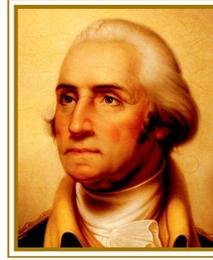


Statement of
Professor Steven L. Schooner
Co-Director of the Government Procurement Law Program
before the
United States Senate
Democratic Policy Committee



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CONTRACTING IN IRAQ

Chairman Dorgan and members of the Committee, I appreciate the opportunity to appear before you today. This Committee's effort to make sense of the procurement process in Iraq is an important and valuable public service. My statement attempts to serve two purposes. First, in an attempt to capture the enormity of the task involved,¹ it introduces the three key players in the Iraq reconstruction contracting process and comments briefly on each.² Second, it identifies a number of broad concerns that have arisen in the Iraq contracting process.

MAJOR PLAYERS IN IRAQ PROCUREMENT

If the news coverage I read is any indication, the public is (justifiably) confused about which U.S. governmental institutions are involved in the Iraq procurement process. To some extent, three major government players dominate the scene: the United States Agency for International Development (USAID or AID), the United States Army Corps of Engineers

¹ Comparisons to the Marshall Plan abound, and estimates, in the tens of billions of dollars, widely vary. For example, "Initial estimates are that Iraq will need between \$50-75 billion to achieve these conditions for success." See, e.g., the White House, *Fact Sheet: Request for Additional FY 2004 Funding for the War on Terror*, Sept. 8, 2003, available at: <http://www.whitehouse.gov/news/releases/2003/09/iraq/20030908-1.html>.

² It would not be practical to fully describe the machinations of this process in this forum. For those interested in additional reading and research, I recommend the following. Robert S. Nichols, *Iraq Reconstruction: Needs, Opportunities, and the Contracting Environment*, 80 FEDERAL CONTRACTS REPORTS 410 (B.N.A., October 28, 2003); The Center for Public Integrity, *Windfalls of War: U.S. Contractors in Iraq and Afghanistan*, available at: <http://www.publicintegrity.org/wow/>. This report is particularly helpful in that it provides access to many of the relevant contractual documents, at <http://www.publicintegrity.org/wow/resources.aspx?act=resources>. It also organizes much of the work by individual contractors, <http://www.publicintegrity.org/wow/bio.aspx?act=pro&fil=IQ>. See also, Department of State, *U.S. Government Iraq Reconstruction Contracts*, <http://www.state.gov/e/eb/cba/iraq/>. Below, I provide additional, more specific, resources.

(USACE or the Corps), and the nascent Coalition Provisional Authority (CPA).³ In addition, other government participants,⁴ a host of contractors, and an ever-growing cadre of subcontractors create a dynamic, rapidly fluctuating landscape.

USAID

USAID has awarded both contracts (11) and grants (5) for work in Iraq. The USAID commanded much of the attention during the early phases of the Iraq reconstruction, by awarding ten contracts between February and July, 2003 (and, arguably more importantly, eight between February and early May). After initially operating outside of the public view, USAID has endeavored (for the most part, successfully) to provide information relating to its contracting activities on its web page,⁵ including information regarding each of its Iraq-related contracts:

Contract Purpose	Contractor	Award Date
Personnel Support	International Resources Group (IRG)	February 7, 2003
Theater Logistical Support	Air Force Contract Augmentation Program (AFCAP)	February 17, 2003
Seaport Administration	Stevedoring Services of America (SSA)	March 24, 2003
Local Governance	Research Triangle Institute (RTI)	April 11, 2003
Primary and Secondary Education	Creative Associates International, Inc.	April 11, 2003
Capital Construction	Bechtel	April 17, 2003
Public Health	Abt Associates	April 30, 2003
Airport Administration	SkyLink Air and Logistic Support (USA)	May 5, 2003

³ Of course, this could change with DoD’s creation of a new Iraq “project management office.” See, Chip Cummins and Neil King Jr., *New Office Created to Rebuild Iraq: Pentagon-Run Operation To Award Contracts in Move To Prioritize Reconstruction*, WALL ST. J. A3 (Oct. 14, 2003) “[I]t is envisioned as a central clearinghouse for all U.S.-funded, non-security-related contracts. [It will] serve as a liaison between the [CPA] and the Iraqi Governing Council, and ... come up with priorities and procedures for future U.S.-funded contracts in Iraq. ... The office is intended to "rationalize the process" of bidding for U.S.-funded contracts.... "It's the first real sign of mature management." ... Retired Admiral David Nash ... will run the new office.”

⁴ For example, the Commerce Department’s Iraq Reconstruction Task Force has assumed an active role. See, e.g., <http://www.export.gov/iraq/>.

⁵ See, *Assistance for Iraq*, available at <http://www.usaid.gov/iraq/activities.html>.

Monitoring and Evaluation	Management Systems International	June 25, 2003
Economic Recovery, Reform and Sustained Growth	BearingPoint, Inc.	July 25, 2003
Agriculture Reconstruction and Development	Development Alternatives, Inc.	October 21, 2003
Iraq Reconstruction – Phase II	N/A	draft request for proposals

USACE

The Corps began its Iraq operations with a more limited mandate. Primarily, attention focused upon the Corps' responsibility for the Iraqi oil industry.⁶

The Department of Defense designated the ...Corps of Engineers as Executive Agent for implementing plans to extinguish oil well fires and to assess the damage to oil facilities.... For the initial phase of this work, extinguishing nine oil well fires in southern Iraq ignited in the opening days of the operation, the Corps' prime contractor is Kellogg, Brown & Root..., which prepared the contingency plans for the government under the Army Field Support Command's Logistics Civil Augmentation Program (LOGCAP).⁷

Because this large contract involved a subsidiary of Halliburton, a company with long-standing ties to the Vice President, scrutiny has been intense. The LOGCAP contract is broad in scope and, most observers believe, has successfully permitted the U.S. military to more quickly and effectively project its fighting forces and technical superiority around the globe.⁸ Awarded

⁶ The Corps has awarded at least three other (smaller) contracts for potential work in the region. See, e.g., <http://www.hq.usace.army.mil/cepa/CENTCOMRFP.htm>.

⁷ See, <http://www.hq.usace.army.mil/cepa/iraq/oilfires.htm>.

⁸ See, Army Material Command, Logistics Civil Augmentation Program (LOGCAP) <http://www.amc.army.mil/LOGCAP/>.

LOGCAP is a U.S. Army initiative for peacetime planning for the use of civilian contractors in wartime and other contingencies. These contractors will perform selected services to support U.S. forces in support of Department of Defense (DoD) missions. Use of contractors in a theater of operations allows the release of military units for other missions or to fill support shortfalls. This

(continued...)

(through an open, competitive process) to Brown & Root Services (now Kellogg, Brown and Root or KBR) in 2001, LOGCAP is an indefinite delivery/indefinite quantity (ID/IQ) vehicle, often described as an umbrella contract. Depending upon its needs, the government can request that a broad range of tasks – covering the universe of support functions – be promptly performed around the world under the contract.

The Corps' goal is to restore Iraqi's oil production resources.⁹ This includes suppressing fires, environmental cleanup, and restoring oil production levels. While the Corps work began before hostilities concluded, the duration will depend upon the extent of the damage, impacted by ongoing looting and sabotage. When the Corps identified the need for contingency plans to extinguish oil well fires and to assess damage to oil facilities that might occur in Iraq, the existing LOGCAP contract was the most efficient and expedient way to proceed. (The Corps claims that KBR was the only contractor that could satisfy the requirement for immediate execution of its plan.) The Corps used the contract to pre-position firefighting equipment and personnel, extinguish oil well fires ignited during the war, and to assess damages. On March 8, 2003 the Corps issued a sole source contract to KBR as a bridge to a competitive contract. This contract also is ID/IQ contract, worth up to \$7 billion. Task Orders are issued against this contract as needed to obtain services necessary to support the mission in the near term.

The Corps plans, eventually, to replace the sole-source KBR contract with two competitively procured contracts: one for the Northern Oil Company area and the other for the South. While each of these contracts was originally entailed \$500 million, the process has been (recently delayed) and the solicitation has been amended, increasing the maximum value for Northern oil fields contract to \$800 million and \$1.2 billion for the Southern. Critics bemoan the delays. The longer the Corps waits to award these two contracts, the longer KRB continues to perform under a sole source contract.

CPA

More recently, attention has turned to the contracting practices of the CPA. The CPA, at least to this point, has not engaged in the type of large-scale contracting discussed above. Conversely, CPA's transaction volume appears far greater. In other words, in the near term, the CPA will award far more contracts, for far smaller sums of money. The scope of CPA's purchases seem to cover the waterfront, including construction materials (T-walls and jersey barriers), supplies (up to 50,000 new AK-47 rifles; portable latrines, public address system, and a

⁸(...continued)

program provides the Army with additional means to adequately support the current and programmed forces.

⁹ Much of the information that follows is available on the Corps' LOGCAP question and answer page, at <http://www.hq.usace.army.mil/CEPA/Iraq/faq.htm#LOGCAP%20Contract>. I have borrowed liberally from the Corps' language in this passage.

broad range of components and parts for turbines, power plants, water treatment facilities), and services (cement factory project management).¹⁰

As opposed to typical U.S. governmental entities, such as the Corps or AID, the CPA's contracts are supposed to be funded by foreign assistance. Most of this spending currently derives from the Development Fund for Iraq (DFI).¹¹ The creation, standing, and authority of the CPA raise a host of interesting (and, arguably, perplexing) issues far beyond the scope of this brief statement.¹² To date, the CPA has earned high marks for transparency (discussed at length below) for its efforts to publish its contracting rules¹³ and its contracting opportunities.¹⁴ Conversely, some have raised concerns that the CPA's procedures do not permit the same due process rights typically enjoyed by contractors doing business with the United States. Specifically, while firms may pursue limited administrative remedies, the CPA's regulations suggest that contractors cannot access the General Accounting Office or the U.S. Courts.¹⁵

¹⁰ See, Coalition Provisional Authority, *Request for Proposals and Quotations/Solicitations*, available at <http://www.cpa-iraq.org/business/>.

¹¹ See, e.g., *Coalition Provisional Authority Regulation Number 2*, available at <http://www.cpa-iraq.org/regulations/REG2.pdf>.

¹² See, e.g., *Coalition Provisional Authority Regulation Number 1*, available at <http://www.cpa-iraq.org/regulations/REG1.pdf>. The most intriguing document I've seen in this regard is the Department of the Army's October 21, 2003 letter to the GAO's Procurement Law Control Group, General Counsel's Office, regarding the protest of Turkcell Consortium, B-293048 (on file with author). The Army argues that: (1) the CPA is not a federal agency and (2) the CPA is not using appropriated funds for its contracts. But see, e.g., the *Minutes of CPA Program Review Board, September 1, 2003 Emergency Meeting*, available at: <http://www.cpa-iraq.org/budget/PRBMinutes9-1-03EmerMtg.html> (discussing the reprogramming of appropriated funds). GAO may soon opine on the matter. See, e.g., Melanie I. Dooley, *GAO Dismisses Turkcell Protest of Iraq Telecom Licenses; Turkcell Files New Protest After Receiving Debriefing*, 80 FEDERAL CONTRACTS REPORT 405 (BNA, Oct. 28, 2003).

¹³ See, e.g., *Coalition Provisional Authority Regulation Number 4, Contract and Grant Procedures Applicable to Vested and Seized Iraqi Property and the Development Fund for Iraq*, available at http://www.cpa-iraq.org/regulations/CPAMEM04_AND_APPENDICES.pdf; see also, *Coalition Provisional Authority Regulation Number 3*, available at <http://www.cpa-iraq.org/regulations/REG3.pdf>. These rules, despite their pithy appearance, seem to track and mostly capture the essence of the Federal Acquisition Regulations (FAR), found in Title 48 of the C.F.R.

¹⁴ See, CPA, *Request for Proposals*, *supra* note 10.

¹⁵ GAO proceedings are governed by 4 C.F.R. § 21; the waivers of sovereign immunity
(continued...)

QUESTIONS AND CONCERNS

The U.S. Federal Acquisition Regulation (“FAR”) constitutes the most complex, yet also the most transparent, Government purchasing code in the world. Still, the success it ensures for fundamental fairness, transparency, and maximum competitive benefit is normally achieved at considerable costs in time and staffing effort.... There is a tremendous tension between this purposely deliberate and unhurried process and the occasional emergency needs of a Government agency.¹⁶

Before addressing my general concerns with the contracting process in Iraq, let me temper my remarks. While the government should aspire to maintain an optimal procurement process, perfection, a huge gulf exists between sub-optimal behavior and improper or even illegal behavior. The procurement process, by its very nature, is subject to discretionary decision-making. Frequently, government officials make discretionary decisions which, in retrospect, may suggest poor judgment. Those same decisions, at the time, under the exigencies or pressures of the moment and given the available resources, often seem eminently reasonable. For example, I have no doubt that USAID’s leadership and procurement organization believed that, in early 2003, speed in execution trumped many of the policies I discuss below. My disagreement, as a matter of policy, should not be read to suggest illegality or improper conduct. Moreover, none of this suggests a conspiracy, and putative links between campaign contributions and contract awards appear tenuous at best. But, with foresight and a commitment to an open, competitive procurement regime, any such suspicion could have been avoided.

The following discussion raises concerns in terms of broad principles:¹⁷ (1) the process could have been open and competitive; (2) although USAID and the Corps’ actions were legal, neither institution demonstrated sufficient cognizance of the appearance of their actions and the potential harm to the public trust; (3) the government’s ambition, exuberance, and rapid expenditure rate appear to have exceeded its ability to develop realistic plans for specific results and manage its contractors to achieve those outcomes; and (4) protectionist behavior risks U.S. firms’ long-term prospects abroad.

¹⁵(...continued)

that permit contractors to sue in the United States Court of Federal Claims are found in the Tucker Act, 28 U.S.C. § 1491, and Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613.

¹⁶ Jeffrey Marburg-Goodman, *USAID’s Iraq Procurement Contracts: An Insider’s View*, 39 PROCUREMENT LAWYER 10 (Fall 2003).

¹⁷ See generally, Steven L. Schooner, *Desiderata: Objectives for a System of Government Contract Law*, 11 PUBLIC PROCUREMENT LAW REVIEW 103 (2002), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=304620 (suggesting considerations for a developing country attempting to draft a credible public procurement law).

• **Transparency.** A transparent procurement system employs procedures by which offerors and contractors (and even the public at large) ensure that government business is conducted in an impartial and open manner.¹⁸ In a transparent system, the affected parties clearly know both the rules to be applied in conducting procurements as well as information on specific procurement opportunities. We maintain transparency by, among other things: (1) publishing all of the statutes, regulations, and rules that define our procurement process; (2) announcing our government's requirements – what we expect to purchase – for all the world to see; (3) clearly articulating in every solicitation how offerors will be evaluated; (4) notifying all of the unsuccessful offerors (and members of the public who request the information) which offeror received the award and for what amount; (5) debriefing unsuccessful offerors to explain to them how all of the rules and regulations were followed; (6) providing for protest procedures, where independent third parties and attorneys for the unsuccessful offerors can review all of the agency records; and (7) employing appropriate oversight, such as government Inspectors General, to audit agency actions. Granted, in the private sector, transparency is rarely considered, let alone valued,¹⁹ so transparency often proves antithetical to what are perceived as commercial practice. Nonetheless, to the extent that the public's funds are being spent, we believe that maintaining transparency is worthwhile. Further, transparency helps to ensure integrity which, in turn, promotes competition.

Unfortunately, the Iraq contracting process has not been fully transparent. USAID performed all of its original contractor selection (at least on the first eight contracts) in secret, rather than advertising its contracting opportunities through the government's widely-used website, fedbizopps.gov. USAID only posted information regarding these contract opportunities after the period for proposal submission has passed. That's troubling. Other than its desire to operate quickly, USAID offered insufficient explanation for the shroud of secrecy. That's a shame, particularly because secrecy further limited competition. Moreover, USAID only considered contractors authorized to handle classified information. Given the tasks involved – road and airport construction, water sanitation, elementary school education, and public health services – the need for such stealth appears unfounded. Transparency promotes public trust in government. Government officials cannot simply expect the public to accept on faith that public funds have been spent wisely.

¹⁸ *Id.*, citing, Sue Arrowsmith, *Towards a Multilateral Agreement on Transparency in Government Procurement*, 47 INT'L & COMP. L.Q. 793, 796 (1998). In the broader context of transparent government, see the excellent resource, *Transparency International, the global coalition against corruption*, at <http://www.transparency.org/>.

¹⁹ “Numerous laws designed to ensure transparency, rationality, and accountability in decision making, including the Administrative Procedure Act (APA) and the Freedom of Information Act, apply to agencies, and not to private actors.” Jody Freeman, *The Private Role in Public Governance*, 75 N.Y.U. LAW REVIEW 543, 586-87 (2000) (citations omitted).

- **Competition.** Both the USAID and Corps relied upon severely limited competition to award Iraq contracts. This was legal, but unfortunate. Our procurement system is premised upon competition because we believe in the power of the marketplace.²⁰ By effectively maximizing competition, the government receives its best value in terms of price, quality, and contract terms and conditions. Contractor motivation to excel is greatest when private companies, driven by a profit motive, compete head-to-head in seeking to obtain work. Yet, maintaining a robust competitive regime requires more than an ephemeral commitment to the marketplace. For that reason, Congress requires that the government select its contractors after allowing for “full and open competition.”²¹ As the legal standard suggests, everyone gets an opportunity to compete for the government’s dollars on a level playing field. This is sound public policy.

In awarding its initial contracts, rather than maximize competition, USAID capitalized upon its unique “impairment of foreign assistance objectives” exception to the Competition in Contracting Act. Accordingly, USAID quietly invited a small number of U.S. firms to seek these contracts through an expedited process. Intentionally or unintentionally, USAID excluded any number of potentially qualified U.S. companies. Similar concerns arise regarding KBR’s continued sole source work. The Corps’ explanation for how this situation evolved sounds reasonable. But it remains difficult to stomach as KBR’s continues performance of this multi-billion dollar sole source opportunity. Ambassador L. Paul Bremer previously represented that “[e]very contract of the \$20 billion for Iraq will be competitively bid.”²² Yet the CPA prompted concerns by setting extremely short periods for the submission of proposals, bids, and quotations. While some opportunities remained open for a month, others required a response within two weeks, ten days, a week, and, in some circumstances, three days. That’s not the way to maximize competition.

²⁰ The marketplace thrives because human self-interest is more potent than legislated or regulated mandates or policies. As Adam Smith wrote over two hundred years ago: “[E]very individual necessarily labours to render the annual revenue of society as great as he can. He generally neither intends to promote the public interest, nor knows how much he is promoting it. . . . He intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention.” ADAM SMITH, *THE WEALTH OF NATIONS* 477 (ed. Edwinn Canaan, University of Chicago Press, 1976).

²¹ See generally, the Competition in Contract Act of 1984 (CICA), Pub. L. No. 98-369, Div. B., Title VII, 98 Stat. 1175 (July 18, 1984); 10 U.S.C. § 2304; 41 U.S.C. § 253. Full and open competition, “when used with respect to a contract action, means that all responsible sources are permitted to compete.” 48 C.F.R. § 6.003.

²² Statement of Ambassador Paul Bremer, Appropriations Subcommittee Supplemental Hearing, Sept. 22, 2003, available at: http://www.cpa-iraq.org/transcripts/20030923_Sep22BremerAppropriationsCommitteeHearing.html. Bremer also represented: “This money will be spent with prudent transparency.”

- **Integrity and public trust.** We frequently use of the word integrity to describe rules of conduct for procurement personnel in the government and private industry. No one disputes that bribery, favoritism, or unethical behavior have no place in a successful procurement system. Accordingly, an extensive statutory and regulatory construct is intended to limit both actual and apparent conflicts of interests involving government procurement officials. Our regulatory mandate is clear: “Government business shall be conducted in a manner above reproach and . . . with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. . . . [T]he actions of Government personnel [in] their official conduct must . . . be such that they would have no reluctance to make a full public disclosure of their actions.”²³ The ground rules not only attempt to ensure fair treatment and ethical behavior; they also seek to avoid the appearance of impropriety. Unfortunately, when transparency and competition are compromised, the media and public are quick to assume a corresponding absence of integrity. That compromises the public trust. This trust, bolstered by meaningful oversight, not only sustains but enhances the competitive environment. Unfortunately, significant questions remain regarding oversight.

- **Acquisition Planning, Contract Management, and Oversight.** Many observers sense that too many of the contracts awarded for Iraq reconstruction reflect inadequate acquisition planning. For example, USAID administrator Andrew S. Natsios eventually conceded that, in its 40-year history, his agency has never spent this kind of money this quickly in a single country.²⁴ Given the frenetic pace of spending, it is reasonable to query whether the contracts reflect carefully wrought, realistic plans likely to achieve specific objectives. The Corps’ experience attempting to restore the Iraqi oil industry is but one example of an apparent underestimation of the scope of work and its attendant challenges. Looking ahead, there is every reason to fear that the government lacks adequate resources on the ground in Iraq to properly manage and administer these contracts. Moreover, no one doubts that the government lacks sufficient personnel and mechanisms to ensure appropriate oversight of this massive contracting enterprise.

²³ 48 C.F.R. § 3.101-1.

²⁴ “The \$680 million contract awarded to Bechtel National, Inc. in April 2003 was the largest single direct contract awarded by USAID in its 42-year history and is thought to be the largest single non-military foreign aid contract to be awarded since the Marshall Plan that rebuilt Europe after World War II. Collectively, the initial Iraq contracts, now approaching \$2 billion in value, comprise the largest single country foreign aid program since the Marshall Plan.” Marburg-Goodman, *USAID’s Iraq Contracts*, *supra* note 16. This article responds to the three criticisms leveled against USAID that: (1) the limited competition employed by USAID violated the law; (2) the secrecy employed by USAID suggested that politics played a role in contractor selection; and (3) USAID improperly excluded foreign firms. I agree with the author that, as stated, these hyperbolic allegations do not hold water. Conversely, nothing in the article convincingly disputes that USAID could and should have: (1) obtained *more* competition, (2) operated in a *more* transparent fashion, and (3) included foreign firms.

At one level, these concerns suggest the potential that contractors may perform shoddy or inferior work. Moreover, it seems reasonable to ask whether the government is wasting money by rushing to award contracts (and spend money) before fully developed plans are in place.

Unfortunately, this problem is not unique to the Iraq contracting process.²⁵ There simply are not enough qualified acquisition professionals left in the federal government to conduct appropriate market research, properly plan acquisitions, maximize competition, comply with a plethora of Congressionally-imposed social policies, administer contracts to assure quality control and guarantee contract compliance, resolve pending protests and disputes, and close out contracts. GAO recently conceded that the acquisition workforce has declined dramatically, while “all agencies face the prospect of losing many of their skilled acquisition personnel over the next 5 years – with a significant portion of the government’s acquisition workforce becoming eligible to retire by fiscal year 2008.”²⁶

This point bears emphasis for two reasons. First, GAO’s “prior work has shown that when workforce reductions do not consider future needs – such as the staff reduction at DOD during the 1990’s – the result is a workforce that is not balanced with regard to experience and skill sets.”²⁷ Moreover, given the administration’s competitive sourcing initiative,²⁸ the most rapidly growing area of procurement activity lies in service contracting. Successful service contracts are difficult to draft and, more importantly, require significant resources to administer or manage. Currently, there are inadequate personnel resources, and insufficient investment has been made to train existing personnel in required skills (such as drafting performance-based statements of work). In other words, the critical acquisition workforce problems will get worse before they get better. The reality of the workforce cuts has led to a triage-type focus on buying, which has severely limited the resources available for contract administration. When the acquisition corps shrinks, the buyers who remain must keep buying to fill agencies’ stated needs. The first responsibility jettisoned often is contract administration or management. This scenario

²⁵ See, generally, Steven L. Schooner, *Fear of Oversight: The Fundamental Failure of Businesslike Government*, 50 AMERICAN UNIVERSITY LAW REVIEW 627 (2001) (discussing reduced internal and external oversight in government procurement throughout the 1990’s).

²⁶ See, generally, *Federal Procurement: Spending and Workforce Trends*, GAO-03-443 (April 2003); Office of the Inspector General, Department of Defense, *DoD Acquisition Workforce Reduction Trends and Impacts*, Report D-2000-088 (February 29, 2000).

²⁷ GAO-03-443, citing, *inter alia*, *Contract Management: Trends and Challenges in Acquiring Services*, GAO-01-753T (May 22, 2001).

²⁸ Competitive sourcing was one of five government-wide initiatives in the President’s Management Agenda. See, Executive Office of the President, Office of Management and Budget, *The President’s Management Agenda, Fiscal Year 2002*, available at: <http://www.whitehouse.gov/omb/budget/fy2002/mgmt.pdf>.

thus hides significant downstream costs. In Iraq (and, ultimately, throughout the government), it's time to make meaningful investments in restoring, expanding, training, and incentivizing the acquisition workforce.

- **Reciprocity.** In the world trade community, reciprocity dominates the discussion of public procurement. I find it troubling that the government has yet to make a significant contract award to a non-U.S. firm. For reasons unique to its statutory character, USAID initially excluded all foreign firms. (While this was legally excusable, I do not believe it was wise.) This not only frustrates non-U.S. companies, it angers foreign governments – the same governments we hope will donate aid funds to rebuild Iraq.

The Corps' oil industry restoration contracts offer a simple example. The two pending oil restoration contracts recently expanded to a combined \$2 billion. Why not instead award four contracts, worth \$500 million (or eight contracts, for a mere \$250 million apiece), with an eye towards involving foreign firms? A single contract of this size would be a dramatic, significant step in the right direction. Unfortunately, as discussed above, I fear that such an approach is unlikely. There are obvious administrative efficiencies associated with avoiding smaller, more numerous purchases. The limited procurement and contract management resources available, and the unrelenting demands upon those resources, drive our buyers towards the most efficient vehicles to accomplish their mission. That makes sense, but only in the short term.

Frankly, I am disappointed by the number of Americans applauding this result. There's a jingoistic appeal to the mantra: it was our war and our money, so only Americans should get the work. But demanding that U.S. firms reap any largess associated with US-funded reconstruction efforts is short-sighted. (And, even if we intended to exclude French and Russian companies, why exclude the British?) But, more importantly, if the U.S. government closes its market to foreign firms, we empower foreign nations to exclude our firms from their public works projects. In other words, turnabout is fair play. In today's global economy, U.S. companies recognize that their most profitable long-term business ventures will arise abroad. Given the world's intense level of scrutiny of our actions in Iraq, this protectionist behavior appears misguided.

Conclusion

That concludes my statement. Thank you for the opportunity to share this information and these thoughts with you. I would be pleased to answer any questions.