

CRS Report for Congress

Defense Contracting in Iraq: Issues and Options for Congress

January 26, 2007

Valerie Bailey Grasso
Analyst in National Defense
Foreign Affairs, Defense, and Trade Division



Prepared for Members and
Committees of Congress

Defense Services Contracting in Iraq and Issues for Congress

Summary

The Department of Defense (DOD) is the largest agency in the federal government. It obligated nearly \$270 billion on contracts for goods and services in FY2005 — an 88% increase over the amount obligated in the year 2000. The growth in DOD spending has been primarily for the acquisition of services. Furthermore, there has been a substantial shift in the types of contracts for troop support services, the size of the contracts, and the lack of effective management control over the administration of the contracts, and the oversight of the contractors. These new contracts have characteristics that make oversight difficult. One factor is that the concept of “full and open competition” has been historically the guiding principle by which the federal government has awarded contracts. Yet the majority of contracts for troop support services in Iraq have been awarded on a “non-competitive” or sole-source basis.

This report will examine logistical support contracts for troop support services (also known as service contracts) in Iraq, primarily administered through the United States’ (U.S.) Army’s Logistics Civil Augmentation Program (LOGCAP). Four broad areas will be discussed, including (1) contract administration; (2) contract costs, the development of contract requirements, and the use of no-bid, sole-source contracts, and costs-reimbursement contracts; (3) transparency; and (4) the acquisition workforce.

The 110th Congress has announced plans to hold hearings on Iraq contracting activities. Congress is concerned over Iraq contracting for several reasons, including (1) logistical support contracts in Iraq are expensive and difficult to manage; (2) many public agencies and private organizations cite instances of contract waste, fraud, abuse, and financial mismanagement; and, (3) DOD has announced that it will replace the current LOGCAP III contract with new a LOGCAP IV contract, and competitively award the contract to multiple contractors. Also, concerns over Iraq contracting has led Congress to extend the tenure of the Office of the Special Inspector General for Iraq Reconstruction (SIGIR), through passage of the Iraq Reconstruction and Accountability Act, P.L. 109-440.

Many questions have been raised as to whether the sole-source contracts in Iraq were improperly awarded. Some have offered evidence to suggest that efforts may have been made to circumvent the DOD contracting regulations and guidance provided by professionally-trained, senior DOD contracting officials. Others note that the very nature of the types of contracts employed in Iraq, combined with the challenges in contract administration, serve as major factors which make contract administration difficult. Given the size and scope of the contracts in Iraq, and the challenge of managing billions of DOD-appropriated dollars, many have suggested it appropriate to inquire whether these types of contracts can be managed better.

This report will be updated as warranted.

Contents

Introduction	1
Purpose and Scope	1
Congressional Interest	1
Background	2
Awarding of Defense Contracts	2
Full and Open Competition	2
Emergency Contracting Authorities	3
Contingency Contracting	3
Rapid Acquisition Methods	3
Audits, Investigations, and Reports	4
Role of Federal Agencies	4
Special Inspector General for Iraq Reconstruction (SIGIR)	4
Army Audit Agency	5
Department of Defense Inspector General	5
Government Accountability Office (GAO)	6
Iraq Contracts	7
The Air Force Contract Augmentation Program (AFCAP) Contracts	7
The Army's Logistics Civil Augmentation Program (LOGCAP) Contracts	7
Potential Oversight Issues	8
Contract Administration	8
DOD Contracting Officials	9
Development of Contract Requirements	11
Use of Indefinite-Delivery/Indefinite-Quantity Contracts	11
Costs and the Use of No-Bid and Sole-Source Contracts	12
Cost-reimbursement Contracts	12
Use of Overhead Fees	13
Transparency	13
Acquisition Workforce	14
Potential Options for Congress	15
Option 1: Create an Office of Iraq Contract Management for Troop Support Services	16
Option 2: Expand the Jurisdiction of the Special Inspector General for Iraq Reconstruction	16
Option 3: Convene a Study of the Federal Employee and Contractor Workforce	17
Option 4: Require More Detail for Better Congressional Oversight	17
Appendix A. Reports	18
Congress	18
Congressional Research Service	18
General Accounting Office	18

Department of Defense Inspector General	19
Army Audit Agency	19
Appendix B. Current Legislative Initiatives on Iraq Contracting	20

Defense Contracting in Iraq: Issues and Options for Congress

Introduction

Purpose and Scope

This report will examine logistical support contracts for troop support services (also known as service contracts¹) in Iraq, primarily administered through the United States Army's Logistics Civil Augmentation Program (LOGCAP).² The U.S. Air Force has a smaller contingency contracting support program for services in Iraq.³ Logistical support contracts are for vital services needed by the troops, such as food and housing. This report will focus on contracts involving Department of Defense (DOD) appropriated funds, although some projects involve a blending of Iraqi Relief and Reconstruction Funds (IRRF) with DOD appropriated funds.⁴

Congressional Interest

The 110th Congress has announced plans to hold hearings on Iraq contracting activities. Policymakers are concerned about Iraq contracts for several reasons, including (1) the expense and difficulty of managing logistical support contracts; (2) the instances of contract waste, fraud, abuse, and financial mismanagement cited by many public agencies and private organizations;⁵ and (3) the recent DOD announcement that it will replace the current LOGCAP III contract with at least three

¹ FAR 37, Subpart 37.1 defines "service contracts" as contracts that directly engage the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.

² Department of the Army. Logistics Civil Augmentation Program (LOGCAP). Army Regulation (AR) 700-137, Introduction, 1-1. Purpose, p. 1.

³ The Air Force Contract Augmentation Program (AFCAP) administers logistical support contract for services in Iraq.

⁴ For a fact sheet on the application of federal procurement statutes to contracts for the reconstruction of Iraq, see CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes*, by John R. Luckey; for discussion on IRRF contracting issues, see CRS Report RL31833. *Iraq: Recent Developments in Reconstruction Assistance*, by Curt Tarnoff.

⁵ One statement attributed to U.S. Army General George Casey, Commander of Multi-National Forces in Iraq, expressed concern that the high cost of LOGCAP contracts undermined public support for ongoing military operations. Hess, Pamela. Former DOD brass want LOGCAP overhaul. United Press International, May 18, 2006.

new contracts, under a new LOGCAP IV contract, to foster competition among multiple contractors.⁶

As a result of these concerns over contracting in Iraq, Congress has extended the tenure of the Office of the Special Inspector General for Iraq Reconstruction (SIGIR)⁷ through passage of the Iraq Reconstruction and Accountability Act.⁸

Background

Awarding of Defense Contracts

In most cases, federal government contracts are awarded under “full and open competition.” However, there are exceptions, particularly during times of war.

Full and Open Competition. In general, authorities that govern the awarding of most federal government contracts can be found in the United States Code (U.S.C.) and the Federal Acquisition Regulation (FAR). The Competition in Contracting Act of 1984⁹ explicitly states that the federal government “shall obtain full and open competition through use of the competitive procedures in accordance with the requirements of this title and the *Federal Acquisition Regulation*.”¹⁰ The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) outline seven circumstances which permit DOD to use other than full and open competition in the awarding of federal government contracts.¹¹

⁶ The new LOGCAP IV contract is estimated to have a total contract value of upwards of \$150 billion. Announcement of the contract award decision is pending. As reported to LexisNexis by Comtex News Network, Inc., January 4, 2007.

⁷ The SIGIR replaced the Inspector General for the Coalition Provisional Authority (CPA-IG). As provided for in Public Law 108-106, the SIGIR provides an independent and objective audit, analysis, and investigation into the use of U.S.-appropriated resources for Iraq relief and reconstruction. The SIGIR, Stuart W. Bowen, Jr., was appointed as CPA-IG on January 20, 2004. He reports to both the Department of State and the Department of Defense, provides quarterly reports and semi-annual reports to Congress, and has offices in Baghdad and Arlington, VA. For a summary of the history of U.S. reconstruction assistance in Iraq, see CRS Report RL31833, *Iraq: Recent Developments in Reconstruction Assistance*, by Curt Tarnoff.

⁸ Public Law (P.L.) 109-440 directs that the Office of the Inspector General shall terminate 10 months after 80 percent of the funds appropriated for the Iraq Relief and Reconstruction funds have been spent.

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

¹⁰ 41 U.S.C. 253 (a)(1)(A).

¹¹ The Defense Federal Acquisition Regulation and AIDAR are supplements to the FAR. See DFARS, Subpart 206.3, and AIDAR, Subpart 706.3, Other Than Full and Open Competition. The exceptions are: (1) There is only one responsible source available to fulfill the contract requirements; (2) the federal agency’s need for these goods or services

(continued...)

Two of the seven circumstances give the Secretary of Defense the authority to use other than full and open competition: (1) when the Secretary of Defense determines that DOD's need for a property or service is of such an "unusual and compelling urgency" that the United States would be seriously injured unless DOD is permitted to limit the number of sources from which it solicits bids or proposals; and (2) when the use of full and open competition would compromise national security.

Emergency Contracting Authorities. Title 41, United States Code (U.S.C.), Section 428a grants special emergency procurement authority to heads of executive agencies where it is determined that a procurement is to be used in support of a contingency operation, or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

Contingency Contracting. DOD is developing initiatives to strengthen the DOD contracting process and system in Iraq. Section 817 of P.L.109-163 directs the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, to develop a joint policy for contingency contracting during combat operations and post-conflict operations, no later than one year from the bill's enactment. (See Appendix B of this report) DOD estimates that the contingency contracting initiative will be operational by the Fall 2007. Also, DOD recently announced the selection of a Deputy Director for Contract Policy.¹²

Rapid Acquisition Methods. Title 10, Section 2304, outlines the use of indefinite-delivery/indefinite-quantity (ID/IQ) task orders, sealed bidding, undefinitized contract actions, and set asides under section 8(a) of the Small Business Act [15 U.S.C. 637(a)], as examples of ways to expedite the delivery of goods and services during combat operations or post-conflict operations.

¹¹ (...continued)

is of such an unusual and compelling urgency that the federal government would be seriously injured if this contract were not awarded; (3) the federal government needs to ensure that suppliers are maintained in the event of a national emergency, or to achieve industrial mobilization, or to establish or achieve or maintain an engineering, development, or research capability; (4) The federal government has an international agreement to make this acquisition through means other than through full and open competition; (5) a statute specifically authorizes or requires that the contract be made through a specific source; (6) The use of full and open competition may compromise national security; (7) The public interest would be better served by use of other than full and open competition. The procedures for submitting written justifications to use other than full and open competition, including review requirements and delegation of authority, are outlined in DFARS, Subparts 206.303-1 and 206.304, and AIDAR 706.3. For a more detailed discussion on the seven exceptions to the use of full and open competition, refer to CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes*, by John R. Luckey.

¹² Memorandum from Shay D. Assad, Director, Defense Procurement and Acquisition Policy, October 10, 2006.

Audits, Investigations, and Reports

Role of Federal Agencies. No one federal agency has the sole mission to audit, investigate, or oversee DOD-appropriated funds for troop support services under LOGCAP. There are many agencies who share the responsibility, including the Defense Contract Audit Agency (DCAA), the Defense Contract Management Agency (DCMA), the Army Audit Agency (AAA), and the DOD Inspector General.

Special Inspector General for Iraq Reconstruction (SIGIR). A perceived lack of transparency in the earliest Iraq contracts led to the appointment of the Special Inspector General for the Coalition Provisional Authority (now SIGIR). Stuart Bowen, the SIGIR, audits and investigates contracts for Iraq reconstruction and relief funds of approximately \$32 billion, although some projects involve a blending of IRRF funds with DOD appropriated funds.¹³ According to the Congressional Budget Office, the SIGIR has produced more than 150 reports, audits, or investigations of reconstruction-related activities.¹⁴ As a result of SIGIR's work, it is estimated that their audits, investigations, and inspections resulted in significant benefits to the federal government.¹⁵

The SIGIR's investigations characterize LOGCAP contracts in Iraq as lacking transparency, oversight, and financial accountability, and the investigations documented cases of waste, fraud, abuse, and financial mismanagement. Auditors found that KBR had repeatedly overcharged the government by billing for work that it did not perform, and paid suppliers more than amounts owed. Overhead expenses for such activities as transportation, security, and office support ranged from 11% to as high as 55% of the contract value, and were billed to reconstruction contracts by KBR. The greater the amount of money charged to overhead expenses, the less money there was available for reconstruction activities. The total dollar value of the contracts audited in one report was approximately \$1.3 billion.¹⁶

The SIGIR has recommended that the federal government should "generally avoid the use of sole-source and limited-competition contracting actions."¹⁷ In the opinion of the SIGIR, the use of sole-source and limited competition contracting in

¹³ For further discussion of contracting issues, see CRS Report RL31833. *Iraq: Recent Developments in Reconstruction Assistance*, by Curt Tarnoff.; and CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes*, by John R. Luckey.

¹⁴ Paying for Iraq Reconstruction. An Update of the January 2004 analysis conducted by the Congressional Budget Office. December 8, 2006.

¹⁵ Senator Collins Works To Extend The Term of the Office that Oversees Billions in Iraqi Reconstruction Dollars. Press Release of the United States Senate Committee on Governmental Affairs, November 13, 2006.

¹⁶ Review of Administrative Task Orders for Iraq Reconstruction Projects. SIGIR-06-028, October 23, 2006, 38 p.; Witte, Griff. "Halliburton Cited For Iraq Overhead," *Washington Post*, Oct. 25, 2006, D 01.

¹⁷ Lessons in Contracting from Iraq Reconstruction. Lessons Learned and Recommendations from the SIGIR, July 2006.

Iraq should have ended sooner, and that contracts issued previously under limited or sole-source competition should have been re-competed.

Army Audit Agency. The Army Audit Agency has three ongoing audits in support of Operation Iraqi Freedom, including one audit which evaluates the adequacy of LOGCAP throughout the Iraq area of operation.

Department of Defense Inspector General. At an October 18th 2005 hearing before the House Government Reform Committee, the acting DOD Inspector General reported that he had limited his audit role in Iraq because of the oversight already provided by the SIGIR, the DOD audit community, and the Government Accountability Office. The other consideration was a lack of sufficient resources.¹⁸

The acting DOD Inspector General testified in a recent hearing before the House Armed Services Committee on “Audit of Reconstruction and Support Activities in Iraq.” In his testimony, he described the past and present audits of Iraq reconstruction activities:

“We have 15 on-going Iraq-related audit projects involving critical readiness issues that directly impact the warfighter such as personnel and operational equipment readiness; the sustainability of small arms programs, and resetting ground vehicles and equipment with the combatant commands. Our audits include the oversight of funds and evaluation of internal controls relating to the Commanders’ Emergency Response Program, as well as the execution of supplemental funds to train and equip the Iraq security forces.” Later he discussed past and present criminal investigations:

The Defense Criminal Investigative Service (DCIS), the criminal investigative arm of the DOD Inspector General, has been engaged in investigating DOD-related matters pertaining to the Iraqi theater, to include Kuwait, since the start of the war. From May 2003 through October 2004, DCIS had teams of two to three agents deployed to Baghdad. From October 2004 to present, the DCIS European office as well as multiple CONUS DCIS offices continued to investigate Iraq related matters. In September 2006, DCIS re-deployed four special agents to the theater - two special agents are assigned to Iraq and two special agents are assigned to Kuwait. Both offices are conducting criminal investigations and examining matters that pertain to the Department.

The presence of DCIS in the region has led to numerous investigations of corrupt business practices, the lost of U.S. funds through contract fraud, and the loss of Iraqi military equipment. Our investigations are focused on matters such as bribery, theft, gratuities, bid-rigging, product substitution,

¹⁸ Statement of Mr. Thomas F. Gimble, Acting Inspector General, Department of Defense, before the Subcommittee on National Security, Emerging Threats, and International Relations, House Committee on Government Reform on “Iraq Reconstruction, Governance and Security Oversight,” October 18, 2005.

and conflicts of interest. These alleged crimes expose U.S. and coalition forces to substandard equipment and services, or shortages that aggravate an already harsh and harmful environment.”¹⁹

Government Accountability Office (GAO). GAO has identified DOD contract management as an area of high risk; as such, GAO monitors DOD’s performance and provides the Deputy Secretary of Defense with periodic updates.²⁰ GAO has conducted many studies of Iraq contracting, including four studies of logistical support contracts: LOGCAP, the Balkan Support Contracts, AFCAP, and the Navy’s CONCAP. Overall, GAO found that “DOD’s contract oversight processes were generally good, although there is room for improvement.”²¹

GAO provided an analysis of 93 award-or-incentive-fee contracts awarded by DOD, and found that DOD frequently paid most of the available award fees, regardless of whether the contractor fell short of, met, or exceeded expectations. DOD allowed contractors second chances to earn “initially unearned” or deferred award fees, and paid a significant number and amount of fees for performance that was judged to be “acceptable, average, expected, good, or satisfactory.” GAO concluded that despite the fact that DOD paid billions in award fees, DOD has little evidence to support its contention that the payment of award fees improved contractor performance.

The Comptroller General appeared before the House Armed Services Committee to discuss GAO’s activities on reconstruction contracts in Iraq. Since 2003, GAO has issued 67 Iraq-related reports and testimonies to Congress. He made several important observations:

- The challenges faced in Iraq are a symbol of systematic challenges facing DOD.
- DOD cannot develop a complete picture of the extent to which it relies on contractors to support its operations. Information on the number of contractor employees, and the services they provide, is not aggregated within DOD or its components.
- DOD recently established an office to address contractor support issues, but the office’s specific roles and responsibilities are under study.
- DOD and its contractors need to clearly understand DOD’s objectives and needs. To produce desired outcomes with available funding and within required time frames, they need to know the goods or services required, the level of performance or quality desired, the schedule, and the cost. When such requirements were

¹⁹ Statement of Mr. Thomas F. Gimble, Acting Inspector General, Department of Defense, before the House Armed Services Committee, January 18, 2007.

²⁰ “High Risk Area: Defense Contract Management.” GAO-05-207. February 2005.

²¹ “Military Operation. DOD’s Extensive Use of Logistics Support Contracts Requires Strengthened Oversight.”. GAO-04-854. July 2004.

not clear, DOD often entered into contract arrangements that posed additional risks.

- Managing risks when requirements are in transition requires effective oversight.
- DOD lacked the capacity to provide sufficient numbers of contracting, logistics, and other personnel, thereby hindering oversight efforts.²²

Iraq Contracts

The Air Force Contract Augmentation Program (AFCAP) Contracts

AFCAP is the largest contingency support contract ever awarded by the Air Force. AFCAP is an “umbrella” contract, similar to LOGCAP. It was designed to provide an on-call capability for troop sustainment and support. The program was established in 1997 to contract for a wide-range of non-combatant, civil engineer services during wartime, contingency, and humanitarian efforts. AFCAP provides for contractor support to relieve active duty and air reserve personnel. AFCAP provides capabilities in the area of food service, lodging, carpentry, plumbing, electrical, mechanical, air conditioning, laundry plant operations, fire protection emergency management, project and program management.

Initially, AFCAP began as a 5-year, \$475 million program; now it is a 10-year, \$10 billion program. AFCAP is managed by the Air Force Civil Engineer Support Agency at Tyndall Air Force Base, and the Air Force Services Agency in San Antonio, Texas. The contract consists of administrative task orders which have been awarded to six companies: Washington Group International, CH2M Hill Global Services, URS/Berger JV, Bechtel National, DynCorp International and Readiness Management Support. The AFCAP contractor maintains a core staff in theater to plan, organize, and acquire resources on an as-needed basis.

The Army’s Logistics Civil Augmentation Program (LOGCAP) Contracts

Some of the most publicized examples of allegedly poor contract administration can be found in the contracting activities of Kellogg, Brown & Root (KBR), a subsidiary of Halliburton, and its performance on LOGCAP and the Restore Iraqi Oil contract (RIO). LOGCAP is an Army program, established on December 6, 1985, as a vehicle to manage civilian contractors who perform services in support of DOD

²² GAO-07-358T, p. 13. Also, see GAO-07-145. Military Operations. High-Level DOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces, December 2006, p. 53. GAO-04-854. Military Operations. DOD’s Extensive Use of Logistics Support Contracts Requires Strengthened Oversight. July 1004, p. 67.

missions during times of war and other military mobilizations. LOGCAP is administered through the Army Materiel Command (AMC), Operations Support Command, and is a centrally managed program to coordinate efforts to negotiate pre-existing (such as contingency) contracts with vendors from the United States. LOGCAP has been used in a variety of military contingency operations, and provides for the awarding of contingency, or bridging contracts, or for the inclusion of contingency clauses in peacetime contracts. LOGCAP contracts have been previously awarded for work in Rwanda, Haiti, Saudi Arabia, Kosovo, Ecuador, Qatar, Italy, southeastern Europe, Bosnia, South Korea, and Kuwait. Kellogg, Brown and Root (KBR) is the Army's primary contractor for providing food and shelter to the military in Iraq and Afghanistan.

The first LOGCAP contract (LOGCAP I) was awarded by the Army Corps of Engineers to KBR in 1992. The contract was used to support the United States military services and the United Nations military forces in Somalia. The second LOGCAP contract (LOGCAP II) was awarded to DynCorp in 1994. The third LOGCAP contract was awarded to KBR in 2001.

The third LOGCAP contract (LOGCAP III), a ten-year contract (one base year, followed by nine option years), was awarded in 2001 to KBR to perform a variety of tasks. Initial press reports indicated that this LOGCAP III contract would be for the development of a contingency plan for extinguishing oil well fires in Iraq; however, subsequent press reports included such tasks as providing housing for troops, preparing food, supplying water, and collecting trash.

Potential Oversight Issues

Potential contract oversight issues that Congress may choose to examine include various aspects of contract administration, such as contract costs, including the development of contract requirements; costs-plus, no-bid, and sole-source contracts; transparency, and the acquisition workforce.

Contract Administration

Contract administration includes contract management and contract oversight. Federal Acquisition Regulation (FAR) Part 37 makes it clear that "agencies shall ensure that sufficiently trained and experienced professionals are available to manage contracts."²³ The burden rests with the federal government to ensure that enough appropriately-trained professionals are available to manage the contracts. This is essential, particularly before the requirements generation process, when the government determines the scope of work to be completed. Contract management is described in The Office of Federal Procurement Policy's (OFPP) "Guide To Best Practices for Contract Administration." In this guide, the point is made that "The technical administration of government contracts is an essential activity....absolutely essential that those entrusted with the duty ensure that the government gets all that

²³ FAR Part 37.

it bargains for...and they must be competent in the practice of contractor administration.”²⁴

Over the past few years, the size, shape, and complexity of service contracts have grown with the technical requirements of the new contracts. However, the size of the federal contractor workforce has not grown. There is now an imbalance - there are fewer federal contracting officials to manage the large-scale contracts, such as LOGCAP, and in some cases the government has sought to hire contractors to do the job that federal employees used to perform. For example, in their investigation of LOGCAP contracts, GAO reported that military officials utilizing LOGCAP had little understanding of LOGCAP, or their contract management responsibilities. Logistical support units which were intended to help military commanders had no prior LOGCAP, or contracting, experience.²⁵

Two former OFPP administrators, Steven Kelman and Allan Burman, think that the current situation creates a crisis of sorts. Here they offer their assessment:

“Hiring contracting officials is hardly the way to dress for political success - who wants to bring in more “bureaucrats?” - but there can’t be well-managed contracts without people to manage them. The current situation creates a vicious circle: Overstretched people make mistakes, producing demands for more rules, creating additional burdens, giving people even less time to plan effective procurements and manage performance.”²⁶

It is important that both civilian and military procurement sectors in DOD have qualified and experienced contract professionals. In the case of service contracts, having professionally-trained contracting personnel could be even more critical than contracts for tangible goods. With tangible goods, there is an identifiable product. In the absence of a product, it becomes even more important that the contractor maintain both awareness and involvement to exercise good stewardship of DOD-appropriated dollars.

DOD Contracting Officials. Contracting officials are expected to make tough decisions. Ms. Bunnatine Greenhouse, the highest ranking civilian at the U.S. Army Corps of Engineers (USACE), raised important questions on the rationale for giving KBR contracts without competition. She objected to the awarding of the no-bid contract award to KBR, and to the five-year term of the contract.²⁷

²⁴ OFPP. A Guide to Best Practices for Contract Administration. October 1994.

²⁵ Logistical support units write performance statements of work, prepare independent government cost estimates, and review contractor estimates on behalf of the government. See GAO-04-854. Military Operations: DOD’s Extensive Use of Logistics Support Contracts Strengthen Oversight. July 21, 2004.

²⁶ Burman, Allan and Kelman, Steven. “Better Oversight of Contractors,” *The Boston Globe*, January 16, 2007, Pg. A9.

²⁷ Schnayerson, Michael. “Oh, What a Lucrative War,” *Vanity Fair*, April 2005, p. 9.

The basis for her refusal to approve the proposed five-year, sole-source contract between KBR and the U.S. Army [for the Restore Iraqi Oil (RIO) contract]²⁸ was because: (1) KBR had been paid \$1.9 million to draft a contingency plan to design the “guts” of the contract, how it would work, the budget, and other details; and (2) selecting KBR for the five-year contract would violate procurement protocol, as (reportedly, Ms. Greenhouse stated) contractors who draw up a contingency plan cannot be allowed to bid on the job to *execute* the same plan. Bidding on the contract would give them an unfair advantage over any competitors. Pressured to sign the contract, Ms. Greenhouse added the following contract language: “I caution that extending this sole source effort beyond a one-year period could convey an invalid perception that there is not strong intent for a limited competition.”²⁹ A DOD audit later showed that, under the RIO contract, KBR had over-charged the government \$61 million. for fuel. In response, the Commander of the USACE gave KBR a blanket waiver for the overcharge.³⁰

Various media reports suggested that in the case of Bunnatine Greenhouse, it appeared that a trained and experienced senior contract management official with the Army Corp of Engineers, doing her job and raising difficult questions, was demoted and eventually dismissed from the Army Corps of Engineers.³¹

Another senior DOD civilian testified that he made a decision to award Halliburton/KBR a task order under the LOGCAP contract, without conducting a competition. Michael Mobbs, Special Assistant to the Undersecretary of Defense for Policy, testified that he made the decision to award KBR the contingency planning contract over the objections of an attorney with the Army Materiel Command. The attorney had determined that the oil-related task order was outside of the scope of the LOGCAP troop support contract. Later, GAO concluded that the lawyer’s position was the correct one, and that the work “should have been awarded using competitive procedures.”³²

²⁸ For additional information, see CRS Report RL32229, *Iraq: Frequently Asked Questions About Contracting*, by Valerie Bailey Grasso (Coordinator).

²⁹ Vanity Fair, p. 149.

³⁰ It should be noted here that the KBR sole-source contract, according to the SIGIR, complied with applicable federal regulations for sole-source contracts, according to the SIGIR. The SIGIR concluded that “the justification used was that KBR had drafted the Contingency Support Plan (CSP), had complete familiarity with it, had the security clearances necessary to implement it, and the contract need[ed] to be immediately available to implement.” *Lessons In Contracting and Procurement. Iraq Reconstruction. Special Inspector General for Iraq Reconstruction. July 2006, p. 20.*

³¹ For additional information, see the following documents: Letter to Tom Davis, Chairman, Committee on Government Reform, House of Representatives, from Henry A. Waxman, Ranking Minority Member, House of Representatives, November 10, 2004; Testimony of Bunnatine Greenhouse before the Senate Democratic Policy Committee, June 27, 2005; and Letter to Donald Rumsfeld, Secretary of Defense, from Senators Byron L. Dorgan and Frank Lautenberg, and Representative Henry A. Waxman, August 29, 2005.

³² Briefing by Michael Mobbs, Special Assistant to the Undersecretary of Defense for Policy, for staff of the House Government Reform Committee, June 8, 2003. Also, see (continued...)

Development of Contract Requirements. LOGCAP contracts often bypassed the process to define realistic funding, appropriate time frames, and other important requirements - through the use of “undefinitized” contract actions. Undefinitized contract actions³³ do not require that the DOD contracting official write a complete performance work statement before the work is performed. Some proponents of undefinitized task orders say that they give the contractor more flexibility in getting work started sooner. However, recent DCAA audits have found that these undefinitized task orders gave KBR a significant cost advantage. Auditors found that DOD contracting officials were more willing to rely on KBR’s costs estimates, estimates which were later found to be greatly inflated. According to DCAA auditors, rarely did DOD contracting officials challenge these cost estimates. The estimates can become the baseline from which KBR establishes their costs.

In testimony before the Senate Armed Services Committee, the SIGIR stated that contracting personnel must be provided with an adequate description of a customer’s needs. The inability to properly define and prepare requirements appears to be a significant oversight challenge in the Iraq contracting process.³⁴

Use of Indefinite-Delivery/Indefinite-Quantity Contracts. FAR Subpart 16.5 defines indefinite-delivery/indefinite-quantity (ID/IQ) contracts.³⁵ In the case of ID/IQ contracts, task and delivery orders are issued; these orders do not define a firm quantity of goods or services.³⁶ Task orders are the “to do” portion of the contract, the contractor’s action list. LOGCAP contracts allow task orders to be approved as needed, without being subject to competition among multiple contractors. Each task and delivery order acts, in fact, like a single contract, allowing billions of dollars of work to be performed on a non-competitive basis. Task Order 59 is the largest single task order, to date, on the LOGCAP III contract. It was issued in May 2003, and includes various discrete functions, supporting up to 130,000 U.S. troops. Task Order 59 has resulted in charges to the government of

³² (...continued)

GAO-04-605. Rebuilding Iraq: Fiscal year 2003 Contract Award Procedures and Management Challenges, June 2004.

³³ Also referred to as undefinitized task orders.

³⁴ Testimony of the Special Inspector General for Iraq Reconstruction, before the Senate Armed Services Committee, February 7, 2006.

³⁵ FAR Subpart 16.5 Indefinite delivery/indefinite quantity contracts, also known as IDIQ contracts, supply an indefinite quantity of supplies, goods, or materials, for an indefinite period of time. See FAR, Part 16, Types of Contracts. There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. Pursuant to 10 U.S.C. 2304d and section 303K of the Federal Property and Administrative Services Act of 1949, requirements contracts and indefinite-quantity contracts are also known as delivery order contracts or task order contracts.

³⁶ Indefinite-quantity contracts are also known as delivery order contracts or task order contracts.

about \$5.2 billion dollars, for the 12-month period from June 2003 through June 2004.

Costs and the Use of No-Bid and Sole-Source Contracts. In general, most authorities believe that government contract costs are influenced significantly by the degree of competition; that having several competitors will drive down cost. However, questions can be raised on LOGCAP contracts to help identify costs drivers, their impact on the overall contract costs, and whether contract costs in a war zone are inherently uncontrollable. DOD has argued that Iraq contracting costs are expensive because of the uncertainty of war-related requirements for goods and services. Contingency contracting in times of war, using programs such as LOGCAP, enables contracting officials to move quickly to secure contractors, who in turn can be deployed quickly into the combat theater.

Much has been written in the media about the use of sole-source contracting³⁷ in Iraq. While full and open competition is the standard for government contracting, full and open competition has not been the standard for contracting for troop support services under LOGCAP. Of the \$145 billion in non-competitive contracts awarded in 2005, \$97.8 billion was awarded in “no-bid” contracts. Of that \$97.8 billion in contracts, \$63.4 billion was awarded under the rationale that *only one contractor could supply the needed goods or services*. The remaining \$34.4 billion was awarded in no-bid contracts under a variety of other exceptions to full and open competition. \$8.7 billion was awarded for emergency situations, and \$2.9 billion was awarded for circumstances where a statute authorizes or requires restricted competition.³⁸ Finally, \$47.2 billion in contracts was awarded in cases where the competitive range was limited to a small group of companies (called “limited” competition).

The Special Investigations Division of the House Government Reform Committee issued a report called “Dollars, not Sense: Government Contracting Under the Bush Administration.” According to the report, in 2000 the federal government awarded \$67.5 billion in non-competitive contracts; that figure rose to \$145 billion in 2005, an increase of 115%. While the contracts awarded were larger, the value of contracts overseen by the average government procurement official rose by 83% (between 2000-2005).

Cost-reimbursement Contracts. Cost-reimbursement contracts³⁹ can be: (1) cost-plus award fee; (2) cost-plus incentive fee; or (3) cost-plus fixed fee. In 2000, the federal government spent \$62 billion on cost-plus contracts; in 2005, that figure increased to \$110 billion. Nearly half of all costs-plus contracts (\$52 billion) were costs-plus award fee contracts. LOGCAP is the single largest cost-plus award

³⁷ Sole-source contracts are contracts which are not subject to competition.

³⁸ Dollars, Not Sense: Government Contracting Under the Bush Administration. United States House of Representatives, Committee on Government Reform - Minority Staff, Special Investigations Division, p. 7-9.

³⁹ Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

fee contract, and is valued at about \$16.4 billion.⁴⁰ In costs-plus contracts, contractor's fees rise with contract costs. Increased costs means increased fees to the contractor. There is no incentive for the contractor to limit the government's costs.

Use of Overhead Fees. The SIGIR's investigation into reconstruction contracts revealed that, in some contracts, overhead expenses accounted for more than half of the costs that Kellogg, Brown, and Root (KBR) billed the federal government. A recent audit report, *Review of Administrative Task Orders for Iraq Reconstruction Contracts*, found that relatively high overhead costs were charged, and these costs were significantly higher than work by other companies in Iraq. Overhead costs for these contracts ranged from 11% to 55% of projected contract budgets. For example, the SIGIR found that in five KBR projects, administrative costs outdistanced the costs of the project itself. For example, the report cites a project where administrative costs totaled about \$52.7 million, while the actual project costs were about \$13.4 million. In another case, the combined administrative costs for five contractors totaled about \$62 million, while the direct construction costs totaled \$26.7 million.⁴¹ The SIGIR found that overhead expenses accounted for more than half of the costs that Kellogg, Brown, and Root (KBR) billed the federal government.

Overhead fees can also result as a part of fees passed from one contractor to another. One such example is the case of Blackwater Security Firm's contract for private security services in Iraq. Blackwater's contract paid workers who guarded food trucks a salary of \$600 a day. The company added overhead costs and a 36% markup to its bill, then forwarded the bill to a Kuwaiti company. The Kuwaiti company then added costs and profit, then sent the bill to the food company. The food company did the same, and finally sent the bill to KBR. KBR passed its cost to DOD. Yet the U.S. Army stated in a congressional committee hearing that it had never authorized KBR to enter into a subcontracting relationship with Blackwater. The matter remains pending.⁴²

Transparency. Transparency allows the federal government to better administer contracts and oversee contractors. For example, the federal government has had difficulty getting certain contractors to provide important information on their invoices and billing statements. The SIGIR released a series of audit and investigative reports which drew attention to barriers that hampered the government's efforts. In one report, Bowen reported that it was difficult to complete the investigation into the KBR contracts because KBR "routinely and inappropriately marked their data as proprietary."⁴³

⁴⁰ Army Field Support Command, Media Obligation Spreadsheet, April 20, 2006.

⁴¹ Powers, Mary Buckner. Congress Moves To Reinstate Iraq Contracting Overseer. *Engineering News-Record*, Vol. 257, No. 19, p. 13. November 13, 2006.

⁴² "Watching War Costs," *The News & Observer*, Raleigh, NC, December 9, 2006. Retrieved January 21, 2007, at [<http://www.nexis.com/research/search/submitViewTagged>].

⁴³ Powers, Mary Buckner. Congress Moves To Reinstate Iraq Contracting Overseer. *Engineering News-Record*, Vol. 257, No. 19, p. 13. November 13, 2006.

Another problem with a lack of transparency is the relationship between the federal government, the prime contractor, and the subcontractors. The federal government has a contractual relationship with the prime contractor, not with the subcontractors. Thus, the government cannot provide full accountability for taxpayer dollars. While these agreements are between private companies, the monies are from public funds.⁴⁴

Acquisition Workforce. According to DOD, its acquisition workforce has been reduced by more than 50 percent between 1994-2005.⁴⁵ In future years, between 2006-2010, half of the federal acquisition workforce will be eligible to retire.⁴⁶ It appears that DOD does not have sufficient numbers of contractor oversight personnel, particularly at deployed locations. This limits its ability to assure that taxpayer dollars are being used in a judicious manner. For example, in recent testimony before Congress, a GAO official reported that if adequate staffing had been in place, the Army could have realized substantial savings on LOGCAP contracts in Iraq.⁴⁷ The GAO official also stated that one DCMA official, who is responsible for overseeing the LOGCAP contractor's performance at 27 locations, reported that he was "unable to visit all of those locations during his 6-month tour to determine the extent to which the contractor was meeting the contract's requirements."⁴⁸

⁴⁴ "Commentary: Watching War Costs," *The News & Observer*, Raleigh, NC, accessed on January 10, 2007 at [<http://www.nexis.com/research/search/submitViewTagged>].

⁴⁵ In 1998, the House National Security Committee asked GAO to review DOD's progress in achieving a 25-percent reduction in the acquisition organizations' workforce, examine the potential savings associated with such reductions, determine the status of DOD efforts to redefine the acquisition workforce, and examine DOD's efforts to restructure acquisition organizations. GAO concluded that: "DOD has been reducing its acquisition workforce at a faster rate than its overall workforce and is on schedule to accomplish a 25-percent reduction by the fiscal year 2000. However, potential savings from these reductions cannot be precisely tracked in DOD's budget. In addition, some of the potential savings from acquisition workforce reductions may be offset by other anticipated costs. Such costs include those for contracting with private entities for some services previously performed by government personnel (i.e., substituting one workforce for another." U.S. Congress. General Accounting Office. *Defense Acquisition Organizations: Status of Workforce Reductions*. Report to the Chairman, Committee on National Security, House of Representatives. GAO/NSIAD-98-161. June 1998. 20 pages. For another source of data on the federal acquisition, see *Report on the Federal Acquisition Workforce, FY2003-2004*, Federal Acquisition Institute Report, Executive Summary, p. vii.

⁴⁶ S. Assad, Director, Defense Procurement and Acquisition Policy, in testimony before the Acquisition Advisory Panel, June 13, 2006, p. 57-58 (excerpted from the Final Panel Working Draft, Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the U.S. Congress, December 2006

⁴⁷ GAO-07-359T. *Defense Acquisitions: DOD Needs to Exert Management and Oversight to Better Control Acquisition of Services*. Statement of Katherine V. Schinasi, Managing Director, Acquisition and Sourcing Management, before the Subcommittee on Readiness and Management Support Committee on Armed Services, United States Senate, January 17, 2007.

⁴⁸ GAO-07-359T, p. 8.

Earlier mandates to reduce the size of the DOD acquisition workforce reflected Congress' view that the workforce had not been downsized enough — that reductions continued to lag in proportion to the decline in the size of the overall defense budget, in general, and to the acquisition portion of the defense budget, in particular. At that time, Congress and DOD were at odds over the need for further reductions in the defense acquisition workforce. Reducing the defense acquisition workforce had been viewed by the Congress, in the past, as a necessary requirement for eliminating wasteful spending, and providing DOD with increased funding for other priorities.

Staffing shortages in the defense contracting personnel to oversee Iraq contracts are part of a larger, systemic problem within DOD.⁴⁹ In reducing the size and shape of the federal acquisition workforce, an unanticipated result was the increase in the growth of the private sector service contracts. With the growth in service contracting, the increase in the number of complex, billion dollar contracts, and the decline in the number of federal acquisition workforce employees, some assert that there are not enough DOD contracting officials, onsite in Iraq, who are available to manage the complexities of the new acquisition programs, or oversee private sector contractors.

It appears to some that DOD has downsized the federal acquisition workforce, particularly those that oversee large-scale contracts like LOGCAP, to dangerously low levels. They note that the past downsizing of the defense acquisition workforce has resulted in the loss of technical personnel and a talent drain on DOD's ability to meet its mission and objectives. There are concerns over potential deficits and imbalances in the skills and experience levels of personnel who manage large-scale weapon acquisition programs and defense contracts.

Potential Options for Congress

Congress may choose to consider the following options when examining DOD contracts for troop support in Iraq: (1) the establishment of a dedicated office of the DOD Inspector General to conduct audits and investigation of DOD contracts; (2) the broadening of the jurisdiction of the SIGIR to include DOD contracts for troop support services (like LOGCAP contracts); (3) the convening of a study of the federal employee and contractor workforce; and (4) the need for more detail from DOD to give Congress better information to perform its oversight role.

⁴⁹ The same observations were made about the U.S. Coast Guard's Deepwater contract. According to Admiral Thad Allen, Commandant, the issue concerns "the capacity of our acquisition staffs to deal with the myriad definitization of task orders, particular line items, the ability to interact with the extensive amount of nodes that you have in Integrated Coast Guard Systems...I'm not sure that we understood going how much we had to be prepared to handle the work load in terms of capacity and competency in human capital, and that's one of the main things I'm focusing on." Cavas, Christopher P. Millions for Deepwater, No One to Spend It. U.S. Coast Guard Adds Acquisition Experts for Modernization. *Defense News*, Vol. 22, No. 2, January 8, 2007, p. 1.

Option 1: Create an Office of Iraq Contract Management for Troop Support Services

One of the recommendations of the SIGIR is to “designate a single, unified contracting entity to coordinate all contracting in theater.”⁵⁰ One way to accomplish this is to establish a Contingency Contracting Corp (a DOD initiative currently underway is studying the issue) that will deploy to Iraq and establish a standing presence. However, what additional resources might be necessary in order to provide better contract management and oversight of DOD-appropriated funds?

Given that the mission of the DOD Inspector General’s office is to promote “integrity, accountability, and improvement of Department of Defense personnel, programs and operations to support the Department’s mission and to serve the public interest”,⁵¹ should the DOD Inspector General have a stronger presence in Iraq? Given the many problems associated with LOGCAP contracts, oversight agencies like the DOD IG could have a pivotal role in preventing future contractor waste, fraud, or mismanagement

Congress may want to consider creating an office for the audit and investigation of DOD contracts for troop support services in Iraq. This office could be under the authority of the DOD Inspector General, and be deployed to Iraq. The mission of this office could be to conduct regular audits and investigations of DOD contracts for troop support.

Option 2: Expand the Jurisdiction of the Special Inspector General for Iraq Reconstruction

Another option is to give the SIGIR the authority to audit and investigate DOD logistical support contracts in Iraq. The SIGIR has already established a presence in Iraq, and has issued more than 150 reports, including audits and investigations. His efforts have largely resulted in the arrest of five people, and the convictions of four of them, with more than \$17 million in assets seized.⁵² The SIGIR has made several recommendations related to his audit and investigation of contracts under his jurisdiction. His observations and insights may be relevant and appropriate for the contract administration and oversight of DOD contracts for troop support services.⁵³

⁵⁰ Lessons in Contracting and Procurement, SIGIR, July 2006, p. 95.

⁵¹ From the DOD Inspector General’s website, at [<http://www.dodig.osd.mil/mission.htm>].

⁵² Senator Collins Works To Extend The Term of the Office that Oversees Billions in Iraq Reconstruction Dollars. Press Release of the United States Senate Committee on Governmental Affairs, November 13, 2006.

⁵³ As an example, the SIGIR recommends the creation of an “enhanced contingency FAR” to simplify the rules governing contingency contracting. SIGIR, Lessons in Contracting and Procurement, July 2006, p. 97.

Option 3: Convene a Study of the Federal Employee and Contractor Workforce

Congress may want to convene a study of the federal employee and contractor workforce. The study could examine three important questions: (1) Is there an appropriate balance of federal employee and contractor roles? (2) Is there an appropriate federal role and presence in the oversight area? and (3) Is the federal government attracting the right types of acquisition professionals?

Congress could require a separate report, from each military service, on the size, scope, costs, and structure of its acquisition workforce (including military, civilian, and contractor personnel).

Option 4: Require More Detail for Better Congressional Oversight

Congress could require DOD to provide more details for better congressional oversight. There are five questions that Congress could consider: (1) Should DOD move to limit sole-source or limited competition for Iraq contracts? (2) Should DOD use more fixed-priced contracting in Iraq? (3) Should task and delivery orders have certain dollar constraints? (4) Should task orders be subject to public notice? and (4) Should larger contracts be divided into smaller contracts, with better-defined, discrete tasks?

To create more transparency and openness in defense acquisitions regarding contract administration, costs, and performance, Congress could require a separate report from each military service. Each report could include data on the size, scope, costs, and structure of all contracts, particularly no-bid, sole-source, and costs-reimbursement contracts.

Congress also could require that specific criteria be met before certain contract arrangements can be approved by DOD or by Congress. In addition, Congress could require a periodic re-competition of certain types of contracts, like LOGCAP, that have the potential of spanning for many years. Congress could also require, for example, that task orders beyond a certain size be treated as a separate contract, and thus subject to competition among multiple contractors.

And finally, Congress could require that large defense contracts be subject to competition, and that a minimum of three contractors should be selected for contractors beyond a certain size. It appears, from available press accounts, that some contracts for services in Iraq could have been segregated and opened for competitive bidding. By administering smaller contracts, financial oversight might be easier. This may give small businesses more of an opportunity to compete for contracts in Iraq.

Appendix A. Reports

During the last four years, the Congressional Research Service, General Accounting Office, Department of Defense Inspector General, Army Audit Agency, Air Force Audit Agency, and the Special Inspector General for Iraq Reconstruction have issued many reports on contracting issues in Iraq, including those that appear below.

Congress

Dollars, Not Sense: Government Contracting Under the Bush Administration. Prepared by the Special Investigations Division, Committee on Government Reform-Minority Staff, U.S. House of Representatives, June 2006.

Congressional Research Service

CRS Report RL31833, *Iraq: Recent Developments in Reconstruction Assistance*, by Curt Tarnoff.

CRS Report RL32229, *Iraq: Frequently Asked Questions About Contracting*, by Valerie Bailey Grasso (Coordinator); Rhoda Margesson, Curt Tarnoff, Lawrence Kumins, Hyna Powers, Carolyn C. Smith, Michael Waterhouse. (Archived)

CRS Report RL32419, *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*, Jennifer K. Elsea and Nina M. Serafino.

CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes*, by John R. Luckey.

General Accounting Office

GAO-07-359T. Defense Acquisitions: DOD Needs to Exert Management and Oversight to Better Control Acquisition of Services. Statement of Katherine V. Schinasi, Managing Director, Acquisition and Sourcing Management. Testimony Before the Subcommittee on Readiness and Management Support, Committee on Armed Services, U.S. Senate, January 17, 2007.

GAO-07-145. Military Operations: High-Level DOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces, December 16, 2006.

GAO-07-20. Defense Acquisitions: Tailored Approach Needed to Transform DOD Services Acquisition Outcomes, November 9, 2006.

GAO-06-1130T. Rebuilding Iraq: Continued Progress Requires Overcoming Contract Management Challenges, GAO-06-1130T, September 28, 2006.

GAO-06-1132. Iraq Contract Costs: DOD Consideration of Defense Contract Audit Agency's Findings, September 25, 2006.

GAO-06-800T. DOD Acquisitions: Contracting for Better Outcomes. September 7, 2006.

GAO-06-838R. Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse, GAO-06-838R, July 7, 2006

GAO-05-274. Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts, March 17, 2005.

GAO-05-207. GAO, High Risk Series: An Update, January 2005

GAO-04-854. Military Operations: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight, July 19, 2004.

GAO-04-605. Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management Challenges, June 1, 2004.

Department of Defense Inspector General

Semi-Annual Report to Congress. April 1, 2006-September 30, 2006.

Semi-Annual Report to Congress. October 1, 2005-March 31, 2006

Semi-Annual Report to Congress. April 1, 2005-September 30, 2005.

Semi-Annual Report to Congress. October 1, 2004-March 31, 2005.

Report Number D-2004-112. Department of Defense, Office of the Inspector General, Audit Report: Unfinalized Contractual Actions. August 30, 2004.

Report Number D-2004-057. Acquisitions: Contracts Awarded for the Coalition Provisional Authority by the Defense Contracting Command-Washington. March 18, 2004.

Army Audit Agency

Report Number A-2005-0043-ALE Logistics Civil Augmentation Program in Kuwait, U.S. Army Field Support Command, November 24, 2004.

Appendix B. Current Legislative Initiatives on Iraq Contracting

Several bills were introduced to reduce the potential for future waste, fraud and abuse in Iraqi contracts. Senator Patrick Leahy has introduced two bills, the “War Profiteering Prevention Act of 2003”, and the “War Profiteering Prevention Act of 2006.” In the 110th Congress, he introduced a similar bill.⁵⁴ In the 109th Congress, Senator Byron Dorgan introduced a bill titled, “Honest Leadership and Accountability in Contracting Act of 2006.”⁵⁵

Section 812 of the National Defense Authorization Act for FY2006 (P.L. 109-163) requires the establishment and implementation of a DOD management structure to manage the acquisition of services. DOD has developed the “Acquisition of Services Policy.” This policy implements Section 2330 of Title 10, U.S.C. This policy will be included in the next revision of DOD Instruction 5000.2.

Section 817 of P.L. 109-163 directs the Secretary of Defense, in consultation with the Joint Chiefs of Staff, to develop a joint policy on contingency contracting during combat operations and post-conflict operations. This policy shall provide for the following:

- (1) the designation of a senior commissioned officer in each military department with the responsibility for administering the policy;
- (2) assignment of a senior commissioned officer with appropriate acquisition experience and qualifications to act as head of contingency contracting during combat operations, post-conflict operations, and contingency operations, who shall report directly to the commander of the combatant command in whose area of responsibility the operations occur;
- (3) an organizational approach to contingency contracting that is designed to ensure that each military department is prepared to conduct contingency contracting during combat operations and post-conflict operations;
- (4) a requirement to provide training (including training under a program to be created by the Defense Acquisition University) to contingency contracting personnel.

⁵⁴ S. 1813 was introduced on 11/3/03, and referred to the Senate Foreign Relations Committee. S. 2356 was introduced on 3/2/06 and referred to the Senate Judiciary Committee. S. 119 was introduced on 1/4/07 and referred to the Senate Judiciary Committee.

⁵⁵ S. 2361 was introduced on 3/2/06 and referred to the Committee on Homeland Security and Governmental Affairs.