

Audit Report



Award of Sector Design-Build Construction Contracts

Report Number 04-005

July 23, 2004

**Office of the Inspector General
Coalition Provisional Authority**

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Acronyms

CPA	Coalition Provisional Authority
DASA(P&P)	Deputy Assistant Secretary of the Army (Policy and Procurement)
DCAA	Defense Contract Audit Agency
FAR	Federal Acquisition Regulation
JV	Joint Venture
KBR	Kellogg, Brown and Root, Incorporated
RFP	Request for Proposal
PCO	Projects and Contracting Office
SSEB	Source Selection Evaluation Board



COALITION PROVISIONAL AUTHORITY
OFFICE OF THE INSPECTOR GENERAL

July 23, 2004

MEMORANDUM FOR AMBASSADOR TO IRAQ
ASSISTANT SECRETARY OF THE ARMY (ACQUISITION,
LOGISTICS AND TECHNOLOGY)
DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION
POLICY
IRAQ RECONSTRUCTION MANAGEMENT OFFICE
COMMANDER, U.S. ARMY CORPS OF ENGINEERS
COMMANDER, NAVAL FACILITIES ENGINEERING COMMAND

SUBJECT: Report on Award of Sector Design-Build Construction Contracts
(Report No.04-005)

We are providing this report for your information and use. We performed the audit in accordance with our statutory duties contained in Public Law 108-106 which mandates the conduct of audits relating to the treatment, handling, and expenditure of funds by the CPA or its successor entities on Iraq reconstruction, and of the programs operations, and contracts, carried out in utilizing such funds. We considered management comments in preparing the final report.

We appreciate the courtesies extended to the staff. Questions should be directed to Mr. John Betar, (703) 428-1094 or Mr. Donney J. Bibb at (703) 428-0467. If management requests, we will provide a formal briefing on the results. See Appendix C for the report distribution.

Stuart W. Bowen, Jr.
Inspector General
Coalition Provisional Authority

**Office of the Inspector General
Coalition Provisional Authority**

Report No. 04-005

July 23, 2004

Award of Sector Design-Build Construction Contracts

Executive Summary

Background. Public Law 108-106 Congress appropriated over \$18.6 billion¹ for the Iraq Relief and Reconstruction Fund, November 6, 2003, including \$18.4 billion designated for Iraq. Those funds can be used through September 2006. The Project and Contracting Office,² Coalition Provisional Authority supervises reconstruction efforts in Iraq and manages execution of the \$18.4 billion. The Project and Contracting Office has six Sector Project and Contracting Offices that oversee reconstruction. The sectors are Public Works and Water; Security and Justice; Buildings, Education, and Health; Electric; Communications and Transportation; and Oil.

To help rebuild the Iraqi infrastructure, DoD Components awarded 12 design-build construction contracts, valued as much as \$7 billion. Two contracts were awarded in January 2004 to rebuild the oil sector and 10 contracts were awarded in March 2004 for the other sectors. Each contract was an indefinite-delivery indefinite quantity contract that provides for the issuance of task orders on either a cost reimbursement or fixed price basis. This contracting vehicle was used in order to minimize the costs of mobilizing and de-mobilizing contractors and administering the contracts, and to facilitate training and transition of responsibility to the Iraqi people. Each contractor will perform a portion of the work within a sector. As such, the contractors will not compete for work performed within the scope of their contracts.

Results. For the six contracts we reviewed, DoD Components used competitive procedures to award the design-build construction contracts for rebuilding the Iraqi infrastructure. However, except for the two contracts for the oil sector, the contract awards were limited to sources from designated countries, the United States, Iraq, Coalition partners, and force contributing nations. On awarding these contracts, Army components properly advertised the requirements, developed source selection plans, and had sufficient controls to ensure the plans were followed. As a result, the U.S. Government will potentially obtain the benefits derived from competitive contracting. Nonetheless, the Project and Contracting Office faces challenges in ensuring that tasks performed under these contracts fully meet the U.S. Government's requirements and are economically and efficiently executed.

Management Comments. Although not required to comment, the Director, Iraq Project and Contracting Office, provided comments to the draft report. See the finding section of the report and the Management Comments section of the report for the complete text of the comments.

¹ Of the \$18.6 billion, \$100 million is designated for assistance to Jordan, \$100 million is designated for assistance to Liberia, and \$10 million is designated for assistance to Sudan.

² As of June 28, 2004, the Program Management Office was re-designated as the Project and Contracting Office.

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Background

In order to provide security, relief, rehabilitation, and reconstruction in Iraq under the Foreign Assistance Act of 1961, in Public Law 108-106, Congress appropriated over \$18.6 billion³ for the Iraq Relief and Reconstruction Fund (the Fund), November 6, 2003. These funds can be used by the Coalition Provisional Authority (CPA), the Department of Defense, the Department of Health and Human Services, the Department of State, the Department of Treasury, and the U.S. Agency for International Development through September 2006.

Actions Prompting Congressional Concerns. Concern has been expressed over the award of non-competitive contracts for the rebuilding of Iraq. Much of that concern has centered on the sole-source contracts awarded to Kellogg, Brown and Root (KBR), a unit of the Halliburton Corporation. According to the Acquisition Strategy for Repair and Continuity of Operations of the Iraqi Oil Infrastructure, June 5, 2003, the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) approved a Justification and Approval for the Southwestern Division, U.S. Army Corps of Engineers (Southwestern Division) on February 28, 2003, to negotiate a sole-source contract for KBR to execute a Contingency Support Plan. KBR had developed and delivered that plan to the Government on February 4, 2003, through the contract for the Logistics Civil Augmentation Program. Then, according to the acquisition strategy, the Southwestern Division identified an immediate need for additional capabilities and on March 8, 2003, the Under Secretary of Defense for Policy approved a request by the Southwestern Division to award the contract to KBR for executing the contingency support plan. Although the sole-source contract was not to exceed \$7 billion, the acquisition strategy states that the contract was intended as a temporary execution mechanism until competitively awarded contracts could replace it.

Program Management. The CPA and its Project and Contracting Office⁴ (PCO) are responsible for rebuilding Iraq. Award of the sector design-build contracts involved several organizations, including the PCO and Department of the Army (Army), which was designated as the executive agent for the contracting efforts. Source selection authorities evaluated the contract proposals and made award decisions. The source selection authorities received advisory, evaluation, contracting, and legal assistance.

Projects and Contracting Office. The PCO is responsible for all activities associated with program, project, asset, construction, and financial management of the reconstruction efforts undertaken by the United States. As such, the PCO supervises reconstruction efforts in Iraq and is responsible for managing execution of the \$18.4 billion appropriated on behalf of the CPA. The PCO consists of an overall management staff, six Sector PCOs, and a Directorate for Construction Management with regional construction offices. Sector PCOs oversee reconstruction and include Public Works and Water; Security and Justice; Buildings, Education, and Health; Electric; Communications and Transportation; and Oil. There are two PCO offices. The central PCO office, located in Baghdad, controls the infrastructure program. The rear PCO office, located in the Pentagon, provides contracting and financial support.

³ Of the \$18.6 billion, \$100 million is designated for assistance to Jordan, \$100 million is designated for assistance to Liberia, and \$10 million is designated for assistance to Sudan.

⁴ As of June 28, 2004, the Program Management Office was re-designated as the Iraq Project and Contracting Office.

Army. On May 21, 2003, the Deputy Secretary of Defense designated the Secretary of the Army as the DoD executive agent for administrative, financial, logistics, acquisition, and contracting support to the CPA. Following that designation, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) designated the Deputy Assistant Secretary of the Army (Policy and Procurement) (DASA[P&P]), as the agent responsible to the acting Secretary of the Army for acquisition support for the CPA mission. In this capacity, the DASA(P&P) has authority for provide personnel and other support necessary to support the Iraqi infrastructure reconstruction effort both in the National Capital Region and in Iraq.

Source Selection Authority. Source selection authorities ensured proper conduct of the source selection process and made award decisions. The source selection authorities were selected from the U.S. Army Corps of Engineers, the Naval Facilities Engineering Command, and the U.S. Army Communication-Electronics Command, a component of the Army Materiel Command. Advisory councils, consisting of senior leaders, provided counsel and advice to the source selection authorities and participated in briefings and reviews.⁵ The source selection evaluation board (SSEB) coordination and orchestration committee included the chair and deputy chair of the SSEB and the legal advisor. That committee oversaw and provided advice to the SSEB. The SSEB consisted of teams that evaluated designated aspects of the contract proposals. The procuring contracting office and legal advisors provided support to the entire evaluation organization.

Design-Build Construction Contracts. DoD Components awarded 12 design-build contracts including 2 contracts in January 2004 and 10 contracts in March 2004 to rebuild the Iraqi infrastructure. The DASA(P&P) determined that the most appropriate type of contract to use was an indefinite-delivery indefinite quantity contract that provides for the issuance of task orders on either a cost reimbursement or fixed price basis. Technical and schedule risks were considered to be moderate, while cost risk was considered to be high. It was anticipated that task orders would initially be awarded on a cost-plus award fee basis, and if the risks later decreased, orders would be negotiated and awarded on a fixed price basis. The DASA(P&P) also determined that the contracts should be single-award with each contractor responsible for performing a portion of the work within a sector. The use of a single-award would minimize the costs of mobilizing and demobilizing contractors and administering the contracts, and facilitate training and transition of responsibility to the Iraqi people. The contracts, valued as much as \$7 billion, are identified in Table 1.

⁵For the oil sector, the DASA (P&P) also established an Executive Review Committee that reviewed the SSEB evaluation and briefed the source selection authority on that evaluation in November 2003.

Table 1. Sector Design-Build Construction Contracts

Sector	Contractor	Contract No.	Award Date	Contract Ceiling (millions)
Buildings/Education and Health	Parsons Delaware, Inc	W914NS-04-D-0006	25-Mar-04	500
Communications/Transportation	Lucent Technologies, Inc	W914NS-04-D-0005	23-Mar-04	75
	Contrack/AICI/OCI/Archirodon JV	W914NS-04-D-0004	3-Mar-04	325
Electrical	Fluor-AMEC, Joint Venture (JV)	W914NS-04-D-0003	11-Mar-04	\$500
	Washington Group, Inc	W914NS-04-D-0010	12-Mar-04	500
	Perini Corporation	W914NS-04-D-0011	12-Mar-04	500
Oil	Parsons/Iraq JV	W9126G-04-D-0002	16-Jan-04	800
	Kellogg, Brown and Root, Inc	W9126G-04-D-0001	16-Jan-04	1,200
Public Works/Water	Fluor-AMEC, JV	W914NS-04-D-0008	23-Mar-04	600
	Fluor-AMEC, JV	W914NS-04-D-0022	23-Mar-04	500
	Black and Veatch/Washington Group, JV	W914NS-04-D-0007	11-Mar-04	600
Security and Justice	Parsons Delaware, Inc	W914NS-04-D-0009	26-Mar-04	900
Total				\$7,000

Objectives

Our overall audit objective was to evaluate the procedures used by the CPA, the CPA PCO, and supporting contracting activities when awarding sector contracts. Specifically, we evaluated whether competitive procedures were used to award contracts to rebuild the Iraqi infrastructure. See Appendix A for a discussion of the scope, scope limitations, and methodology.

Procedures Used to Award the Sector Design-Build Construction Contracts

Except that competition was generally limited to sources from designated countries, DoD Components used competitive procedures required by the Federal Acquisition Regulation (FAR) to award the design-build contracts for each sector of the Iraqi infrastructure. In awarding the contracts, the Army properly advertised the requirements, developed source selection plans, and had sufficient controls to ensure the plans were followed. As a result, the Government will potentially obtain the benefits derived from competitive contracting. Nonetheless, the PCO faces challenges in ensuring that tasks performed under these contracts fully meet the U.S. Government's requirements and are economically and efficiently executed.

Competition Requirements

To award contracts with Fund appropriations, P.L. 108-106 requires that the CPA and Federal executive agencies use full and open competition, except when the Federal Property and Administrative Services Act allows the use of other procedures. The Federal Property and Administrative Services Act include six exceptions to the use of full and open competition. To compete Government requirements, agencies must follow steps specified in the FAR. The steps involved with awarding a competitive, negotiated contract start with publicizing the U.S. Government's requirements and ends with source selection.

Publicizing Government Requirements. FAR Part 5 prescribes policies and procedures for publicizing contract opportunities and award information. Generally, FAR Subpart 5.203 requires Federal agencies to synopsise information on proposed contract actions expected to be over \$25,000 in the Government Point of Entry, accessed at www.fedbizopps.gov, at least 15 days before issuing a solicitation. Also, except for the acquisition of commercial items, FAR Subpart 5.203 requires Federal agencies to provide a response time of at least 30 days to receive proposals from solicitation issuance, if the proposed contract action is expected to exceed the simplified acquisition threshold (\$500,000 for contracts to be performed outside the United States).

Evaluation of Proposals. FAR Part 15 prescribes policies and procedures for negotiated acquisitions. FAR Subpart 15.304 states that although the evaluation factors and their relative importance that apply to an acquisition are within the broad discretion of agency acquisition officials, the evaluation factors must represent the key areas of importance and emphasis that the Federal agency should consider in the source selection decision. That subpart also requires that the evaluation factors support a meaningful comparison and discrimination between and among competing proposals and price or cost and quality be evaluated in every source selection. The subpart explains that the evaluation of quality includes factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. FAR Subpart 15.305 states that proposals will be evaluated based on the factors and sub-factors in the solicitation. That subpart also states that Federal agencies can evaluate proposals using any rating method or combination of methods.

Evaluation of Price or Cost. FAR Subpart 15.304(c)(1) states that price or cost to the Government shall be evaluated in every source selection. Also, FAR 15.305(1) states that Federal agencies are required to perform a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract.

Evaluation of Technical Proposal. FAR Subpart 15.304(c)(2) requires Federal agencies to address the quality of the product or service in every source selection through consideration of one or more non-cost evaluation factors. Those factors include past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. FAR Subpart 15.305(a)(2) describes past performance information is an indicator of an offeror's ability to successfully perform the contract and states that Federal agencies should consider the currency and relevance of information provided by offerors, source and context of the information, and general performance trends. That subpart also states that the evaluation should take into account past performance information regarding key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the acquisition. The evaluation of past performance should also include offerors' compliance with subcontracting plan goals for small disadvantaged business concerns, monetary targets for small and disadvantaged business participation, and notifications.

Contract Competition

Except that competition was limited to sources from designated countries for all prime contracts but the oil sector contracts, DoD Components used competitive procedures required by the FAR to award the design-build contracts for each sector of the Iraqi infrastructure. Specifically, a number of proposals were received for each request for proposal (RFP), staff evaluated contract proposals according to the established evaluation factors, and the source selection authority decided on the best value to the Government. The evaluation factors included compliance with solicitation requirements, past performance, technical excellence, management capability, personnel qualifications, prior experience, and cost. In planning the oil sector acquisition and selecting the contractor, the Southwestern Division and the source selection authority faced several challenges.

Limited Competition. Except for the award of contracts in the oil sector, competition for award of the sector design-build construction contracts was limited. The limited competition was based on a Determination and Findings,⁶ December 5, 2003, approved by the Deputy Secretary of Defense, citing the public interest exception to the competition requirements in the Federal Property and Administrative Services Act. Specifically, the Determination and Findings stated that it was in the public interest to limit competition to sources from the United States, Iraq, Coalition partners, and force contributing nations. Although the Federal Property and Administrative Services Act does not provide the Deputy Secretary of Defense with authority to cite that exception, according to officials from the Office of General Counsel, DoD, evidence supports that the Secretary of Defense⁷ was aware of and agreed with that determination. Also, according to the Single Acquisition Management Plan, January 6, 2004, the Deputy Secretary's determination supported a policy decision made by the Deputies Committee, National Security Council.

Offers Received. The Government received a sufficient number of offers for the six contracts that we selected for detailed review. For the oil sectors, proposals were due at the Ft. Worth

⁶ A Determination and Findings is a written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions.

⁷ According to the Federal Property and Administrative Procedures Act, the Secretary of Defense has authority to make a determination that it is in the public interest to use procedures other than full and open competition in the award of contracts.

District Office, Southwestern Division by 2 PM local time on August 14, 2003. For the other sectors, proposals were due at the locations responsible for performing the evaluations by 1 P.M. local time, on February 5, 2004. Of the 57 proposals received, 53 proposals were received on-time and 51 were assessed as responsive to the requirements in the solicitation, as shown in the following Table 2.

Table 2. Number of Companies That Submitted Proposals				
Sector	Contract Number	Total Offers	On-time Offers	Late Offers
Oil - North	W9126G -04-D-0002	7*	7*	0
Oil - South	W9126G-04-D-0001	7*	7*	0
Public Works - North	W914NS-04-D-0008	11	11	0
Public Works - South	W914NS-04-D-0022	13	12	1
Transportation	W914NS-04-D-0004	10	8	2
Water Resources	W914NS-04-D-0007	9	8	1
Total		57	53	4

*Initially 7 proposals were received for each oil sector. However the Southwestern Division rejected one proposal for each sector as being unresponsive. The offeror did not take exception to the rejection; therefore, the Southwest Division evaluated 6 proposals for each oil sector.

In accordance with the FAR Subpart 15.208(b)(1), the four late offers were not considered for award.

Evaluation of Contract Proposals. After the proposal receipt deadline, teams evaluated the proposals to assess which ones provided the best value to the Government. Initially, the evaluation teams assessed whether the proposals complied with the general requirements in the solicitations. Then, the proposals were assessed for the factors in the solicitations, which included all the factors required by the FAR: technical, management, past performance, and cost. For the oil sector contracts, evaluators assessed two sample projects, including a project related to firefighting capabilities and a project related to assessing oil systems. For the contracts in the other sectors, the evaluators assessed the

offerors' approach to a mobilization task⁸ and a sample task, which were unique to each solicitation.

Evaluations. Evaluators assessed proposals according to the factors in the solicitation and the source selection plan. First, the evaluators individually assessed the proposals. The individual assessments were then consolidated into a consensus report that was summarized into a briefing for the source selection authority. The comments and conclusions in the consensus report were supported by the individual evaluations and those evaluations were, in turn, supported by information in the offerors' proposals. Further, while generally agreeing with the conclusions reached by the evaluation teams, the source selection authorities made their own assessments of the proposals. In the two instances where the source selection authority disagreed with sub-factor ratings provided made by evaluation teams, the source selection authority provided reasonable rationale.

Evaluation Factors. The RFP for the oil sector presented evaluation factors different from the RFPs for the other sectors, and provided different relative values. However, all the RFPs included evaluation factors required by the FAR. For the oil sector, the factors included past performance, technical, management capability, contract administration, and cost. For the other sectors, the factors included technical, management, past performance, and cost. For all evaluations, the non-cost factors, when combined, were considered to be significantly more important than cost. Details on the evaluation factors are in Appendix B.

Challenges to Award of the Oil Sector Contracts. The Southwestern Division faced several challenges in the award of the two oil sector contracts. First, there was an incumbent contractor for restoring Iraq's oil industry and, prior to the March 2003 war in Iraq, that contractor had developed the Government's contingency support plan for restoring the oil industry. Then, the Southwestern Division needed to compare costs between proposals that used different technical approaches and made different assumptions. In addition, the Southwestern Division needed to evaluate whether a bankruptcy filed by an affiliate affected an apparent winner's ability to perform the contract. Also, the evaluations of the top three offerors were practically identical. Lastly, three days prior to contract award, the Defense Contract Audit Agency (DCAA) issued a report on the estimating system used by one of the offerors. The Southwestern Division and the source selection authority addressed each of the concerns.

Incumbent Contractor. One challenge faced by the Southwestern Division was that there was an incumbent contractor for restoring Iraq's oil industry. According to the acquisition strategy, the incumbent had certain advantages including the knowledge accumulated in developing the contingency support plan, and the knowledge of actual cost incurred performing work under the existing contract. In addition, the Government had already reimbursed the incumbent for its mobilization costs and the incumbent already had staff in-place. The Southwestern Division addressed the incumbency issue in its acquisition strategy. To mitigate the incumbent's advantage, the Southwestern Division proposed that it determine the work to be performed and incorporate that work into the statements of work for each task order. Also, each offeror would develop a project management plan geared to the statement of work in the RFPs and mobilization costs would be removed from proposal costs.

⁸ Mobilization was not a factor for the oil sector contracts as the Government had already reimbursed the incumbent contractor for its costs of mobilizing under Contract No. DACA63-03-D-0005.

Potential Conflict of Interest. Another challenge faced by the Southwestern Division was determining whether there was a conflict of interest in allowing the incumbent contractor to compete for the contracts since the incumbent had developed the Government's contingency support plan for restoring the oil industry. FAR Subpart 9.505-2(a) states that if a contractor prepares and furnishes complete specifications covering non-developmental items used in a competitive acquisition, that contractor shall not be allowed to furnish these items. In its acquisition plan, the Southwestern Division concluded that the contingency support plan was not a specification and would not be used to prepare either proposals or statements of work. In addition, Southwestern Division officials stated that their personnel, not the incumbent contractor, prepared the statements of work and that the conditions in Iraq were considerably different in June 2003, when the statement of work was being developed, than anticipated when the contingency support plan was prepared from mid-November 2002 through early February 2003. According to the acquisition strategy, the contingency support plan assumed that much more damage would occur from sabotage and the war efforts than the amount that actually occurred. In addition, the acquisition strategy states that the contingency support plan did not foresee the amount of damage that would result from looting and civil disorder. Finally, the acquisition strategy states that the contingency support plan did not anticipate the early re-emergence of Iraqi oil companies. Our review of the contingency support plan identified no clear relationship between the plan and the RFP.⁹

Evaluation of Costs. The cost proposals were not comparable because the offerors made different assumptions regarding the sample project in the RFP and proposed different technical solutions to the sample projects. The evaluators found that the RFP requirements were subject to interpretation and that the offerors' assumptions could realistically be read into the task objectives for the sample projects. For example, the sample project for fighting oil well fires did not define the size of the fire or the amount of damage to the wells. As a result, offerors proposed a wide variety of total hours to complete the project, and reached different conclusions as to the equipment and services that would be furnished by the Government. The SSEB concluded that price differences were not significantly attributable to differences in technical approaches, each of which were reasonable based on the RFP requirements and assumptions. As a result, all offerors were evaluated and rated based on the reasonableness and cost realism of their sub-assumptions.

Bankruptcy. The Southwestern Division needed to evaluate whether a bankruptcy filing under 11 U.S.C. Chapter 11¹⁰ in December 2003 by an affiliate of an offeror affected the company's ability to perform the contract. The contracting officer determined that the bankruptcy would not affect the company's responsibility. The source selection authority considered the contracting officer's advice in selecting the oil sector contractors.

Distinguishing Between Proposals. The results of the proposal evaluations for the top three offerors were practically identical. Therefore, the source selection authority needed to differentiate between the three best proposals. Using source

⁹ We did not use technical assistance to review the contingency support plan, which was still classified as SECRET when we reviewed it.

¹⁰ Under 11 U.S.C. Chapter 11, the entity reorganizes.

selection criteria, the source selection authority was able to differentiate between the proposals and made a source selection decision. The Office of the General Counsel, USACE reviewed that decision and found it adequately supported by the record in compliance with legal requirements, and that there was a sound business case and legal basis for the decision.

Report on Estimating System. Three days prior to contract award, DCAA issued a report on the estimating system used by an offeror. One day before the award, Southwestern Division officials contacted a local DCAA office about the report. The DCAA contact said that she would either obtain and review the report and explain the issues, or provide a point of contact at the responsible DCAA office. However, there was no further communication between the Southwestern Division and DCAA concerning that report. The contracting officer advised the source selection authority that the report did not impact source selection.

Acquisition Planning, Publicizing Requirements, and Controls Over the Evaluation Process

In awarding the sector design-build construction contracts, the Army adequately planned the acquisitions and publicized the Government's requirements, and had sufficient controls in place to ensure that DoD Components followed the source selection plans. The controls included established procedures to evaluate proposals, training of evaluators, and oversight of the process by independent teams. Although evaluators for the oil sector contracts did not initially follow the source selection plan, oversight identified those deviations and they were corrected.

Acquisition Planning. The Southwestern Division and the PCO developed acquisition plans and source selection plans before the RFPs were issued.¹¹ Those plans detailed the factors to be considered in evaluating contract proposals and included standard sheets for evaluators to complete in preparing their evaluations. The evaluation sheets, which were properly completed by the evaluators, identified the offeror, evaluator, sector, factor and sub-factor being evaluated, proposal summary, evaluation summary, and strengths, weaknesses, and deficiencies of the proposal.¹²

Publicizing the Proposed Contracts. The Army properly publicized the proposed contracts and provided potential offerors adequate time to prepare proposals. For the oil sector, the Southwestern Division synopsisized the proposed contract in the Government Point of Entry on June 23, 2003, which was 16 days before the RFP was issued on July 9, 2003, for full and open competition on an unrestricted basis. In addition, the Southwestern Division held a pre-proposal conference in Dallas, Texas, on July 14, 2003, to provide information to potential offerors and to answer their questions. For the other sectors, the Army synopsisized information on proposed contract actions in the Government Point of Entry on November 24, 2003, which was 42 days before the RFPs were issued on January 6, 2004. In addition, the Army held two industry day conferences on the proposed contracts. After the conference in Washington, D.C., the Army made the presentation materials, an audio of the speakers' presentations, and frequently asked

¹¹ Adjustments were made to the plan after the RFP was issued, but those adjustments were made prior to the date and time that proposals were due from offerors.

¹² After initial evaluations, the procuring contracting officer decided that the Government needed to have discussions with companies that had prepared acceptable offers for awards in the Transportation sector and Water and Public Works sector. After discussions, the companies determined to be in the competitive range clarified their offers and the evaluation teams re-evaluated the proposals.

questions available on the CPA website and the National Defense Industries Association website.

Controls Over the Evaluation Process. The Army established sufficient controls over the proposal evaluation process to ensure the source selection plans were followed. The controls included requiring statements of non-disclosure and independence, evaluator training, and oversight of the process followed by the independent teams. Although evaluators for the oil sector contracts did not initially follow the source selection plan for the evaluation of costs, oversight identified those deviations and those deviations were corrected.

Statements of Non-Disclosure and Independence. The integrity of the evaluation process included staff involved in the evaluation and source selection process being required to sign non-disclosure statements and statements of non-interest. Through the statement of non-interest, staff stated that they and members of their family did not have either a direct or indirect interest in any firm submitting a proposal being considered by the SSEB. For the contract competitions reviewed, one evaluator stated that a family member was associated with one proposal. To ensure independence, the SSEB received legal advice that the evaluator should not review that proposal.

Training. For all the sectors except oil, training was provided to evaluation team members. That training occurred in January 2004 and covered the provisions of the RFPs, integrity requirements, source selection process, evaluations, exchanges with offerors, documenting decisions, and protests. For the oil sector, although the source selection plan stated evaluators would be trained, officials from the Southwestern Division stated that since the evaluators were very experienced, training was informal.

Oversight of the Source Selection Process. After the evaluation process, the SSEB briefed the source selection authority and source selection advisory council to discuss the evaluation results and recommend the proposal that represented the best overall value and most advantageous to the Government. The source selection authority and SSEB also briefed the DASA(P&P). For the oil sector, the DASA(P&P) appointed an Executive Review Committee to review the efforts of the SSEB. The committee identified evaluation deficiencies and recommended corrective action, including a re-evaluation of proposal costs. After a new chairperson was assigned to the cost team, the team re-evaluated proposal costs. Finally, another team, consisting of staff from the Air Force Materiel Command and Defense Contract Management Agency, reviewed the cost evaluation and concluded that the cost evaluation team had developed a complete and careful analysis of a difficult procurement.

Competition Benefits and Challenges Ahead

Because DoD Components used competitive procedures to award the design-build construction contracts, the U.S. Government will potentially obtain the benefits derived from competitive contracting. Those benefits include timely delivery of quality products and services at reasonable cost. In addition, because competitive procedures were used, companies that submitted proposals have assurances that they were treated fairly. However, because offerors were not competing to provide or repair specific facilities and the contractors will not compete against each other for specific tasks, there are risks that the full benefits of competition will not be achieved. Therefore, the PCO needs to manage the risks by providing oversight ensuring contractors design facilities that fully meet the Government's requirements and are economically and efficiently executed. That includes using efficient and effective design and building

methods, the most appropriate materials, and competitive procedures to subcontract and obtain materials. That also includes contractors effectively managing their staff and subcontractors. In addition, since the contracts provide incentives for the contractors through award fees, the PCO needs to effectively manage those fees.

Management Comments. In responding to the draft report, the Director, PCO acknowledged the management challenges and presented its plan to meet the challenges. The strategy consisted of:

- Using award fee contracts to motivate contractor performance.
- Monitoring and controlling costs and schedule performance by using earned value management systems.
- Using contractors to assist with the monitoring of the design-build construction contractors.

The Director, PCO also commented that the award of the sector design-build construction contracts was not the end of the competitive process. He stated that the PCO intends to continue using contracts awarded by the Air Force Center for Environmental Excellence; the Gulf Region Division, U.S. Army Corps of Engineers; and U.S. Agency for International Development in the efforts to rebuild Iraq. In addition, the Director stated that the PCO would monitor performance on existing contracts to determine where the contractors are excelling and will use past performance information, along with pricing and scheduling information, as factors in evaluating the suitability of contractors to perform. The Director stated that this process would create competition and ensure that taxpayers receive the best value possible.

Appendix A. Scope and Methodology

We reviewed the procedures used by Army and other DoD Components that assisted the Army to award the design-build construction contracts to restore the Iraqi infrastructure. The review was limited to evaluating whether DoD Components complied with the competition requirements in the FAR. Specifically, we evaluated whether Government requirements were adequately publicized, controls over the receipt and safeguarding of proposals, the evaluation of proposals, and notices provided to unsuccessful offerors. We performed this audit from April 2004 through July 2004 in accordance with generally accepted government auditing standards. The RFPs that we reviewed are in the following table, along with the associated infrastructure sector and the organization of the source selection authority.

Table of RFPs Reviewed		
Sector	RFP Number.	Source Selection Authority Organization
Transportation	W914NS-04-R-0004	Northwestern Division, U.S. Army Corps of Engineers
Oil, North and South	DACA63-03-R-0021	Southwestern Division, U.S. Army Corps of Engineers
Public Works - Water Resources	W914NS-04-R-0007	Headquarters, Naval Facilities Engineering Command
Public Works - Water, North and South	W914NS-04-R-0008	Headquarters, Naval Facilities Engineering Command

Documents reviewed included acquisition plans, source selection plans, RFPs, proposals, proposal receipts, statements of non-interest and non-disclosure, proposal evaluations made by individuals involved with the source selection, source selection briefings, notices to unsuccessful offerors, source selection decisions, and contracts. We conducted interviews with officials from the Iraq Infrastructure Reconstruction Contract Team; Headquarters, Naval Facilities Engineering Command; South West Division, U.S. Army Corps of Engineers; and DCAA.

Scope Limitation. This review contained scope limitations that could materially impact the results.

- Although a common source selection plan was developed for all the contracts except the two oil sector contracts, the choice of contracts to review was not

always at our discretion. Specifically, the DASA (P&P) and the Iraq Infrastructure Reconstruction Contract Team provided contract W914NS-04-D-0004 (Transportation) as the only contract file immediately available. That was the first contract file reviewed.

- The source selection process was reviewed after the fact. Therefore, we could not obtain complete assurance that contract proposals were properly secured after receipt and throughout the evaluation process. In addition, the files for W914NS-04-D-0004 were not reviewed at the Omaha Division, USACE; therefore, security over the proposals for that contract was not reviewed. The files for W914NS-04-D-0004 were reviewed at Ft. Belvoir, VA.
- We did not review the management control program for any DoD Component involved with the award of the sector design-build construction contracts.
- The review of the sample tasks was limited to a general review of the reasonableness of the contract proposals. We did not enlist the assistance of technical specialists.
- Although we found no discernible relationship between the statement of work and the contingency support plan prepared for the Government by the incumbent contractor for the oil sector, technical experts did not assist in that review.

Use of Computer-Processed Data. We did not use computer-processed data to perform this audit.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), the Inspector General of the Department of Defense (IG DoD), and the Inspector General of the Coalition Provisional Authority have issued 3 reports discussing the award of contracts to rebuild Iraq. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted IG DoD reports can be accessed at <http://www.dodig.osd.mil/audit/reports>.

GAO

GAO-04-605, “Fiscal Year 2003 Contract Award Procedures and Management Challenges,” June 1, 2004

GAO-04-869T, “Contracting for Iraq Reconstruction and Global Logistics Support,” June 15, 2004

IG DoD

IG DoD Report No. D-2004-057, “Contracts Awarded for the Coalitional Provisional Authority by the Defense Contracting Command-Washington,” March 18, 2004

Appendix B. Evaluation Factors for the Design-Build Construction Contracts

The proposals that we reviewed were evaluated for the factors included in the RFPs, which included all the factors in the FAR. In all source selections of negotiated contracts, the FAR requires an evaluation of price or cost to the Government and quality of products or services. The FAR states that quality is addressed by evaluating one or more non-cost factor, such as past performance, technical excellence, management capability, personnel qualifications, and prior experience. For negotiated contracts expected to exceed \$1 million, the FAR requires that past performance be an evaluation factor.

Oil Sector Contracts. For the oil sector contracts, the RFP broke the evaluation of quality into the following categories, in the order of importance: past performance and experience; business management and technical approach, and contract administration. Cost was significantly less important than the combination of the other criteria.

Past Performance and Experience. The evaluation of past performance and experience, which was considered to be the most important evaluation factor, assessed the likelihood that offerors would be able to successfully perform the requirements in the contract. Offerors that demonstrated good performance and experience on recent, relevant contracts were assessed a lower level of risk. Primary sub-factors were past performance, personnel experience and company experience. The level of risk assessed the likelihood of success in performing the requirements stated in the RFP.

Past Performance. For the past performance sub-factor, evaluators assessed the quality of services and or products provided by the offeror, responsiveness and flexibility to changes in project requirements, resourcefulness or ability to provide needed resources, problem solving, and the ability to develop innovative approaches to resolve problems. In addition, the offeror's record of timely performance, cost control, business practices, customer satisfaction, key personnel, and support of the small and small disadvantaged business utilization program were also evaluated. That evaluation was based on information in the proposals as well as information from references and other sources.

Personnel Experience. For the personnel experience sub-factor, evaluators evaluated the offerors personnel relative to the requirements of the contract. The proposed job titles, education, and special qualifications listed on the resumes of the key personnel were evaluated. Offerors with personnel possessing experience with cost reimbursable contracts, and personnel with experiences linked to projects identified in the company experiences section were rated higher.

Company Experience. The evaluation of past experience assessed the ability of the company to successfully perform work relevant to the contract, including experience working in the Middle East. Offerors were to present up to ten examples of projects representing work experience relevant to the requirements of the contract. These requirements included experiences by the Prime or sub-contractor on large diverse projects in this region of the world. In addition, the offerors were asked to describe technical problems encountered and how these problems were addressed. Offerors with experience working in Iraq with Iraqi contractors received high ratings. In addition, those who identified technical

challenges and solutions on past projects and related those experiences to what they expected to find in Iraq were evaluated higher

Business Management and Technical Approach. The evaluation of business management and technical approach, which was considered to be slightly less important than past performance and experience, assessed the ability of offerors to perform the business management and technical requirements. The primary sub-factors included business management approach and oil field capabilities.

Business Management Approach. For the business management approach sub-factor, evaluators assessed the size and depth of the organization staffing plans, workload, training, and use of resources. Also, the proposed approach to mobilization was evaluated. Although other mobilization factors were considered, offerors showing ability to quickly respond and mobilize received higher ratings. The evaluations included a review of the relationship between the prime and subcontractors and the joint venture team members. Those groups with experience in working a project together received higher ratings.

Oil Field Capability. For the oil field capability sub-factor, evaluators assessed the ability to meet contract requirements and the methods proposed for accomplishing the requirements, including quality control and safety. Offerors that demonstrated an outstanding understanding of safety and quality control received higher ratings. Offerors were also evaluated on their ability to provide a full range of oil service capabilities. Evaluators assessed the offeror's ability to provide cost effective services, work with undefinitized contracts, and perform daily cost accounting. In addition, offeror's plans for responding to environmental and disaster situations with environmental implications were considered. That evaluation included the ability to provide environmental services, including environmental sampling, laboratory analyses, and other environmental services. In addition, the offeror's philosophy toward the use of innovative technologies was evaluated.

Contract Administration. The evaluation of contract administration, which was considered to be less important than business management and technical approach, assessed the ability of offerors to perform the range of contract administration requirements as stated in the RFP. The primary contract administration sub-factors were management information system, small business and small disadvantaged business utilization, and acquisition management. Offerors that demonstrated in its proposal an excellent understanding of Contract Administration requirements received higher ratings.

Management Information System. For the management information system sub-factor, evaluators assessed how offerors integrated subcontractors and or team members into the system. Offerors that proposed a viable plan for controlling cost were given high ratings.

Small Business. For the small business and small disadvantaged business utilization sub-factor, evaluators assessed the proposed use of small, small disadvantaged, women owned and small businesses in historically underutilized business zones (HUBZones).

Acquisition Management. For the acquisition management sub-factor, evaluators assessed the offerors' purchasing system and procedures for managing the acquisition and control of resources and subcontractors. Proposals providing details of how the purchasing system would be used and verifying that the

purchasing system was Government approved received higher ratings. Proposals showing that the acquisition system was used to manage subcontracts also received higher ratings.

Cost. Proposed costs were subjectively evaluated for cost realism and most probable cost, and to determine the reasonableness, affordability over the life of the contract, the adequacy and value of the cost data. Offerors provided a copy of their latest audited financial statements, a determination of adequacy from the cognizant administrative contracting officer and verification of an approved accounting system that is adequate for cost-reimbursement contracts. In addition, offerors submitted for evaluation cost proposals for two sample projects, firefighting capabilities and oil system assessment capabilities.

Other Sectors. For contracts in the other sectors, the RFP broke the evaluation of quality into the following categories, in the order of importance: technical, management, and past performance. Cost was significantly less important than the combination of the other criteria.

Technical. The evaluation of the technical factor, which was considered to be the most important factor, assessed the likelihood of the offeror successfully performing the requirements in the statement of work. This factor had two subfactors, technical approach and tasks.

Technical Approach. For the evaluation of the technical approach sub-factor, evaluators assessed the offerors' experience and expertise, capabilities, ability to quickly obtain additional expertise and resources. In addition, evaluators assessed the offerors' proposed sources of proposed material and heavy equipment. According to the source selection plan, that assessment was made to evaluate the offerors' understanding of the contract requirements, and challenges of performing work in Iraq.

Tasks. Evaluators assessed the offerors' approach to a mobilization task and a sample task. Each sample task was unique to each RFP. In addition to evaluating costs, the evaluators assessed whether the planned approach demonstrated **whether** each offeror understood the requirements of the tasks, the needed resources and logistics requirements, the event sequences and timing. The evaluation also assessed the offerors' ability to identify and mitigate risks, minimize mobilization time, and address logistics issues related to facilities, security, and moving personnel and equipment.

Management. The evaluation of the management factor, which was considered to be slightly less important than the technical factor, assessed the approach to managing design-build construction efforts. The primary management sub-factors were management approach and subcontracting plan.

Management Approach. Management approach was further sub-divided into three other elements: the management plan, life support and security, and approach to integrating the Iraqi workforce. As part of the management plan, the evaluators assessed systems for managing and controlling multiple construction efforts, ability to identify and mitigate or manage risks, solve problems, and maintaining quality and fiscal control. The evaluation of management plan also assessed the control processes, management information systems, purchasing systems, communication plans, subcontractor management, ability to manage cost reimbursable projects, and to respond to changing requirements. The evaluation of life support and security assessed the offerors' capabilities and approaches to

providing life support services and security for personnel, materials, and equipment. The evaluation of approaches to integrating the Iraqi workforce assessed the utilization and training of the Iraqi workforce. It also evaluated approaches to increasing Iraqi women's access to or ownership of productive assets.

Subcontracting Plan. The evaluation of subcontracting plans assessed how the offerors were going to use U.S. small businesses and companies from coalition partners and force-contributing nations. The evaluation of U.S. small business usage assessed the proposed utilization of U.S. small businesses, including small businesses owned by veterans, service-disabled veterans, disadvantaged persons, and women, and HUBZones. Plans submitted by offerors needed to assure that at least 10 percent of the total dollar value of the acquisition was performed by small businesses as either prime contractors or first-tier subcontractors. As part of that assessment, evaluators reviewed the history of offerors' ability to meet small business goals and actions that the offerors proposed to identify opportunities for U.S. small businesses. The evaluation of the subcontracting plan also assessed the proposed actions for identifying opportunities for companies from coalition partners and force-contributing nations to be prime contractors or subcontractors at any tier.

Past Performance. The evaluation of past performance, which was considered to be slightly less important than the management factor, assessed the likelihood that offerors would be able to successfully perform the requirements in the RFP. Specifically, the evaluators assessed the quality, relevancy, and recency of past performance of the offerors and their proposed subcontractors. The elements of past performance assessed were cost, schedule, and performance. Based on information in the proposals as well as information from references and other sources, the evaluators assessed whether offerors executed programs within costs, adhered to contract schedules or accelerated schedules when necessary, resolved problems quickly, effectively managed subcontractors, and used sound engineering processes and practices. The evaluation of past performance also included an assessment of whether contractor teams, including joint venture members and offerors and their subcontractors, had experience working together on relevant projects.

Cost. Proposed costs were evaluated for realism and reasonableness based on hypothetical projects the Government expected contractors to perform under each contract. The hypothetical projects included estimates for labor, materials, and equipment needed. Offerors adjusted the Government estimates to reflect their cost and level of effort projections of the effort needed to support the hypothetical projects and to include their direct and indirect cost rates.

Appendix C. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Director, Defense Procurement and Acquisition Policy

Department of the Army

Assistant Secretary of the Army (Acquisition, Logistics, and Technology)
Deputy Assistant Secretary of the Army (Policy and Procurement)
Commander, U.S. Army Corps of Engineers
Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Research, Development and Acquisition)
Commander, Naval Facilities Engineering Command
Naval Inspector General

Combatant Command

Commander, U.S. Central Command

Other Defense Organizations

Director, Iraq Project and Contracting Office
Department of Defense Inspector General
Director, Defense Contract Audit Agency

Non-Defense Federal Organization

Office of Management and Budget
U.S. Government Accountability Office
Department of State
U.S. Agency for International Development

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
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House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Efficiency and Financial Management, Committee on Government Reform
House Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform
House Subcommittee on Technology, Information Policy, Intergovernmental Relations, and the Census, Committee on Government Reform

Iraq Project and Contracting Office Comments



15 July 2004

MEMORANDUM FOR: COALITION PROVISIONAL AUTHORITY, OFFICE OF
INSPECTOR GENERAL

SUBJECT: Draft Report – Award of Sector Design-Build Construction Contracts
(Project No. D2004-DCPAAC-0017)

ATTN: John E. Betar, Assistant Inspector General for Auditing

This memorandum is provided in response to July 9, 2004 letter, same subject. As you report in your draft, the Sector Design-Build Construction Contracts were awarded in compliance with the competitive procedures required by the Federal Acquisition Regulation and you are not requesting management comments on recommendations. However, on page 14 of your report you highlight the challenges that lie ahead of the Project and Contracting Office (PCO). You specifically state:

However, because offerors were not competing to provide or repair specific facilities and the contractors will not compete against each other for specific tasks, there are risks that the full benefits of competition will not be achieved. Therefore, the PCO needs to manage the risks by providing oversight ensuring contractors design facilities that fully meet the Government's requirements and are economically and efficiently executed.

We acknowledge the challenges that we face as we proceed with our efforts. However, PCO is prepared to meet these challenges and ensure that each specific task is completed efficiently and economically. PCO's management strategy includes:

- The use of award fee contracts to motivate contractors to constantly strive for improved performance,
- The use of Earn Value Management Systems to monitor and control cost and schedule performance,
- The use of Sector Program Management contractors to assist the PCO by providing technical, administrative, and management resources to monitor the Design-Build Contractors' performance.

In addition, we would like to take this opportunity to explain that the awards of the Sector Design Build Contracts are not the end of the competitive process. These contractors are only guaranteed minimum awards of \$500,000.

In order to receive additional effort the Design-Build Contractors must perform well. In addition to the Design Build Contractors we intend to continue to use the Air Force Center for Environmental Excellence (AFCEE), the Gulf Region Division (GRD), and U.S. Agency for International Development (USAID) and their contractors.

AFCEE, GRD, and USAID have been, and will continue to be important components of our efforts to rebuild Iraq. Through AFCEE, we have access to qualified small business prime contractors and our access to all AFCEE contractors increases the competitive nature of our awards. By monitoring performance on existing contracts, PCO intends to find where AFCEE, the Gulf Region Division (GRD), U.S. Agency for International Development, and the sector contractors are excelling or may need improvement. Along with price and scheduling considerations, past performance is used to evaluate the suitability of contractors to perform effort and this process is used to create competition among the bidders to ensure that the taxpayers receive the best value possible.

Thank you for the opportunity to provide these comments to your draft report. Any questions regarding this matter should be directed to Mr. John Doherty, Audit Liaison, or the undersigned.



DAVID J. NASH
Director

Audit Team Members

The Office of the Deputy Inspector General for Auditing of the Coalition Provisional Authority prepared this report. Office of the Inspector General staff who contributed to the report are listed below.

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