.S. government officials and contractors with little or no control. Your July 2006 report notes that U.S. contracting entities lacked auditing procedures and developed ad hoc operating systems and procedures for monitoring and maintaining contracts in Iraq. To the best of your knowledge, was there any pre-invasion planning to establish an auditing system?

Response of Stuart W. Bowen, Jr.

There is no evidence that pre-war planning encompassed particular accountability systems to be used in post-war Iraq. It was most likely assumed that existing inspectors general, including the Department of Defense, Department of State and USAID auditors would be responsible for oversight of the funds apportioned to them for programs in Iraq. It should be noted that the Iraq Relief and Reconstruction Fund, the operations and programs it would support, and the need for an additional set of auditors, had not been considered at that time.

4. Your July 2006 report recommends pre-competing and pre-qualifying a diverse pool of contractors with expertise in specialized reconstruction areas. Is this being done now? If so, how many contracting firms with specialized reconstruction capabilities has the Department of Defense pre-competed and pre-qualified, and has this process been coordinated with the Department of State to avoid duplication?

Response of Stuart W. Bowen, Jr.

We do not know if the Department of Defense has yet begun to pre-qualify and pre-compete contractors, as we have recommended. The Department of Defense has established a task force, headed by a deputy under secretary, tasked with developing remedies for contingency contracting problems that we have identified. We have met with them in Baghdad. Under National Security Presidential Directive-44, the Department of State has authority for interagency coordination of stabilization and reconstruction operations, and thus is responsible for ensuring that efforts to develop mechanisms for more effective post-conflict contracting, including pre-qualifying, are coordinated among implementing agencies.

Special Inspector General
for Iraq Reconstruction

IRAQ RECONSTRUCTION

LESSONS IN CONTRACTING AND PROCUREMENT

2

[July 2006]

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PREFACE

This is the second of three reports in SIGIR's Lessons Learned Initiative (LLI). Begun in September 2004, the LLI focuses on three areas of the U.S. relief and reconstruction effort in Iraq:

- human capital management
- contracting and procurement
- program and project management

SIGIR's review of each area includes thorough background research and extensive interviews with a broad spectrum of persons possessing first-hand experience in the Iraq reconstruction program. The collected findings from this research are then provided to a panel of senior executives and experts drawn from the U.S. government, industry, and academia, many of whom served in Iraq. These experts convene for a full-day forum to evaluate the findings and provide recommendations.

The first LLI Report, *Iraq Reconstruction: Lessons in Human Capital Management,* was released in January 2006. SIGIR will publish the third and final paper in this series, *Iraq Reconstruction: Lessons in Program and Project Management*, in the fall of 2006.

This report provides a chronological review of the U.S. government's contracting and procurement experience during the Iraq relief and reconstruction program. It begins by examining contracting activity early in the Iraq program and traces its evolutionary development through the effort's succeeding phases. The concluding section lays out a series of key lessons learned followed by six recommendations for improving the U.S. government's capacity to support and execute contracting and procurement in contingency environments.[1]

OVERVIEW

The success of any post-conflict reconstruction effort depends in great part upon effectively employing the U.S. government's capacity to deploy efficiently and rapidly the means of relief and reconstruction: services, materials, and their supporting systems. This requires extant governmental contracting and procurement processes that are well structured and optimized for use in contingency situations. As this report reveals, the U.S. government was not systemically well-poised to provide the kind of contracting and procurement support needed at the time of the 2003 invasion of Iraq.

Pre-war relief and reconstruction planning for the Iraq endeavor focused chiefly on preparing for humanitarian assistance and the restoration of essential services. The contracting and procurement efforts during that phase reflected this focus. After combat operations ceased in April 2003 and the Iraqi government collapsed, the shape of these efforts began to shift. The U.S. discovered that Iraq's infrastructure was in far worse condition than some pre-war assessments had indicated. With that recognition came the realization that reconstruction requirements in Iraq would be far greater than originally anticipated.

The U.S. government responded to this challenge by appropriating more than $20 billion in grants to assist the Iraqi people in reviving their infrastructure and economy. These grants, together with several billion dollars in Iraqi funds, served as the primary source for financing the U.S. relief and reconstruction program. The effort engaged multiple U.S. government agencies possessing overlapping jurisdictions and diverse capacities. These agencies applied a variety of approaches to similar contracting and procurement requirements, resulting in methodologies and outcomes that occasionally came into conflict. As a general matter, however, the contracting and pro-

curement effort in Iraq substantially improved over the course of the Iraq relief and reconstruction program.

Scope

SIGIR defines contracting and procurement as all activities ranging from developing reconstruction contracting plans and requirements, to soliciting and awarding contracts, to issuing task orders under these contracts. SIGIR will assess the execution of the reconstruction program in its next Lessons Learned report, *Iraq Reconstruction: Lessons in Program and Project Management.*

Report Structure

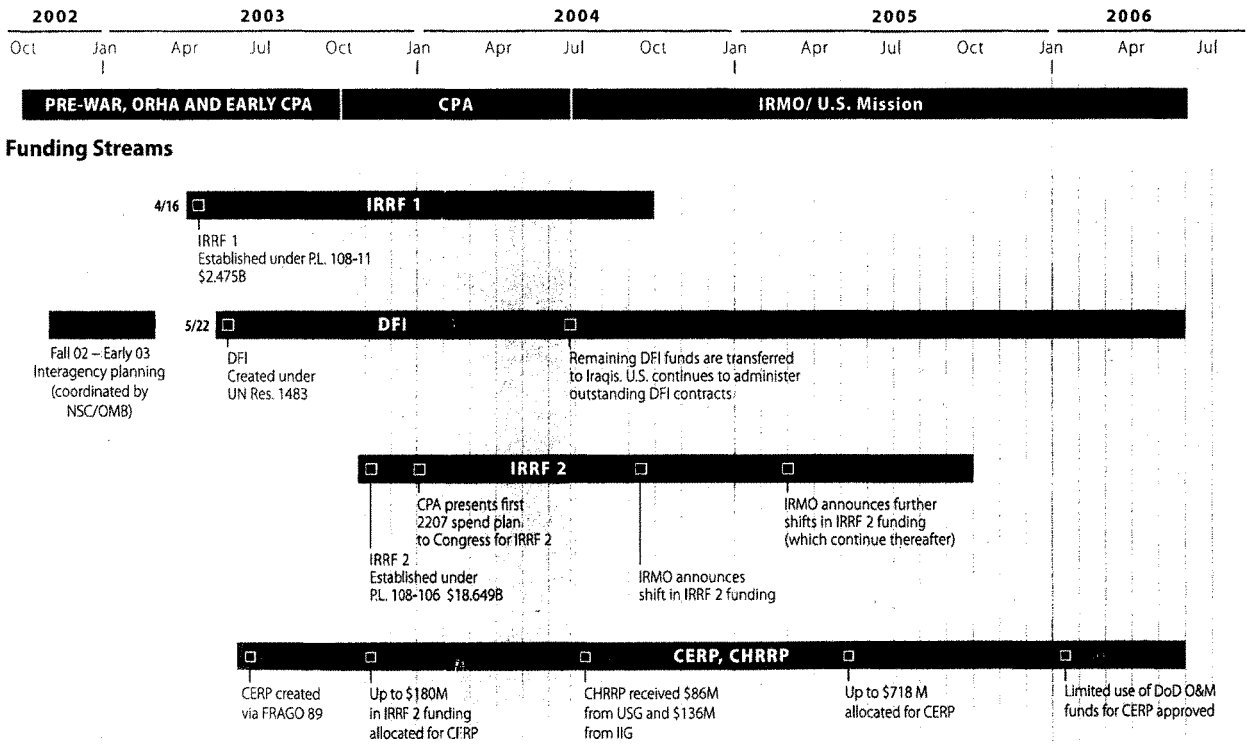
To review and evaluate the contracting and procurement processes that supported the relief and reconstruction program in Iraq, SIGIR divides this report into four chronological periods and one functional concept area:

- Summer 2002 to January 2003: *The Pre-ORHA Period*
- January 2003 to August 2003: *The ORHA and Early-CPA Period*
- August 2003 to June 2004: *The Later CPA Period*
- June 2004 to present: *The Post-CPA Period*
- June 2003 to present: *CERP and CHRRP*

The report tracks the evolution of reconstruction contracting and procurement through these periods, reviewing within each the planning processes, funding allocations, legal issues, and agency responsibilities. Figure 1 presents the timeline of U.S. contracting and procurement activity in Iraq, indicating the funding points and functional life-spans of various U.S. contracting authorities.

IRAQ RECONSTRUCTION

Contracting and Procurement Timeline



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Major Contracting Authorities and Events

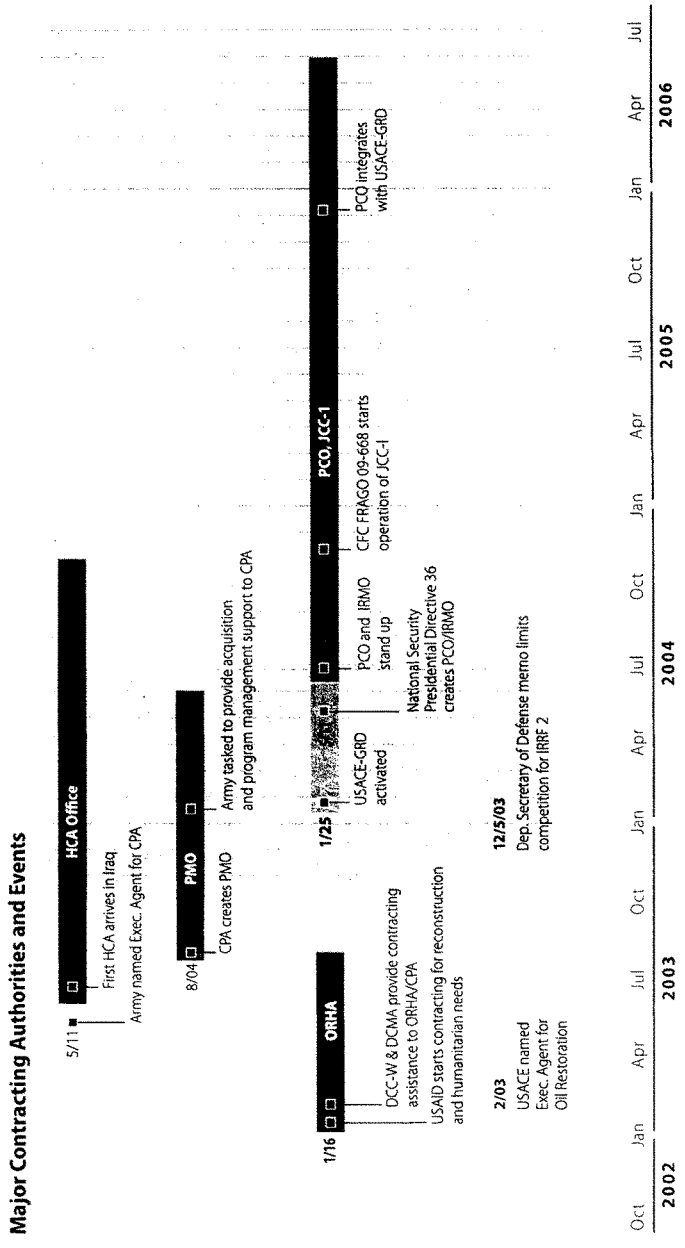


Figure 1

THE PRE-ORHA PERIOD (SUMMER 2002 TO JANUARY 2003) —CLOSED RECONSTRUCTION PLANNING

During this period, U.S. agencies were separately directed to initiate planning for relief and reconstruction activities in Iraq; but there was limited coordination of contracting and procurement among these organizations. This lack of coordination in early planning was attributable, in part, to the fact that much of the activity was classified. Planning did not become predominately unclassified until the creation of the Office of Reconstruction and Humanitarian Assistance (ORHA) in January 2003.[2]

Department of Defense: The Decision to Use LOGCAP

The U.S. Department of Defense (DoD) chose to employ the Logistics Civil Augmentation Program (LOGCAP) as the chief vehicle for executing its initial contracting for Iraq reconstruction. This Army-administered program, originally created in 1985, requires "peacetime planning for the use of civilian contractors in wartime and other contingencies."[3]

To meet LOGCAP's goal, contractors must produce[4]:

- A worldwide plan for providing vital support, such as logistical, engineering, and construction services, to U.S. forces deployed for war or contingency operations.
- Multiple contingency plans targeted at countries in areas of potential conflict.
- Operational capacities to support simultaneously up to three major contingency operations.

LOGCAP's Focus Expands

The original LOGCAP program permitted various Army commands to award support contracts independently. In 1992, the Department of the Army converted LOGCAP into an umbrella support contract with a single worldwide provider. In 2001, the latest iteration of the contract, LOGCAP III, was awarded to Kellogg, Brown & Root Services, Inc. (KBR), a subsidiary of Halliburton, Inc., with a one-year base period and nine one-year options. LOGCAP III requires "support to most events deemed in the national interest, with approval of [the Department of the Army]."[5] According to a Government Accountability Office (GAO) report, the use of LOGCAP to support U.S. troops in Iraq was the largest effort undertaken in the program's history.[6]

LOGCAP Used for Contingency Planning in the Oil Sector

In late summer 2002, the National Security Council's (NSC) Deputies' Committee identified requirements for the potential post-war recovery and repair of Iraq's oil infrastructure. The Deputies' Committee developed options for maintaining the security of Iraq's oil sector to pre-empt its destruction.[7] DoD and U.S. Central Command (CENTCOM) leadership concurrently engaged in similar planning on these issues. All of these planning sessions, and the subsequent contracting actions stemming from them, were classified.[8]

Pursuant to the NSC's directives, DoD established the Energy Infrastructure Planning Group (EIPG) to prepare contingency plans for Iraq's oil sector. Because the U.S. government lacked the necessary knowledge and expertise to develop oil infrastructure contingency plans, the EIPG sought private sector assistance.[9]

Faced with a December 2002 deadline for delivery of the draft oil sector contingency plan, the EIPG requested that the Department of

the Army issue a task order under LOGCAP III to KBR to develop an Iraq oil sector contingency plan.[10] KBR had an existing relationship with CENTCOM, possessed the necessary security clearances, and was familiar with CENTCOM's technical and operational warplans into which the Iraq oil sector contingency plans would be integrated.[11]

Before issuing the task order, DoD contracting authorities analyzed whether LOGCAP III was the appropriate vehicle for the oil sector contingency contract. Under LOGCAP III, the military cannot award a contract to improve another country's infrastructure, but it can issue task orders to support military contingency operations.[12] The Secretary of Defense had ordered CENTCOM to develop plans to secure and maintain operation of Iraq's oil infrastructure in the event of hostilities. DoD contracting authorities thus determined that protecting Iraq's oil infrastructure was an essential element of coalition military operations, and it was therefore deemed proper to use LOGCAP III as the contingency contracting vehicle for the oil sector.

A legal opinion provided by DoD's Office of General Counsel substantiated this view. However, a subsequent GAO review concluded that the task order was beyond the scope of LOGCAP III. GAO found that the Army Field Support Command (AFSC) should have provided a written justification to authorize the award of the work to KBR without competition.[13]

In November 2002, the AFSC executed the first formal DoD contracting action related to Iraq reconstruction, awarding a LOGCAP III task order to KBR to develop contingency plans for the repair and operation of Iraq's oil infrastructure (should it be destroyed or damaged). The value of this initial task order was small ($1.9 million) compared to its eventual impact. In March 2003, before the commencement of hostilities, KBR was awarded a sole-source indefinite

delivery/indefinite quantity (IDIQ) cost-plus contract, with a ceiling of $7 billion, to restore Iraq's oil infrastructure. *See infra* p. 19. This award was based in part on KBR's work on the initial oil sector contingency plan. During FY 2003, $1.4 billion was obligated under this contract as part this effort, designated Task Force Restore Iraqi Oil (RIO) and managed by the U.S. Army Corps of Engineers.[14]

U.S. Agency for International Development: Initial Planning

USAID's pre-war planning process began in September 2002 with the assignment of a USAID staff member to the Humanitarian/Reconstruction Planning team, one of several interagency teams organized to develop contingency plans in support of the intervention in Iraq.[15] The Humanitarian/Reconstruction Planning team "was convened to develop a baseline assessment of conditions in Iraq and to define sector-by-sector relief and reconstruction plans."[16] The team tasked USAID to undertake planning for "non-oil-related capital construction, seaport and airport administration, local governance, economic development, education, and public health."[17] USAID also created its own Iraq reconstruction planning taskforce, which included program staff, members of USAID's Office of Acquisition and Assistance, and USAID Inspector General personnel.

USAID'S HUMANITARIAN RELIEF PLANNING

In the fall of 2002, USAID's Office of Foreign Disaster Assistance (OFDA), which includes the Disaster Assistance Response Team (DART), and the Office of Transition Initiatives (OTI) began preparing for a possible post-conflict humanitarian disaster in Iraq. By February 2003, OFDA had committed $26.5 million in preparation for Iraq relief activities using International Disaster Assistance (IDA) funds, "for the purchase and pre-positioning of non-food relief com-

modities, and for assistance to UN agencies and NGOs [non-governmental organizations]." USAID provided these funds to the UN agencies and NGOs to support contingency planning and coordination efforts among various organizations that would be involved in Iraq relief and reconstruction efforts.[18]

U.S. Department of State: Minimal Initial Role in Contracting

There was limited DoS involvement in Iraq contracting and procurement until June 2004, when DoS/Chief of Mission replaced CPA/DoD as the lead U.S. agency in Iraq reconstruction. Prior to assuming leadership, DoS's only major contracting event was the award of a police training contract to DynCorp. *See infra* p. 33.

ORHA AND EARLY-CPA (JANUARY TO AUGUST 2003)—CONTRACTING FOCUSES ON HUMANITARIAN NEEDS AND ESSENTIAL SERVICES

The Department of Defense created ORHA in late January 2003 to manage reconstruction and humanitarian activities in post-conflict Iraq. Although administratively assigned to DoD's Washington Headquarters Services, ORHA took policy direction from the Under Secretary of Defense for Policy.

ORHA was organized according to three pillars of responsibility: humanitarian assistance, reconstruction, and civil administration. Retired Lt. General Jay Garner (USA) was appointed ORHA's director. Upon his appointment, Lt. General Garner immediately ordered DoS to take charge of humanitarian assistance, USAID to assume

responsibility for reconstruction activity, and DoD to oversee civil administration.[19]

Between January and March 2003, the U.S. relaxed confidentiality restrictions on pre-war relief and reconstruction planning. More agencies then became more openly involved in planning for post-war Iraq. Financial and acquisition personnel, however, were still largely not included in the interagency planning process.[20] Their absence contributed to the limited interagency cooperation on, and centralized support for, contracting and procurement during this period, which had deleterious effects upon subsequent phases of the program.

USACE: Task Force Restore Iraqi Oil

In February 2003, the Secretary of the Army directed USACE to serve as the executive agent for the Iraqi oil restoration mission. USACE then created Task Force Restore Iraqi Oil (RIO) to manage and operate this mission, with the contracting officer for USACE's Southwestern Division as the "contractor's source of definitive guidance."[21]

In late February 2003, the Assistant Secretary of the Army for Acquisitions, Logistics, and Technology (ASA-ALT) approved USACE's justification for a sole-source, emergency response contract for Iraq's oil sector. On March 8, 2003, USACE awarded this contract to KBR for "an interim period as a bridge to a competitive contract," after receiving approval from the Under Secretary of Defense for Policy.[22] *See supra* p. 15. It justified issuing the IDIQ contract on a sole-source basis because KBR was "the only company [that] could immediately satisfy the requirements of the oil sector plan, considering the imminence of potential hostilities."[23] USACE relied on section 6.302.1 of the Federal Acquisition Regulation (FAR),[24] which allows sole-source awards whenever there is "only one responsible

source and no other supplies or services will satisfy agency requirements."[25]

The KBR sole-source contract generated considerable public controversy. Notwithstanding this controversy, SIGIR and GAO reviews of the award concluded that it complied with applicable federal regulations for sole-source contracts. The SIGIR review found that "the justification used was that KBR had drafted the Contingency Support Plan (CSP), had complete familiarity with it, had the security clearances necessary to implement it, and the contract need[ed] to be immediately available to implement." GAO's review noted that KBR's qualifications as a sole-source provider were justified by its capabilities developed under the LOGCAP III task order awarded in November 2002.[26]

The oil sector contract had a ceiling of $7 billion. The total amount expended under the IDIQ contract eventually exceeded $2.4 billion.

ORHA: Washington-Based Contracting Support

Shortly after ORHA's inception, the agencies assigned to work on the humanitarian and reconstruction pillars began planning for acquisition needs in Iraq. In February 2003, DoD's Washington Headquarters Services directed the Defense Contracting Command-Washington (DCC-W) to meet ORHA's contracting needs. In March 2003, DCC-W awarded contracts totaling $108.2 million to execute the Iraqi Free Media Program and establish the Iraq Reconstruction Development Council, which comprised a group of Iraqi expatriates deployed to Iraq to assist ORHA with its outreach mission.[27]

A March 2004 audit conducted by the DoD Office of Inspector General (DoD OIG) found that ORHA initially had "no written plans or strategies for obtaining acquisition support" and no assigned acquisition personnel.[28] The DoD OIG audit further criti-

cized DCC-W contracts for circumventing proper procedures, but cited a lack of contracting personnel and extreme time constraints as extenuating circumstances.[29]

ORHA: In-Country Contracting Support

ORHA suffered from a lack of qualified contracting personnel in theater as it prepared to provide post-war relief and reconstruction services in Iraq. To remedy this shortfall, the Defense Contract Management Agency (DCMA) transferred three military contracting officers to support ORHA. Contingency contracting officers normally are warranted (i.e., provided the authority to write contracts) upon arrival in theater by the Head of Contracting Activity. However, the Principal Assistant Responsible for Contracting, U.S. Army Forces Central Command, refused to warrant these DCMA contracting officers.[30]

DCMA then obtained a waiver from the Principal Deputy Under Secretary of Defense/Acquisition, Technology, & Logistics, allowing DCMA to warrant independently its contracting officers for ORHA's procurement activities.[31] But the warrants limited the contracting officers to procuring direct logistical support (e.g., office supplies and basic administrative services). The three contracting officers were specifically prohibited from executing contracts for reconstruction or humanitarian purposes, though there ensued a steady stream of such requests from various agencies.[32] ORHA itself thus had no organic capacity to execute reconstruction and relief contracting. A former ORHA contracting official observed that "the true connection between requirements, funding, and contracts is what was missing most of the time; people didn't know who to take their requirements to, who could or would approve it, what funding source would pay for it, and then who could or would contract for it."[33]

ORHA Develops a Contract Review Process

In early April 2003, ORHA, DCMA, and DCC-W implemented improved processes that helped mitigate ORHA's contracting difficulties. On April 8, 2003, ORHA created the Requirements Review Board (RRB) through a memorandum of understanding (MOU) with DCMA.[34] Pursuant to the MOU, ORHA contracts were processed in the following way:

1. The ORHA front office in Baghdad generated initial requirements.
2. These initial requirements were forwarded to the RRB for approval.
3. The RRB approved and forwarded the requirements to the Under Secretary of Defense (Comptroller) (USD-C) for final review and approval.
4. After USD-C approval, the requirements were sent to the appropriate contracting agency for execution.

These more formalized ORHA contracting processes governed contracting activity until CPA was formed a little over a month later.

According to a DoD OIG audit, which reviewed 24 contracts awarded by DCC-W, 15 contracts were awarded prior to the development of this process.[35] The DoD OIG audit provided these details:

> Generally, services or items that were not construction related or dealing with humanitarian relief were handled by the DCC-W.[36] Other requirements that specifically related to rebuilding the infrastructure of Iraq were given to the Army Corps of Engineers who managed the Army Logistics Civil Augmentation Program (LOGCAP). According to the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, contracts for items and services that were to be provided or performed with seized Iraqi funds or vested Iraqi funds were returned to the ORHA/CPA Office in Baghdad for award of the contract.[37]

The Creation of CPA

CPA initially was recognized as a discrete organization in a CENTCOM order that Commanding General Tommy Franks issued on April 16, 2003. The President subsequently appointed Ambassador L. Paul Bremer III as his envoy to Iraq on May 9, 2003.[38] And on May 13, 2003, the Secretary of Defense designated Ambassador Bremer as CPA's Administrator.[39] ORHA, however, was not officially dissolved until mid-June;[40] the delay apparently reflected the time needed by CPA to set up operations and subsume ORHA's functions.

In General Franks' April 16 CENTCOM order, the CPA was described as "exercise[ing] powers of government temporarily, and as necessary, especially to provide security, to allow the delivery of humanitarian aid and to eliminate weapons of mass destruction."[41] The President's appointment of Ambassador Bremer as presidential envoy to Iraq directed Ambassador Bremer to "oversee Coalition reconstruction efforts and the process by which the Iraqi people build the institutions and governing structures that will guide their future."[42] The Secretary of Defense's designation letter appointed Ambassador Bremer as the "head of the Coalition Provisional Authority, with the title of Administrator." The Secretary further directed that Ambassador Bremer would be "responsible for the temporary governance of Iraq, and shall oversee, direct and coordinate all executive, legislative, and judicial functions necessary to carry out this responsibility." [43]

From CPA's inception, there was some question as to whether it was a U.S. entity or an international/multi-national entity like NATO. The following excerpt from a June 2005 report of the Congressional Research Service (CRS) underscores the ambiguity that persisted within the federal government regarding CPA's status, especially with respect to contracting:

The former Administrator of the Office of Federal Procurement Policy, in writing about contracting with the [CPA], offered [a] possible explanation of why government officials chose to have DoD components issue solicitations and award contracts for the reconstruction of Iraq: "The CPA is not the United States Government. Accordingly, if one enters into a contractual relationship with the CPA, one is not entering into a contractual relationship with the United States. The rights and remedies available to parties contracting with the United States will not be available in a contractual relationship with the CPA."[44]

DoD Tasks Army as Executive Agent for ORHA

On May 21, 2003, the Deputy Secretary of Defense officially designated the Army as the executive agent for ORHA.[45] When ORHA dissolved in mid-June 2003, the Army continued its support role as CPA's executive agent.[46] In this capacity, the Army provided administrative, logistical, and contracting support required by CPA "for the humanitarian relief and reconstruction for the people of Iraq."[47]

Development Fund for Iraq: Key Source for CPA Contracts

On May 22, 2003, the United Nations approved United Nations Security Council Resolution 1483 (UNSCR 1483), establishing the Development Fund for Iraq (DFI). The Resolution required the funding of DFI with Iraqi oil revenue, existing Oil for Food funds, and all frozen and seized assets that had previously belonged to the Iraqi government or had been controlled by Saddam Hussein.[48] UNSCR 1483 further directed UN member nations holding Iraqi frozen assets to transfer them promptly to the DFI. It also gave the CPA responsibility for the DFI's management and expenditure, and it provided that the CPA should use the DFI for the benefit of the Iraqi people. Importantly, the Resolution created the International

Advisory and Monitoring Board (IAMB), assigning it functions similar to those of an external audit committee and charging it with oversight of the DFI.[49]

The DFI began with an opening asset balance of $1 billion from the Oil for Food program.[50] By the end of June 2004, the DFI had received total deposits of about $20 billion.[51] Over the span of the DFI's 13-month existence under CPA's management, CPA spent $3.35 billion directly on relief and reconstruction projects.[52] The CPA used the DFI for various purposes, including the funding of rapid reconstruction initiatives like the Commander's Emergency Response Program (CERP). *See infra* p. 81.

ESTABLISHMENT OF THE CPA HEAD OF CONTRACTING ACTIVITY

With the creation of the CPA and the designation of the Army as its executive agent, the Department of the Army established a new contracting cell in Iraq. The DCMA concomitantly dissolved the contingent that had supported contracting and procurement for ORHA. The Assistant Secretary of the Army-ATL appointed an Army Colonel to serve as the Head of Contracting Activity (HCA) for CPA, and he arrived in theater in late June 2003.[53]

At the outset, the HCA Office had just three contracting officers, but that number slowly increased as the HCA's workload and responsibilities grew during 2003. The precise scope of the HCA Office's mission was initially unclear.[54] It was at first expected to provide support only to CPA's headquarters in Baghdad. Its reach, however, rapidly expanded to supporting all four of CPA's operating regions, which encompassed the 18 Iraqi governorates. During its first two months of operation, the HCA Office awarded more than $250 million in contracts.[55]

CPA's HCA Office was given the Iraq reconstruction contracting mission "without limitations," meaning that it could "execute not

only Iraqi funds, but also supplemental and appropriated funds for the United States."[56] In 2003, however, DFI funds accounted for 99% of the HCA Office's contracting activity. Only 1% came from funds appropriated by the U.S. Congress.[57] From June 2003 to March 2004, 99% of the contracts awarded through the HCA Office were competitive solicitations,[58] with 65% of these awarded to Iraqi firms.[59] This period of significant activity for the HCA Office was burdened by inadequate staffing, the absence of an effective requirements generation mechanism, and the lack of sufficient legal support to contracting officers.[60]

DFI REGULATIONS: THE PROGRAM REVIEW BOARD AND CPA MEMO 4

CPA Regulation 3, issued on June 18, 2003, created the CPA's Program Review Board (PRB). The PRB supplanted ORHA's RRB and thereby became responsible for recommending expenditures by the CPA. The PRB's designated voting members comprised 6 U.S. officials and representatives of the United Kingdom, Australia, the Iraqi Finance Ministry, Coalition forces, and the Council for International Coordination.[61] Regulation 3 provided that the PRB could make recommendations for the expenditure of DFI and U.S.-appropriated funds, but only the U.S. officials had voting rights on recommendations involving U.S. funds.[62]

After the PRB began operation, the CPA Administrator approved formal procedures to regulate CPA's contracting and expenditure of the DFI.[63] These procedures were promulgated in CPA Memorandum 4, which the CPA Administrator signed on August 20, 2003. Memo 4 established comprehensive regulations for the execution of Iraqi funds through CPA contracts and provided that, though "Iraqi funds are not subject to the same laws and regulations that apply to funds provided to the [CPA] directly from coalition governments,

they shall be managed in a transparent manner that fully comports with the CPA's obligations under international law."[64]

Expenditures of U.S. appropriated funds under the CPA were carried out pursuant to the FAR and not Memo 4. There was concern at the time about the uncertainty that might arise from a contracting system operating under two sets of contracting regulations.[65] This concern, however, was mitigated by the fact that virtually all of the HCA Office's contracts were funded with DFI throughout the remainder of 2003 and the first quarter of 2004. The CPA IG concluded in an audit of the DFI that the CPA frequently failed to follow Memo 4 in the contracting of DFI.[66]

U.S. Appropriated Funds Designated for Reconstruction

In April 2003, the Congress passed Public Law (P.L.) 108-11 that created the Iraq Relief and Reconstruction Fund (IRRF 1), appropriating $2.475 billion for use primarily by the lead U.S. reconstruction agencies in Iraq—USAID, DoS, and DoD. USAID was the largest recipient of IRRF 1 money, eventually receiving about 70% of the appropriation.[67] P.L. 108-11 also authorized the reimbursement of these agencies for expenditures made from their accounts for previous Iraq relief and reconstruction planning, preparation, and initial awards.

A separate provision of the bill established the Natural Resources Risk Remediation Fund (NRRRF) to address emergency fire fighting, repair damage to oil facilities and related infrastructure, and preserve a distribution capability. NRRRF funds were used to help pay for the cost of Task Force RIO, which was administered by USACE. The NRRRF program obligated approximately $800 million, chiefly for oil field remediation.[68]

USAID: Grants, Cooperative Agreements, and Contracts

During ORHA and the early CPA period, USAID awarded grants and made cooperative agreements for rapid humanitarian response initiatives and contracts for more extensive reconstruction efforts. USAID issued these awards, which were primarily funded by U.S. appropriated dollars provided through IRRF 1, pursuant to the reconstruction strategy that USAID had developed and presented to the Office of Management and Budget (OMB) and the NSC in the latter part of 2002 and early 2003.[69]

The USAID reconstruction strategy had four main objectives[70]:

- execute necessary infrastructure reconstruction projects
- provide education, health, and social services
- strengthen the economic, financial, and agricultural sectors
- improve the efficiency and accountability of local government.

Most USAID contracting was managed by its senior contracting staff in Washington, D.C. USAID operates under the Foreign Assistance Act of 1961, which is specifically tailored for work outside the United States and thus is not governed by the more demanding domestic contracting requirements for competition.[71] USAID's greatest challenge was "scaling up the flexible response mechanisms that it uses for natural disasters to something of the size that was required for Iraq."[72]

THE DISASTER ASSISTANCE RESPONSE TEAM ISSUES COOPERATIVE AGREEMENTS

In March 2003, OFDA deployed a substantial DART team to the Gulf Region, which was tasked to provide initial humanitarian aid and disaster relief in post-war Iraq. DART team personnel comprised a mix of direct hires, contractor staff, and other USAID

personnel, whose duties included assessing relief and reconstruction needs. The pre-positioned 65-person DART team – the largest ever deployed – was stretched across Kuwait, Qatar, Turkey, Jordan, and Cyprus, awaiting further movement into Iraq.

The DART team was unable to develop detailed requirements for relief and reconstruction projects, because it lacked specific information about the situation on the ground in Iraq. The team thus applied "creative contracting mechanisms," including the issuance of cooperative agreements to non-governmental organizations (NGOs). Unlike a grant, a cooperative agreement requires more substantial involvement and programmatic control from USAID. The cooperative agreements were executed in USAID's office in Washington, D.C. DART awarded cooperative agreements to four NGOs, each amounting to a maximum of $4 million.[73]

USAID BEGINS PROCUREMENT OPERATIONS

USAID's formal procurement process for Iraq reconstruction began in January 2003, when the NSC instructed the agency to initiate contracting related to Iraq. On January 16, 2003, the USAID Administrator responded to this urgent directive by authorizing the use of "a less than full and open competition process" to meet the pressing need to prepare for potentially significant relief and reconstruction efforts.

Between February and May 2003, USAID awarded eight major IRRF 1-funded contracts, using less than full and open competition, totaling about $1.3 billion. Although the Congress did not approve IRRF 1 until mid-April 2003, USAID issued contracts in anticipation of the eventual appropriation. The USAID IG audited these procurements and found only minor shortcomings in the contracting processes.

USAID: IRRF 1 INFRASTRUCTURE CONTRACT

USAID awarded its largest IRRF 1 contract for major infrastructure reconstruction work in Iraq to Bechtel International. This contract, which obligated a substantial portion of IRRF 1, generated controversy because of its large value and the use of less than full and open competition in the solicitation process. USAID initially had sent the Request for Proposal (RFP) to seven potential contractors, with a two-week response time. Three declined to submit, and only two of the remaining four submitted competitive bids. On April 17, 2003, USAID "awarded Bechtel a cost-plus/fixed-fee 'letter contract' for a total not to exceed $680 million."[74] USAID eventually increased the contract's ceiling to $1.03 billion in September 2003.[75]

The USAID procurement office estimated that the normal processing time for a contract of this size would be seven months. However, given the exigent circumstances facing reconstruction planners, USAID awarded the Bechtel contract in less than three months. The USAID IG's review of the Bechtel contract award concluded that the agency had complied with all applicable federal regulations, except for the rule requiring "notification and timely debriefing of offerors that were not selected."[76]

OTHER USAID CONTRACTS DURING THE EARLY-CPA PERIOD

USAID issued four other major contracts obligating IRRF 1 dollars. These contracts, finalized from June to October 2003, addressed economic growth, agricultural assistance, and the monitoring and evaluation of USAID's Iraq reconstruction programs. USAID awarded only one of the four contracts, a $36.9 million cost-plus fixed-fee contract for agricultural assistance, through full and open competition.[77] Table 1 presents information on each of USAID's original IRRF 1 contracts (but not grants or cooperative agreements).

[redacted]

GRANTS UNDER CONTRACTS

Several of the contracts issued by USAID contained a special provision allowing grants under contracts, which USAID is authorized by law to use. USAID regulations provide that "when the [USAID] Head of the Contracting Activity provides [gives] written approval, the Contracting Officer may enter into a contract that provides for a USAID-direct contractor to execute grants with non-governmental organizations."[78] USAID has found grants under contract to be an effective method throughout the world, and they were especially useful in Iraq. During the implementation of its first local government program in Iraq, a USAID contractor issued more than $15 million in such grants to "jump-start local civil administrations' ability to restore essential services."[79]

USAID's Initial Iraq Reconstruction Contract Awards

Date Awarded	Contractor & Sector	Original Contract Amount (millions)	Original Contract Ceiling or Current Obligation (millions)	Original Contract Length	Contract Type & Procurement Method
02/07/03	International Resources Group (IRG): Personnel Services Contract	$7.000	$27.10	3 month, with 2 option years	CPFF: Sole Source
03/17/03	AFCAP: Logistics	$26.00	$91.50	2 years	Inter-agency agreement
03/21/03	SkyLink Air: Airport Administration	$10.200	$27.20	18 months, with 2 option years	CPFF: Less than full and open
03/07/03	SSA Marine: Iraq Seaport Assessment	$4.800	$14.32	1 year with 2 option years	CPFF: Less than full and open
04/11/03	Research Triangle Institute: Local Government I	$168.000	$241.91	I year, with 2 option years	CPFF: Less than full and open
04/11/03	Creative Associates, Inc. (CAI): Education I	$62.628	$56.50	1 year, 2 option years	CPFF: Less than full and open
04/17/03	Bechtel National: Infrastructure	$680.000	$1,029.83	18 months	CPFF: Less than full and open
04/30/03	Abt Associates: Health Systems	$43.800	$23.03	1 year	CPFF: Less than full and open
06/01/03	Army Corps of Engineers: Architecture and Engineering Services	$23.99	$38.09	19 months	Interagency agreement
06/25/03	Management Systems International: Monitoring and Evaluation	$5.038	$15.12	1 base year and 2 option years	Task Order: RFP to all holders of IQC
07/24/03	Bearing Point: Economic Recovery I	$79.583	$79.58	1 year with 2 option years	CPFF: Less than full and open
10/15/03	Development Alternatives, Inc.: Agricultural Development	$36.900	$106.70	1 year with two option years	CPFF: Full and Open

Sources:
USAID's Iraq weekly financial summaries (http://www.usaid.gov/iraq/updates/index.html, accessed April 25, 2006)
USAID's Iraq audits (http://www.usaid.gov/oig/iraq_reports.html, accessed April 25, 2006)
USAID's Iraq acquitstion information (http://www.usaid.gov/iraq/activities.html, accessed April 25, 2006) and information provided to SIGIR by USAID staff.
USAID/Iraq, written comments to SIGIR, June 8, 2006.

TABLE 1

U.S. Department of State: DynCorp Contract

The DynCorp contract, awarded in April 2003, was the principal DoS contracting event during this period. ORHA had directed the DoS Bureau of International Narcotics and Law Enforcement (INL) to manage police sector training and related reconstruction activities in Iraq, because it possessed extensive experience in training police in post-conflict environments. INL then coordinated with the U.S. Department of Justice to perform a joint assessment of Iraq's police training facilities, prisons, and courthouses.

In light of the compelling need for the rapid recovery of Iraq's security sector, DoS authorized a limited competition for the police training contract. On April 2, 2003, INL and DoS's division of Acquisition Management (DoS-AQM) hosted a pre-solicitation conference and issued an RFP for the contract on April 3. DynCorp and three other firms submitted bids, and technical presentations were held April 10-11. DoS announced the award to DynCorp on April 17, 2003.[80]

After the contract was issued, the focus shifted from the training of Iraqi police to the construction, operation, and maintenance of Iraqi police training facilities in Jordan.[81] Modifications to this contract continued to increase its value, which reached more than $140 million by August 2003. At that time, DoS-AQM published a pre-solicitation notice to re-compete the contract.

THE LATER CPA PERIOD (AUGUST 2003 TO JUNE 2004)—CONTRACTING EMPHASIS SHIFTS TO LARGE-SCALE RECONSTRUCTION

In late summer 2003, the CPA's reconstruction contracting emphasis moved from humanitarian relief and the restoration of essential services, funded chiefly by IRRF 1 and DFI, to large-scale infrastructure projects. This new emphasis continued through the balance of CPA's tenure, which concluded in June 2004.

Contracting efforts during this period focused on the award and allocation of funds appropriated by the Congress in Public Law 108-106. This public law, signed by the President on November 6, 2003, provided $18.4 billion in grants through the Iraq Relief and Reconstruction Fund (IRRF 2). The effort to design and implement the IRRF 2 program became the central feature of CPA's contracting activity during this period.

HCA Activities Continue

When CPA's planning for the IRRF 2 program began in late July 2003, the HCA Office's contracting activities were dominated by a wide range of awards predominantly funded by DFI. The Deputy Assistant Secretary of the Army for Policy and Procurement, testifying before the Congress in March 2004, said that:

> more than 1,300 contracts totaling $1.3 billion have been awarded by our contracting office in Iraq. These contracts were awarded for the repair and renovation of schools, banks, railway stations, clinics, mosques, a human rights building, a teacher training institute, a woman's rights building, and water treatment plants. These contracts were awarded to provide police and fire fighters with uniforms and equipment; hospitals with badly needed supplies; electrical power system equipment; rescue equipment; and buses. In addition, our contract awards are helping to build playgrounds, youth centers, emergency housing, roads, sewers, and irrigation systems.[82]

In an audit of contract award processes at the CPA, SIGIR provided the following insight into the number of DFI-funded contracts let in Iraq:

> the Iraq Project and Contracting Office informed [SIGIR] that [the CPA Contracting Activity] had awarded 1,988 contracts, grants, and purchase and delivery orders valued at approximately $1.04 billion as of April 4, 2004. Of this total, 1,928 contracts valued at approximately $847 million were awarded with Development Funds for Iraq (DFI).[83]

U.S. Army Corps of Engineers: Oil and Electricity Contracts

OIL

USACE intended the sole-source RIO contract awarded to KBR in March 2003 to be an interim measure until a new contract could be fully competed and awarded. The RIO contract's $7 billion ceiling was the maximum amount that could be paid out, but the actual expenditures proved considerably less.[84] *See supra* p. 19. In June 2003, USACE solicited RFPs for two new oil sector contracts to replace the sole-source RIO contract. The offer deadline was August 15, 2003, but was extended until November 14, 2003.

The bid process for the oil contracts was fully competitive and used a formal source selection panel. The source selection panel awarded two new IDIQ contracts on January 16, 2004, one with an $800 million ceiling to the Worley/Parsons Group for Iraq's northern oil sector and the other to KBR for the southern oil sector with a $1.2 billion ceiling. Concurrent with this solicitation, the CPA's PRB voted to fund additional RIO task orders with DFI money, resulting in the allocation of $1.4 billion of DFI to RIO from September 2003 through March 2004.[85]

ELECTRICITY

In late August 2003, the CPA identified electricity shortages as a potential threat to security in Iraq.[86] In response, CENTCOM tasked USACE to focus on rebuilding Iraq's electrical infrastructure.[87] USACE then issued task orders for reconstruction work in Iraq's electrical sector under contracts originally awarded in April 2003 to three U.S. firms. These contracts were intended to support construction work throughout CENTCOM's area of responsibility and not just in Iraq. The original maximum value for each contract was $100 million. But the size of the Iraq task orders caused these three IDIQ contracts immediately to exceed their respective $100 million ceilings.[88]

GAO criticized USACE's August 2003 award of these large task orders, because they were not competed among the three existing contract holders. GAO noted that USACE decided to divide up the work, in consultation with the contractors, based on Iraq's geography and the contractors' respective capabilities in-theater. Moreover, until requested by GAO in its review of the electricity contracts, USACE did not prepare justifications for the non-competitive task orders.[89]

In September 2003, USACE formed Task Force "Restore Iraq Electricity" (RIE) to provide electrical infrastructure work in Iraq using these three contractors. RIE received $300 million from the "Iraq Freedom Fund (IFF), which helped fund the task orders issued under the contracts."[90] The IFF was funded separately from the IRRF 1 program but under the same April 2003 emergency appropriation legislation. Significantly, in March 2004, each of the three contractors involved in the initial RIE awards also won competitive awards under the IRRF 2 design-build solicitation for work in the electricity sector.[91]

Planning Begins for IRRF 2

Planning for the IRRF 2 program began during late July 2003 and continued through the fall. IRRF 2 was both quantitatively and qualitatively different from IRRF 1, which primarily engaged in a "broad range of humanitarian and reconstruction efforts." In contrast, IRRF 2 "was intended to have an immediate impact on the two greatest reconstruction concerns raised since the occupation of Iraq began—security and infrastructure."[92]

In July 2003, CPA formulated an initial strategic plan and presented it to the Congress.[93] CPA did not link the reconstruction aspects of this plan to any specific spending or funding programs.[94] Instead, the plan provided general goals, such as "re-open airspace and airports" and "repair and upgrade water and sewage treatment facilities."[95]

More specific CPA planning for the IRRF 2 program commenced in early August 2003,[96] just a few days after the CPA Administrator had informed the Secretary of Defense that a large supplemental appropriation would be necessary to meet CPA's reconstruction goals.[97] At that time, the United States was also preparing for an October 2003 conference in Madrid designed to solicit funding pledges for Iraq's relief and reconstruction from potential donor nations. The director of CPA's Office of Management and Budget (CPA-OMB) suggested that CPA draft the IRRF 2 proposal in a way that would allow its use at both the donor's conference (as the U.S. pledge) and before Congress in support of the supplemental budget request.[98]

CPA CREATES THE PROGRAM MANAGEMENT OFFICE

In August 2003, the CPA Administrator signed an action memo creating the Program Management Office (PMO) and designating it as the primary manager for the IRRF 2 program.[99] To lead the

PMO, the CPA Administrator selected a retired Rear Admiral (and former SEABEE), who had served as the Deputy Senior Advisor to the Transportation and Communication Ministry since his arrival in Baghdad in July 2003. The CPA Administrator tasked the new PMO Director "to create and lead an organization in Iraq charged with the execution of the [reconstruction] program" and to report to the CPA Director of Operations and Infrastructure. [100]

CPA established PMO, in part, because of the limited capacities of the recovering Iraqi ministries to manage a large-scale reconstruction program.[101] A plan to award 3,700 fixed-price contracts directly to Iraqi contractors was proposed but rejected because of concerns about Iraq's construction capabilities. Moreover, the U.S. did not have sufficient oversight capacity in country to supervise such an enormous Iraqi-led program.[102]

Some disagreed with the decision to create a wholly new organization to manage most of the Iraq reconstruction program.[103] USAID was already managing a broad spectrum of reconstruction programs in Iraq under IRRF 1 and was ready to play a leading role under IRRF 2. And USACE was in country managing Task Forces RIO and RIE; it potentially could have been funded to expand its operations to manage the IRRF 2 program. Senior USACE officials at the time, however, did not believe that USACE had sufficient existing capacity to manage the mammoth reconstruction endeavor.[104]

Significant financial and administrative burdens accompanied the creation of a new large construction oversight organization in post-war Iraq.[105] Among other things, the lack of early funding and sufficient personnel to support PMO's structure and operations inhibited the organization's start-up. *See infra* p. 43.

RECONSTRUCTION ESTIMATES AND BENCHMARKS

In August 2003, the CPA-OMB director presented CPA's Administrator with cost estimates for the proposed Iraq reconstruction program. These preliminary estimates were derived from the findings of the World Bank/UN Assessment Mission, the Iraqi ministries project lists, and Bechtel. The World Bank/UN assessment had pegged potential overall relief and reconstruction costs for Iraq at $56 billion.[106] CPA's IRRF 2 proposal was designed to "get things started" in Iraq reconstruction through targeted programs, focusing primarily on large infrastructure projects.[107] CPA initially estimated that the funding necessary to fulfill this ambitious program would amount to approximately $27 billion.

In September 2003, the CPA Administrator testified on Capitol Hill in support of the IRRF 2 proposal. He requested that the Congress appropriate over $20 billion to fund IRRF 2. The $27 billion estimate had apparently been reduced in the planning process. During his congressional testimony, the Administrator pledged that CPA would ensure that all appropriated funds would be contracted through full and open competition and expended with "prudent transparency." He specifically asked the Congress to provide the funding as grants rather than loans, noting that Iraq's existing debt burden of nearly $200 billion had placed the country in a precarious financial position that would be exacerbated if the U.S. required repayment.[108]

At this critical juncture, the CPA had not developed consensus on benchmarks for infrastructure outputs nor analogous milestones that Iraq should meet as the program advanced. Rather, the goals at this stage were quite general: to move Iraq out of post-war chaos and toward recovery by stimulating economic growth, relieving suffering, establishing security, and repairing the critical infrastructure.[109]

Reaching these goals would restore Iraq's government and society to a level that would permit Iraqi entrepreneurs to develop a market economy.[110]

THE SUPPLEMENTAL REQUEST

CPA completed the process of developing the IRRF 2 supplemental request largely through tasking the ministries to identify relief and reconstruction needs. Because the ministries were still "getting back on their feet," their ability to respond to these requests varied significantly.[111]

USAID proposed changes to the draft supplemental request, but they were not incorporated into the final document presented to Congress. USAID described its attempt to provide input as follows:

> when a draft was provided to implementing agencies, [USAID noted] that critical programs for nation building (such as democracy) were not included. [USAID also suggested] broadening the overall categories to permit democratic and economic transformation programs, as well as key social services' activities. [USAID] recommended that the supplemental not list proposed projects as this would limit flexibility in programming. [USAID's] recommendations were forwarded to the Office of Management and Budget for incorporation into the supplemental. However, these recommendations were not included in the final draft, which eliminated any funding for democracy building, education, and agriculture, and reduced funding to support the economic transition. Instead, the draft IRRF-II was dominated by a collection of rapidly compiled infrastructure projects. The CPA budget office structured the request in a narrow line item format, rather than in broad categories. Congress approved the...request almost exactly as it had been submitted (with a few additions such as $100 million for democracy building and limited funds for education). More importantly, Congress approved CPA's line item format, restricting flexibility required to respond to changing conditions in Iraq.[112]

Details of IRRF 2

The $18.4 billion in IRRF 2 money was allocated across the ten sectors for Iraq reconstruction as follows:

- Security and Law Enforcement: $3.24 billion
- Justice, Public Safety, Infrastructure, and Civil Society: $1.32 billion [113]
- Electricity: $5.56 billion
- Oil: $1.89 billion
- Water Resources and Sanitation: $4.33 billion
- Transportation and Telecommunication: $500 million
- Roads, Bridges, and Construction: $370 million
- Private Sector Development: $153 million
- Health Care: $793 million
- Education, Refugees, Human Rights, and Governance: $280 million[114]

There were a number of key differences between IRRF 1 and IRRF 2:

- IRRF 1 was much smaller in scale than IRRF 2 ($2.475 billion vs. $18.4 billion).
- IRRF 1 contracting was primarily managed by USAID, whereas IRRF 2 contracting was managed chiefly by DoD.
- IRRF 1 contracting commonly used less than full and open competition, whereas IRRF 2 contracting was executed almost exclusively using full and open competition.
- IRRF 1 did not specifically allocate its $2.475 billion across different sectors. IRRF 2 was entirely sector driven.
- IRRF 2 eliminated funding for certain areas covered by IRRF 1, including food provision and distribution, de-mining, and agriculture.

- IRRF 2 combined certain IRRF 1 spending priorities into a single sector. For example, education, refugees, human rights and governance were all placed in one sector.
- IRRF 2 included nearly $2 billion for the oil sector. Because oil was covered under a separate section of the April 2003 emergency supplemental, IRRF 1 obligated no funds for oil projects.

P.L. 108-106 required that full and open competition be used for any contract obligating IRRF 2 money or for any "extension, amendment or modification of contracts" that had used less than full and open competition for IRRF 1 funds. One official involved in contracting planning for IRRF 2 observed:

> Congress appeared to be very unhappy with the way things had happened [under IRRF 1]...not enough transparency, not enough competition, sole-source contracting. They were very specific about the way they wanted it done in accordance with peacetime federal acquisition regulations with lots of transparency.[115]

An important (and subsequently oft-used) provision in P.L. 108-106 gave the President the authority to reallocate 10% of any sector's funding to another sector, "except that the total for the allocation receiving funds may not be increased by more than 20 percent," except in an emergency.[116] This provision was applied during the 2004 reprogrammings of IRRF 2 funds, which moved $5.8 billion out of traditional reconstruction sectors and into the security and justice and democracy building sectors. Of note, there were over 250 reprogramming actions after IRRF 2 was appropriated.[117]

LIMITING IRRF 2 COMPETITION TO COALITION COUNTRIES

On December 5, 2003, the Deputy Secretary of Defense published a memo restricting which countries were eligible to win IRRF 2 contracts noting that:

> It is necessary for the protection of the essential security interests of the United States to limit competition for the prime contracts of these procurements to companies from the Unites States, Iraq, Coalition partners, and force contributing nations. Thus, it is clearly in the public interest to limit prime contracts to companies from these countries.[118]

Attached to the Deputy Secretary's memo was a list of 63 countries that were qualified to compete for IRRF 2 contracts. This limitation applied to all IRRF 2 sectors, except oil. Of note, this limitation had not been applied to IRRF 1 contracting.

In its review of Iraq-related contracts, GAO noted "the plain language of the law provides that [the Secretary of the Defense's] authority to approve public interest exceptions may not be delegated and we conclude that the Deputy Secretary did not have authority [to enact the exception] in this instance."[119] Further, because the exception was meant to apply to 26 contract actions, GAO determined that this was a "class" determination, which is "specifically prohibited by FAR 6.302-7(c)(4)." DoD did not concur with GAO's findings.[120]

PMO Operational Funding and HCA Staffing

PMO's operating costs were supposed to be paid from appropriated funds. In August 2003, the CPA Administrator approved $10 million for the PMO, but the funds were not received until November 2003,[121] which limited its capacity to execute an effective start-up. The November 2003 supplemental appropriated an additional $50 million for management systems to support reporting on uses of IRRF 2. The PMO, however, did not receive these reporting funds until May 2004, hampering its ability to develop a system to manage project data.[122] A SIGIR audit of the use of the $50 million in reporting funds found that only $22.6 million ultimately was obligated for activities directly related to "reporting."[123]

The amount of funding provided under IRRF 2 was so large and the need for action so urgent that no single service could assume the contracting burden alone.[124] In the late fall of 2003, the HCA Office, PMO, and the Deputy Assistant Secretary of the Army (Policy and Procurement) developed a joint manning document (JMD) to increase the number of contracting personnel supporting the reconstruction effort. The JMD directed expansion of the HCA office's contracting staff from 15 to 57, with approximately 24 slots to be filled by contractors.[125] But by February-March 2004, just before the award of the major IRRF 2 contracts, a total of about 16 people were serving in the HCA office.[126]

CPA Develops a Spend Plan for IRRF 2

P.L. 108-106 mandated that a "spend plan" for IRRF 2 reconstruction funds be filed each quarter with the Congress, beginning on January 5, 2004. In the two months following the passage of P.L. 108-106, the staff and contractors at PMO and CPA developed the required spend plan, which provided details on the developing reconstruction program.

During this period, the Iraqi ministries became more involved in developing projects for IRRF 2, working with CPA to prepare Project Identification Forms (PIF) that were used to provide details about each project. The CPA Administrator had directed that the CPA's senior advisors and the Iraqi ministries—and not PMO—should determine which projects would be funded under the IRRF 2 plan.[127] PMO helped develop the PIFs, but its participation occasioned some tension in the project selection process. A senior advisor from a ministry that was then widely considered to be one of the best developed provided this perspective on the project identification process:

> Once funds had been appropriated, [we] needed to work aggressively to ensure that the PMO accepted [our] priorities, which were Iraqi priorities, and everything from [building] design to location was dictated by the Iraqis. Part of the challenge was taking the Iraqi product into the "design-build" part of the contracting process. As the PMO tried to make changes to get things on contract, we insisted that the Iraqis needed to be consulted.[128]

Project costs were estimated through analysis of specific project data in the PIFs, with add-ons made for security. PMO personnel involved in IRRF 2's formulation reported that original security add-ons were relatively low, typically ranging from 7% to 10% of total contract cost. But as the security situation worsened in Iraq, security add-ons rapidly increased to above 15%.[129]

PMO entered all the PIFs into a database, prioritizing them into a master list and matching them against available funding.[130] Lower priority projects did not receive funding; these proposals were given to the Ministry of Development, Planning and Cooperation, which was expected to work with other donors to fund them. The PMO then provided the list of funded projects to the CPA Administrator, who approved and authorized the submission of the list with the first *Section 2207 Report*.[131]

The initial slate of projects created by this process had a variety of problems, largely because of indeterminate scopes of work. The ministries and the CPA senior advisors provided much of the information for the list, but many ministries did not understand the requirements for scopes of work. Moreover, some ministries did not have good relationships with provincial leaders and thus had difficulty obtaining accurate information, especially regarding the condition of more distant or dangerous project sites. As a result, many PIFs were "basically place holders," especially for smaller projects such as schools.[132]

SECTION 2207 REPORT TO CONGRESS

On January 5, 2004, CPA presented its IRRF 2 spend plan in the first *Section 2207 Report* to the Congress. The plan identified funding according to the ten sectors specified by P.L. 108-106 and quantified spending on proposed projects within each sector. [133] It also recommended funding for approximately 2,300 separate projects.[134]

The January 2004 spend plan proposed the first sector reprogramming, increasing the amounts allocated for justice/public safety/infrastructure/civil society and private sector development and concomitantly reducing oil sector funding allocations. This reprogramming was based on the need to "expand and accelerate democracy-building initiatives" and put a "greater concentration of resources on local facilities and community centers."[135] These changes in funding allocations reflected the perception that more money was needed to develop Iraq's democratic institutions in preparation for the July 2004 transfer of sovereignty to the Iraqis, which the President had announced in November 2003.[136]

Administrative and Funding Bottlenecks

Concurrent with PMO's development of the IRRF 2 spend plan, a DoD-led contracting team developed an acquisition strategy that would guide the award of IRRF 2 sector contracts. *See infra* p. 54. The structure for the contracting program developed slowly, because there was significant debate over which agencies should administer contracting for each sector and how much funding should be allocated to each sector.[137] These decisions had to be made before the start of the solicitation process.

Approximately $12 billion of the $18.4 billion IRRF 2 supplemental was allocated to "hard construction" sectors. Pursuant to P.L. 108-106, the funds were distributed among the six primary sectors where construction work was the predominant activity: electrical;

public works and water; security and justice; transportation and communications; buildings, housing and health; and oil. Health care was included under hard construction because most of these funds were to be spent on building new primary health care facilities and renovating existing hospitals. The IRRF 2 funds were channeled by OMB through the Army, which served as DoD's executive agent supporting the CPA.

Although the Congress appropriated the IRRF 2 funds in November 2003, the money did not become available to the executing agencies until OMB apportioned it. OMB initially released IRRF 2 funds in January 2004. The delay in release was caused partially by a high-level policy debate over IRRF 2's spending strategy.[138] There was some resistance within the NSC to CPA's approach, which was perceived as overly ambitious given the deteriorating security situation in Iraq. This debate led to an effort to hold back $4 billion of the IRRF 2 funds until PMO had achieved some measure of progress.

A senior contracting official, who was part of the PMO team and later worked for its successor, the Project and Contracting Office (PCO), gave this description of the situation at that time:

> We had to go out subject to the availability of funds because we didn't have the funding approved by OMB. We knew it was appropriated, but it just hadn't been apportioned yet. But we took [leadership's] direction, and we took the risk and put [the contracts] out, subject to the availability of funds.[139]

DoD Sends an Acquisition Assessment Team to Iraq

In December 2003, DoD developed plans to send assessment teams to Iraq to review various problematic areas within CPA, including security, human resources, and contracting. The Acquisition Management Assessment Team, which was assigned to review CPA's contracting capability, was composed of representatives from USAID,

USACE, and DoS, and led by a senior military contracting officer. In late January 2004, the team traveled to Baghdad with the charge to:

> assess the mission; composition; requirements; resourcing; and command and control of program management, facilities management, contracting and logistics functions in order to ensure an incremental, orderly transfer from CPA to the appropriate authority no later than June 30, 2004.[140]

The Team's key recommendations and findings on contracting included:[141]

- **Immediately increase contracting staff.** The HCA Office urgently needed more personnel. At existing staff levels, the HCA was experiencing difficulty carrying out the necessary contracting for DFI and IRRF 1 demands. The assessment team concluded that the existing staff could not handle the increased workload that IRRF 2 would bring.
- **Create a program management team to help define and determine project requirements.** The HCA Office needed more individuals with acquisition expertise who could help PMO's program side of the operation, which was not adequately performing the contract requirements function.
- **Create a project prioritization board comprising PMO, HCA, and ministry officials.** HCA needed to develop contracting priorities based on construction needs that aligned with each sector's strategy for reconstruction.
- **Continue to support implementation of the Standard Procurement System (SPS).** DoD's automated contracting system was needed to help the HCA Office provide timely delivery of services and equipment.
- **End the unauthorized procurement of goods and services.** CPA senior advisors, ministry, and military personnel were engaging

in unauthorized procurements in violation of CPA Memo 4.[142]

- **Provide additional legal expertise to the HCA Office.** The HCA Office needed more contracting lawyers to troubleshoot solicitation problems and to support the office so that legal disputes did not cause undue delays.

In February 2004, the head of the DoD contracting assessment team returned to Iraq as the head of a requirements generation team that supported the HCA Office. In March 2004, he became the new HCA, remaining in Baghdad until February 2005.

CPA Head of Contracting Activity Initiatives

The HCA responded to the assessment team's recommendations by instituting a variety of initiatives to systematize CPA's contracting process. The HCA focused first on improving requirements formulation, both in quality and timeliness. The requirements process is critical because it determines what work must be done to accomplish a construction project. Effective contracting demands clear project requirements. The assessment team found that the lack of a good requirements system significantly burdened CPA's contracting activity:

> under normal contracting circumstances, customers come to KOs [contracting officers] with Statements of Work and a clear idea of what they need. In Iraq, at the time, this didn't happen and sometimes a contract would be written, and then the customer would say it wasn't what he or she wanted. This was due to unclear requirements definition. Industry bidders require a very clear understanding of what the work would entail.[143]

Because of this shortfall in good requirements, HCA contracting officers devoted an inordinate amount of time helping PMO write project requirements. To remedy this situation, HCA assigned 12

staff members to handle requirements, which immediately alleviated the contracting bottleneck that had developed because of the requirements problem.

In early 2004, there were "about 20 different organizations undertaking contracting [in Iraq]. The HCA [Office] was contracting, companies were contracting with sub-contractors, and some who didn't have authority—such as the ministries—were also awarding contracts."[144] In April 2004, the HCA sent a memorandum to all CPA personnel informing them that "recurring actions concerning the unauthorized commitment of U.S. appropriated funds and Iraqi funds have become an issue." The memo noted that the unauthorized commitments are "not binding on the Government because the individual[s] who make the agreements lack the authority to enter into the agreements on behalf of the Government."[145] The HCA's memorandum was a belated effort to ensure that CPA contracts obligating DFI complied with Memo 4.

Other major HCA initiatives implemented in response to the DOD Assessment Team's report included:

- **Organizing contracting officers by sector, with at least two or three contracting officers assigned per contract.** This allowed contracting officers to become experts in a specific sector.
- **Securing additional legal personnel to ensure the legality of the contracting process at each stage, thereby avoiding time-consuming contract disputes.**[146] Many legal questions arose in the unique context of CPA, and contracting officers generally had little legal experience to resolve them. CPA attorneys, who had numerous other duties, were called upon to answer these questions, which frequently delayed the contracts involved. Contracting officers thus needed their own legal staff to avoid the delays that legal issues could create if not resolved promptly.

- **Creating an internal, automated contract documentation system that replaced the existing manual system.**[147] The HCA's contract management system was weak.[148] Part of the reason was that the Standard Procurement System (SPS), DoD's automated procurement system, was not easily implemented in Iraq. As a result, contracting offices had developed *ad hoc* contract documentation systems that proved inconsistent. SIGIR audits of contracting during this period found numerous instances of missing contracts.[149]
- **Applying the FAR to contracts funded by DFI and IRRF.** The new HCA ordered the FAR to be used for all contracting, regardless of funding source, to avoid confusion on which law applied.[150]

PMO Turns to the Air Force Center for Environmental Excellence

In December 2003, the PMO Director recognized that the award of the design-build contracts for IRRF 2 would take time. However, he wanted to move forward immediately with urgently needed reconstruction activity in the security sector. Thus, the Director looked for other means by which to execute high priority construction work for New Iraqi Army (NIA) facilities.[151]

Since P.L. 108-106 required that all work funded by IRRF 2 be fully and openly competed, PMO investigated existing IDIQ construction contracts that met this competition requirement. In mid-December 2003, CPA officials approached the Air Force Center for Environmental Excellence (AFCEE), which had an IDIQ contract—the Worldwide Environmental Restoration and Construction (WERC) contract—to provide a wide range of construction and related services for U.S. military bases. In late 2003, the WERC contract had 27 qualified construction firms available to perform

construction task orders, with a potential contracting capacity of $10 billion.[152]

In December 2003, the Air Force Chief of Staff approved CPA's request to use AFCEE's services for Iraq reconstruction. Pursuant to PMO's direction, AFCEE immediately began executing task orders under the WERC IDIQ contract for reconstruction projects in Iraq's security sector. By the end of CPA's tenure, AFCEE had undertaken more than $500 million in Iraq reconstruction work, with USACE providing oversight for the projects.

An AFCEE contracting staff member assigned to Baghdad described the contracting process:

> when we get a request from a customer here in Iraq...they identify a requirement, we work with them to help define the requirement, they fund it, we send out...an announcement to all 27 contractors of what the scope is if they want to bid on it, then we do a best value determination, not low bid, and we award the contract...[153]

A July 2004 CPA Inspector General (CPA-IG)[154] audit of task orders awarded by AFCEE at the request of CPA found that eight were beyond the scope of work approved by the Air Force Chief of Staff and the Joint Chiefs of Staff. Moreover, the CPA-IG found that these task orders provided "less than the necessary transparency to the public." CPA-IG therefore called for a Memorandum of Agreement (MOA) to be signed between PCO (as PMO's successor) and AFCEE to detail the roles and responsibilities of each organization and to address the scope of any new projects that AFCEE might undertake. This MOA was to be executed no later than August 15, 2004.[155] PCO and AFCEE, however, never executed the MOA.[156]

This continuing breach was resolved in June 2005, when AFCEE signed an MOA with the Multi-National Security Transition Com-

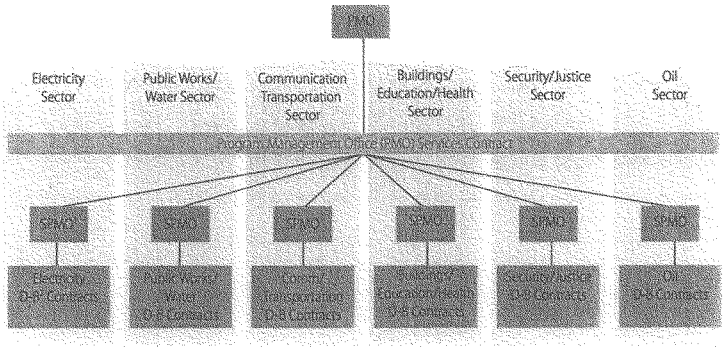
mand-Iraq (MNSTC-I), which had taken over security training and related contracting functions from the Project and Contracting Office (PMO's successor) during the previous year. Among other things, the MOA required that AFCEE support MNSTC-I "within the scope of their pre-solicited IDIQ contracts." The MOA also listed a variety of construction-related services that AFCEE may provide to MNSTC-I but noted that its services were "not limited" to those listed.[157]

CPA/DOD IRRF 2 Contracting Award Process

IRRF 2: INFRASTRUCTURE CONTRACTING STRATEGY

The complex strategy for contracting the core IRRF 2 infrastructure program had two main components: design-build construction contracts and program management contracts. PMO planned for twelve design-build cost-plus contracts to execute projects in six primary construction sectors: electrical; public works and water; security and justice; transportation and communications; buildings, housing and health; and oil. In addition, PMO planned for seven program management contracts—one to provide management of the entire program and six to provide supervisory management for the six sectors. Figure 2 indicates how the design-build program was organized.

IRRF 2 Design-build Program Management Structure



1 Sector Program Management Office
2 Design-build

FIGURE 2

THE SINGLE ACQUISITION MANAGEMENT PLAN

The FAR requires that an acquisition plan be completed for all RFPs before issuance. In late 2003, a group of DoD contracting officials developed an IRRF 2 acquisition strategy, which was formalized into a single acquisition management plan (SAMP).[158]

The SAMP established the acquisition management approach and supporting strategy for IRRF 2 contracting. It provided the following processes:

- **Program management support:** Two levels of oversight responsibility to govern reconstruction program management comprising: (1) total program management, which required one contractor to oversee management of the six reconstruction sectors, and (2) six Sector Program Management Offices (SPMO) to oversee the design-build contractors' work within each sector.[159]

- **Contract terms:** Each design-build contract would have a two-year base period followed by three one-year renewal options.[160] The program management contracts would have one-year base periods, with two one-year renewal options.[161]
- **Contract type:** To facilitate the design-build construction program, a cost-plus IDIQ contract approach was selected, with issuance of task orders on either a cost-reimbursement or fixed-price basis (after definitization).[162]
- **Single awards rather than multiple awards per sector:** The SAMP outlined a single-award strategy for the IRRF 2 program, in which a single contractor would be awarded an IDIQ contract for a sector and all task orders issued under the contract would go to that contractor. The rationale for the single-award strategy was to limit costs for mobilization and demobilization of contractors by limiting the number of contractors. This was also expected to reduce contract administration costs and facilitate training and transfer of responsibilities to Iraqi managers.[163]
- **Conflict of interest avoidance:** The SAMP restricted contractors from winning awards in the same sector for both SPMO services and design-build construction. Further, the contractor that received the umbrella management contract was restricted from winning any other program management or design-build construction contracts. The government reserved the right to restrict any contractor to a total of four contract awards.[164]
- **Source selection authority:** The SAMP provided a source selection authority for each sector.[165] Some advocated for one authority to make award decisions for all sectors. However, this idea was rejected because broader participation by a variety of source selection boards and authorities would provide more transparency and greater competition.[166]

The SAMP placed post-award procurement under the aegis of the HCA Office in Iraq.[167] It also set out special provisions for firms working in Iraq, including security responsibilities,[168] prohibitions on hiring or subcontracting to former members of the Ba'ath party,[169] and limitations on the nationality of firms allowed to compete for contracts.[170] Finally, the SAMP provided procedures for evaluating proposals and awarding contracts.[171] After some delays caused by differing views on spending strategy, the SAMP was approved in late January 2004.

KEY CONTRACTING TERMS

Indefinite Delivery, Indefinite Quantity (IDIQ) contracts "provide for an indefinite quantity, within stated maximum and minimum limits, of specific supplies or services" to be furnished within an unspecified time period. Under these contracts, task orders are issued on either a *cost-reimbursement (e.g., cost-plus)* or *fixed-price* basis.

Under **fixed-price** task orders, "payment is made to the contractor on the basis of pre-established prices."

Under **cost-reimbursement** task orders, the U.S. government reimburses the contractor for all allowable, allocable, and reasonable contract costs. Cost-reimbursement contracts are typically used in risky situations when the U.S. government is unable to provide sufficient information for offerors to accurately determine a competitive price.

Source: Ralph Nash, et.al., *The Government Contracts Reference Book,* Second Edition, 1998.

STANDARDIZING THE IRRF 2 DESIGN-BUILD CONTRACT SOLICITATION

The SAMP provided separate source selection boards to manage the awards for each sector. The DoD planners devised the following structure for the awards' process:

- A *source selection authority* for each sector to make the *final decision* on contract award.
- A *source selection committee* for each sector tasked with providing information and recommendations to the sector's source selection authority.
- *Source selection advisory councils* comprised of senior officials who provided counsel and advice to source selection authorities and participated in briefings and reviews.

Standardization was essential because different authorities, in different branches of the services and at varying locales, were executing the solicitations. A senior DoD contracting official was designated to oversee selection operations, provide training for all staff involved, and monitor activities to ensure consistent practices for all the committees.[172]

IRRF 2 DESIGN-BUILD CONSTRUCTION CONTRACT AWARDS

All IRRF 2 construction sector proposals, except those in the oil sector, had to be submitted by February 5, 2004. (In the oil sector, competition began in the summer of 2003, with awards made in January of 2004).

After receiving the proposals, the source selection committees determined whether they complied with the solicitation's administrative requirements and then assessed them according to the selection factors provided in the RFP. This included factors required by the FAR: technical capability, management expertise, past per-

formance, and cost effectiveness. The evaluators also assessed the bidders' approach to a hypothetical mobilization order and a sample project task order.[173] The committees then reviewed every proposal to assess which were the most competitive and provided the best value to the U.S. government.

A SIGIR audit of the IRRF 2 contract solicitation process found that the source selection committees properly carried out their duties, individually evaluating proposals, consolidating individual assessments into consensus reports, and presenting them to the source selection authority for final decision. The source selection authority then made an independent evaluation of each proposal, which usually concurred with the source selection committee's conclusions. If the authority disagreed with the source selection committee, it was required to "provide a reasonable rationale" for divergence.[174] The source selection authority then made the final determination as to the award recipient.

After the evaluation process, each source selection committee and source selection authority briefed the Deputy Assistant Secretary of the Army for Policy and Procurement on the award process. Of particular note, no protests were filed challenging any decisions by the IRRF 2 source selection authorities.[175]

The major IRRF 2 design-build construction and program management contract awards were announced in March 2004. After a series of delays, the required contract documentation began arriving in Baghdad at PMO in early April 2004. Table 2 lists information about selected IRRF 2 contracts.

[redacted]

IRRF 2 – Selected Contracts

PMO Program Management Contracts

	Solicitation Office	Contractor(s)	Maximum	Date Awarded
PMO Services	PenRen*	AECOM	$50M	10-Mar-04
Electrical Sector	PenRen	Iraq Power Alliance JV (Parsons Energy and Chemical Group, Parsons Brinckerhoff – USA/UK)	$55M	10-Mar-04
Public Works/ Water	PenRen	CH2M Hill and Parsons Water Infrastructure (USA)	$55M	10-Mar-04
Communications and Transportation	PenRen	Berger/URS JV, (Louis Berger Group & URS Group 9USA))	$15M	10-Mar-04
Building Education and Health	PenRen	Berger/URS JV, (Louis Berger Group & URS Group (USA))	$15M	10-Mar-04
Security and Justice	PenRen	Berger/URS JV, (Louis Berger Group & URS Group (USA))	$30M	11-Mar-04

[redacted]

IRRF 2 – Selected Contracts

Oil	PenRen	Foster Wheeler (UK)	$30M	10-Mar-04

Design-Build Construction Contracts

	Solicitation Office	Contractor(s)	Maximum	Date Awarded
Electrical Sector Generation	Louisville District, USACE*	Fluor-Amec JV (USA/ UK)	$500M	11-Mar-04
Electrical Transmission & Distribution (North)	Louisville District, USACE	Washington International (USA)	$500M	12-Mar-04
Electrical Transmission & Distribution (South)	Louisville District, USACE	Perini Corp (USA)	$500M	12-Mar-04
Public Works North	Navy Facilities Engineering Command	Fluor-Amec JV (USA/UK)	$600M	23-Mar-04
Public Works South	Navy Facilities Engineering Command	Fluor-Amec JV (USA/UK)	$500M	23-Mar-04
Water Resources	Navy Facilities Engineering Command	Washington International & Black and Veach (USA)	$600M	11-Mar-04
Communications	Army-CECOM Acquisition Center	Lucent Technologies World Services (USA)	$75M	23-Mar-04
Transportation	Seattle District, USACE	Contrack/AICI/OIC/ Archirodon JV (USA, Egypt, Netherlands/ Panama/UAE)	$325M	23-Mar-04
Building Education and Health	Philadelphia District, USACE	Parsons Delaware (USA)	$500M	25-Mar-04
Security and Justice	Transatlantic Program Center, USACE	Parsons Delaware (USA)	$900M	26-Mar-04
Oil North	USACE	Parsons Iraq JV (USA/ Australia)	$800M	16-Jan-04
Oil South	USACE	KBR (USA)	$1.2B	16-Jan-04

*Pentagon Renovation Office (PENREN), United States Army Corps of Engineers (USACE) Program Management, Construction as of March 2004. Modifications to contractors, sector, and award amounts are not represented. Source: DoD document, PMO Chart of Contracts, March 27, 2004; USACE document, "Frequently Asked Questions. USACE Missions-Oil Fire Suppression and Restoration of Production," January 20, 2004 (online at: http://www.hq.usace.army.mil/cepa/iraq/faq.htm, accessed April 25, 2006).

[redacted]

IRRF 2 – Selected Contracts

Bridge Contracts

	Solicitation Office	Contractor(s)	Maximum	Date Awarded
Bechtel National II (Infrastructure)	USAID	Bechtel	$1.82B	4-Jan-04
Renovation of New Iraqi Army Facilities	AFCEE†	Earth Tech, Inc	$65M	22-Jan-04
Renovation of New Iraqi Army Facilities	AFCEE	Shaw Environmental	$75M	22-Jan-04
Renovation of New Iraqi Army Facilities	AFCEE	Parsons Infrastructure & Technology Group	$33M	22-Jan-04
Renovation of New Iraqi Army Facilities	AFCEE	Weston Solutions	$16M	22-Jan-04

† AFCEE awards were task orders under the Worldwide Environmental Restoration and Construction IDIQ contract. Above listing includes initial 4 awards. A total of 15 task orders were awarded as of May 31, 2004. Sources: SIGIR report, "Task Orders Awarded by AFCEE in Support of the Coalition Provisional Authority," SIGIR 04-004, July 28, 2004; USAID document, "Contracts: Iraq Infrastructure Reconstruction Phase II," (online at: http://www.usaid gov/iraq/contracts/iirii. html, accessed April 25, 2006).

Table 2

More on Design-Build Contracts

According to the design-build approach, a prime contractor would receive a task order from PMO directing it to carry out a specific project or set of projects. The contractor would then execute an initial field survey, develop a cost estimate, and provide it to PMO for review. After PMO's approval, the contractor would accomplish the necessary design work, procure the materials, and manage the project's construction.[176] The prime contractor usually performed survey, design, and procurement work, but much of the actual construction work was carried out by sub-contractors (frequently Iraqi or Middle Eastern firms).

Although the initial design-build contracts were let as IDIQ cost-plus contracts, some of the contracts had clauses allowing for their conversion to firm fixed-price after a set percentage of design work had been completed. However, "this conversion was inexplicably not exercised by the government."[177] Subsequently, when the some of the contracts were renewed, the conversion requirement was removed.[178]

A senior DoD official offered this description of how the agencies awarded design-build contracts:

> [There was] this large, large complex problem...trying to get a pipeline of people going in country. We needed a large capacity very quickly to do a large amount of projects that still needed to be definitized and shaped in order to even know what we were building and where we were going to build them. That's where the design-build concept came into being with the IDIQ, so we could create capacity in different sectors of areas of expertise and then throw in the definitized requirements and award and get going. You had to award these large contracts in accordance with the FAR, somewhat of a traditional set of laws and regulations, and by deploying teams all across the country [i.e., the USA] across different agencies, they awarded 17 contracts, $5 billion in capacity, within 90 days and no protests at that time. [179]

THE COSTS OF DELAY

The start-up of IRRF 2 projects lagged because of communication problems between the Iraq contracting team and the awarding offices in Washington, the slow response of contractors to get "boots on the ground," the delay in issuing task orders, and the uncertainty created by the rapid deterioration of the security situation in Iraq.[180]

After the award of the design-build contracts, the prime contractors were pressured to move personnel and resources to Iraq rapidly to prepare for the flow of task orders that they expected would soon begin. But the task orders arrived more slowly than anticipated.

> There was great pressure on the design-build contractors to get [to Iraq] immediately. They were given a $2.5 million task order to mobilize, which was half of what was in our proposals, because [PMO wanted] us to mobilize to be able to perform on a given schedule at a given volume of work. And so we mobilized at full force and started spending mobilization money, and then the task orders did not come, but the mobilization costs kept growing, and we had nowhere to charge any more. Once we started getting task orders, they came in one or two at a time. [This happened from] the summer of 2004 to the fall of 2004.[181]

Contractors charged their "waiting costs" against their IDIQ contracts; thus, delays in task-order issuance resulted in charges for overhead with no work being carried out.[182] This issue will be covered in greater depth in SIGIR's next LLI report, *Iraq Reconstruction: Lessons in Program and Project Management.*

RISING SECURITY COSTS AND ISSUES

Security problems (and their proximate costs) began rising during early 2004, spiking dramatically in April 2004 when deadly conflict erupted in Falluja. Because of the increasingly dangerous environment in Iraq, the percentage of security-related contract costs even-

tually rose from under 10% to as much as 20%.[183]

Pre-award site assessments became more difficult to perform as security concerns increased. This created problems in defining project requirements and, in some cases, made project site selection impossible. The deteriorating security situation meant that contractors had to resort to historical data rather than field visits to accomplish site assessments. Contractors arriving at a project site selected via historical data frequently found that site conditions differed significantly from what they had expected. Over time, actual site visits increased, which mitigated the problem of second-hand assessments.[184]

From PMO to PCO

As planning for post-CPA reconstruction management developed, PMO's role within the reconstruction program came under scrutiny.[185] The issue was addressed directly by National Security Presidential Directive 36 (NSPD 36), which the President signed on May 11, 2004. NSPD 36 directed the creation of the Project and Contracting Office (PCO), which supplanted PMO at the end of June 2004, and the establishment of the Iraq Reconstruction Management Office (IRMO) under the Department of State, which was assigned the responsibility to coordinate reconstruction priorities for the Ambassador. Most important, NSPD 36 designated the Ambassador as the strategic director and primary decision maker regarding Iraq reconstruction. PCO would "provide acquisition and project management support with respect to activities in Iraq, as requested by the Secretary of State and heads of other departments and agencies."[186]

A few days after the issuance of NSPD 36, the Department of the Army, ostensibly to clarify lines of authority defined by NSPD 36, issued a memo reiterating the Army's role in providing acquisition and program management support to the CPA and any successor

entity.[187] On June 22, 2004, the Deputy Secretary of Defense issued a memorandum specifically establishing PCO "within the Department of the Army" to carry out these functions, including "support related to the close-out of the CPA."[188] Regardless of the intentions of these DoD directives, they tended to perpetuate the inter-departmental difficulties that NSPD 36 had sought to resolve.

The need to maintain continuity of oversight for ongoing reconstruction contracts and task orders meant that PCO and its affiliated HCA Office would remain under the Army's control.[189] The structure of contracting activity thus remained largely unchanged after CPA's dissolution until the Joint Contracting Command–Iraq (JCC-I) was created in November 2004. JCC-I served as an umbrella contracting organization, overseeing both military and reconstruction contracting. *See infra* p. 76.

USAID's Contracting Role in the CPA/IRRF 2 Period

USAID's contracting role, prominent during the first phase of Iraq reconstruction, decreased during IRRF 2.[190] Moreover, its relationship with DoD became strained, largely because DoD had functional control over most of the IRRF 2 reconstruction program. The tension arose in part because USAID believed that it should have had a greater role under the IRRF 2 program (as it had during IRRF 1), particularly in light of its institutional experience in post-conflict relief.[191] USAID was allocated about $3 billion from IRRF 2, which was approximately one-third of what it requested.[192]

During this period, USAID issued four democracy-building grants, amounting to $126.3 million, to support the January 30, 2005 elections. Other USAID awards included five cooperative agreements under its successful Community Action Program, totaling $275 million. Of note, USAID's Office of Transition Initiatives (OTI)[193] received more funding under IRRF 2 than it had under

IRRF 1. As of November 2005, OTI had been allocated $340 million of IRRF 2 funds.[194] New commitments to OTI reflected the growing demands for democracy-building and civic-development programs to support upcoming elections.[195]

THE BECHTEL II AWARD: FULL AND OPEN COMPETITION

Most of USAID's share of IRRF 2 funded the second Bechtel Infrastructure Rehabilitation and Reconstruction Program. Unlike Bechtel I, however, this new contract was awarded through full and open competition and in full compliance with the FAR.[196] Only three firms submitted bids in response to USAID's IRRF 2 RFP, one fewer than USAID's IRRF 1 limited competition solicitation. On January 4, 2004, USAID awarded Bechtel its second large Iraq reconstruction contract, this one amounting to $1.823 billion.

Bechtel II was intended to be a bridge between the infrastructure work begun under IRRF 1 and the design-build construction work that would be accomplished under IRRF 2. However, PMO's delay in issuing task orders under this contract prevented the Bechtel II bridge concept from working effectively.[197] Between January and March 2004, USAID received only 4 task orders under Bechtel II, amounting to a total of $180 million in work.[198]

It is unclear why PMO failed to use the Bechtel II contract as a bridge between the IRRF 1 and the IRRF 2 programs. According to PMO leadership, part of the reason was PMO's desire to manage the entire IRRF 2 reconstruction effort as one program.[199] Work under Bechtel II rapidly increased after March 2004, and by August 2004, USAID had obligated $1.4 billion under Bechtel II.

DoS Re-competes the DynCorp Contract

DoS's main contracting action during this period was the re-competing of the DynCorp contract for Iraq police training. The re-compe-

tition happened under the supervision of the DoS Bureau of International Narcotics and Law Enforcement Affairs (INL). The decision to re-compete was made after the original DynCorp contract reached its ceiling of $145 million.

INL had always intended the initial police training contract, which was awarded through limited competition, to be an interim measure until a full and open competition could be held. DoS announced the re-competing of the contract in August 2003.[200] This new global contract included work in Afghanistan as well as Iraq. DoS simultaneously published a statement of "Justification for Other Than Full and Open Competition"[201] that allowed an extension of the DynCorp contract to permit ongoing reconstruction work to continue.

In February 2004, DoS announced the award of the new police training contract. DynCorp was one of three recipients. Each firm was eligible to receive up to $1.5 billion over a 5-year period, with a guarantee that each would receive at least one task order. Of the three recipients, however, only DynCorp engaged in Iraq work. DynCorp also received a $188 million task order to continue the Baghdad portion of its support work it had begun under the first contact.

NSPD 36 greatly diminished INL's role in Iraq with respect to police training by directing CENTCOM to take charge of training all of Iraq's security forces. CENTCOM then created the Multi-National Security Transition Command-Iraq, (MNSTC-I) to execute this mission. The CPA's Civilian Police Assistance Training Team (CPATT) consequently fell under the management of MNSTC-I, and INL's role was reduced to contract oversight for CPATT, including the DynCorp contract. Thus, after the dissolution of CPA, INL became a contract manager for police training, while MNSTC-I assumed the day-to-day operational direction, which was partially funded by the DynCorp contract.[202]

The End of CPA

The CPA ceased operations on June 28, 2004, two days earlier than expected. Pursuant to NSPD 36, the Chief of Mission assumed leadership of the reconstruction program, "serving under the guidance of the Secretary of State and responsible for the direction, coordination, and supervision of all United States government employees, policies, and activities in country, except those under the command of an area military commander."[203]

POST-CPA CONTRACTING DEVELOPMENTS (JUNE 2004 TO THE PRESENT)—SHIFT FROM DESIGN-BUILD TO DIRECT CONTRACTING

On June 28, 2004, the CPA Administrator transferred sovereignty to the Iraq Interim Government (IIG). This action activated the provision of NSPD 36, creating the Project and Contracting Office (PCO) and Iraq Reconstruction Management Office (IRMO). The PMO Director continued on as the PCO Director until August 2004.

A GAO review of the new structure provided the following description of IRMO and PCO:

> The Presidential Directive established two temporary offices: The Iraq Reconstruction Management Office (IRMO) to facilitate transition of reconstruction efforts to Iraq; and the Project and Contracting Office (PCO) to facilitate acquisition and project management support for US-funded reconstruction projects. Iraq-based personnel from both offices are under U.S. Chief of Mission authority, although the U.S. Army funds, staffs and oversees the operations of PCO. IRMO is a State Department organization and its responsibilities

include strategic planning, prioritizing requirements, monitoring spending, and coordinating with the military commander. Under the authority of the U.S. Chief of Mission in Baghdad, the PCO's responsibilities include contracting for and delivering services, supplies, and infrastructure.[204]

IRMO took on program coordination responsibilities, while PCO and U.S. Army Corps of Engineers-Gulf Region Division (USACE-GRD) focused on project execution, picking up PMO's management of task orders under the design-build contracts. USAID managed its own set of ongoing IRRF 2 projects, loosely coordinating with PCO.[205]

Problem Areas during the CPA/Embassy Transition

During the spring of 2004, there was widespread concern within the U.S. governement about the slow progress of reconstruction work under the IRRF 2 program. This concern persisted into the summer of 2004, after PCO had replaced PMO. The slow issuance of task orders and the further deterioration of security conditions contributed to construction delays. In addition, the new procedures that the HCA Office initiated in February 2004 took time to implement, and problems in contract execution arose with the transfer of sovereignty engendered by the new level of influence exerted by Iraqi ministries over reconstruction decision-making. Some ministers were "holding contractors hostage" by threatening to break contracts they did not like.[206] "Nobody was sure of the legal consequences for contracting during or after the transition," either on the Iraqi or the American side.[207]

Human Resource Issues

Human resources remained an issue both before and after the transition from CPA to the Chief of Mission. Some of the persistent problems included:

- short tours
- lack of adequate (or any) handoff time with replacement personnel
- varying tour lengths among personnel
- lack of standard contracting procedures
- inadequately qualified personnel

Many contracting officers did not have construction backgrounds, while others had only a "Level 1 Contracting Certification."[208] High turnover rates among HCA office personnel—at both the upper management and worker levels—resulted in shifting contract oversight, which increased costs and delays. The change in leadership of the PCO also caused delays in issuing task orders as new management became acclimated to its roles and responsibilities.[209] For a detailed review of human resource problems, see SIGIR's *Lessons Learned in Iraq Reconstruction: Human Capital Management,* January 2006.

DFI Funds and Accelerated Iraqi Reconstruction Program

In April 2004, two months before CPA's termination, the CPA Administrator directed the PMO to start using DFI funds to finance projects that could be "quickly implemented to improve the daily lives of the Iraqi people, by creating jobs and providing additional security."[210] CPA allocated these funds to the Commanders' Emergency Response Program (CERP), as well as to the Accelerated Iraqi Reconstruction Program (AIRP).[211]

AIRP originally focused its efforts in ten cities: Baghdad, Ba'quba, Falluja, Mosul, Ramadi, Samarra, Tikrit, Najaf, Diwaniya, and Karbala.[212] Teams of representatives from PMO, Coalition Joint Task Force 7 (CJTF-7), and the Ministry of Planning and Cooperation worked with officials in each city to identify priority projects. Some local officials focused on multiple, small-scale projects; others were more interested in implementing larger scale and longer-term efforts.[213] CPA initially planned to put $500 million under contract via AIRP.[214] However, the April 2005 DoS *Section 2207 Report* reveals that approximately $313 million was put under contract for 360 projects, which were reportedly completed by July 2005.[215]

DFI Transfers to the Ministry of Finance

With the transition of sovereignty, CPA transferred responsibility for all unobligated DFI funds to the Iraqi Ministry of Finance. CPA and the Iraqi Ministry of Finance entered into an agreement to ensure the continued U.S. management of DFI-funded contracts that the CPA initiated before the transfer of sovereignty. The agreement directed the Chief of Mission and the Commander of the Multi-National Force-Iraq (MNF-I), successors to the CPA and the CJTF-7, to ensure the continued administration and payout of funds on contracts executed during the CPA period. The Chief of Mission and Commander MNF-I had no authority from the Iraqis to initiate any new contracts with DFI funds. The Iraqi Ministry of Finance provided these instructions regarding DFI contracts:

> the powers, privileges, rights and authorities granted to you under this designation, shall be exercised in coordination with relative officials from the IIG and consistent with UN Resolution 1546 of 2004 to satisfy outstanding obligations against the DFI. This designation does not authorize you to terminate, amend or novate any contracts or grants covered by this designation. However, if requested by the IIG, you shall assist the IIG if it decides to terminate, amend or novate any such contract.[216]

Slow Contracting Process: Security and Lack of Information

A variety of obstacles slowed the progress of reconstruction contracting in the spring and summer of 2004.[217] The early project lists that constituted the first phase of the reconstruction program were, in many cases, place holders.[218] This meant that PMO/PCO issued many task orders with insufficient information. The complex process of drafting task orders required the project manager, the SPMO program manager, and the HCA contracting officer to form a consensus on the contents of each task order. This caused bottlenecks in the execution process.[219]

When PMO/PCO initially awarded task orders they were often undefinitized (meaning their costs could not yet be concretely calculated). Contracting regulations allow for the government to award undefinitized task orders to allow necessary job performance to begin immediately.[220] But by law, undefinitized task orders must be definitized within 180 days. PMO/PCO usually did not meet this 180-day definitization deadline. The failure to definitize contracts—essentially to come to a final agreement on what will be done, how much it will cost, and when it will be completed—significantly inhibited the government's ability to control costs within the program and concomitantly reduced the incentive of contractors to minimize costs.

There were a variety of reasons for PMO/PCO's inability to definitize task orders in a timely fashion, including:

- Security issues that made it difficult to travel to worksites.
- The bundling of smaller projects into one task order. For example, construction or repair of 150 schools were bundled in one task order, which necessitated that contracting personnel visit all 150 different sites to definitize the task order.

- Understaffing and heavy rotation of personnel in the contracting element.
- Limited training or experience among program management personnel.[221]

The number of undefinitized contracts escalated over time. Then, as the number of ongoing projects grew, the backlog of task orders in need of definitization also grew, which threatened the PMO/PCO's control over the total contract costs.[222]

Shift in Project Emphasis and Contracting Strategy

In the summer of 2004, the U.S. civil and military leadership agreed that "things needed to get moving" in the Iraq reconstruction program.[223] PCO and USACE-GRD sought to expand the means of project execution beyond the design-build program, shifting emphasis to smaller, shorter-term projects, and to a new contracting approach. The shift meant that reconstruction projects would be delivered not only through the design-build process, but also through a variety of additional mechanisms, most notably, direct contracting with local or regional firms.

Important changes in contracting strategy increased the number of entities involved in contracting, the variety of contracts used, and the kinds of contractors receiving contracts. The changes affected:

- **Contracting capability**: PCO tapped into alternative contracting capabilities that could move work forward. For example, PCO asked the contracting arm of the USACE-GRD to start engaging in reconstruction contracting. Previously, USACE-GRD's role in reconstruction was largely confined to project management and quality assurance. In addition, the USACE TransAtlantic Center in Winchester, Virginia, awarded several new contracts to support work in Iraq.[224] Another new initiative called for Iraqi

ministries to oversee projects through pilot grant programs that reimbursed the ministries as contractors completed work.

- **Local and regional contractors**: As reconstruction effort progressed, it became clear that large design-build contractors were not necessary to carry out certain construction projects or programs. Local or regional contractors were available, and their mobility was less restricted by security concerns. Indeed, from the outset, the design-build contractors had been subcontracting to this kind of contractor. Local companies thus were identified, and their management was trained by PCO in U.S. procurement processes. While there were some drawbacks to using Iraqi contractors, many Iraqi firms exceeded expectations.[225]
- **Diverse contracting mechanisms:** The HCA Office used fixed-price contracts when directly contracting with Iraqis. The HCA Office also used existing contracts with offshore entities, such as the USACE TransAtlantic Center IDIQ contracts and the AFCEE IDIQ. "Simplified acquisition" was also employed, pursuant to the FAR, to expedite contracting; it permitted fewer bids and had less burdensome cost data requirements. In the fall of 2004, Congress increased the allowable threshold for simplified acquisition from $500,000 to $1 million under the FY 2005 National Defense Authorization Act.[226]
- **Organization of project work:** To speed up definitization, the HCA Office broke down large projects into smaller elements.[227] This ensured that the design-build contractors would engage in actual construction work, while the HCA Office continued to definitize larger aspects of the project. The Rapid Contracting Initiative was instituted to use local contractors to execute simple water projects, limited electrical distribution projects, and school construction.

By mid-2004, the design-build program began to take hold; but it simultaneously began to lose its primacy. A SIGIR Government Contracting Lessons Learned Forum participant noted:

> the added emphasis by [the] State Department [in late 2004] on generating more Iraqi employment started making a shift towards how much more work we can give to the Iraqis. There is a much larger percentage going to Iraqi firms [now], than when we started in year one. It shifted based on what we were learning out there and the desire is to get the Iraqis more involved. I think the start-off was correct because it got us up and running but it wasn't a cure-all. Design-build wasn't the single way to get all the work completed.[228]

It had become apparent that, while the design-build approach may have been appropriate for very large and complex infrastructure projects, it was not economically well-suited to simpler projects, especially when standard structures were needed in large numbers over a wide geographical area (like schools and clinics).[229]

Further Changes in Strategy and Structure

By the end of 2004, the U.S. mission in Iraq continued to pursue a "more integrated management structure for projects and programs already underway."[230] The April 2005 DoS *Section 2207 Report* described the program as changing its:

> focus from longer range infrastructure development projects, as originally envisioned, to a plan providing for and sustaining a stable base of current infrastructure systems needed for short and intermediate range economic development. These moves [were] necessary not only because of the added operating complexity and cost caused by the continuing combat operations, but also because (1) the original estimate of the damage done to the basic infrastructure

> from decades of neglect and warfare was significantly underestimated; as a result, more time and resources [were] required to stand up and maintain systems than originally thought; and (2) the limited capacity of the Iraqi government to provide their own resources for near-term reconstruction.[231]

In February 2005, the Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA-ALT) requested a business plan from PCO leadership to consolidate the PCO into USACE-GRD.[232] PCO provided the plan a month later, which recognized USACE-GRD's increasing role in the reconstruction program and helped streamline management of the overall reconstruction effort. The high costs associated with using civilian contractors as management personnel within PCO also shaped this decision.[233] The merger of PCO into USACE-GRD occurred on December 4, 2005, and, with this transition, the USACE-GRD commander became the primary operational director of most reconstruction activity in Iraq.

The Creation of the Joint Contracting Command-Iraq

In November 2004, the Joint Contracting Command-Iraq (JCC-I) was created. The need for it had become apparent in light of the absence of any central coordinating authority managing contracting in Iraq.[234] Creating JCC-I had been under consideration since the release of an April 2004 white paper suggesting just such a reform. Concerns over who would be in charge of contracting had delayed the decision.[235] The Army had been overseeing military contracting in Iraq and the majority of reconstruction contracting. But JCC-I merged both processes under one roof. The move also consolidated all contracting that had been scattered among the HCA Office, DCMA, and USACE-GRD.

An October 27, 2004 letter from the ASA-ALT designated the HCA for Iraq as the JCC-I commander and appointed two Principal

Assistants for Responsible Contracting (PARC), one who would supervise military contracting (PARC-Forces) and another who would oversee reconstruction contracting (PARC-Reconstruction). Fragmentary Order[236] 09-668, issued on November 12, 2004, formally created JCC-I, affirming the appointments of the two PARCs and the HCA as the JCC-I commander. USACE-GRD continued to use its own USACE PARC, based in Washington, D.C., with a forward contingent based in Iraq.[237]

A second FRAGO subsequently provided the following directives, which further centralized contracting activity in JCC-I:

- **Prioritize contracting activities:** JCC-I should work with the military to ensure that their recommended projects have available funds and with the Ambassador to prioritize reconstruction work in each sector.
- **Resolve contract disputes in theater:** Contract disputes in theater should be resolved in theater and not in Washington.[238]

A number of other structural modifications were made to allow JCC-I to carry out its mission more effectively. For example, JCC-I was required to establish an audit trail to ensure that all contracting laws and regulations were met and to provide contract reporting requirements for all units attached to MNF-I and CENTCOM in Iraq. JCC-I was also directed to manage the DFI-funded contracts portfolio and train the Iraqi ministries on acquisition.[239]

USAID in the Post-CPA Contracting Environment

With the June 2004 transition of sovereignty from CPA to the IIG (and the Chief of Mission's contemporaneous assumption of control over reconstruction), USAID contracting transitioned from focusing on emergency and humanitarian response to economic assistance and development. Moreover, USAID contracting staff believed that the Chief of Mission placed a greater emphasis on strategic planning,

which resulted in more orderly procurements. This was in contrast to CPA, which was viewed by USAID as operating in a perpetual "emergency mode."[240]

Senior USAID contracting staff continued to provide oversight from Washington, while the majority of new contracts were issued out of USAID's Amman, Jordan office. Contract administrators continued to work in Baghdad to carry out a full range of post-award management functions. The decision to place contracting staff in both Jordan and Baghdad proved beneficial, because Jordan's stable atmosphere enabled USAID to recruit more senior contracting staff for longer tours. But USAID, like other agencies, faced high staff turnover in Iraq. For example, one USAID Iraq contract had an estimated ten different contracting officers during its life.[241]

USAID'S CONTRACTING PROCESS

From the start of the reconstruction effort in Iraq, USAID used its website to provide information about reconstruction contracting. Information was posted about projects, including redacted contracts and pending procurement activities. Advertisements and solicitations for these activities were then posted on the website for government contracting (FedBizOpps).

USAID's procurement program for full and open competition followed this process:

1. After USAID made strategy and funding determinations, technical staff members defined the requirements for a specific contract and wrote a statement/scope of work (SOW).
2. This SOW was approved, and a pre-solicitation notice was posted on FebBizOpps.
3. USAID contracting staff then drafted the RFP, which included the SOW. Firms were given a specific period of time to submit a proposal.

4. Proposals were reviewed by both a technical and cost panel. Cost was scored based on "quality and reasonableness," and the technical portion was scored based on the methodology defined in the RFP.
5. The contracting officer reviewed the panel's findings and ranked the submissions.
6. Firms were then notified if they reached competitive range, and proposals were revised if necessary.
7. The contract was awarded to the selected firm.
8. Once the award was made, other competing firms were notified that they were not selected and were offered a debriefing session.

The contracting office was responsible for ensuring the entire process was properly documented.[242]

P.L. 108-106 required IRRF 2 contracts to be awarded using full and open competition. This requirement applied to "any extension, amendment or modification of contract entered into before the enactment of this Act, using other than full and open competition procedures."[243] Pursuant to this statutory provision, USAID used Congressionally-mandated full and open competition when competing extensions, modifications, and follow-on awards to its initial contracts. Table 3 outlines some of these contracts, as well as other non-construction contracts and grants awarded during this period.

IRRF 2: Selected USAID Non-Construction Contracts and Grants

	Solicitation Office	Contractor(s)	Maximum	Date Awarded
Education II	USAID	Creative Associates, Inc	$56.4M	7-Jul-04
Business Skills Training	USAID	Volunteers in Economic Growth Alliance	$12M	7-Jul-04
Consortium for Elections & Political Process Strengthening (II)	USAID	IRI & NDI	$50M	7-Jul-04
Consortium for Elections & Political Process Strengthening (III)	USAID	IRI & NDI	$35.7M	26-Jul-04
Consortium for Elections & Political Process Strengthening (IV)	USAID	IFES	$40M	1-Sep-04
Private Sector Development	USAID	Bearing Point	$184M	3-Sep-04
Vocational Education	USAID	Louis Berger	$87M	27-Sep-04
Private Sector Development II	USAID	Louis Berger	$119M	30-Sep-04
Local Governance II	USAID	Research Triangle Institute	$89M	9-May-05

Amounts are those listed at time of award. Subsequent modifications are not included in the chart. Sources: USAID documents, "Acquisition and Assistance Activities: Awarded Grants and Contracts" (online at: http://www.usaid.gov/iraq/activities.html#contracts, accessed April 25, 2006) and "Contracts and Grants" (online at: http://www.usaid.gov/iraq/contracts/, accessed April 25, 2006); SIGIR document, Quarterly Report to Congress. January 2006, Appendix I: List of Contracts.

TABLE 3

SPECIAL CONTRACTING PROGRAMS: CERP AND CHRRP (JUNE 2003-PRESENT)—BALANCING RAPID RESPONSE WITH REGULATION

Most IRRF funding was used for design-build infrastructure projects, security forces training, and equipment procurement. The IRRF contracting strategy generally did not focus on supporting smaller projects at the local level that could provide immediate improvements in basic services. But U.S. military field commanders operating in Iraq noted the need for exactly this kind of localized project.

The Commander's Emergency Response Program (CERP) was formally created by the CPA Administrator to contract, procure, and implement small projects in a short timeframe. A similar program, the Commanders Humanitarian Relief and Reconstruction Program (CHRRP), subsequently was developed by MNF-I to target reconstruction of water and sewerage services, primarily in Baghdad. CHRRP began nearly a year after CERP started, reportedly in large part because of CERP's success.[244] Of note, the two programs were not derived from legislative directives or military doctrine but from military commanders who recognized a compelling need and initiated the rapid development of agile reconstruction methods to address them.

In hostile environments, the rapid provision of programs and projects that have a pacifying effect is essential, but complex contracting and procurement regulations can cause costly delays. CERP and CHRRP helped resolve this problem in Iraq by permitting military commanders to respond rapidly through simplified contracting processes and thereby mitigate the pressing humanitarian needs they encountered daily in the field. Both CERP and CHRRP succeeded in providing "some of the most important reconstruction efforts." [245]

CERP and CHRRP had several key differences:

- CERP was implemented in Iraq and Afghanistan; CHRRP was only for projects in Iraq.
- CERP received far more funding than CHRRP—$1.4 billion for CERP vs. CHRRP's $220 million in U.S and Iraqi funds.
- CERP was exempt from the FAR and other regulations;[246] CHRRP was not.
- CERP used a warranted contracting officer for any project of more than $200,000; CHRRP used a warranted contracting officer for any project of more than $2,500.
- CERP projects had a wide functional and geographic range of application; CHRRP focused on water and sewerage services in Baghdad.

Commander's Emergency Response Program

Two factors led to the creation of the CERP program. First, after the fall of Saddam Hussein, the need for sewerage system repair, garbage collection, and other basic civil administration services in Iraq became immediately apparent. Second, coalition forces confiscated hundreds of millions of dollars in cash that then became available for such projects. On May 7, 2003, Combined Joint Task Force-7 authorized the "Brigade Commander's Discretionary Recovery Program to Directly Benefit the Iraqi People" to use seized assets for rapid reconstruction projects. The initial allocation was approximately $180 million.[247]

On June 16, 2003, the CPA Administrator gave the incipient program its formal name (CERP) and provided regulations and an overarching direction for the use of funds. The CPA implementation memo authorized the Commander of the Coalition Forces to operate CERP,[248] set a limit on the expenditure of seized funds, and established spending ceilings and transactional caps for commanders at different levels.[249]

CERP Goes Operational

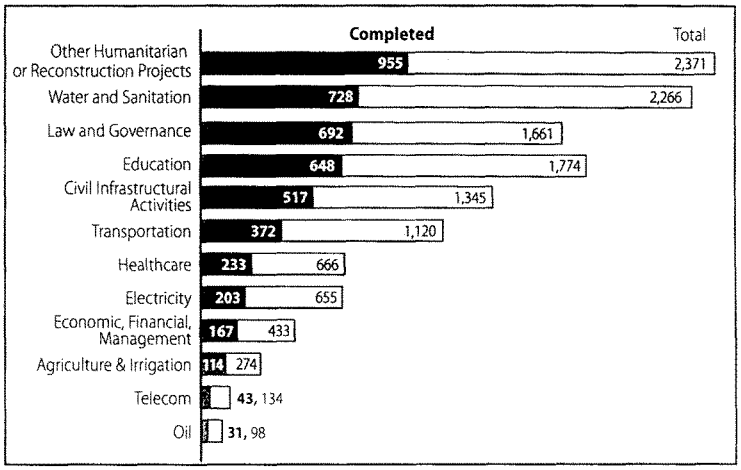
On June 19, 2003, the Commander of Combined-Joint Task Force 7 (CJTF-7) issued FRAGO 89, ordering CERP into operation. FRAGO 89 states that CERP activities include, but are not limited to:

> water and sanitation infrastructure, food production and distribution, healthcare, education, telecommunications, projects in furtherance of economic, financial, management improvements, transportation, and initiatives which further restore the rule of law and effective governance, irrigation systems installation or restoration, day laborers to perform civic cleaning, purchase or repair of civic support vehicles, and repairs to civic or cultural facilities.[250]

In the program's early stages, CERP funding came from seized assets and DFI. (CERP eventually received more than $368 million in funding from DFI.) The program subsequently received funding from IRRF 2 as well.[251]

Although commanders sometimes used CERP for larger-scale, strategic projects, its primary uses were tactical—projects with a short-term delivery and grassroots impact. The varying types of CERP projects are presented in Figure 3. The category with greatest funding—Other Reconstruction Projects—was primarily for condolence payments to Iraqi citizens.

TYPES OF CERP PROJECTS (AS OF SEPTEMBER 1, 2005)



Source: MNC-I, FY 2005[252] These data have not been reviewed or audited.

FIGURE 3

The process of CERP project implementation was quite streamlined compared to that of typical IRRF projects. The contracting was executed as follows:

- U.S. commanders and local Iraqi leaders identified projects, developed scopes of work, estimated costs, and solicited contractors.
- U.S. commanders nominated projects for CERP funding via an email to the CERP regional coordinating officer.
- Approval depended on variables such as community need, geographic distribution, and potential project success.
- The size of the award depended on the rank of the commander sponsoring the project.

Funding for CERP

By late 2003, appropriated U.S. dollars began to be allocated to the CERP program. Public Law 108-106 (IRRF 2) budgeted $180 million to CERP.[253] And on August 5, 2004, P.L. 108-287 budgeted another $300 million to CERP for FY 2005.[254] These laws required the Secretary of Defense to submit quarterly reports to Congress on the source, allocation, and use of CERP funds.

CERP received further appropriations under P.L. 108-447 (December 8, 2004) and P.L. 109-13 (May 11, 2005). This legislation increased CERP's maximum funding, first to $500 million and then to $854 million ($136 million of it earmarked for Afghanistan).[255] Congress exempted these appropriated funds from standard contracting regulations, such as the FAR or DFARS.[256]

As of September 30, 2005, CERP had received more than $1.4 billion in funding for Iraq programs from the following sources:

- Seized Assets: $180 million
- DFI: $368 million
- U.S. Appropriations: $858 million

In the National Defense Authorization Act for FY 2006, Congress gave DoD authority for FY 2006 and FY 2007 to use up to $500 million from its operations and maintenance funds for CERP in Iraq (and a similar program in Afghanistan).[257] These data are summarized in Table 4.

TOTAL CERP FUNDING (in millions of $)

	TOTAL PROGRAM FUNDING	CUMULATIVE FUNDS OBLIGATED	CUMULATIVE FUNDS EXPENDED
Seized Assets	$180.2	$178.6	$177.1
IRRF 2 (P.L. 108- 106)	140.0	140.3	130.5
P.L. 109-13	718.0	718.0	333.2
DFI	368.1	360.1	353.2
FY 2006 Request	500.0	NA	NA
Total*	$1,406.3	$1,397.1	$994.0

Source: MNC-I, 2005[258] * Total Excludes FY 2006 Request

TABLE 4

Regulations and Responsibilities

FRAGO 89 defined CERP's operating regulations for military commanders. Pursuant to that FRAGO, the size of a command determined the limit of that commander's contracting authority: brigade- and division-level commanders had contracting authority to spend up to $200,000 and $500,000 per project, with transaction limits of $50,000 and $100,000, respectively.[259] Commanders had to report weekly to headquarters on CERP activity, providing dates, locations, amounts spent, and descriptions of projects. Commanders also had to appoint trained and certified project purchasing officers to document and follow purchase order procedures. These procedures included standard forms for purchases up to $100,000. Any purchase greater than $10,000 required:

- O-7/O-8 (i.e., Brigadier General /Major General) level commander oversight
- three competitive bids
- an identified project manager
- payment for services as progress occurred

In early November 2003, the passage of P.L. 108-287 exempted CERP from standard contracting requirements and left the regulation of funds to DoD. On November 25, 2003, the Under Secretary of Defense (Comptroller) (USD-C) issued guidance on using appropriated CERP funds. The USD-C stated the DoD's intent to "preserve the same flexibility and responsiveness...maintained with the original CERP [under FRAGO 89 and CPA regulations]." The guidance assigned the Department of the Army as the Executive Agent for CERP and gave it the task of developing further operating procedures for use of the funds. USD-C directed CENTCOM to determine funding distribution.[260] DoD's financial management regulations were eventually amended to codify CERP policies, drawing from FRAGO 89 and the CPA requirements.

SIGIR AND USAAA AUDITS OF CERP

CERP funds have been subject to audits from various organizations.[261] At the request of DoD OIG, SIGIR conducted an audit of CERP to determine whether funds were properly administered. SIGIR concluded that "while CERP-appropriated funds were properly used for intended purposes, overall controls over CERP processes required improvement."[262]

In its audit, SIGIR found that:

- 58 of 74 projects reviewed did not have documentation showing that the commander obtained a contracting officer's approval.
- 5 of 46 projects that exceeded a $10,000 threshold did not have the required three quotes from vendors.
- 19 of 46 projects did not have documentation of obtaining a fair and reasonable price.
- A budget officer inappropriately signed the Statement of Agent Officer's Account form for more than $289 million.

In September 2005, the U.S. Army Audit Agency conducted an

audit of CERP and found that "command personnel demonstrated adequate oversight over administrative processes and processed cash disbursements properly." The audit found, however, that there were some deficiencies in carrying out required oversight responsibilities.[263]

IMPACT OF CERP

CERP is widely viewed as a success story in Iraq reconstruction. Military commanders report that the "benefit received from CERP funds far outweighs the amount [of funds] provided. Funding minor efforts such as repairs to houses and buildings are helping to stabilize areas in Iraq."[264]

Iraqis immediately felt the impact of CERP projects: thousands in Baghdad were employed by the program to clean streets, alleys, buildings, and public spaces. CERP projects also employed Iraqis to install hundreds of generators and air conditioners, as well as repair jails and police stations in and around Baghdad. In other parts of the country, CERP projects accomplished water and sewerage repairs that provided clean water and improved health for local Iraqis.

CERP projects tended to be executed rapidly. For example, in the first 18 weeks of the program almost 1,800 CERP projects completed the repair of, among other things, bridges, roads, and schools. Northern Iraq was the site of a notable CERP initiative. In the fall of 2003, the 101st Airborne Division partnered with the local population to complete more than 3,600 projects valued at $28 million. The projects included the refurbishment of more than 400 schools, employing more than 1,000 Iraqis in the process.[265]

The CERP program received significant praise during the SIGIR government contracting forum, with one USAID participant noting that:

> Divisional Commanders told us that CERP money was as important as bullets because they could be used right away, [were] highly flexible, tactical as well as reconstruction. They loved it.[266]

Commanders Humanitarian Relief and Reconstruction Program

When the Interim Iraqi Government began operations on June 28, 2004, the MNC-I Commanding General asked the IIG Prime Minister to partner with MNF-I to support CERP by providing DFI funds for a number of proposed projects.[267] The Deputy Prime Minister agreed to provide $86 million in IIG funds, with the proviso that the United States must match the Iraqi contributions.[268] MNF-I agreed to use U.S. appropriated funds for this request, and designated this fund the "Commanders Humanitarian Relief and Reconstruction Program (CHRRP)."

The October 2004 DoS *Section 2207 Report* contained the first mention of CHRRP and explained the difference between this program and CERP:

> Although CHRRP and CERP funds are both for requirements defined by military commanders in the field, the laws and implementing regulations governing their expenditure differ. Procurements using CHRRP funds must follow the federal acquisition regulations and provisions pertaining to full and open competition in Public Law 108-106 for IRRF...specific focus of CHRRP is to provide urgent, essential water and sewage services with a primary focus on Baghdad.[269] Additionally, the goal of CHRRP was to support labor-intensive, high-impact programs that generate employment, stimulate economic activity, and provide immediate assistance in areas targeted by insurgents.[270]

The January 2005 SIGIR *Quarterly Report* explained that $86 million was reallocated from IRRF security and law enforcement funds to the CHRRP program to match the IIG contribution. During 2004

and early 2005, the Iraqi government transferred an additional $52 million to support the CHRRP program. That brought total program funding from all sources to more than $220 million.[271] This program also succeeded in rapidly producing hundreds of completed water and sewerage projects that benefited Iraqis in the Baghdad area.[272]

CHRRP FUNDING AND EXECUTION

Only the Multi-National Division-Baghdad (MND-B) and Multi-National Division-North Central (MND-NC) received CHRRP funds. To receive CHRRP money, the sponsoring command had to prepare a project proposal. For purchases of more than $2,500, the sponsoring command prepared a purchase request and commitment form and forwarded it to the contracting office. Purchases of less than $2,500 required only a purchase order form. CHRRP projects required a warranted contracting officer to execute any project above $2,500.

The DoS 2005 *Section 2207 Reports* highlighted CHRRP accomplishments. For example, completed CHRRP projects included:

- the completion of sewer line repair in Baghdad: $58,555
- seven water and sewer projects in Baghdad that focused on pumping stations and sewage line cleaning: $1.56 million
- renovation of the Al Jadriya Irrigation System in Baghdad: $869,000
- additional pump work at Pumping Station 14A in Baghdad: $45,635
- modification to the Baghdad Solid Waste Transfer Haul contract in Baghdad: $8.3 million[273]

LESSONS IN CONTRACTING FROM IRAQ RECONSTRUCTION

KEY LESSONS LEARNED: STRATEGY AND PLANNING

- **Include contracting and procurement personnel in all planning stages for post-conflict reconstruction operations.** The pre-deployment interagency working groups for Iraq reconstruction did not adequately include contracting and procurement personnel.

- **Clearly define, properly allocate, and effectively communicate essential contracting and procurement roles and responsibilities to all participating agencies.** The failure to define contracting and procurement roles and responsibilities at the outset of the Iraq endeavor resulted in a subsequently fragmented system, thus foreclosing opportunities for collaboration and coordination on contracting and procurement strategies.

- **Emphasize contracting methods that support smaller projects in the early phases of a contingency reconstruction effort.** The Commander's Emergency Response Program (CERP) and similar initiatives in Iraq proved the value of relatively small, rapidly executable projects that meet immediate local needs and thereby have the salutary effect of enhancing relations with local communities.

- **Generally avoid using sole-source and limited-competition contracting actions.** These exceptional contracting actions should be used as necessary, but the emphasis must always be on full transparency in contracting and procurement. The use of sole-source and limited competition contracting in Iraq should have virtually ceased after hostilities ended (and previously

sole-sourced limited competition contracts should have been promptly re-bid).

KEY LESSONS LEARNED: POLICIES AND PROCESS

- **Establish a single set of simple contracting regulations and procedures that provide uniform direction to all contracting personnel in contingency environments.** The contracting process in Iraq reconstruction suffered from the variety of regulations applied by diverse agencies, which caused inconsistencies and inefficiencies that inhibited management and oversight. CPA contracting developed CPA Memorandum 4 for contracts funded by the Development Fund for Iraq (DFI). Other agencies used the Federal Acquisition Regulation[274] (FAR) and its supplements. Certain agencies used departmental regulations to modify their application of the FAR for contracting in Iraq. USAID used its own statutory authority for contingency contracting (within the FAR).

- **Develop deployable contracting and procurement systems before mobilizing for post-conflict efforts and test them to ensure that they can be effectively implemented in contingency situations.** After reconstruction operations began in Iraq, contracting entities developed *ad hoc* operating systems and procedures for monitoring contracts and maintaining contracting and procurement histories; this limited contracting efficiency and led to inconsistent documentation of contracting actions.[275]

- **Designate a single unified contracting entity to coordinate all contracting activity in theater.** A unified contract review and approval point would help secure the maintenance of accurate

information on all contracts, thereby enhancing management and oversight.

- **Ensure sufficient data collection and integration before developing contract or task order requirements.** The lack of good requirements data slowed progress early in the reconstruction program.

- **Avoid using expensive design-build contracts to execute small scale projects.** While the use of large construction consortia may be appropriate for very extensive projects, most projects in Iraq were smaller and could have been executed through fixed-price direct contracting.

- **Use operational assessment teams and audit teams to evaluate and provide suggested improvements to post-conflict reconstruction contracting processes and systems.** Oversight entities should play a consultative role (along with their evaluative role), because the rapid pace of reconstruction contingency programs cannot easily accommodate the recommendations of long-term assessments or audits.

RECOMMENDATIONS

RECOMMENDATION 1:

Explore the creation of an enhanced Contingency FAR (CFAR). When the SIGIR met with the Commanding General of the Multi-National Forces-Iraq and told him of the contracting Lessons Learned Initiative, he observed that there was a compelling need for a single, simplified, and uniform contracting process for use during contingency operations. Although the existing FAR provides avenues for rapid contracting activity, the Iraq reconstruction experience suggests that the FAR lacks ease of use. Moreover, promoting greater uniformity through a single interagency CFAR could improve contracting and procurement practices in multi-agency contingency operations. An interagency working group led by DoD should explore developing a single set of simple and accessible contracting procedures for universal use in post-conflict reconstruction situations. Congress should take appropriate legislative action to implement the CFAR, once it is developed by the interagency working group.

RECOMMENDATION 2:

Pursue the institutionalization of special contracting programs. In Iraq, smaller scale contracting programs, like the Commander's Emergency Response Program (CERP) and the Commanders Humanitarian Relief and Reconstruction Program (CHRRP), achieved great success. Commanders used these programs to accomplish projects that immediately met the needs of a post-war population in distress. Given the positive performance of CERP and CHRRP in Iraq, the Congress should legislatively institutionalize such programs for easy implementation in future contingency operations.

RECOMMENDATION 3:
Include contracting staff at all phases of planning for contingency operations. Contracting plays a central role in the execution of contingency operations, and thus it must be part of the pre-deployment planning process. Whether for stabilization or reconstruction operations, contracting officials help provide an accurate picture of the resources necessary to carry out the mission.

RECOMMENDATION 4:
Create a deployable reserve corps of contracting personnel who are trained to execute rapid relief and reconstruction contracting during contingency operations. This contracting reserve corps could be coordinated by the DoS Office of the Coordinator for Reconstruction and Stabilization as part of its civilian ready reserve corps. An existing contingent of contracting professionals, trained in the use of the CFAR and other aspects of contingency contracting, could maximize contracting efficiency in a contingency environment.

RECOMMENDATION 5:
Develop and implement information systems for managing contracting and procurement in contingency operations. The interagency working group that explores the CFAR should also review current contracting and procurement information systems and develop guidelines and processes for enhancing these existing systems or, if necessary, creating new ones to meet unique contingency operational needs.

[redacted]

RECOMMENDATION 6:

Pre-compete and pre-qualify a diverse pool of contractors with expertise in specialized reconstruction areas. These contractors should receive initial reconstruction contracts during the start-up phase of a post-conflict reconstruction event.

APPENDIX A: REQUESTED CHANGES TO THE FEDERAL ACQUISITION REGULATION

SIGIR research shows that throughout the Iraq experience there has been debate about whether the Federal Acquisition Regulation[276] (FAR) provides appropriate flexibilities for the fast-paced contracting required in conflict/post-conflict environments like Iraq. This debate continues. What is clear, however, is that after more than a year of contracting in Iraq, staff at different U.S. agencies in the fall of 2004 felt compelled to ask for relief from various FAR requirements.

At that time, an interagency effort coordinated through IRMO requested changes to the FAR for use in Iraq contracting. The organizations making requests included PCO, MNF-I and entities under its command, USAID, and USACE-GRD. The Chief of Mission in Iraq sent more than 20 proposed changes in a cable to the Secretary of State on October 4, 2004. The Secretary of State provided interagency responses to the requests on October 14, 2004, and October 27, 2004. These communications are summarized in Table A-1.

A review of the requested changes provides insight into the differing concerns of staff at various agencies working in Iraq, as well as their level of awareness of existing FAR flexibilities. Additionally, the responses highlight that the levels of flexibility allowed to contracting staff sometimes differed from agency to agency. Finally, although some of the flexibilities requested by agencies technically already existed in the FAR, some sources have told SIGIR that the process necessary to justify, document, and act on these flexibilities is too cumbersome and time-consuming to be practical in a contingency environment.

[redacted]

For example, many of USAID's requests for changes related specifically to contractor insurance rather than to more general issues with the FAR. USAID did not feel particularly constrained by FAR regulations, said one SIGIR interviewee, perhaps due to the degree of pre-planning they undertook for their contracts.[277]

Instead, some of USAID's suggested changes proposed the inclusion in contracts of contractors' costs for accidental death and dismemberment insurance and additional war risk insurance. The interagency response to these requests indicated that contracting officers had the flexibility to construct insurance as an allowable cost within individual contracts. However, the response also recognized the larger issues of insurance availability, as it indicated that the (lack of) availability of such insurance was an issue being addressed by an interagency working group.

In contrast, PCO's requests focused on increasing dollar thresholds for micro-purchases and reducing the length of notification time required for particular solicitation processes. The response to the PCO's notification request indicated that authority for this process already existed; however, the threshold request was addressed in the FY 2005 National Defense Authorization Act.

In addition to the requests made through IRMO, the HCA in Iraq also made requests directly to the Deputy Assistant Secretary of the Army (Policy and Procurement). Conversely, a DoS contracting official informed SIGIR that DoS has not requested any waivers outside of those allowed in the FAR or the DoS supplement to the FAR, known as the DOSAR.[278]

Table 5 provides a limited sample of excerpts from agency requests for changes in contracting regulations in Iraq during the fall of 2004, and the resulting interagency responses.[279] They reflect only this time period and only the agencies involved in the communications.

Written comments to SIGIR from DoD contracting officials regarding these fall 2004 communications suggest that both the requestors and responders may have been unaware of the existing flexibilities in the FAR. They may also have been unaware of waivers previously enacted, or other actions underway, to provide greater contracting flexibility.[280] Ensuring broad knowledge of contracting regulations pertinent to post-conflict contracting, as well as improving forward-rear and interagency visibility of activities underway would increase contracting flexibility. This in turn would assist contracting personnel in pre-stabilization or post-conflict environments to more effectively use all of the contracting mechanisms at their disposal.

Requested Changes to the FAR from Iraq-based Staff and Interagency Responses (October 2004)*

Request from Staff in Iraq	Requesting Agency	Interagency Response
Increase the Simplified Acquisition Threshold to $1 million**	MNSTC-I (MNF-I)	"The requested increase...is included in the final version of FY 05 National Defense Authorization Act, which will become law on signature by the President."***
Increase the Micro-purchase Threshold to $25,000	PCO	"The requested increase...is included in the final version of FY 05 National Defense Authorization Act, which will become law on signature by the President."
Waive the requirement for Performance and Payment Bonds of more than $100,000	USACE-GRD	"DoD, USAID and DoS concur that authority already exists under FAR 28.102-1 for the Contracting Officer to waive this requirement."
Equipment Risk of Loss. Make additional war risk insurance available; if not available, U.S. should accept equipment at border	USAID	"State, USAID, and DoD concur that flexibility currently exists to reimburse contractors for war risk insurance if it is available. The reasonableness of cost is a determination of each contract." "An interagency insurance working group [exists] to interact with the insurance industry and contractor associations on the larger issue of insurance availability."
Limit price reasonableness determinations to commercial standard for subcontractors	USACE-GRD	"State, USAID, and DoD concur that contracting officers already have the authority you seek, and Washington encourages Contracting Officers to use this authority in accordance with the FAR requirements to expedite reconstruction activities."
Reduce combined commercial synopsis/ solicitation time from 15 to 7 days	PCO****	"Agency Heads can already waive the 15-day requirement." "DoS currently has a waiver in effect for DoS procurement up to $5 million, as does USAID." "DoD regulations permit this waiver, using existing authorities. General authorities regarding synopsizing exist in regulation. The Army, as Executive Agency for contracting in Iraq is the waiver authority for DoD."

REQUESTED CHANGES TO THE FAR FROM IRAQ-BASED STAFF AND INTERAGENCY RESPONSES (OCTOBER 2004)*

REQUEST FROM STAFF IN IRAQ	REQUESTING AGENCY	INTERAGENCY RESPONSE
Revise the Determination and Findings (D&F) for waiver of Trade Agreements Act and Balance of Payments Act	HCA	"New D&Fs are awaiting [Deputy Secretary of Defense] signature, after having undergone a thorough DoD and interagency coordination process."

Sources: *Information included in the table was taken from a summary of communications between IRMO and the Department of State, which coordinated Baghdad-based and Washington-based interaction on contracting concerns during the fall of 2004. See Iraq Project and Contracting Office document, "Chronology of Cables," October 2004; IRMO memo, "Peace Time Rules in a Wartime Environment: Summary of Federal Acquisition Regulation (FAR)," September 24, 2004

**Simplified Acquisition and Micro-Purchase procedures are streamlined acquisition methods that are allowable below certain dollar thresholds. These requests were to increase the dollar value of purchases that could be made using these procedures.

***President George W. Bush signed the National Defense Authorization Act Fiscal Year 2005 (P.L. 108-375) in October 2004. Changes to the Simplified Acquisition and Micro-purchase thresholds were covered in Section 822 of the act (online at: http://www.defenselink.mil/dodgc/olc/docs/PL108-375.pdf, accessed April 25, 2006).

**** Written comments from DoD officials indicate that waivers of the Trade Agreements Act and Balance of Payments Program were issued in "Determination and Findings" documents by the Deputy Secretary of Defense in June 2003. (See DoD memo, Deputy Secretary of Defense, "Findings and Determination: Exemption from Balance of Payments Program," June 16, 2003; DoD memo, "Findings and Determination: Waiver of the Procurement Prohibition of Section 203(a) of the Trade Agreements Act of 1979, as amended." June 16, 2003. According to these sources, no new related waivers have been granted since that date. See DoD officials, written comments to SIGIR, March 10, 2006.

TABLE 5

APPENDIX B: TRENDS IN THE ACQUISITION WORKFORCE

Workforce Trends: Skills and Numbers

An April 2003 GAO report, *Federal Procurement: Spending and Workforce Trends*, reported that while federal contracting increased by 11% between 1997 and 2001, the federal acquisition workforce decreased by 5%. The report notes that the decline in the acquisition workforce varied by agency. DoD experienced the largest decrease—about 9%.[281]

A senior official at the OMB Office of Federal Procurement Policy provided an explanation of this trend. During the 1990s, there was a major acquisition reform movement in the U.S. government. It was believed that the increased use of technology and more efficient contracting vehicles, including the use of the purchase card, could result in a decrease of the acquisition workforce.[282]

GAO reported that these 1990 reforms created a need for an expanded skill set among acquisition personnel:

> Over the last decade, the federal acquisition workforce has had to adapt to changes in staffing levels, workloads, and the need for new skill sets. Procurement reforms have placed unprecedented demands on the acquisition workforce. For example, contracting specialists are required to have a greater knowledge of market conditions, industry trends, and the technical details of the commodities and services they procure.[283]

During the last several years, policies were issued to improve the management and training of acquisition workforce, including the Defense Acquisition Workforce Improvement Act, 1990, and the Services Acquisition Reform Act (SARA), 2003. More recently, Policy Letter 05-01, dated April 15, 2005, was issued by the OMB Office

of Federal Procurement Policy. This policy letter "broadens the definition of acquisition workforce, expands duties of the agencies acquisition workforce manager, aligns civilian and defense acquisition workforce requirements...and increases continuous learning requirements."[284] The office also has launched a certification program that uses DoD modules as a standard for all acquisition personnel.[285]

Skills and Numbers: Effect in Iraq

In Iraq, acquisition numbers and skills seemed to be a challenge for DoD, USAID, and to a lesser extent, DoS, especially early in the reconstruction effort.

A senior DoD official stressed the importance of deploying with people who had proper skill sets, but felt that not everyone working with PMO had the "right skills to do the work in Iraq."[286] This official also noted that there was high turnover, especially among the legal support. He said that many of the lawyers did not have contracting backgrounds or the temperament and experience to work in a war zone. Instead, they were all trying to learn on the job.[287]

Another senior DoD official mirrored these opinions. He felt that some contracting staff lacked experience in large construction contracts. He said deployment was tied to the need to "have a warm body" and not necessarily to skills. However, he said that most people learned very quickly.[288] This official asserted that, "until we get a larger acquisition/contracting workforce, we will never resolve the deployment resources issue."[289]

A senior member of the USAID acquisition staff reflected on human resource challenges:

> I was proud of the way we handled the procurements and of our taking a strong stand on the need for competition. The biggest area of concern from my perspective was the lack of senior talent. I had to handle complex and politically sensitive contracts totaling multi-mil-

[redacted]

> lion dollars. We obviously put senior talent on the initial contracts, but as things started to move faster, and people became engaged on the award of earlier actions, we were forced to move to less senior contract specialist with tight oversight by a more senior contracting officer. This is perfectly o.k., and is the way junior contracting talent is developed. However, with such politically sensitive actions, I wanted only the best talent available, and I found myself having to assign people that may not have worked on multi-million dollar contracts under intense pressure to be awarded ASAP. I believe we helped grow USAID's contractual talent base considerably during this time, and that is good. However, I did not want younger talent learning on the job...I wanted senior contracting officers with 25 years of experience and we found them difficult to find in Washington.[290]

In the last two years, USAID has been able to increase its overall acquisition staff, and this is reflected in the number of contracting staff assigned to the Iraq effort. In 2004, USAID had 306 contracting officers and specialists; in 2005, this number grew to 358.[291] A USAID official described some of the reasons for this increase. He said that "after years of efforts, the Office of Acquisition and Assistance (OAA) obtained the resources in FY 2005 to fill vacancies that had gone long unfilled. Filling these vacancies has helped OAA reduce vulnerabilities caused by its previous understaffing."[292] In 2004, the USAID Iraq office (Baghdad and Amman, Jordan) had six contracting officers and specialists. In 2005 this number grew to nine.[293]

A senior DoS contracting official told SIGIR that, in general, DoS had the "right" number of contracting staff. However, this individual indicated that a number of people will be eligible for retirement in the next several years; therefore, hiring and developing the next generation of DoS contracting officers is of special importance.[294]

APPENDIX C: RECENT DEVELOPMENTS IN CONTRACTING FOR CONTINGENCIES/EMERGENCIES

More than three years have passed since the first contracts related to Iraq reconstruction were awarded. Modifications have been made to improve contracting, and lessons from the Iraq experience continue to inform new initiatives to improve U.S. readiness for contracting in contingency and post-conflict environments. This appendix offers details of recent developments.

Joint Policy on Contingency Contracting

Contingency contracting takes place during "an event which requires the deployment of military forces in response to natural disasters, terrorist or subversive activities, collapse of law and order, political instability, or other military operations...[and which] requires plans for rapid response and procedures to ensure the safety and readiness of personnel, installations, and equipment"[295]

The National Defense Authorization Act for FY 2006 requires the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, to develop a joint policy among all the military services for contingency contracting during combat and post-conflict operations.

The joint policy is to include, at a minimum, an organizational approach to contingency contracting, provision and maintenance of a training program for contingency contracting personnel,[296] and "such steps as may be needed to ensure jointness and cross-service coordination in the area of contingency contracting."[297]

Contractors on the Battlefield

A recent House of Representatives bill aimed at establishing specific requirements for contractors on the battlefield, including those who do not accompany military forces, did not win Senate approval. However, earlier in 2005, DoD issued regulations addressing requirements for contractors accompanying the military, as directed under section 1205 of the Ronald W. Reagan National Defense Authorization Act for FY 2005 (P.L. 108-375). House and Senate conferees instructed DoD to revise this guidance to include contractors or subcontractors:

> ...at any tier under a contract with any federal government agency, if the work to be performed is related to:
> - private security
> - reconstruction
> - humanitarian assistance
> - peacekeeping
> - other activities in an area of responsibility of a commander of a combatant command in which there are ongoing combat operations or there is a significant risk that contractor employees could come under hostile fire.[298]

The revisions are to address, among other things, the issues of force protection, weapons issuance, security, visibility and accountability, and provision of threat information to contractors not accompanying the force.

Contracting Guides

DoD

The Deputy Secretary of the Army for Policy and Procurement is currently preparing two guidebooks for contingency contracting: *The Army Guidebook for OCONUS Contingency Contracting* and

CONUS Guide for Supporting Emergencies within the United States and Supporting Overseas Contingencies from CONUS Locations.

The guidebooks are not training manuals, but rather refreshers for those who have already been trained in contingency contracting procedures. An official involved in the creation of the documents noted that the aim was twofold:

- to "fill in the gaps" of information highlighted by personnel who worked in Iraq and other recent contingencies
- to help contracting personnel focus on how they will need to operate differently in a contingency environment

As their primary source, the draft guidebooks use a Special Operations Command (SOCOM) compendium of contracting documents (pertinent regulations, procedures, and guidance) for use by SOCOM contracting officers. The guidebooks also draw on the *Air Force Guidebook on Contingency Contracting* and other materials for samples that contracting officers can refer to, highlighting established procedures and regulations, as well as special provisions that may need to be considered in different types of contingency situations. The draft documents also address some of the tactical-level challenges that contracting personnel have relayed to SIGIR during interviews.[299]

Both draft guidebooks outline wartime regulations, approval levels and thresholds triggered by contingency declaration, as well as information on relationships with contractors and planning for contingency contracting. The draft OCONUS guidebook also contains information for "customers" on how to write requirements, and includes a copy of CPA Memo 4 as a sample policy for use when procuring with seized funds.

The draft OCONUS guidebook makes reference to relief from regulatory requirements that certain contingencies may demand,

and contains sample documents, memos, and checklists for a wide variety of items. An official familiar with the draft guides informed SIGIR that DoD and DASA P&P are developing standby packages of waivers, documentation, and other mechanisms to initiate relief from regulatory requirements. DASA P&P plans to release the documents on the Army Contracting Agency (ACA) website and to make them available to contracting personnel deploying to work on contingencies.

USAID and DoS

A USAID contracting official informed SIGIR that his agency does not have such a guidebook, nor is one planned. Rather, the agency's practice is to set up a task force for each emergency or assistance situation in which it works. A memorandum establishes and outlines the task force, special authorizations or waivers, and contracting procedures.[300] Such a memo was created for Iraq. Because of experiences in Iraq, task forces set up for complex environments will include representatives from all relevant bureaus, including procurement and contracting staff. Also, the task forces now work to ensure that planning for relief and reconstruction is undertaken as an interdepartmental effort.[301]

A DoS contracting official told SIGIR that DoS has not found a need to provide any unique training to its contracting personnel for contracting in contingency environments. He noted that, to a large extent, DoS personnel contracted in Iraq as they would elsewhere—construction of the embassy, purchasing supplies and materials for staff, etc.[302] With the exception of early contracts awarded by DoS for police sector reconstruction, this statement is supported by SIGIR research.

APPENDIX D: ORGANIZATIONAL VETTING COMMENTS

SIGIR circulated a draft of its contracting lessons learned paper to a number of U.S. government organizations to obtain their official views on SIGIR's findings, particularly the recommendations. Although most vetting comments have been incorporated into the body of the report, SIGIR has placed the following comments in this appendix because they represent dissenting views or provided important qualifications concerning SIGIR's overall recommendations.

Several organizations responded to *Recommendation 1, "Explore the creation of an enhanced Contingency FAR (CFAR),"* indicating that they did not believe a formal enhanced Contingency FAR (CFAR) was necessary, and that current FAR provisions, properly understood and/or appropriately altered, would be sufficient.

The Department of State's Office of Acquisition Management (DoS-AQM) indicated that it did not believe there was a need for an enhanced Contingency FAR, stating that the current FAR provides "flexibility in multiple areas depending on the type of contracting" The office suggested additional training for contracting personnel in existing flexibilities to remedy current problems. DOS-AQM suggested altering audit standards to include consideration of unusual conditions in contingency operations to alleviate reluctance to use waivers and special provisions.[303]

The White House Office of Management and Budget – Office of Federal Procurement Policy (OMB-OFPP) did not specifically state that an enhanced CFAR was unnecessary, but told SIGIR that it did not believe that legislative changes are needed at this time. OMB-OFPP pointed out that the FAR council is making a "significant effort" to create new emergency acquisitions regulations in order

to consolidate emergency procurement authorities for contingency operations.

Similarly, the Office of the Under Secretary of Defense-Acquisition, Technology, and Logistics (OUSD-ATL) described the "real issue as the need to have a useable, straight-forward compilation of existing regulations and applicable flexibilities..." with personnel appropriately trained before deployment to use these provisions.[304]

USAID/Iraq stated that rather than focus on the creation of a "special FAR," consideration might be given to "a better delegation of authority within the US Government." This would "authorize departments/agencies to implement clearly defined objectives," and gives them "the budget and operational control to execute."[305]

For *Recommendation 4, "Create a deployable reserve corps of contracting personnel...,"* the OUSD-ATL told SIGIR that they supported this recommendation, provided that corps personnel "...are part of existing contracting operations, where they can ply their skills on an ongoing basis before deployment."[306]

OUSD-ATL also responded to *Recommendation 6, "Pre-compete and pre-qualify a diverse pool of contractors with expertise in specialized reconstruction areas,"* stating that such a program would be most useful if done relatively soon before deployment.[307]

ENDNOTES

1. On June 22, 2006, the Deputy Secretary of Defense commendably responded to the draft recommendations in this report by announcing the formation of a Task Force to Support Improved DoD Contracting and Stability Operations in Iraq. The task force is charged with evaluating DoD processes and systems in Iraq affecting contracting, logistics and financial management, among other areas, and will provide recommendations and implementation plans to the Deputy Secretary of Defense on:
   - Deployment of a common system and business process for contingency contract management in Iraq
   - Establishment of appropriate contracting authority for CENTCOM
   - Policy and processes to ensure the effective and rapid utilization of CERP
   - Potential changes to the FAR and DFARS to address future contingency operations
   - Appropriate legislative strategies to address statutory issues impacting contingency contracting capability

   This dynamic responsiveness by DoD will enable Iraq reconstruction contracting lessons learned to be immediately applied to the current situation in Iraq.
2. See e.g. Senior USAID official, interview, November 2, 2005; Former senior DoD contracting official, interview, January 20, 2006.
3. U.S. Army Materiel Command document, "LOGCAP: Who and Where We Are," October 8, 2004 (online at: http://www.amc.army.mil/LOGCAP/WhoWhere1.html, accessed April 24, 2006).
4. MAJ M. Salah Ehab, CPT Dawn M. Cox et al, "Logisticians Don't Always Wear Green – Contractors as Force Multipliers," Staff of the Quartermaster Professional Bulletin, summer 1999 (online at: http://www.quartermaster.army.mil/oqmg/professional_bulletin/1999/summer1999/Contractors%20as%20Force%20Multipliers.htm, accessed April 24, 2006).
5. Donald L. Trautner, "A Personal Account and Perspective of the U.S. Army Logistics Civil Augmentation Program (LOGCAP)," 2004 Conference of Army Historians, July 15, 2004.
6. GAO report, "Defense Logistics: High-Level DoD Coordination is Needed to Further Improve Management of Army's LOGCAP Contract," GAO-05-328, March 2005.
7. DoD official, SIGIR Lessons Learned Forum: Contracting I, Washington D.C., December 5, 2005, (transcript pp. 51-53).
8. Ibid., p. 54.

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9. Ibid., p. 54.
10. DoD official, written comments to SIGIR, March 10, 2006.
11. DoD official, written comments to SIGIR, June23, 2006.
12. DoD former senior contracting official, interview, January 20, 2006.
13. GAO report, "Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management," GAO- 04-605, June 2004, pp. 19-20.
14. Ibid, p. 20.
15. These groups included the: Interagency Iraq Political-Military Cell; Interagency Executive Steering Group; Interagency Humanitarian/Reconstruction Group; Interagency Energy Infrastructure Working Group; Interagency Coalition Working Group; and Office of Global Communications (Source, Air War College, "Pre-war Planning for Post-war Iraq" (online at http://www.au.af.mil/au/awc/awcgate/dod/postwar_iraq.htm, accessed on July 6, 2006).
16. OMB Director, testimony before the U.S. Senate Foreign Relations Committee, July 29, 2003, (online at: http://www.defenselink.mil/speeches/2003/sp20030729-depsecdef0385.html, accessed April 24, 2006).
17. GAO report, "Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management," GAO-04-605, June 2004, p. 7.
18. USAID document, "USAID Consultations on Iraq Contingency Planning," February 24, 2003, (online at: http://pdf.dec.org/pdf_docs/PDABY342.pdf, accessed April 24, 2006).
19. Former senior ORHA official, interview, March 30, 2004.
20. Senior DoD official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript, pp. 33-34).
21. Contract Statement of Work, Iraqi Oil Infrastructure Additional Pre-positioning of Fire Fighting, Rapid Response, Damage Assessment and Oil Spill Assessment and Response Teams, March 10, 2003. Declassified on April 22, 2004.
22. USACE official, written comments to SIGIR, March 20, 2006.
23. USACE document, "Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom. USACE Missions – Oil Fire Suppression and Restoration of Production," updated January 20, 2004 (online at: http://www.hq.usace.army.mil/cepa/iraq/faq.htm, accessed April 24, 2006).
24. The FAR is the body of regulation used by federal executive agencies for acquiring supplies and services with appropriated funds. Additionally, DoD, USAID, and DoS have specific supplements to the FAR.
25. USACE document, "Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom. USACE Missions – Oil Fire Suppression and Restoration of Production," updated January 20, 2004 (online at: http://www.hq.usace.army.mil/cepa/iraq/faq.htm, accessed April 24, 2006).
26. GAO report, "Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management," GAO-04-605, June 2004, p. 7.

27. DoD OIG report, "Contracts Awarded for the CPA by the Defense Contracting Command-Washington," Report D-2204-057, March 18, 2004, p. 2.
28. Ibid., p. 13.
29. Ibid., pp. 4-7.
30. Former ORHA contracting official, interview, November 22, 2005.
31. See DoD memo, Principal Under Secretary of Defense (AT&L) to Director, DCMA, "Contracting Support for Office of Reconstruction and Humanitarian Assistance," March 28, 2003.
32. Former ORHA contracting official, written comments, December 21, 2005.
33. Ibid.
34. DoD OIG, "Contracts Awarded for the CPA by the Defense Contracting Command-Washington," Report D-2204-057, March 18, 2004.
35. Ibid., p. 7.
36. Contracting and planning for the humanitarian assistance pillar was also being carried out at this time by DoS in conjunction with USAID. Members of the USAID team involved in this planning noted that their agencies' planned work did not include tasks in civil administration, however.
37. DoD OIG, "Contracts Awarded for the CPA by the Defense Contracting Command-Washington," Report D-2204-057, March 18, 2004, p. 3.
38. White House memo to Presidential Envoy to Iraq, May 9, 2003.
39. Congressional Research Service document, "The Coalition Provisional Authority (CPA): Origin, Characteristics, and Institutional Authorities," updated June 6, 2005, p. 3.
40. DoD memo, Deputy Secretary of Defense to DoD officials, "Authority of the Administrator of the Coalition Provisional Authority and Supporting Relationships," June 16, 2003.
41. CENTCOM document, "Freedom Message to the Iraqi People," April 16, 2003.
42. White House document, Statement by the Press Secretary, "President Names Envoy to Iraq," May 6, 2003.
43. DoD memo to Presidential Envoy to Iraq, "Designation as Administrator of the Coalition Provisional Authority," May 13, 2003.
44. Congressional Research Service document, "The Coalition Provisional Authority (CPA): Origin, Characteristics, and Institutional Authorities," updated June 6, 2005, p. 20.
45. DoD memo, Deputy Secretary of Defense to DoD officials, "Designation of the Army as Department of Defense Executive Agent for the Office of Reconstruction and Humanitarian Assistance," May 21, 2003.
46. DoD memo, Deputy Secretary of Defense to DoD officials, "Authority of the Administrator of the Coalition Provisional Authority and Supporting Relationships," June 16, 2003. This memo outlined the dissolution of ORHA and

noted that the responsibilities of the Secretary of the Army as DoD's executive agent would be exercised in support of the CPA.

47. DoD memo, Deputy Secretary of Defense to DoD officials, "Designation of the Army as Department of Defense Executive Agent for the Office of Reconstruction and Humanitarian Assistance," May 21, 2003.
48. See UN document, United Nations Security Council Resolution 1483, May 22, 2003 (online at: http://www.iamb.info/pdf/unsc1483.pdf, accessed April 24, 2006).
49. UN document, United Nations Security Council Resolution 1483, May 22, 2003 (online at: http://www.iamb.info/pdf/unsc1483.pdf, accessed April 24, 2006).
50. KPMG report. "Development Fund for Iraq. Statement of Cash Receipts and Payments, 22 May, 2003 to 31 December 2003," Note 4, undated (online at: http://www.iamb.info/auditrep/r052203a.pdf, accessed April 24, 2006).
51. See, KPMG report, "Development Fund for Iraq. Statement of Cash Receipts and Payments, 1 January 2004 to 28 June 2004," page 4, undated (online at: http://www.iamb.info/auditrep/r052203a.pdf, accessed April 24, 2006).
52. This figure does not include funds spent on Iraqi ministry budgets. See CPA document, "Development Fund for Iraq Financial Reporting Matrix," June 26, 2004 (online at: http://www.iraqcoalition.org/budget/DFI_intro1.html, accessed April 11, 2006).
53. To avoid confusion, throughout this paper SIGIR refers to HCA as the "HCA Office" when speaking of HCA as an organization. When referring to the person in charge of the HCA Office, "HCA" is used without any further descriptors. Also, it should be noted that the HCA Office acted as the contracting organization for CPA, and later for CPA's Project Management Organization (PMO) after the PMO was created in fall 2003. After the end of the CPA, the HCA Office continued this function for the Project and Contracting Office (PCO), which took over many of the PMO's duties. SIGIR understands that throughout the post-conflict reconstruction period up to the creation of the Joint Contracting Command-Iraq, the HCA and the HCA Office was closely associated with, but formally independent of these organizations. In fall 2004, the HCA became the commander of the JCC-I.
54. Senior DoD contracting official, interview, October 24, 2005.
55. Ibid.
56. Senior DoD contracting official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript p. 16).
57. DoD briefing, Deputy Assistant Secretary of the Army (Policy and Procurement), "CPA Contracting Support: Information Briefing," March 10, 2004.
58. Given that the majority of contracts awarded by the HCA office during this period were funded through DFI, one assumes that these were competitively awarded under the competition requirements in CPA Memorandum Number 4, not the FAR.
59. Senior DoD contracting official, written comments to SIGIR, March 10, 2006.
60. Senior DoD contracting official, Lessons Learned Forum: Contracting I, Washington D.C., December 5, 2005 (transcript p. 19- 25).

61. CPA document, "Regulation Number 3: Program Review Board," June 16, 2003 (online at: http://www.iraqcoalition.org/regulations/index.html#Regulations, accessed April 24, 2006).
62. Ibid.
63. Minutes from early meetings of the PRB indicate that the board was given updates by CPA staff on the development of formal procedures during meetings where funding decisions were also made. See e.g. CPA document, "PRB Meeting Minutes", July 8, 2003.
64. CPA memo, "Memorandum Number 4: Contract and Grant Procedures Applicable to Vested and Seized Iraqi Property and the Development Fund for Iraq," June 18, 2004. (online at: http://www.iraqcoalition.org/regulations/index.html#Regulations, accessed April 24, 2006).
65. Former senior DoD contracting official, interviews, November 2-3, 2005.
66. SIGIR report, "Oversight of Funds Provided to Iraqi Ministries through the National Budget Process," 05-004, January 30, 2005, p. 5.
67. SIGIR Report, Quarterly Report to the United States Congress, Appendix B, April 2006.
68. SIGIR document, Quarterly Report to the United States Congress, Appendix B, October 30, 2005.
69. Senior USAID official, interview, November 2, 2005.
70. USAID press release, "USAID Contingency Plans for Post-Conflict Reconstruction in Iraq", March 20, 2003 (online at: http://www.usaid.gov/press/factsheets/2003/fs030320_1.html, accessed June 26, 2006).
71. Senior USAID official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript p. 67).
72. Senior USAID official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript p. 69).
73. USAID officer, interview, November 2005.
74. USAID document, Bechtel I contract award, April 17, 2003, (online at: http://www.usaid.gov/iraq/contracts/pdf/bechtel.pdf, accessed May 22, 2006).
75. Former USAID contractor, interview, January 5, 2006.
76. SIGIR believes that the few shortcomings in the Bechtel award were relatively minor and would not have attracted public attention were it not for the value of the contract. See also USAID audit memorandum, Assistant Inspector General for Audit to Assistant Administrator ANE, "USAID's Compliance with Federal Regulations in Awarding the Iraq Infrastructure Reconstruction Contract," AIG/A Memorandum 03-003, July 23, 2003.
77. USAID memo, Assistant IG for Audit to Acting Assistant Administrator ANE, "USAID's Compliance with Federal Regulations in Awarding the Agriculture Reconstruction and Development Program for Iraq Contract," AIG/A Memorandum 04-002, January 14, 2004.

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78. USAID document, "ADS 300," (online at: http://www.usaid.gov/policy/ads/300/302.pdf, accessed June 28,2006), No date, p. 9.
79. RTI report to USAID, "RTI Iraq Local Government Final Report," June 2005, p. xi.
80. DoS-INL document, "Justification for Other Than Full and Open Competition," (online at: http://iraqcoalition.org/economy/PMO/State_Justification.htm, accessed March 21, 2006).
81. Ibid.
82. Deputy Assistant Secretary of the Army (Policy and Procurement), Testimony before the Committee on Government Reform, U.S. House of Representatives, March 11, 2004 (online at: http://www.house.gov/hasc/openingstatementsandpressreleases/108thcongress/04-06-24ballard.pdf, accessed April 25, 2006).
83. SIGIR report, "CPA's Contracting Processes Leading Up to and Including Contract Award," SIGIR 04-013, July 27, 2004, p. i.
84. USACE document, "Frequently Asked Questions: USACE Missions—Oil Fire Suppression and Restoration of Production." January 20, 2004 (online at: http://www.hq.usace.army.mil/cepa/iraq/faq.htm, accessed April 3, 2006).
85. SIGIR report, "Attestation Engagement Concerning the Award of Non-Competitive Contract DACA63-03-D005," SIGIR-05-019, September 30, 2005, p. 4.
86. GAO report, "Rebuilding Iraq, Fiscal Year 2003, Contract Award Procedures and Management," GAO-04-605, June 2004, p. 21.
87. Ibid., p. 20.
88. Ibid.
89. GAO report, "Rebuilding Iraq, Fiscal Year 2003, Contract Award Procedures and Management," GAO-04-605, June 2004, p. 21.
90. OMB document, 1506 Report, October 2003, p. 16, (online at: http://www.sigir.mil/reports/pdf/1506_final101503.pdf, accessed April 25, 2006).
91. Fluor Intercontinental, Inc. won a design-build award as part of a joint venture with the British firm, AMEC.
92. CRS document, "Iraq: Recent Developments in Reconstruction Assistance," May 12, 2005, pp. 2-3.
93. Former senior CPA official, written comments to SIGIR, April 14, 2006.
94. Senior USAID official, interview, November 3, 2005; Former USAID official, interview, February 9, 2006.
95. CPA memo, "Taking Forward the CPA Strategic Plan for Iraq," undated.
96. Former senior CPA official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005, p. 77.
97. CPA memo, Administrator to SECDEF, August 6, 2003.
98. Former senior CPA official, interview, January 13, 2006.

99. CPA Action memo, CPA Director of OMB to CPA Administrator, "Management of Large Appropriated Construction Contracts," August 15, 2003. Approval indicated by Administrator's signature, also dated August 15, 2003.
100. CPA memo, Chief of Staff to CPA officials, "President's Supplemental–CPA Program Management Office," Unclassified, September 9, 2003.
101. Former senior CPA official, interview, January 13, 2006.
102. Ibid.
103. See e.g. Former USAID official, interview, February 9, 2006.
104. Senior USACE officer, SIGIR Lessons Learned Forum: Program and Project Management, April 12, 2006, (transcript p. 97).
105. See e.g. Senior USACE official interview, February 8, 2006; Former USAID official, interview, February 9, 2006.
106. The UN/World Bank information was formally published in a report in October 2003, see: UN document, "United Nations/World Bank Joint Iraq Needs Assessment," October 2003, p. ix-x (online at: http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/Iraq+Joint+Needs+Assessment/$File/Joint+Needs+Assessment.pdf, accessed April 25, 2006).
107. Former senior CPA official, interview, January 13, 2006.
108. CPA Administrator, testimony before the Appropriations Committee, U.S. Senate, September 22, 2003 (online at: http://www.iraqwatch.org/government/Index_US_Hearings.htm, accessed April 20, 2006).
109. Former senior CPA official, interview, January 13, 2006.
110. Ibid.
111. Ibid.
112. USAID/Iraq, written comments to SIGIR, June 8, 2006.
113. Of this amount, $100 million was to be "made available for democracy-building activities, and $10 million made available to the United States Institute for Peace for activities supporting peace enforcement, peace keeping and post-conflict peace-building." See PL 108-106, p.1225 (online at: http://www.export.gov/iraq/pdf/public_law_108-116.pdf, accessed April 25, 2006).
114. Public Law 108-106, Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, November 6, 2003, p.1225 (online at: http://www.export.gov/iraq/pdf/public_law_108-116.pdf, accessed April 25, 2006).
115. Former senior CPA official, interview, July 1, 2004.
116. Public Law 108-106, Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, November 6, 2003, p.1225 (online at: http://www.export.gov/iraq/pdf/public_law_108-116.pdf, accessed April 25, 2006).
117. SIGIR document, Quarterly Report to the United States Congress, April 2006.
118. DoD document, Deputy Secretary of Defense, Determination and Findings, December 5, 2003.

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119. GAO report, "Rebuilding: Fiscal Year 2003 Contract Award Procedures and Management Challenges." GAO-04-605, July 2004, p. 46.
120. Ibid.
121. CPA document, CPA Budget Director to CPA Administrator, "Management of Large Appropriated Construction Contracts," August 15, 2003.
122. Former senior CPA official, interview, January 13, 2006; Senior USACE official, interview, February 8, 2006.
123. These funds were expended for reporting purposes while under the control of the Department of the Army, acting as executive agent for the CPA. However, after dissolution of the CPA in late June 2004, the remaining funds were transferred to DoS, which used $23.8 million for salary expenses associated with the newly formed Iraq Reconstruction Management Office (IRMO). SIGIR did not question the authority of DOS to obligate these funds; however it did question "disbursing the remaining funds for salary expenses without being able to provide either rationale or support for how these expenditures complied with the congressional intent for the appropriation," (i.e. reporting). See SIGIR memo, SIGIR to U.S. Ambassador to Iraq and Director, IRMO and Commanding General, USACE-GRD, "Fact Sheet on the Use of the $50 million Appropriation to Support the Management and Reporting of the Iraq Relief and Reconstruction Fund," SIGIR 05-026, January 27, 2006.
124. PCO staff, interview, November 15, 2005.
125. Senior DoD contracting official, written comments to SIGIR, March 10, 2006.
126. Former senior DoD contracting official, written comments to SIGIR, April 26, 2006.
127. Former senior CPA official, interview, March 3, 2006.
128. Former senior and deputy ministerial advisors, interview, December 22, 2005.
129. See e.g. Senior DoD contracting official, interview, November 17, 2005; DoD contractor, interview, March 19, 2006.
130. Former senior CPA official, interview, January 13, 2006.
131. Former senior CPA official, interview, January 13, 2006.
132. Senior USACE official, interview, February 8, 2006.
133. OMB document, *Section 2207 Report*, January 5, 2004 (online at: http://www.whitehouse.gov/omb/legislative/index.html, accessed June 1, 2006).
134. Former CPA official, interview, July 1, 2004.
135. OMB document, *Section 2207 Report*, January 5, 2004.
136. Ibid.
137. Former senior DoD contracting official, interview, January 20, 2006.
138. Senior DoD official, interview, December 12, 2005.
139. DoD contracting officials, interview with PMO/PCO Historian, November 17, 2004.
140. DoD briefing document, "Acquisition Management and Logistics Assessment

Team," February 6, 2004.

141. See former DoD senior contracting official, interviews, November 2-3, 2005; DoD briefing document, "Management and Logistics Assessment Team," February 6, 2004; DoD document, "Draft Recommendations from Management and Logistics Assessment Team," Undated.
142. See e.g. DoD contracting official, interview, January 23, 2006; Senior DoD contracting official, interviews, November 2-3, 2005.
143. Former senior DoD contracting official, interviews, November 2-3, 2005.
144. Ibid.
145. DoD memo, Head of Contracting Activity-CPA to Personnel Assigned to CPA, "Unauthorized Commitments," April 14, 2004, as cited in The Army Lawyer, "Special Topics Regarding Military Contracts," January 1, 2005. (online at: http://www.highbeam.com/library/docfreeprint.asp?docid=1G1:130776906&ctrlInfo=Round18%3AMode18c%3ADocFree%3APrint&print=yes, accessed April 25, 2006).
146. Ibid.
147. Senior DoD contracting official, interview, November 17, 2005.
148. Senior DoD contracting official, written comments to SIGIR, March 10, 2006.
149. SIGIR audit, "Administration of Iraq Relief and Reconstruction Fund Contract Files," SIGIR-05-007, April 30, 2005, p. 6.
150. Ibid.
151. SIGIR report, "Task Orders Awarded by the Air Force Center for Environmental Excellence in Support of the Coalition Provisional Authority, SIGIR- 04-004, July 28, 2004, p. 4.
152. Ibid., p. 1.
153. AFCEE contracting official, interview, July 1, 2004.
154. SIGIR was formerly known as the Coalition Provisional Authority-Inspector General (CPA-IG).
155. SIGIR report, "Task Orders Awarded by the Air Force Center for Environmental Excellence in Support of the Coalition Provisional Authority," SIGIR- 04-004, July 28, 2004, p. 7-8.
156. AFCEE contracting official, conversation with SIGIR staff, February 2006.
157. Ibid.
158. Former senior DoD contracting official, interview, January 20, 2006.
159. DoD briefing document, "Iraq Reconstruction Pre-proposal Conference Briefing. Program Management and Design-Build Construction," January 21, 2004, pp. 10, 27, and 32 (online at: http://www.ndia.org/Content/NavigationMenu/Meetings_and_Events/Past_Events/2004_Iraq_Reconstruction_491C.htm, accessed April 19, 2006).
160. Ibid., p. 73.
161. Ibid., p. 34.
162. Ibid., p. 74.

163. SIGIR report, "Award of Sector Design-Build Construction Contracts," SIGIR-04-005, July 23, 2004, p. 2.
164. DoD briefing, "Iraq Reconstruction Pre-proposal Conference Briefing. Program Management and Design-Build Construction," January 21, 2004, pp. 21 and 42 (online at: http://www.ndia.org/Content/NavigationMenu/Meetings_and_Events/Past_Events/2004_Iraq_Reconstruction_491C.htm , accessed April 19, 2006).
165. SIGIR report, "Award of Sector Design-Build Construction Contracts," SIGIR-04-005, July 23, 2004, p. 2.
166. Former senior DoD contracting official, interview, January 20, 2006.
167. DoD briefing document, "Iraq Reconstruction Pre-proposal Conference Briefing. Program Management and Design-Build Construction," January 21, 2004, p.20 and 73 (online at: http://www.ndia.org/Content/NavigationMenu/Meetings_and_Events/Past_Events/2004_Iraq_Reconstruction_491C.htm, accessed April 19, 2006).
168. SIGIR report, "Award of Sector Design-Build Construction Contracts," SIGIR-04-005, July 23, 2004, p. 16.
169. DoD briefing document, "Iraq Reconstruction Pre-proposal Conference Briefing. Program Management and Design-Build Construction," January 21, 2004, p. 39 (online at: http://www.ndia.org/Content/NavigationMenu/Meetings_and_Events/Past_Events/2004_Iraq_Reconstruction_491C.htm , accessed April 19, 2006).
170. Ibid., p. 20.
171. Ibid., pp. 64-68 and pp.107-110.
172. Senior DoD contracting official, interview, November 17, 2005.
173. SIGIR report, "Award of Sector Design-Build Construction Contracts," SIGIR-04-005, July 23, 2004, p. 6-7.
174. Ibid.
175. Former senior CPA official, interview, November 17, 2005.
176. Former senior CPA official, interview, July 1, 2004.
177. USACE, written comments to SIGIR, April 12, 2006.
178. USACE Commanding General, meeting with SIGIR, May 15, 2006.
179. Senior DoD contracting official, SIGIR Lessons Learned Forum: Contracting I, Washington D.C., December 5, 2005 (transcript p. 151).
180. See e.g., Senior DoD contracting official, interview, November 17, 2005; Former senior DoD official, interviews, November 2-3, 2005; Senior USACE official, interview, February 8, 2006.
181. PMO/PCO contractor, SIGIR Lessons Learned Forum: Contracting II, Arlington, VA, December 13, 2005 (transcript p. 74).
182. Various participants, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript p. 161).
183. Senior DoD contracting official, interview, November 17, 2005.
184. Ibid.

185. See e.g. Former senior DoD contracting official interviews, November 2-3, 2005; Former senior CPA official, interview, March 3, 2006; Former CPA official, written comments, June 7, 2006.
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187. DoD memo, Administrative Assistant to the Secretary of the Army to Director, Army Acquisition Support Center, "Personnel and Ancillary Support for Army Program Management Office (Iraq/Washington, DC), Provisional Organization," May 13, 2004.
188. DoD memo, Deputy Secretary of Defense to DoD Officials, "Organizational Establishment and Placement of the Project and Contracting Office within the Department of the Army," June 22, 2004.
189. Former senior DoD contracting official, interviews, November 2-3, 2005.
190. Senior USAID contracting official, interview, November 2, 2005.
191. Senior USAID official, interview, November 3, 2005.
192. Senior USAID official, interview, November 2, 2005.
193. OTI supports U.S. foreign policy objectives by providing grants to local community leaders and organizations to assist during periods of political crisis and transition. See USAID Contracting Official, interview, November 9, 2005.
194. OTI official, interview, December 20, 2005.
195. USAID staff, written comments to SIGIR, March 9, 2006.
196. USAID press release, "USAID Awards Iraq Infrastructure Contract II," January 6, 2005 (online at: http://www.usaid.gov/press/factsheets/2004/fs040106.html, accessed April 25, 2006).
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198. Former senior USAID official, interview, January 19, 2006.
199. Former senior CPA official, interview, January 13, 2006.
200. Senior DoS official, interview, November 29, 2005.
201. DoS document, "Justification for Other than Full and Open Competition," undated (online at: http://iraqcoalition.org/economy/PMO/State_Justification.htm, accessed March 21, 2006).
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205. Former USAID contractor, interview, December 1, 2005.
206. Senior DoD contracting official, interview, November 17, 2005.
207. Ibid.
208. There are three levels of certification for DoD contracting officers. To reach certification one must meet requirements in both education and professional experience.
209. PCO staff, interview, November 15, 2005.
210. OMB document, *Section 2207 Report*, July 2004.
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214. CPA document, "CPA Situation Reports," unclassified, April 2004.
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220. U.S. Army Audit Agency report, "Program Management in Support of Iraq Reconstruction," A-2005-0194-ALA, May 26, 2005, pp. 15-16.
221. Senior DoD contracting official, interview, February 10, 2006; Former senior DoD contracting official, interviews, November 2-3, 2005; U.S. Army Audit Agency report, "Program Management in Support of Iraq Reconstruction," A-2005-0194-ALA, May 26, 2005.
222. Senior DoD contracting official, interview, February 10, 2006.
223. Senior USACE official, interview, February 8, 2006.
224. USACE-GRD contracting official, interview, November 15, 2005.
225. Senior DoD contracting official, interview, February 10, 2006.
226. See Public Law 108-375 (online at: http://www.defenselink.mil/dodgc/olc/docs/PL108-375.pdf, access April 25, 2006).
227. Former senior DoD contracting official, written comments to SIGIR, April 24, 2006.
228. Senior DoD contracting official, SIGIR Lessons Learned Forum: Contracting I, Washington D.C., December 5, 2005 (transcript p. 152).
229. Ibid.
230. DoS document, *Section 2207 Report*, April 6, 2005, p. 2.

231. DoS document, *Section 2207 Report*, April 6, 2005.
232. Former PCO Director, interview, April 24, 2006.
233. USACE-GRD contracting official, interview, November 15, 2005.
234. CFC FRAGO 09-668, "Contracting and Organizational Changes," 122143Z November 2004.
235. Former senior DoD contracting official, interviews, November 2-3, 2005; Senior DoD contracting official, interview, November 17, 2005.
236. A FRAGO, or fragmentary order, is a military order that reflects a change in a previous operation order.
237. USACE, written comments to SIGIR, April 12, 2006.
238. Former senior DoD contracting official, interview, November 2-3, 2005.
239. Former JCC-I staff person, written comments to SIGIR, November 22, 2005.
240. Senior USAID contracting official, conversation with SIGIR staff, December 1, 2005.
241. Ibid.
242. The original contracts were awarded under a modified process. RFPs were not posted, but sent to pre-determined organizations. See USAID press release, "USAID Procurement Process and Iraq Contingency Planning," March 19, 2003 (online at: http://www.usaid.gov/press/factsheets/2003/fs030320.html, accessed April 23, 2006).
243. P.L. 108-106, November 6, 2003, Section 2202 (online at: http://www.export.gov/iraq/pdf/public_law_108-116.pdf, accessed April 25, 2006).
244. GAO report. "Rebuilding Iraq: U.S. Water and Sanitation Efforts Need Improved Measures for Assessing Impact and Sustained Resources for Maintaining Facilities," GAO 05-872, September 2005, p. 12.
245. OMB document, *Section 2207 Report*, April 2004.
246. DoD memo, "Waiver of Limiting Legislation for Commanders' Emergency Response Program," October 5, 2005.
247. Multi-National Corps-Iraq (MNC-I), written comments to SIGIR, October 5, 2005.
248. CPA Memo, Administrator of the CPA to the Commander of Coalition Forces, "Commanders' Emergency Response Program", June 16, 2003, as cited in Mark Martins, "The Commander's Emergency Response Program (CERP)," Joint Forces Quarterly, Issue 37, 2005.
249. Ibid.
250. Combined-Joint Task Force 7 (CJTF-7) document, "Fragmentary Order 89: Commanders' Emergency Response Program (CERP) Formerly the Brigade Commanders' Discretionary Fund to CJTF-7 OPORD 03-036," June 19, 2003. Unclassified. Copy of copies.
251. Multi-National Corps-Iraq (MNC-I), written comments to SIGIR, October 5, 2005.
252. Ibid.
253. See P.L. 108-106, November 6, 2003.

254. See P.L. 108-287, August 5, 2004.
255. See P.L. 108-447, December 8, 2004; P.L. 109-13, May 11, 2005.
256. See P.L. 108-287, August 5, 2004.
257. H.R. 1815, "National Defense Authorization Act for Fiscal Year 2006," January 6, 2006. p. 320, (online at: http://www.govtrack.us/data/us/bills.text/109/h1815.pdf, accessed April 25, 2006).
258. Multi-National Corps-Iraq (MNC-I), written comments to SIGIR, October 5, 2005.
259. Procurements of more than $100,000 were directed through C8/Comptroller Channels, procedures for which, according to FRAGO 89, would be outlined in a separate document.
260. Mark Martins, "The Commander's Emergency Response Program (CERP)," Joint Forces Quarterly, Issue 37, 2005.
261. Ibid.
262. SIGIR report, "Management of Commander's Emergency Response Program for Fiscal Year 2004," SIGIR 05-014, October 13, 2005.
263. U.S. Army Audit Agency, "Follow-up Audit of the Commander's Emergency Response Program and Quick Response Fund," A-2005-0332-ACE, September 30, 2005.
264. OMB document, *Section 2207 Report*, April 2004, p. 12.
265. Mark Martins, "The Commander's Emergency Response Program (CERP), Joint Forces Quarterly, Issue 37, 2005.
266. Senior USAID official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript p. 69).
267. MNC-I, written comments to SIGIR, November 24, 2005.
268. SIGIR document, Quarterly Report to the U.S. Congress, January 2005.
269. DoS document, *Section 2207 Report*, October 2004.
270. DoS document, *Section 2207 Report*, October 2005.
271. SIGIR document, Quarterly Report to the U.S. Congress, January 2005.
272. Senior MNF-I officials, conversion with SIGIR.
273. DoS report, *Section 2207 Report*, October 2004.
274. The Federal Acquisition Regulation (FAR) is the body of regulation used by federal executive agencies for acquiring supplies and services with appropriated funds. Additionally, DoD, USAID, and DoS have specific supplements to the FAR.
275. USAID has recently developed a "Complex Emergency Waiver Package" that can be modified for differing events – e.g., the Southeast Asian Tsunami, the Pakistan Earthquake, Iraq, etc., that may serve as a model for this. (Source: USAID/Iraq, written comments to SIGIR, June 8, 2006).
276. The FAR is the body of regulation used by federal executive agencies for acquiring supplies and services with appropriated funds. Additionally, DoD, USAID, and DoS have specific supplements to the FAR.

277. Former senior USAID official, interview, February 9, 2006.
278. DoS contracting official, written comments to SIGIR, February, 24, 2006.
279. These communications provide a snapshot of a point in time, fall 2004, and the interaction on contracting concerns between Iraq-based and Washington, DC-based staff. They do not reflect changes to regulations that may have taken place after this time, nor do they provide visibility into activities that may have been taking place simultaneously, but of which requesting and responding agencies were not aware.
280. DoD officials, written comments to SIGIR, March 27, 2006 and March 30, 2006.
281. GAO report, "Federal Procurement: Spending and Workforce Trends," GAO-03-443, April 2003, pp. 5 and 21.
282. OMB officials, interview, January 4, 2006.
283. GAO report, "Federal Procurement: Spending and Workforce Trends," GAO-03-443, April 2003, p. 20.
284. Gloria Sochon and John Krieger, Presentation to the Government Contract Management Conference, December 5-6, 2005.
285. OMB memo, Deputy Director of Management to Chief Acquisition Officials and Senior Procurement Officials, January 20, 2006 (online at: http://www.whitehouse.gov/omb/procurement/acq_wk/fac_contracting_program.pdf, accessed May 1, 2006).
286. Senior DoD contracting official, interview, November 17, 2005.
287. Ibid.
288. Senior JCC-I contracting official, interview, December 30, 2005.
289. Senior USAID contracting official, written comments to SIGIR, November 22, 2005
290. Ibid.
291. Ibid.
292. USAID contracting official, written comments to SIGIR, December 21, 2005.
293. Ibid.
294. Senior DoS contracting official, interview, January 31, 2006.
295. Elliott Corey Yoder, "The Yoder Three-Tiered Model for Optimal Contingency Planning and Execution of Contingency Contracting," Naval Post-Graduate School, Contracting for Deployed Forces Panel, May 19, 2005 (online at: http://www.nps.navy.mil/gsbpp/ACQN/publications/FY05/AM-05-004_Proceedings_ThursdayPM.pdf, accessed April 25, 2006).
296. The training requirements include education on the Commander's Emergency Response Fund, which was created for use in Iraq and is discussed in a previous section of this paper.
297. See National Defense Authorization Act for Fiscal Year 2006, "Joint Policy on Contingency Contracting," Sec. 817, December 18, 2005 (online at: http://www.wifcon.com/dodauth6/dod06_817.htm, accessed April 25, 2006).

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298. See Conference Report 109-360, National Defense Authorization Act for Fiscal Year 2006, "Contractors on the Battlefield," p. 764 (online at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:hr360.109.pdf, accessed July 12, 2006).
299. DoD document, "Draft Army Guidebook for OCONUS Contingency Contracting," December 15, 2005; DoD document, "Draft Army CONUS Guide for Supporting Emergencies within the United States and Supporting Overseas Contingencies from CONUS Locations," December 2005.
300. USAID contracting official, conversation with SIGIR staff, February 8, 2006.
301. USAID contracting official, conversation with SIGIR staff, November 15, 2005.
302. DoS contracting official, conversation with SIGIR staff, March 2006.
303. DoS-AQM, written comments to SIGIR, April 11, 2006.
304. OUSD-ATL, written comments to SIGIR, April 21, 2006.
305. USAID/Iraq, written comments to SIGIR, June 8, 2006.
306. Ibid.
307. Ibid.

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