

The seal of the Office of the Special Inspector General for Iraq Reconstruction is a large, circular emblem in the background. It features a central eagle with its wings spread, holding a shield with vertical stripes and a sunburst above its head. The eagle is surrounded by a circular border containing the text "INSPECTOR GENERAL" at the top and "RECONSTRUCTION" at the bottom. In the center of the seal, there is Arabic text: "المفتش العام" at the top and "إعادة إعمار العراق" at the bottom.

**IRAQ RECONSTRUCTION PROJECT
TERMINATIONS REPRESENT A RANGE
OF ACTIONS**

**SIGIR 09-004
OCTOBER 27, 2008**

Report Documentation Page

Form Approved
OMB No. 0704-0188

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

1. REPORT DATE 27 OCT 2008		2. REPORT TYPE		3. DATES COVERED 00-00-2008 to 00-00-2008	
4. TITLE AND SUBTITLE Iraq Reconstruction Project Terminations Represent a Range of Actions				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Office of the Inspector General for Iraq Reconstruction, 400 Army Navy Drive, Arlington, VA, 22202				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			



SIGIR

Special Inspector General for IRAQ Reconstruction

October 27, 2008

Iraq Reconstruction Project Terminations Represent a Range of Actions

Summary of Report: SIGIR-09-004

Why SIGIR Did This Study

SIGIR has often been asked about problems in the U.S. reconstruction program, including the extent to which contracts have been terminated because of poor performance on the part of the contractor. Government contracts generally contain clauses allowing the U.S. government to end a contract when the need for the supplies or services no longer exists, the contractor's performance becomes unsatisfactory, or some other situation develops that warrants contract closure.

SIGIR previously provided an interim report on the availability of aggregate information on such contract actions involving Iraq reconstruction managed by Department of Defense (DoD) implementing agencies (SIGIR-08-013). This follow-on report provides additional insights on factors and circumstances related to contract terminations of selected projects and the reasons for them.

SIGIR's reporting objectives include determining (1) the numbers, types, and basis for all DoD terminations of Iraq reconstruction projects, and the characteristics of selected termination actions; (2) if terminated projects resulted in wasted government resources; (3) actions DoD agencies took against poor performing contractors; and (4) whether funds were still obligated against terminated projects.

What SIGIR Recommends

SIGIR recommends actions to reinforce the importance of screening contractors against lists of those debarred or suspended from receiving contracts, and deobligate excess funds that remain obligated against terminated contracts.

The U.S. Army Corps of Engineers and the Joint Contracting Command-Iraq/Afghanistan concurred with SIGIR's recommendations.

For more information, contact SIGIR Public Affairs at (703) 428-1100 or PublicAffairs@sigir.mil

What SIGIR Found

As of June 2008, SIGIR identified 1,262 DoD Iraq reconstruction projects that have been terminated, including 732 for the convenience of the government, and 530 for default on the part of the contractor. These terminated projects had initial obligations of nearly \$1 billion of which approximately \$600 million has been paid to contractors, including \$89.7 million to contractors on projects terminated for default. Although a few projects were nearly completed at termination, the vast majority were not. SIGIR selected 195 terminations for more detailed review, drawing largely from projects valued at \$1 million or more, representing about 80 percent of the projects' initial obligation amounts.

SIGIR reviewed 135 terminations for convenience, 56 terminations for default, and 4 that were listed incorrectly as terminations. SIGIR found that terminations for convenience were often due to changes in scope or requirement, security problems, or because the project was no longer needed. In a few cases, projects were terminated because the Government of Iraq did not provide the expected support. SIGIR noted that several projects were terminated for convenience despite indication of poor contractor performance. SIGIR also noted instances where, following terminations, other contractors received contracts to complete work associated with the terminated contracts.

SIGIR found that most terminations for default were due to poor contractor and subcontractor performance; a few were for security problems. Some of these projects were later awarded to other contractors to complete.

SIGIR identified several large projects that were started, terminated (some more than once), and not subsequently completed. Other projects were terminated shortly after work began, requiring the government to pay for contractor-incurred expenses. For these projects, millions of dollars might have been wasted.

SIGIR found no records of action taken to suspend or debar contractors from future contracts as a result of poor performance. In a few cases, poor-performing contractors were awarded additional contracts. SIGIR also confirmed that two contractors who were suspended for fraud and other criminal problems related to other contracts received new reconstruction contracts after being placed on the Excluded Parties List System (EPLS), which meant they should have been prevented from receiving new contracts. Two other contractors were permitted to continue with existing contracts after being suspended and placed on the EPLS. Although the Federal Acquisition Regulation does not require agencies to suspend or debar contractors for poor performance, they do authorize agencies to suspend or debar contractors for failure or refusal to perform on a contract, and for any other action of a serious and compelling nature affecting responsibility.

Finally, SIGIR found that closed out, terminated projects contained about \$16.62 million in unliquidated obligations that the government might be able to deobligate. After informing the agencies of these unliquidated obligations in June 2008, the agencies began reviews to determine if the funds could be deobligated. As of September 2008, \$14.50 million in unliquidated obligations remained.



SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

October 27, 2008

MEMORANDUM FOR U.S. AMBASSADOR TO IRAQ
SECRETARY OF DEFENSE
JOINT SECRETARIAT
OSD POLICY EXECUTIVE SECRETARY
COMMANDER, U.S. CENTRAL COMMAND
COMMANDING GENERAL, MULTI-NATIONAL FORCE – IRAQ
COMMANDING GENERAL, MULTI-NATIONAL SECURITY
TRANSITION COMMAND – IRAQ
DIRECTOR, IRAQ TRANSITION ASSISTANCE OFFICE

SUBJECT: Iraq Reconstruction Project Terminations Represent a Range of Actions (SIGIR 09-004)

We are providing this audit report for your information and use. The report discusses Iraq reconstruction projects terminated for convenience or default by the Department of Defense. We performed this audit in accordance with our statutory responsibilities contained in Public Law 108-106, as amended. This law provides for independent and objective audits of policies designed to promote economy, efficiency, and effectiveness of programs and operations and to prevent and detect fraud, waste, and abuse. This audit was conducted as SIGIR project 8020.

We considered written comments from The U.S. Army Corps of Engineers Gulf Region Division, and Joint Contracting Command-Iraq/Afghanistan, as well as technical comments from the Multi-National Force Iraq and Multi-National Corps-Iraq, in finalizing this report. GRD's and JCC-I/A's written comments are included in the Management Comments section of this report.

We appreciate the courtesies extended to the SIGIR staff. For additional information on this report, please contact Mr. Glenn Furbish (glenn.furbish@sigir.mil, 703-428-1058).

A handwritten signature in black ink, reading "Stuart W. Bowen, Jr." with a period at the end.

Stuart W. Bowen, Jr.
Inspector General

Table of Contents

Executive Summary	i
Introduction	1
Project Terminations	5
Some Terminations Resulted in Unfinished Projects and Wasted Funds	11
Few Adverse Actions Taken Against Problem Contractors and Some Suspended or Debarred Contractors Continue to Work	14
Some Terminated Projects Retain Unliquidated Obligations	18
Conclusions and Recommendations	19
Appendices	
A. Scope and Methodology	20
B. Examples of Projects Terminated for Convenience	23
C. Terminated Contracts with Unliquidated Obligations	27
D. Acronyms	28
E. Audit Team Members	29
Management Comments	
U.S. Army Corps of Engineers	30
Joint Contracting Command-Iraq/Afghanistan	32



Iraq Reconstruction Project Terminations Represent a Range of Actions

SIGIR-09-004

October 27, 2008

Executive Summary

Introduction

Since 2003, the U.S. government has appropriated more than \$50 billion for Iraq reconstruction. Approximately \$46 billion was appropriated through four Iraq reconstruction accounts, which were managed primarily by two Department of Defense (DoD) agencies:

- the U.S. Army Corps of Engineers Gulf Region Division (GRD)
- the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A)

As of July 2008, approximately \$38.37 billion of this amount had been obligated, much of it under contractual arrangements.

SIGIR has often been asked about problems in the U.S. reconstruction program, including the extent to which contracts have been terminated because of poor performance by contractors. Government contracts generally contain clauses that allow the U.S. government to end a contract for a number of reasons, including

- if the need for the supplies or services no longer exists,
- if the contractor's performance becomes unsatisfactory, and
- if some other situation develops that warrants contract closure.

In addressing contract terminations, SIGIR previously issued an interim report on the availability of aggregate information on such contract actions involving Iraq reconstruction projects managed by DoD implementing agencies.¹ That interim report provided an overview of the process for terminating contracts for convenience and default, as well as available information about contract terminations. This follow-on report provides additional insights on factors and circumstances related to contract terminations of selected projects and the reasons for them.

In this report, SIGIR's objectives were to determine:

- the numbers, types, and basis for all DoD terminations of Iraq reconstruction projects, as well as the characteristics of selected terminations actions;

¹ *Interim Report on Iraq Reconstruction Contract Terminations* (SIGIR-08-013, April 28, 2008)

- whether terminated projects resulted in wasted government resources;
- whether DoD agencies ensured the integrity and competence of companies selected for projects terminated for default and took appropriate action, including suspension and debarment, against poor-performing contractors; and
- whether funds were still obligated against terminated projects.

SIGIR's review was limited somewhat by incomplete contract files for the projects reviewed, which made it difficult to thoroughly evaluate the reported terminations. Although most files contained termination modifications or notices, only a few contained other required management documents such as a record of the required legal review of awards, rights of parties, termination procedures, liabilities, settlement proposals and agreements, and other contractual matters. Few files contained any information regarding the percentage of work completed by the contractor at termination; when a percentage was cited, at times it was simply a calculation of the amount of funds expended. Also, the contract files rarely contained a record of agency actions to determine the contractor's prior awards and performance before awarding new contracts.

Results

As of June 2008, SIGIR identified 1,262 projects that DoD had terminated, including 732 for the convenience of the government, and 530 for default on the part of the contractor. These terminated projects had initial obligations of about \$1 billion, of which approximately \$600 million had been paid to contractors, including \$89.7 million to contractors on projects terminated for default. Although a few projects were nearly completed at the time of termination, the vast majority were not. SIGIR selected 195 terminations for more detailed review, drawing largely from projects valued at \$1 million or more, which account for approximately 80% of the initial obligation amounts.

SIGIR reviewed 195 terminations, including 135 for convenience of the government, 56 terminations for default, and 4 terminations incorrectly identified in the Iraq Reconstruction Management System. SIGIR found that terminations for convenience were often the result of changes in scope or requirement, security problems, or because the projects were no longer needed. In a few cases, the projects were terminated because the Government of Iraq (GOI) did not provide the expected support. Several projects were terminated for convenience despite indications of inadequate contractor performance. SIGIR also noted cases in which contracts terminated for convenience were awarded to other contractors for completion.

SIGIR reviewed 56 terminations for default: 39 from GRD, 16 from JCC-I/A, and 1 from Multi-National Corps-Iraq. Most of the contracts were terminated for poor performance by contractors and subcontractors, but a few were terminated for security reasons. Some of the projects were later completed by other contractors.

Waste can result if projects are terminated prior to completion and not subsequently completed or used. SIGIR identified several large projects that were started, terminated (some more than once), and not subsequently completed. Other projects were terminated shortly after work began, requiring the government to pay for contractor-incurred expenses. For these projects, millions of dollars might have been wasted.

Regarding the projects reviewed, SIGIR found no records of actions taken to suspend or debar defaulting contractors because of their poor performance. Some contractors were awarded additional contracts. Although the Federal Acquisition Regulation does not require agencies to suspend or debar contractors for poor performance, agencies are authorized to suspend or debar contractors for failure or refusal to perform on a contract, and for any other action of a serious and compelling nature affecting responsibility.

SIGIR found that in two instances the government awarded new reconstruction contracts to suspended or debarred companies on the Excluded Parties List System (EPLS) based on activities unrelated to the projects we reviewed. In addition, SIGIR identified two contractors on the EPLS that continue to work on contracts awarded to them before their suspension. Subsequently, DoD initiated actions to terminate one of these contracts. The other contract was delayed because the GOI did not provide title to the land. In summary, DoD continues to use two contractors that have been suspended for fraud and responsibility issues.

Finally, SIGIR found that terminated projects contained about \$16.62 million in unliquidated obligations that the government may be able to deobligate. JCC-I/A officials speculated that the contract terminating official may not have released the funds. However, GRD officials said that the U.S. Army Corps of Engineers Financial Management System should identify why the funds were being held. After SIGIR informed the DoD agencies of these unliquidated obligations in June 2008, the agencies stated that they would investigate all of the obligations and take any necessary actions to deobligate unneeded funds. As of September 2008, \$14.50 million in unliquidated obligations remained.

Recommendations

SIGIR recommends that:

1. GRD and JCC-I/A reinforce the importance of screening contractors to ensure that they have not been suspended or debarred; and
2. GRD, JCC-I/A, and the Air Force Center for Engineering and the Environment review all terminated contracts to ensure that unneeded funds have been deobligated.

Management Comments and Audit Response

GRD and JCC-I/A provided written comments concurring with SIGIR's recommendations. GRD and JCC-I/A, as well as Multi-National Force Iraq and Multi-National Corps-Iraq provided technical comments which we considered in finalizing this report. GRD's and JCC-I/A's written comments are included in the Management Comments section of this report.

Introduction

The United States has now appropriated more than \$50 billion for Iraq's reconstruction, primarily from four Iraq reconstruction accounts: \$20.86 billion from the Iraq Relief and Reconstruction Fund (IRRF); \$18.04 billion from the Iraq Security Forces Fund (ISFF); \$3.74 billion from the Economic Support Fund (ESF); and \$3.56 billion from the Commander's Emergency Response Program (CERP).² These four funds account for about 90% of all the money appropriated for Iraq reconstruction through mid-2008. As of July 2008, approximately \$38.37 billion of this amount had been obligated, much of it under contractual arrangements.

This report provides information on Iraq reconstruction contracts and task orders, and corresponding projects managed by Department of Defense (DoD) agencies and terminated either for the convenience of the government or for default on the part of the contractor. SIGIR did not review the termination of projects managed by either the U.S. Agency for International Development (USAID) or the Department of State (DoS).

Background

In the early years of Iraq reconstruction, the U.S. government awarded large, cost-plus award-fee contracts to design and build projects throughout Iraq. Some of these large contracts included numerous task orders for individual projects. More recently, the norm has been to award smaller, fixed-price contracts, many to Iraqi firms. Contracts for reconstruction projects have been undertaken in specific sectors of Iraqi governance and society, including security and law enforcement, justice and public safety, electricity, oil, water and sanitation, transportation and telecommunications, health care, private sector development, and education. Over the past four years, some of these contracts were terminated by the government either for its convenience or for default. SIGIR has often been asked about problems in the U.S. reconstruction program, including the extent to which contracts have been terminated because of poor performance by contractors.

These contracts generally contain clauses that allow the U.S. government to terminate them when the need for the supplies or services no longer exists, the contractor's performance is deemed unsatisfactory, or other circumstances that warrant ending the contract. In Iraq, these other circumstances included changes in strategies or plans, unforeseen security conditions, or the inability of the government and the contractor to come to terms on the cost of the work to be performed. When termination of a project is being considered, the government must decide whether to terminate the contract for the convenience of the government or for default on the part of the contractor.³ The Federal Acquisition Regulation (FAR), Part 49, contains detailed procedures for terminating these contracts.

² CERP enables U.S. military commanders in Iraq and Afghanistan to undertake a variety of projects to respond to urgent humanitarian relief and reconstruction requirements in their areas of responsibility. These may include making condolence payments after combat operations, providing funds for repairs, purchasing critical infrastructure equipment, or conducting large-scale civic cleanups that employ as many Iraqis as possible.

³ When a contractor fails to deliver a commercial item, the contract is terminated for "cause."

The government can cancel work under a contract for “convenience” if it determines that cancellation is in its best interest; for example, when funds are no longer available for continued contract performance, the requirements are no longer needed, or changed circumstances make it impossible to perform the work. The government needs no particular reason to terminate a contract for convenience other than “best interest.” When a contract is terminated for convenience, the government must pay the contractor for the effort it has expended on its behalf. For example, the government must pay the contractor for all materials and supplies purchased and labor costs incurred at the time the government ordered the contractor to stop all work on the project. By issuing a termination for convenience, the government limits its liability only to work completed at the time of termination.

The government can also completely or partially terminate work under a contract for “default” if it determines that the contractor has failed or will fail to perform its contractual obligations. Default terminations are most often due to the contractor’s failure to make delivery of the required supplies or perform the required services within the time specified in the contract. Under a termination for default for a firm fixed price contract, the government is not liable for the contractor’s costs on undelivered work and is entitled to the repayment of advance and progress payments, if any. Under a termination for default for a reimbursable contract, the government is liable for (1) all costs reimbursable under the contract not previously paid, (2) costs of settling and paying termination settlement under terminated subcontracts that are chargeable to the terminated portion of the contract; (3) reasonable costs of settlement of the work terminated, including accounting, legal, clerical and other expenses necessary for the preparation of terminal proposals and supporting data, and (4) a portion of the fee payable under the contract, normally based upon the percentage of work completed.

It is important to note that contracts and task orders that incur problems are sometimes modified to change or reduce the scope of work to be performed, rather than terminated. When applied to contracts with problems, it can have the effect of ending the contract or task order without the need to terminate for convenience or default. SIGIR’s work has identified numerous instances in which contract modifications are used in lieu of a termination, but data are not available that show the frequency of these actions. Descoping is an appropriate process but can mask the universe of problem projects.

Although the FAR does not require agencies to suspend or debar contractors for poor performance, it does authorize the agencies to suspend or debar contractors for failure or refusal to perform on a contract, and for any other action of a serious and compelling nature affecting responsibility. Suspensions are temporary actions taken by agencies to immediately protect the public interest by excluding contractors from receiving further Federal contracts pending the outcome of a criminal investigation or proposed debarment action based on a number of actions, including a contractor’s poor performance. Suspensions can be issued based on “adequate evidence” of wrongdoing and generally do not last more than one year. Debarments are more permanent actions to exclude contractors from such contracts, based on preponderant evidence of wrongdoing, having given the party proposed for debarment notice and opportunity to be heard. Debarments are for a specified period of time as determined by the debarring agency, based on the seriousness of the offense or inadequacy of performance and a finding of a lack of present responsibility on the part of the contractor. Suspension and debarment actions are not to be

punitive measures but rather are designed to protect the public interest by assuring the integrity of the contracting process.

Agency Roles and Responsibilities

To support Iraq relief and reconstruction efforts, the U.S. government has entered into contracts with U.S., Iraqi, and other international firms for thousands of projects for both construction and non-construction activities. Since reconstruction began, six government organizations, have been primarily responsible for implementing Iraq reconstruction efforts: four with the DoD, including the Gulf Region Division (GRD) of the U.S. Army Corps of Engineers, Joint Contracting Command-Iraq/Afghanistan (JCC-I/A), Air Force Center for Engineering and the Environment (AFCEE), and the Multi-National Corps-Iraq (MNC-I); USAID; and DoS.

SIGIR Interim Report

In an April 2008 report,⁴ SIGIR provided an overview of the termination for convenience and default processes and general information on Iraq reconstruction contracts terminated. Information used in this interim report was collected primarily from the Iraq Reconstruction Management System (IRMS).⁵ SIGIR noted that this database does not provide a complete or consistent picture of all reconstruction activities and does not contain complete information on USAID or DoS projects.

Scope and Objectives

Given the continued high level of interest in the issue of terminations, especially those for default, SIGIR completed this follow-on review to more closely determine the basis and impact of these terminations. This follow-on review is based on information obtained not only from IRMS, but from additional databases and contract files of individual projects. Our review of project files also allowed us to examine whether the contracting officers had considered the defaulted contractors' prior performance before awarding such contracts and whether any of these contractors were awarded follow-on contracts.

SIGIR collected contract data from several databases, including IRMS, MAXIMO, and the U.S. Army Corps of Engineers Financial Management System (CEFMS) to determine the total number of Iraq reconstruction contracts and projects terminated by DoD agencies involved in managing Iraq reconstruction projects: GRD, JCC-I/A, MNC-I, and AFCEE. From this total number of terminations, SIGIR then selected 195 projects for detailed review based primarily on their award amount. To ensure that project files reviewed included a large amount of all the monies spent on terminated projects, SIGIR judgmentally selected for review largely those projects with contract amounts of \$1 million or more. SIGIR selected for review, 96 projects with initial obligation amounts of \$1 million or greater. The remaining 99 projects were selected from IRMS and lists provided by the agencies. Also, because many of GRD's project files were located in numerous locations throughout Iraq and not easily accessible, SIGIR also selected for review some project files readily available at GRD. Although the use of a judgment sample

⁴ *Interim Report on Iraq Reconstruction Contract Terminations* (SIGIR-08-013, April 28, 2008)

⁵ Operation and maintenance support for this system is provided by GRD.

limits the projection of the results to the entire universe of terminations, we still believe the results are significant since collectively, the 195 project files reviewed represent over 80% of the initial award amount of all terminations. Additional information on scope is provided in Appendix A.

SIGIR's reporting objectives were to determine:

- the numbers, types, and basis for all DoD terminations of Iraq reconstruction projects, as well as the characteristics of selected terminations actions;
- whether terminated projects resulted in wasted government resources;
- whether DoD agencies ensured the integrity and competence of companies selected for projects terminated for default and took appropriate action, including suspension and debarment, against poor-performing contractors; and
- whether funds were still obligated against terminated projects.

Data Limitations

The scope of SIGIR's audit work was limited by incomplete contract documentation. DoD agencies provided us with either electronic or hard copies of requested individual contract files on terminated projects. Because these files were dispersed throughout Iraq and the continental United States, many were provided to us electronically; as a result, it was not possible to determine whether SIGIR had received all of the information in the official files. Some electronic files SIGIR received contained no contract information at all, while others contained incomplete and insufficient information to address all of the objectives of this audit. The lack of basic data in some files prevented us from discerning the basis or justification for the terminations.

For projects terminated for default, neither the databases nor the project files SIGIR received contained records on whether the contracting officer had reviewed the contractor's performance history prior to awarding the contract. Also, just under half of the files contained detailed information on the percent of project completion at time of termination; at times the percent cited was simply a ratio of the amounts paid to the contractor and the contract amount. On average, only one in four files contained data on whether the contract had undergone the required legal review regarding contract provisions and settlement proposals and agreements.

For a full discussion of the audit scope and methodology, use of computerized data and data limitations, and summary of prior coverage, see Appendix A; for examples of contracts terminated for convenience, see Appendix B; for terminated contracts with unliquidated obligations, see Appendix C; for a list of acronyms, see Appendix D; and for a list of the audit team members, see Appendix E.

Project Terminations

SIGIR identified from DoD databases 1,262 terminations of Iraq reconstruction projects as of June 2008. The majority were terminated for the convenience of the government, but also a sizeable number for contractor default. When awarded, these terminated projects had obligations of about \$1 billion. As of June 2008, DoD had paid approximately \$600 million to contractors for these projects⁶, including \$89.7 million to contractors on projects terminated for default. Although a few projects were nearly complete at the time of the termination action, the vast majority were not. Table 1 summarizes by contracting activity the number of DoD-terminations for convenience and default that SIGIR identified.

Table 1—Terminated Iraq Reconstruction Related Projects

DOD Activity	Terminations for Convenience	Terminations for Default	Total Terminations
GRD	137 (60.4%)	90 (39.6%)	*227
JCC-I/A	544 (55.5%)	437 (44.5%)	981
AFCEE	15 (100%)	0	*15
MNC-I	36 (92.3%)	3 (7.7%)	39
Total	732 (58.0%)	530 (42.0%)	1,262

Source: IRMS and JCC-I/A list of terminations

*These numbers reflect a downward adjustment by SIGIR from 230 (GRD), and 72 (AFCEE) projects initially identified as terminations in IRMS. SIGIR subtracted those projects that were actually descope as the result of project changes or cancellations.

As shown in Table 1, JCC-I/A had the largest number of both terminations for convenience and terminations for default, followed by GRD. JCC-I/A's large number of terminations is the result of it assuming responsibility for the large design build contracts and the contracts awarded by the former Project and Contracting Office.

Selected Terminations Reviewed

In addition to compiling data on all termination actions by DoD agencies, SIGIR judgmentally selected 195 terminated projects for more detailed review, focusing primarily on those projects with initial obligation amounts of \$1 million or greater. The sample also included a smaller number with initial obligations less than \$1 million because the contract files were already at GRD. In total, the projects reviewed by SIGIR account for approximately 80% of the projects' initial obligation amounts.

⁶ SIGIR calculation of amount paid to contractors was based mostly on information in DoD databases. However, this data was not available for JCC-IA and GRD/Gulf Region South. For these agencies, SIGIR used amounts found in project files reviewed. As a result, the \$600 million figure likely under represents the actual amount paid to contractors.

Table 2 lists, by DoD activity, the type of termination (for convenience or for default). Table 3 summarizes, by DoD activity, the contract amounts and amounts paid to contractors.

Table 2: Summary of Termination Actions Reviewed

DOD Activity	Terminations for Convenience	Terminations for Default	Other	Total Terminations
GRD	72 (62.6%)	39 (33.9%)	4 (3.5%)	115
JCC-I/A	38 (70.4%)	16 (29.6%)	0	54
AFCEE	15 (100%)	0	0	15
MNC-I	10 (90.9%)	1 (9.1%)	0	11
Total	135 (69.2%)	56 (28.7%)	4 (2.1%)	195

Note: “Other” includes projects listed incorrectly as terminations in IRMS. These were not discovered until we began our detailed review of files.

Source: SIGIR analysis

Table 3: Summary of SIGIR-reviewed Contracts – Contract Amounts and Amounts Paid Contractors (\$ Millions)

DOD Activity	Contract Amounts	Amounts paid to Contractors
GRD	\$115.5	\$25.2 (21.8%)
JCC-I/A	483.9	445.1 (92.0%)
AFCEE	209.0	106.4 (50.9%)
MNC-I	1.5	0.7 (46.7%)
Total	\$809.9	577.4 (71.3%)

Source: Contract files and CEFMS

Most Terminations Were for the Convenience of the Government

Of the 195 terminations reviewed by SIGIR, 135 were for the convenience of the government. SIGIR found that terminations for convenience were often due to changes in scope or requirement, security problems or because the project was no longer needed. In a few cases, the projects were terminated because the GOI did not provide the expected support. SIGIR noted that despite evidence in the contract files of poor contractor performance, several projects were terminated for convenience instead of default. SIGIR also noted several instances where terminated contracts were awarded to other contractors for completion. SIGIR also noted instances where the databases identified a contract as terminated for convenience but the contract file showed the contract was descope rather than terminated. The following summarizes what SIGIR identified in the contract files by individual DoD contracting activities. More detailed examples are provided in Appendix B.

U.S. Army Corps of Engineers Gulf Region Division

SIGIR examined 72 GRD projects terminated for convenience; all but two have been closed out. These 72 projects were initially estimated to cost about \$82.5 million; of which about \$9.9 million was paid to the contractors. Sixteen of these projects had original estimated costs of \$1 million or more. On 38 projects, work was never started and no payments were made. On 32 projects, work was started and payments averaging about \$300,000 were made to the contractor. One project was 90% complete when it was terminated because an attack destroyed the project. In that instance the contractor was paid about \$964,000 for costs incurred.

Joint Contracting Command-Iraq/Afghanistan

JCC-I/A reported 544 terminations for convenience. About 36 of these projects had estimated costs of \$1 million or more and were awarded mostly to large U.S. corporations, including Parsons Global Services, Inc.; KBR, Inc.; Fluor, LLC; and Washington International/Black & Veatch. About half of the projects were for services or commodities costing less than \$25,000, and about one third were for less than \$10,000. The majority of these had been awarded to Iraqi firms for items such as transformers, water tanks, personal electrical equipment, lights, fans, tools, and gym equipment. SIGIR reviewed 38 projects terminated for convenience and found that although all of them were identified by JCC-I/A as terminations; two were listed in IRMS as completed, four were “cancelled,” and two were “no-cost settlements.” Six JCC-I/A files lacked termination notices.

Air Force Center for Engineering and the Environment

Of the 72 projects AFCEE identified as terminated in IRMS, SIGIR determined that 57 had been closed as a result of scope changes and were not true terminations. The contracting officers had neither provided the contractor with a termination letter nor processed the action as a termination. The remaining 15 contract files were for terminations for the convenience of the government. These 15 projects had original estimated costs of about \$268.1 million, of which \$116.2 million (43%) was paid to the contractors. Two of the projects were terminated because of land ownership problems and ten were terminated due to changes in requirements or because the work planned was no longer needed. Nine of these projects have been closed out.

Multi-National Corps-Iraq

MNC-I initially identified 36 projects as terminations for convenience; all were CERP projects. SIGIR reviewed the files of 11 of these projects and found that 4 contained no information detailing why the contracts were terminated. None of the files contained modifications or notices that officially confirmed the termination. The lack of standard documentation is due, in part, to DoD having authorized waivers to FAR requirements for CERP projects. Seven files contained documentation explaining the reason the project was terminated for convenience. Three examples are discussed in Appendix B.

SIGIR could not determine from information in the databases if follow-on awards had been issued for projects or if the projects had been completed. In addition, there was insufficient documentation in the files to determine if actions had been taken against the contractors for poor performance. Moreover, SIGIR could not determine the reasons why MNC-I classified the

actions as a termination for convenience when documents show that the contractors performed poorly. Of note, however, is one terminated project of special concern.

The Dawoo Al Hassan compact water treatment project was terminated, according to a July 2007 CERP Closure Report, when the contractor took money he had been advanced on the project and fled to Syria and nothing was built. According to documents in the project file, the likelihood that funds from this project were funneled to the insurgency is high. The contractor was advanced \$100,000 in two incremental payments of \$50,000, and the remaining \$95,500 was de-obligated. We have referred information regarding this incident to SIGIR's Investigations Directorate for further review.

According to DoD officials, CERP projects do not have to comply with the FAR requirements. They noted that Section 1202 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006 (P.L. 109-163), as amended by section 1205 of the NDAA for FY 2008 (Public Law 110-181), authorizes the use of DoD operations and maintenance funds in fiscal years 2008 and 2009 for the CERP established for Iraq. Section 1202 also authorizes the Secretary of Defense to waive any provision of law that, if not waived, would prohibit, restrict, limit or otherwise constrain the exercise of authority under CERP. DoD asserts that the nature of the CERP precludes the application of federal procurement and contracting rules, and requires payments to individuals and other nongovernmental entities that may not be consistent with federal laws, or subject to military claims laws and procedures.

Most Terminations for Default are the Result of Poor Contractor Performance

SIGIR reviewed 56 terminations for default; 39 from GRD, 16 from JCC-I/A, and one from MNC-I. Virtually all of these terminations were due to poor contractor and subcontractor performance; a few due to security problems. Some of the projects were subsequently awarded to other contractors to complete the work. SIGIR noted that in some instances contractors received additional contracts after having defaulted on earlier ones. Following are examples of some GRD and JCC-I/A large-dollar projects terminated for default.

U.S. Army Corps of Engineers Gulf Region Division

SIGIR reviewed 39 GRD projects terminated for default and all had been closed out. Most of these projects were terminated because contractors and/or subcontractors failed to meet project requirements and timeframes, or because security issues made it impossible for the contractor to continue work. Generally, SIGIR found the required termination modifications or notices in the project files. However, only a limited number of files contained documentation of the agencies' reviews of the contractors' experience prior to awarding the contract, and few files contained evidence of the required legal review of the project awards, rights of parties, termination procedures, liabilities, settlement proposals and agreements, and other contractual matters. Also, based on the available databases and the files provided by GRD, we were unable to determine whether follow-on contracts were awarded for many of these projects. Following are summaries of four large projects terminated by GRD for default.

An Iraqi company was awarded an indefinite delivery indefinite quantity contract in December 2004 (W916QW-05-D-0014). The contractor was issued task order 1 to construct an Iraqi National Guard battalion barracks. The task order was modified six times to change the statement of work and increased funding to about \$10.6 million. This project was terminated for default in March 2007 when the contractor was unable to make appropriate progress on the final punch list. A punch list contains the final items the contractor should complete before turning over the building to GRD. The punch list identified leaking septic tanks, latrine sinks pulling away from the wall, and structural failures of balconies. The contractor blamed his uncooperative sub-contractor for his inability to complete the work. The contractor was paid \$10.6 million, the total contract amount. In April 2007, an Iraqi company was awarded a contract for \$328,000 to complete the project. The contractor completed the project in December 2007.

In October 2005, an Iraqi company was awarded a \$2.38 million contract (W917BG-06-C-0007) to design and build a 250-man Iraq police station in Falluja. (Note: this project was originally awarded in April 2005 to another Iraqi firm--W917BG-05-C-0051--and also was terminated for default; this original contractor was paid \$1.44 million.) The project was to be completed by March 2006 but contract files show that between April and November 2006, the contractor failed to make significant progress on the project. The contractor complained that his workers were being intimidated by insurgents at the site and that his son had been kidnapped (this was refuted by the local Chief of Police). This contract was terminated for default in November 2006, and the contractor paid \$1.57 million for costs incurred. GRD reported that at termination, the project was 66% completed. (Note: 66% is exactly the percent of the contract paid to the contractor). While the Contracting Officer reported that it would not be a problem to solicit and award the contract again, SIGIR' review of IRMS data did not reveal a follow-on contract award to complete this project.

In September 2005, another Iraqi company was awarded a \$2.0 million contract (W917BG-05-C-0270) to construct a water production and treatment plant in Falluja. After several letters of nonperformance, a cure notice, and a show-cause letter, the project was terminated for default in December 2006 because of the lack of progress. At termination, the contractor had been paid \$864,950 and GRD reported that approximately 43% of the project had been completed. (Note: 43% is the same percent as the amount of the contract paid to the contractor). Contract documents show that the contract would be re-competed in order to complete the work. However, IRMS did not identify a follow-on contract award.

Between August and September 2006, GRD also awarded three firm fixed-price construction contracts to an Iraqi firm to complete road projects. These projects (W917BK-06-P-0171; 0172; 0173), with a combined award amount of \$985,825, were terminated for default in December 2007 after the contractor indicated that he could not financially afford to finish the work. Contract documents show that at termination, between 60% - 70% of the work had been completed and the contractor was paid \$587,817. IRMS did not identify a follow-on contract award to complete these projects.

Joint Contracting Command–Iraq/Afghanistan

As of June 2008, JCC-I/A reported 437 terminations for default. SIGIR reviewed 16 of these projects, all of which had awards of over \$1 million. Most projects were terminated based on the

contractors' failure to perform the work or their noncompliance with the contract. Following are summaries of three projects terminated by JCC-I/A for default,⁷ two involving separate task orders terminated within a single contract.

Parsons Global Service, Inc. (U.S.) was awarded a cost-plus award-fee contract (W914NS-04-D0009) with a \$900 million ceiling and issued several task orders to provide design and construction services in Iraq's security and justice sector.⁸ Two task orders—for western-style prisons—were not completed and were terminated for default. The stated reasons for the termination were Parsons' failure to make sufficient progress on the projects, which endangered performance; lack of schedule adherence; and a failure to control costs which endangered the government's ability to adequately fund the projects to completion.

- In May 2004, Task Order #7 under the above contract was issued for \$40.50 million to design and build the Kahn Bani Sa'ad Correction Facility. In June 2006, the task order was terminated for default; the contractor was paid \$31.06 million. At termination, four security buildings were approximately 25% complete and 15 other buildings required under the task order were no more than 30% complete. A bridge contract was then awarded and \$3.3 million paid to a subcontractor to continue construction until a new contract could be awarded. In September 2006, two follow-on contracts were issued: an Iraqi firm was awarded a \$42.47 million contract (W91GXZ-06-C-0035) to complete construction of the first phase of the prison, and Secure Global Engineering (U.S) was awarded a contract and paid \$1.6 million to provide electrical feeder lines to the prison. In June 2007, the construction project was terminated for convenience because of poor quality construction work and security problems. Documents show that at termination, large amounts of unused equipment and materials were left on site and unsecured. Though none of the planned construction was completed, the Iraqi contractor was paid \$7.2 million to cover expenses. In total, approximately \$43.2 million was spent and the prison was not completed.
- In May 2004, Task Order # 8 under the above contract for \$48.82 million was issued to design and build the Nassriya Prison Facility. In July 2006, this task order was terminated for default and the contractor was paid \$31.0 million. A bridge contract was then awarded and \$2.62 million paid to a subcontractor to keep the site secure. Construction on this facility was continued when the same Iraqi firm noted above was awarded a contract in September 2006 to complete Phase I of the prison. According to contract records, this contractor performed poorly on the Kahn Bani Sa'ad facility and the task order was terminated for convenience. Nevertheless, the contractor was awarded two additional contracts, one in May 2007 to complete Phase II of the prison and another in December 2007 to complete Phase III.

In 2007, AEY, Inc., (U.S.) was awarded a number of contracts to provide ammunition and weapons to troops in Iraq. Five of these contracts were terminated for cause (default) when the

⁷ SIGIR determined that three projects were not true terminations, one project was reclassified as a termination for convenience upon the murder of the company owner, and one project was prematurely closed and eventually reopened. Contract files for two other projects lacked basic contract information.

⁸ *Outcomes, Cost, and Oversight of the Security and Justice Contract with Parsons Delaware, Inc.*; (SIGIR-08-019; July 28, 2008)

contractor failed to deliver the required ammunition in accordance with the delivery terms. No money had been paid to the contractor at termination.

Some Terminations Resulted in Unfinished Projects and Wasted Funds

As noted earlier, project files on projects terminated for convenience or default indicated varying degrees of project completion at the time of terminations; sometimes with other contracts awarded to complete the planned work. Waste can result if projects are terminated prior to completion and not subsequently completed or used. SIGIR identified several large projects that were started, terminated (some more than once), and not subsequently completed. Other projects were terminated shortly after work began, requiring the government to pay for contractor-incurred expenses. For these projects, millions of dollars might have been wasted. For example:

- In July 2005, Ellis Corporation (U.S.) was issued task order 12 under contract (FA8903-04-D-8694) for \$69.32 million to construct facilities for the Iraqi Army's 4th Brigade of the 6th Division at Mahmudiya. This project was terminated for convenience by mutual agreement of both parties after the government determined that the contractor had significant management problems and was performing well below standards. At termination, AFCEE reported that 85% of the work had been completed. The contractor was eventually paid \$69.27 million even though none of the facilities were ever fully completed and many were not even started. IRMS did not identify a follow on award for this project.
- In September 2005, Lucent Corporation (U.S.) was awarded a \$4.74 million contract (W917BG-05-C-0254) to provide a telecommunications network in the city of Falluja. The system was to be installed in a building provided by the GOI. The GOI never provided the building, and subsequent attempts to install the system in a new location were unsuccessful due to security problems. In the end, the contract was terminated for convenience, the telephone system was not installed, and the contractor was paid \$288,700 for costs incurred. IRMS did not identify a follow on award for the project.
- In May 2006, Ellis Corporation (U.S.) was awarded task order 17 under contract (FA8903-04-D-8694) for \$34.20 million to construct facilities for the 1st Division of the New Iraqi Army Headquarters and three battalions at Ramadi. In April 2008, the project was terminated for convenience because the GOI was unable to resolve land ownership disputes, and in the end, according to a DoD audit report⁹, nothing was built. Despite these problems, the contractor was paid \$31.89 million, including about \$10.4 million for security, and \$6.0 million for architecture design, building construction project management, and award fees. According to AFCEE, \$15.0 million was paid to the contractor for materials available for future projects though the DoD audit report noted that the contractor's vouchers did not show that these materials were ever purchased. In addition, a United States Air Force audit report¹⁰ identified unapproved subcontracts under this task order that may result in additional charges of \$14.4 million. The auditors

⁹ DOD Inspector General Report, *Management of the Iraq Security Forces Fund in southwest Asia – Phase II*, (Report No. D-2008-026, November 30, 2007)

¹⁰ Air Force Audit Agency, *Cancelled Iraq Reconstruction Program Task Orders* (Report No. F2008-0013-FD1000, September 11, 2008)

also questioned \$1.32 million of the fee awarded to the contractor. IRMS did not identify a follow-on award for this project.

- In July 2006, CH2M Hill (U.S.) was awarded task order 2 under contract (FA8903-06-D-8510) for \$7.81 million to construct facilities to house an Iraqi battalion and to convert an existing light battalion to a motorized battalion at Sykes. This project was terminated for convenience due to contractor labor cost overruns that would have doubled the total project costs. The contractor was paid \$4.07 million and nothing was constructed. IRMS did not identify a follow on award for this project

Few Adverse Actions Taken Against Problem Contractors and Some Suspended or Debarred Contractors Continued to Work

SIGIR reviewed 56 files on DoD terminations for default to identify agency efforts to (1) ensure the integrity and competence of selected contractors and (2) consider restricting poor performing contractors from receiving new contracts. Specifically, SIGIR examined whether the agencies had evaluated the contractors' prior performance before awarding contracts and whether they had considered suspending or debaring the poor performing contractors. SIGIR examined whether follow-on contracts were awarded to complete the work. SIGIR found that after terminating contractors for default, DoD agencies did not initiate actions to suspend or debar any of the poor performing contractors, and some of these contractors received additional government contracts. SIGIR also found a few suspended or debarred contractors that were awarded new contracts.

As noted earlier, even though the FAR does not require agencies to suspend or debar contractors for poor performance, they do authorize the agencies to suspend or debar contractors for failure or refusal to perform on a contract, and for any other action of a serious and compelling nature affecting responsibility. Suspension and debarment actions both can result in the contractor being placed on the government's Excluded Parties List System (EPLS). This list, maintained by the General Services Administration and available on-line to the public, identifies contractors that, because of their suspension or debarment, are declared ineligible to receive Federal contracts. To determine whether suspended or debarred contractors received new contracts, SIRIG checked their names against those contractors on the EPLS. SIGIR identified four contractors that received awards from DoD either after or just before they were suspended or debarred. Two of the contractors had been charged with fraud and other criminal violations and placed on the EPLS yet received new reconstruction contracts. Two contractors on the EPLS continued to work on contracts awarded to them prior to their suspension, although action was subsequently taken to terminate one contractor's project. Contractors who received contract awards before their suspension are allowed to continue to perform under the prior contract award; however, agencies should consider the consequences of continuing to work with suspended or debarred contractors.

As noted earlier in this report, some of the contract files SIGIR reviewed were incomplete. Neither the databases nor the project files contained complete records on whether the contracting officer had reviewed the contractor's performance history prior to awarding the contract. Also, the files reviewed contained limited information on any subsequent contracts awarded to continue the projects.

Poor Performing Contractors Not Added to the Excluded Parties List System

The U.S. Army, Legal Services Agency has been designated the debaring and suspending authority for the Army. The Procurement Fraud Branch within the Agency works with

contracting officers to prevent and detect contractor fraud in Iraq reconstruction and support contracts and to suspend and debar contractors for fraud or corruption. These efforts are taken to ensure that contracts are awarded to, and performed by, contractors who are honest and ethical and who have the ability to successfully perform the required work. Policies and procedures governing actions that can be taken by agencies on contractors who do not perform—including debarment and suspension—are included in the FAR, Subpart 9.4. Contractors can be debarred for a number of criminal actions, including fraud, theft, embezzlement, bribery, falsification of records, making false statements, and lack of business ethics and integrity. As noted earlier, although the regulations do not require agencies to suspend or debar contractors for poor performance, they do authorize the agencies to suspend or debar contractors for failure or refusal to perform on a contract, and for any other action of a serious and compelling nature affecting responsibility.

In responding to a draft of this report, JCC-I/A noted that the particular circumstances surrounding each termination will determine whether a particular contractor will be placed on EPLS. Poor performance alone, without any showing of fraud or unethical behavior, will not generally result in the contractor being suspended or debarred. Rather, the FAR already has procedures in place to screen poor performers from receiving future Federal contracts.

Our review showed that none of the poor performing contractors whose Iraq reconstruction contracts were terminated for default were placed on the EPLS. Also, we found at least eight contractors that had one or more of their projects terminated for default received new contracts and purchase orders. For example, in September 2006, JCC-I/A awarded two firm fixed-price contracts to an Iraqi contractor for about \$45 million to rehabilitate electrical substations. However, in April 2007, the two contracts were terminated for default. Then, over the next 13 months, JCC-I/A awarded the same contractor three additional procurements: in April 2007, the contractor received a purchase order for headphones; in September 2007, three purchase orders for radio equipment and boots; and in May 2008, a contract to provide solar lighting in Falluja. The latter project was three months behind schedule as of September 2008.

In August 2006, GRD awarded a firm fixed-price contract to an Iraqi contractor to build a public health center in Al Khalis. In October 2006, GRD terminated the contract for default. Between February 2007 and May 2008 the contractor was awarded six additional procurements for forklifts, starter bays, and backpacks, and for construction of divisional training centers and a police training center, and to upgrade a checkpoint.

In August 2006, GRD awarded a firm fixed-price contract to an Iraqi contractor to construct the Aziz-Balad electric power network. In November 2006, GRD terminated the contract for default. Over the next five months, between December 2006 and April 2007, the contractor was awarded six new purchase orders for the delivery of computers and internet phone lines, a copier/scanner, and other office supplies. It appears that these supplies have been delivered and the contractor was paid.

Although the above awards to defaulted contractors were within the authority provided by the FAR, they do raise questions about the degree to which contractor's prior performance is being reviewed.

Two Suspended or Debarred Contractors Were Awarded New Contracts

Contractors that are suspended or debarred and placed on the EPLS, or who are proposed for debarment, are supposed to be prevented from receiving Federal contracts. Also, contracting agencies are prohibited from soliciting offers from, awarding contracts to, or consenting to subcontracts with these contractors unless the agency head determines that there is a compelling reason for such action. Such contractors are also excluded from conducting business with the government as agents or representatives of other contractors.

SIGIR found that in two instances the government awarded new reconstruction contracts to suspended or debarred companies on the EPLS based on activities unrelated to the projects we reviewed. It appears that contracting officers had not checked the EPLS prior to awarding the contracts. One contract was awarded to a contractor already on the list and this contract remains open. Another contract was awarded to a company just before it was suspended. However, the effective date of the contract was after the suspension date. In one instance, DoD took subsequent action to address the suspension issue and terminate the project, but in the other instance, the contractor was allowed to continue the project. There was insufficient documentation in the contract file to indicate why action was taken in one instance but not in another.

In the first instance, an Iraqi construction firm was debarred in June 2006 for allegations of bribery and false claims and was expected to be excluded from receiving further government contracts. However, the Army failed to notify the contractor of the action until October 12, 2006. In September 2006, the firm was awarded a \$3.8 million contract (W91GY1-06-C-0050) to build a waste water pump station in Falluja. (Note: SIGIR's Inspections Directorate has completed a number of inspection reports on the Falluja Waste Water Treatment Plant (PA—08-144 through 148.) According to a U.S. Army Legal Services Agency attorney, delays in notifying the contractor of the suspension were due to security concerns and the failure of contracting personnel to respond to requests for assistance in providing notice to the contractor. As of August 31, 2008, the contractor had been paid about \$2 million under this contract, and contract modifications had increased funding to approximately \$4.4 million. The contractor was to complete the construction by July 2007, but because of contractor delays, the completion date has changed to January 2009.

In the second instance, on July 11, 2007, Lee Dynamics, Inc. (U.S.) was awarded a contract (W91GY0-07-C-0058) to continue providing warehouse operation services in Iraq; the firm's earlier contract expired on July 10, 2007. However, on July 9, 2007, the contractor was suspended from government contracting for allegations of bribery of government officials and money laundering, and JCC-I/A was notified by the Command Judge Advocate that the contractor was about to be suspended. Despite the notice, a decision was made by the contracting officer and Deputy Command Judge Advocate to go forward with the new contract. The contract file documented a meeting of government officials in October 2007 after concerns were raised about continuing to work with a suspended contractor. The Army decided to terminate the contract and to turn the warehouses over to the GOI. The contractor was notified that the government intended to terminate the contract for convenience with an end date of

February 10, 2008. The contractor was paid approximately \$1.07 million for providing personnel to operate the warehouses for seven months and other expenses incurred.

Two Contractors Continued With Existing Contracts After Being Debarred

Agencies may continue contracts or subcontracts in place at the time a contractor is placed on the EPLS or proposed for debarment unless the agency head directs otherwise. However, the agency is not supposed to add new work, exercise options, or otherwise extend the duration of these contracts or purchase orders. Following is a summary of the circumstances surrounding the contracts awarded to two debarred contractors who continued working on existing contracts after being placed on the EPLS.

From December 2004 through September 2007, GRD awarded nine contracts to an Iraqi firm for supplies and construction projects. In March 2008, DoD debarred the contractor for allegations of nonperformance of contract terms and trafficking in counterfeit goods and services, and placed it on the EPLS but allowed it to continue working on an existing contract. As of September 2008, seven of these contracts had been completed and one was terminated for convenience. The remaining contract (W917BG-07-C-0098) to construct a new elementary school in Bayaa for \$1.4 million remains open, because the GOI did not provide the land title until July 2008. It is not clear to SIGIR whether DoD officials had reviewed this open contract to determine if they would continue working with this debarred contractor.

On March 25, 2008, DoD debarred another U.S. contractor AEY, Inc. for allegations of product substitution and placed it on the ESPL. The contractor had received a total of 13 contracts for arms and weapons and other supplies prior to the debarment from June 2005 through January 2008. The contractor completed delivery on six of these contracts; five of the contracts were terminated for cause (default), and the contractor has made a partial delivery on two other contracts (W91GY0-07-M-0670 and W91GY0-07-C-0010). In July 2008, JCC-I/A was preparing a termination for cause notice to the contractor for one of those two contracts, a \$4.6 million weapons contract. The contractor had delivered about 90 % of the supplies under the \$1.6 million second contract. At the time of our review, both contracts remained open.

Some Terminated Projects Retain Unliquidated Obligations

SIGIR examined financial documentation in CEFMS and individual contract files on terminated projects to identify funds obligated, expended, and deobligated, and those unneeded funds that remain unliquidated. SIGIR found that closed out contracts related to terminated projects contained about \$16.62 million in unliquidated obligations that the government could deobligate. DoD has in place policies and procedures that require at least an annual review of unliquidated obligations and timely contract closeouts to determine if there is a continuing need for funds as currently obligated. SIGIR found that agencies' procedures varied in the extent to which they reviewed, completed and documented their unliquidated obligations and contract closeouts. SIGIR also found limited documentation of and justification for their continued obligation of funds related to terminated contracts and task orders.

Obligations are recorded when an authorized agent of the federal government enters into a legally binding agreement to purchase specific goods or services. As bills are received and payments made, the recorded obligation is reduced by the payment amounts, with the balance referred to as the unliquidated obligation. Funds no longer needed may be deobligated. The contract closeout process includes actions involving physical, financial, and administrative closeout components. SIGIR conducted prior audits of controls over unliquidated obligations in IRRF-funded projects¹¹ and agencies management of the closeout process for IRRF funds.¹² Based on these reviews, SIGIR concluded that DoD had opportunities to improve its performance, better document results, and expedite the deobligation of unneeded funds in the future.

SIGIR identified 26 terminated contracts with unliquidated obligations totaling about \$16.62 million. Appendix C lists these terminated contracts, including remaining unneeded funds and unliquidated obligations as of September 2008. JCC-I/A officials speculated that the contract terminating official may not have released the funds. However, GRD officials said that CEFMS should contain information on why the funds were being held. After informing the DoD agencies of these unliquidated obligations in June 2008, the agencies stated that they would investigate all of the unliquidated obligations and take any necessary actions to deobligate unneeded funds. As of September 2008, \$14.50 million in unliquidated obligations remained.

¹¹ *Controls Over Unliquidated Obligations in the Iraq Relief and Reconstruction Fund*, (SIGIR-07-011, October 23, 2007)

¹² *Agency Management of the Closeout Process for Iraq Relief and Reconstruction Fund Contracts*, (SIGIR-07-010, October 24, 2007)

Conclusions and Recommendations

Conclusions

From the sample of cases it reviewed, SIGIR identified a sizeable number of contracts terminated for default. SIGIR found that none of the poor performing contractors whose Iraq reconstruction contracts were terminated for default were placed on the EPLS. SIGIR also found that eight contractors that had at least one of their projects terminated for default received new contracts and purchase orders. Moreover, SIGIR found two instances where the government had awarded new reconstruction contracts to suspended companies already on the EPLS. SIGIR also found two contractors who were permitted to continue with their existing reconstruction contracts after being suspended and placed on the ESPL. These examples raise questions regarding the extent to which DoD agencies are screening Iraq reconstruction contractors' prior performance before issuing them new contracts.

SIGIR's review also identified GRD terminated projects containing about \$16.62 million in unliquidated obligations that the government may be able to deobligate. These instances suggest insufficient attention to completing contract close-out actions.

Recommendations

SIGIR recommends that:

1. GRD and JCC-I/A reinforce the importance of screening contractors to ensure that they have not been suspended or debarred; and
2. GRD, JCC-I/A, and AFCEE review all terminated contracts to ensure that unneeded funds have been deobligated.

Management Comments and Audit Response

GRD and JCC-I/A provided written comments concurring with SIGIR's recommendations. GRD and JCC-I/A, as well as Multi-National Force Iraq (MNF-I) and MNC-I provided technical comments which were considered in finalizing this report. GRD's and JCC-I/A's written comments are included in the Management Comments section of this report.

Appendix A—Scope and Methodology

The purpose of this audit was to examine government decisions to terminate Iraq reconstruction contracts and/or task orders funded by IRRF, CERP, ISFF, or ESF either for the convenience of the government or due to contractors' default. SIGIR's reporting objectives includes determining:

- the numbers, types, and basis for all DoD terminations of Iraq reconstruction projects, as well as the characteristics of selected terminations actions;
- whether terminated projects resulted in wasted government resources;
- whether DoD agencies ensured the integrity and competence of companies selected for projects terminated for default and took appropriate action, including suspension and debarment, against poor-performing contractors; and
- whether funds were still obligated against terminated projects.

To determine the total number, type and basis for all Iraq reconstruction contracts and projects terminated and related information, SIGIR relied on information in IRMS and CEFMS. IRMS was established as a reporting database for reconstruction and nonreconstruction project data from the various U.S. implementing agencies operating in Iraq. Although it provides the most complete data available on project terminations, as SIGIR noted in its interim report, not all DoD agencies use the system on a regular basis. Furthermore, as GRD confirmed, the failure of these agencies to routinely input data into IRMS impacts the system's ability to provide current and accurate information. For example, JCC-I/A did not include all its awards to AEY, Inc., and the related terminations in the IRMS system.

Within IRMS, GRD also uses a software program called MAXIMO for asset management and maintenance to help automate all aspects of maintenance operations, including equipment history, scheduling, preventive maintenance, work orders, labor and expense tracking, procurement and reporting. SIGIR used this program to identify all projects terminated for convenience and terminated for default. In addition, we requested a list of all terminated contracts from the individual organizations. SIGIR had direct access to MAXIMO.

CEFMS, the U.S. Army Corps of Engineers' automated financial management system, is intended to provide timely, accurate, and comprehensive financial information for all levels of management, especially at the program and project management level, through the interface with other information system programs. SIGIR had direct access to CEFMS data.

To access the basis for agency decisions to terminate some of the contracts and projects, SIGIR reviewed relevant contract files and agency policies and procedures, and held discussions with selected DoD officials in Baghdad and Washington, DC.

To examine efforts made by DoD agencies to ensure the integrity and competence of contractors, SIGIR reviewed relevant contract files and tracked through IRMS the extent to which defaulted contractors received new reconstruction contracts. SIGIR compared the list of contractors terminated for default to the EPLS to identify actions taken against the defaulted contractors.

SIGIR also examined whether contractors on the EPLS received any new contracts after being suspended or debarred and whether any Iraq reconstruction contractors continue to work on contracts awarded prior to being suspended or debarred.

To develop information on how terminated projects could result in wasted government resources, SIGIR relied on information in IRMS to identify any follow-on contracts for DoD projects terminated. SIGIR also relied on IRMS to determine the project outcome. SIGIR relied on data in CEFMS to compile data on total obligations and expenditures for individual contracts and projects.

To determine whether funds were still obligated against terminated contracts and projects, SIGIR reviewed the basic contract, contract task orders, change orders, scope changes and contract modifications. SIGIR relied on CEFMS to identify the individual contracts and projects and compiled data on obligations, deobligations and expenditures. We compared the CEFMS data to the individual contract files to identify any unliquidated obligations.

SIGIR performed this audit under the authority of Public Law 108-106, as amended, which incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended. It was conducted between May and September 2008 in accordance with generally accepted government auditing standards. Those standards require that SIGIR plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. SIGIR believes that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Use of Computer-Processed Data

To perform this audit, SIGIR used data that originated in IRMS, MAXIMO and CEFMS. To achieve our objectives, SIGIR examined computer-processed data contained in the above databases to identify, verify, and crosscheck information on projects terminated by DoD agencies. As noted in this report and our interim report, our review of system controls casts doubt on the data's completeness and accuracy. Nevertheless, for purposes of this review, SIGIR relied greatly on the IRMS data system because it contained the most complete data on contract terminations. SIGIR identified a number of concerns about the accuracy and completeness of the data system. These concerns, as well as the limitations and relevance of the data, are discussed in this report.

We also obtained financial and management information from individual project files and used this information to crosscheck information from the databases. We believe these steps provide reasonable confidence in our presentation of the data.

Internal Controls

SIGIR also assessed the management controls used to implement FAR requirements related to terminations for convenience and default. SIGIR did not look at the actual practices and procedures used to determine the effectiveness of these controls.

Most of the data on DoD agency project terminations was obtained from several DoD databases, including IRMS and CEFMS. As noted above, even though IRMS data is incomplete, it is recognized by DoD as having the most complete data on contract terminations. Although SIGIR did not assess the overall DoD management controls related to this data, we did review and compare data from the different databases to identify anomalies. Even though we also used financial and management information from CEFMS, we did not perform an overall evaluation of the system.

We also obtained financial and management information from individual project files and used this information to crosscheck information from the databases. We believe these steps provide reasonable confidence in our presentation of the data.

Prior Coverage

The Office of the Special Inspector General for Iraq Reconstruction issued the following related audit reports, accessible on its website at <http://www.sigir.mil>.

- *Outcome, Cost, and Oversight of the Security and Justice Contract with Parsons Delaware, Inc.* (SIGIR-08-019, July 28, 2008)
- *Review of Outcome, Cost, and Oversight of Electricity-Sector Reconstruction Contract with Perini Corporation* (SIGIR-08-011, April 29, 2008)
- *Interim Report on Iraq Reconstruction Contract Terminations* (SIGIR-08-013, April 28, 2008)
- *Review of Outcome, Cost, and Oversight of Iraq Reconstruction Contract W914NS-04-D-0006* (SIGIR-08-010, January 28, 2008)
- *Controls Over Unliquidated Obligations in the Iraq Relief and Reconstruction Fund* (SIGIR-07-011, October 23, 2007)
- *Agency Management of the Closeout Process for Iraq Relief and Reconstruction Fund Contracts* (SIGIR-07-010, October 24, 2007)
- *Issues Related to 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)
- *Management of Iraq Relief and Reconstruction Fund Program: The Evolution of the Iraq Reconstruction Management System* (SIGIR-06-001, April 24, 2006)
- *Review of Data Entry and General Controls in the Collecting and Reporting of the Iraq Relief and Reconstruction Fund* (SIGIR-06-003, April 28, 2006)

Appendix B—Examples of Projects Terminated for Convenience

U.S. Army Corps of Engineers, Gulf Region Division

The following two projects, with initial awards of over \$1 million and with substantial payments to contractors, reflect some of the issues surrounding these large terminations for convenience.

In September 2004, Perini Corporation was issued a task order under contract W914NS-04-D-0011 to improve the security and reliability of four electrical transmission network projects. In March 2005, after experiencing delays and high cost estimates, the project was terminated for convenience prior to construction. The contractor was paid \$2.87 million for incurred costs. In September 2006, JCC-I/A awarded an Iraqi company two follow-on contracts (W91GXY-06-C-0096 and W91GXY-06-C-0082) for \$45 million to rehabilitate the electrical projects. These contracts were terminated for default in April 2007; the contractor was paid nothing for its work. That same month another contract was awarded to Pauwels International to complete the projects. As of May 2008, \$29.04 million had been paid to this contractor. Three of the four projects under this contract are behind schedule.

In June 2005 an Iraqi firm received a contract (W917BG-05-C-0068) to build the \$1.1 million Yousefiya Police Station in Baghdad. When the building was approximately 90 percent completed, it was destroyed by either a mortar or a rocket attack. The project was closed out in June 2006 and the contractor was paid \$963,948 for costs incurred. While GRD initially listed it as a termination for convenience, contract files show that it was actually “de-scoped”; no termination modification was found in the files. Contract files indicate that GRD considered using the remaining funds to pay the contractor to remove the rubble from the building, but no follow-on contract was awarded.

Joint Contracting Command—Iraq/Afghanistan

Following are summaries of several of the large JCC-I/A terminated projects including issues surrounding these large terminations.

In March 2004, Parsons Global Services, Inc. was awarded a cost-plus-award-fee contract (W914NS-04-D-0006) to provide design and construction services in the electric, health, and water resources and sanitation sectors. SIGIR reported in detail on this contract in January 2008.¹³ The government later issued a total of 14 task orders against the contract’s \$500 million ceiling, mostly for maternity and pediatric hospitals and primary health care centers (PHC) in Iraq. Ultimately, eight of these task orders were terminated for convenience, including three task orders for 150 PHCs; follow-on contracts were awarded to Iraqi firms for the construction of some of these PHCs. Work was completed on six of the PHCs, and between 9% and 94% of the

¹³ *Review of Outcome, Cost, and Oversight of Iraq Reconstruction Contract*, W914NS-04-D-0006 (SIGIR-08-010, January 28, 2008).

required work was completed on another 135 PHCs. Summaries of four of these terminated task orders follow.

- *Task Order 04* – Issued in May 2004 to construct 150 PHCs and expected to cost \$15 million, the scope of this task order was reduced and modified to require construction of only 40 PHCs. Due to construction shortfalls and the contractor’s noncompliance with quality, safety, and schedule requirements, it was terminated for convenience in March 2006. JCC-I/A estimates that the contractor had completed 80% of the project and, when closed out, was paid \$50.1 million. SIGIR was able to locate only 34 of the 40 projects in IRMS. IRMS also showed follow-on contracts for 14 of the projects. SIGIR determined that of these 14 projects, only 9 had been completed and given to the GOI, 4 were terminated for convenience, and 1 was terminated for default. The remaining 20 projects were cancelled.
- *Task Order 08* – Issued in September 2004 for \$10.5 million to modernize three maternity and one pediatric hospitals in southern Iraq, this task order was terminated after it was determined that contractor was not making enough construction progress. At termination, contractor had completed work on three hospitals, and 79% of the fourth hospital. The contractor was paid \$10.4 million.
- *Task Order 11* – Issued in October 2004 to construct 50 PHCs, this task order was modified to increase funding to \$66.8 million. Due to construction shortfalls and the contractor’s noncompliance with quality, safety, and schedule requirements, the contract was terminated for convenience in March 2006. None of the PHCs were completed; Parsons completed 96% of four PHCs and an average of 65% of the remaining PHCs. The contractor was paid \$45.78 million.
- *Task Order 12* – Issued in October 2004 to construct 60 PHCs for \$40.9 million, this task order was modified to increase funding to \$69 million. Due to construction shortfalls and the contractor’s noncompliance with quality, safety, and schedule requirements, the contract was terminated for convenience in March 2006. None of the PHCs were completed; Parsons nearly completed three PHCs, and a weighted average of 53% of 55. Two PHCs were dropped from the contract. The contractor was paid \$53.71 million.

In April 2004, Parsons Global Services, Inc. was awarded a cost-plus-award-fee contract (W914NS-04-D-0009) to provide design-build construction for security and justice projects. SIGIR reported in detail on this contract in July 2008.¹⁴ The government later issued 56 task orders under the contract, including 53 for construction projects. Of these, 18 were completed, seven were partially completed before being terminated for convenience, two were terminated for default, and 26 were cancelled before any significant construction activity. The government cited repeated delays in construction as the reason for terminating seven task orders for convenience and two for default. Summaries of two terminated task orders follow.

¹⁴ *Outcome, Cost, and Oversight of the Security and Justice Contract with Parsons Delaware, Inc.* (W914NS-04-D-0009; SIGIR-08-019, July 28, 2008)

- *Task Orders 06 and 29* – Issued in May 2004 and June 2004 to construct the Baghdad Police Academy and expected to cost about \$58 million, these task orders were terminated for the convenience of the government because of repeated construction delays, the failure to remediate construction deficiencies, and increasing costs. At termination, most of the buildings at the Academy were approximately 95% complete; a dining hall was approximately 75% complete, and the gymnasium was approximately 55% complete. (SIGIR issued an inspection report on this project in January 2007.¹⁵) SIGIR found that the buildings constructed and given to the GOI had major plumbing problems. As of July 2008, about \$57 million had been disbursed under these task orders.

After these task orders were terminated, the Multi-National Security Transition Command-Iraq chose to use AFCEE to award a contract to repair the defective work. AFCEE awarded task order 8 under contract FA8903-06-D-8515 for about \$6.7 million to repair defective work under the original contract and to complete the facilities. Some problems, however, could not be fixed. For example, the failure to properly install expansion joints could not be remediated, and in several buildings plumbing deficiencies were so significant that the water had to be turned off and a separate building erected for shower and lavatory use.

In January 2004, KBR, Inc. (U.S.) was awarded a cost-plus award-fee contract (W9126G-04-D-0001) and issued thirty task orders against the contract's \$1.2 billion ceiling to restore and repair Iraqi oil and gas infrastructure in the south. Task Order 11, was originally issued in May 2004 with initial funding of \$5 million and incrementally increased to \$146.67 million. Escalating costs increases were a result of increased equipment, management, support, training, reconstruction and closeout costs. The task order was terminated for convenience in May 2007 due to increases in project life support and security costs resulting in insufficient funds to complete the final phase of the project. At termination, essentially all the work had been completed except for installation of the rotors for the turbine gas compressors, and the purchase of new nitrogen plant due to the bankruptcy of a subcontractor. The contractor was paid \$143.0 million at termination.

In April 2004, FluorAmec, LLC (U.S.) was issued a \$7.5 million task order under contract (W914NS-04-D-0008) to construct the Halabja Water Supply Line. The project was terminated for convenience in October 2004 as part of the reprogramming of funds from the Public Works and Water Sector. Even though construction was never started, the contractor was paid \$2.02 million to cover mobilization expenses and fees.

Air Force Center for Engineering and the Environment

Summaries of three large, projects terminated by AFCEE were reported in “Some Terminations Resulted in Unfinished Projects and Waster Funds” of this report.

¹⁵ Baghdad Police College; PA-06-78.2 & PA-06-079.2; January 29, 2007

Multi-National Corps-Iraq

Following are examples of three MNC-I projects terminated for convenience.

- The Khan Dhari irrigation canal cleaning project was terminated when the contractor stopped work on the project. The contractor was paid \$58,979 for the approximate 20 percent of work completed, and the remaining \$232,280 was de-obligated.
- The Al Watan school project was terminated due to insufficient progress and poor quality work by the contractor. The contractor was paid \$60,000 and the remaining \$21,240 was de-obligated
- A Heifa/Asale school project was terminated when the contractor refused to correct the deficiencies identified during the final inspection. The contractor was paid \$11,000 and the remaining \$30,000 was de-obligated.

Appendix C—Terminated Contracts with Unliquidated Obligations

Contract Number	Unliquidated Obligations (5/2008)	Deobligated	Remaining Unliquidated Obligations (9/2008)
Terminations for Convenience			
W917BG-05-C-0029	\$ 74,783	\$ 74,783	
W917BG-05-C-0244	736,200		\$ 736,200
W917BG-05-C-0235	952,175	698,293	253,882
W917BG-05-D-0008/17	172,294		172,294
W917BG-06-C-0170	34,310	34,310	
W917BG-06-D-0020/004A	440,370		440,370
W917BG-06-D-0006/14	222,700		222,700
FA8903-06-D-8510/02	5,613	5,613	
FA8903-04-D-8683/83	114,188	94,195	19,993
FA8903-04-D-8694/12	52,708		52,708
FA8903-04-D-8676/62	15,000		15,000
FA8903-04-D-8694/17	2,316,857		2,316,857
FA8903-06-D-8511/33	42		42
FA8903-06-D-8515/08	1,232,937	186,047	1,046,890
FA8903-06-D-8505/05	135		135
FA8903-06-D-8512/03	4,357,702		4,357,702
Sub-Total	\$ 10,728,014	\$ 1,093,241	\$ 9,634,773
Terminations for Default			
W917BG-05-C-0102	\$ 84,010		\$ 84,010
W917BG-05-C-0161	99,750		99,750
W917BG-06-C-0105	395,487		395,487
W917BK-06-P-0153	33,200	33,200	
W917BK-06-P-0131	104,200		104,200
W917BG-07-C-0082	229,689		229,689
W91GXY-06-C-0082	736,215	736,215	
W91GXY-06-C-0096	250,000	250,000	
W917BE-06-C-0049	53,978		53,978
W91GXY-06-C-0046	3,900,602		3,900,602
Sub-Total	\$ 5,887,131	\$ 1,019,415	\$ 4,867,716
TOTAL	\$ 16,615,145	\$ 2,112,656	\$ 14,502,489

Appendix D—Acronyms

Acronym	Description
AFCEE	Air Force Center for Engineering and the Environment
CEFMS	U.S. Army Corps of Engineers Financial Management System
CERP	Commanders Emergency Response Program
DoD	Department of Defense
DoS	Department of State
EPLS	Excluded Parties List System
ESF	Economic Support Fund
FAR	Federal Acquisition Regulation
GOI	Government of Iraq
GRD	U.S. Army Corps of Engineers, Gulf Region Division
IRMS	Iraq Reconstruction Management System
IRRF	Iraq Relief and Reconstruction Fund
ISFF	Iraq Security Forces Fund
JCC-I/A	Joint Contracting Command-Iraq/Afghanistan
MNC-I	Multi-National Corps-Iraq
PHC	Primary Health Care Center
SIGIR	Office of the Special Inspector General for Iraq Reconstruction
ULO	Unliquidated Obligation
USAID	U.S. Agency for International Development

Appendix E—Audit Team Members

This report was prepared, and the audit work conducted, under the direction of David R. Warren, Assistant Inspector General for Audit, Office of the Special Inspector General for Iraq Reconstruction. The staff members who contributed to the report include:

Peter Lee

Richard McVay

George Salvatierra

Frank Slayton

Lovell Walls

Management Comments

U.S. Army Corps of Engineers



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
GULF REGION DIVISION
BAGHDAD, IRAQ
APO AE 09348

CEGRD-CG

14 October 2008

MEMORANDUM FOR Special Inspector General for Iraq Reconstruction, US Embassy Annex,
M-202, Old Presidential Palace, APO AE 09316

SUBJECT: Draft SIGIR Audit Report – Iraq Reconstruction Project Terminations Represent a
Range of Actions (SIGIR- 09-004)

1. This memorandum provides the U.S. Army Corps of Engineers, Gulf Region Division response to the subject draft audit report.
2. The Gulf Region Division reviewed the subject draft report and generally agrees with the facts as presented in the report. GRD provides additional comments for clarity and accuracy in the enclosure.
3. Thank you for the opportunity to review the draft report and provide our written comments for incorporation in the final report.
4. If you have any questions, please contact Mr. Robert Donner at (540) 665-5022 or via email Robert.L.Donner@usace.army.mil.

Encl
as

Michael R. Eyre
MICHAEL R. EYRE
Major General, USA
Commanding

COMMAND REPLY
to
**SIGIR Draft Audit Report – Iraq Reconstruction Project Terminations Represent a
Range of Actions**
SIGIR Report Number 09-004
(Project 8020)

Recommendation 1. SIGIR recommends that GRD and JCC-I/A reinforce the importance of screening contractors to ensure they have not been suspended or debarred.

Concur. GRD contracting officials access several databases to screen contractors to make sure they have not been suspended or debarred.

Recommendation 2. SIGIR also recommends that AFCEE, GRD and JCC-I/A review all terminated contracts to ensure that unneeded funds have been deobligated.

Concur. GRD contracting personnel prepare a contract modification to deobligate remaining funds once any settlement costs are determined. In addition, GRD Resource Management Division continuously reviews unliquidated obligations and deobligates funds no longer needed on a contract after appropriate notification from the program manager and contracting officer.

Overall Comment. The Gulf Region Division (GRD) reviewed the report and provides the following comments.

1. **Draft Report, page 13, second paragraph.** In the first instance, in September 2006, an Iraqi construction firm was awarded a \$3.8 million contract (W91GY1-06-C-0050) to build a waste water pump station in Fallujah. In June 2006, the contractor was suspended for allegations of bribery and false claims and was excluded from receiving government contracts. However, the contractor was not notified of the suspension until October 12, 2006. Delays in notifying the contractor of the suspension were attributed to security concerns and failure of GRD contracting personnel to respond to requests for assistance in providing notice to the contractor.

Command Comment. GRD did not award the subject contract; it was awarded by JCC-I/A. The Procuring Contracting Officer obtains the right to contact the contractor. Thus, JCC -I/A should have notified the contractor of the suspension. In addition, the report contains no basis or support that GRD contracting personnel failed to respond to requests for assistance in notifying the contractor.

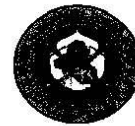
Enclosure

Management Comments

Joint Contracting Command-Iraq/Afghanistan



DEPARTMENT OF THE ARMY
JOINT CONTRACTING COMMAND-IRAQ
APO AE 09316



14 October 2008

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL, Audit Special
Inspector General for Iraq Reconstruction (SIGIR)

SUBJECT: Comments to Report - Iraq Reconstruction Project Terminations Represent a Range
of Activities (SIGIR 09-004) (Project 8020)

1. The Joint Contracting Command – Iraq/Afghanistan (JCC-I/A), requests the following comments be considered prior to finalizing the above referenced Audit Report.
2. The audit found that none of the poor performing contractors whose contracts were terminated for default were placed on the Excluded Parties List System (EPLS). The particular facts and circumstances surrounding each termination will determine whether a particular contractor will be placed on EPLS. Poor performance alone, without any showing of fraud or unethical behavior, will not generally result in the contractor being suspended or debarred. Rather, the federal acquisition regulations already have procedures in place to screen poor performers from receiving future Federal contracts. For example, most solicitations already require a performance evaluation of an offeror's past performance data as delineated in FAR Part 15.
3. The Report also identified agency recommendations. All potential contractors are required to be screened through EPLS to determine whether they have been debarred, suspended, or otherwise declared ineligible from receiving Federal contracts. Contracting centers will be reminded of the importance of this step in the acquisition process to help ensure contracts are being awarded only to honest and ethical contractors.
4. Additionally, the propriety of proposed contract terminations for default are reviewed by contracting and technical personnel, and legal counsel pursuant to FAR 49.402-3. Our Acquisition Instruction, dated 29 July 2008, similarly requires OPARC review for all contract terminations, except no cost terminations and cancellations. To ensure funds have been properly de-obligated from terminated contracts, contracting centers will be asked to review all terminated contracts to determine that funds have been de-obligated.
5. POC is the undersigned at (703) 544-6390.


ROGER H. WESTERMEYER, Col, USAF
Deputy Commander

SIGIR's Mission	<p>Regarding the U.S. reconstruction plans, programs, and operations in Iraq, the Special Inspector General for Iraq Reconstruction provides independent and objective:</p> <ul style="list-style-type: none"> • oversight and review through comprehensive audits, inspections, and investigations • advice and recommendations on policies to promote economy, efficiency, and effectiveness • deterrence of malfeasance through the prevention and detection of fraud, waste, and abuse • information and analysis to the Secretary of State, the Secretary of Defense, the Congress, and the American people through Quarterly Reports
Obtaining Copies of SIGIR Reports and Testimonies	<p>To obtain copies of SIGIR documents at no cost, go to SIGIR's Web site (www.sigir.mil).</p>
To Report Fraud, Waste, and Abuse in Iraq Relief and Reconstruction Programs	<p>Help prevent fraud, waste, and abuse by reporting suspicious or illegal activities to the SIGIR Hotline:</p> <ul style="list-style-type: none"> • Web: www.sigir.mil/submit_fraud.html • Phone: 703-602-4063 • Toll Free: 866-301-2003
Congressional Affairs	<p>Hillel Weinberg Assistant Inspector General for Congressional Affairs Mail: Office of the Special Inspector General for Iraq Reconstruction 400 Army Navy Drive Arlington, VA 22202-4704 Phone: 703-428-1059 Email: hillel.weinberg@sigir.mil</p>
Public Affairs	<p>Kristine R. Belisle Director for Public Affairs Mail: Office of the Special Inspector General for Iraq Reconstruction 400 Army Navy Drive Arlington, VA 22202-4704 Phone: 703-428-1217 Fax: 703-428-0818 Email: PublicAffairs@sigir.mil</p>