Special Inspector General
for Iraq Reconstruction

Iraq Reconstruction

Lessons in Contracting and Procurement

2

[July 2006]

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PREFACE

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

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

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

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

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

OVERVIEW

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

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

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

Scope

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

Report Structure

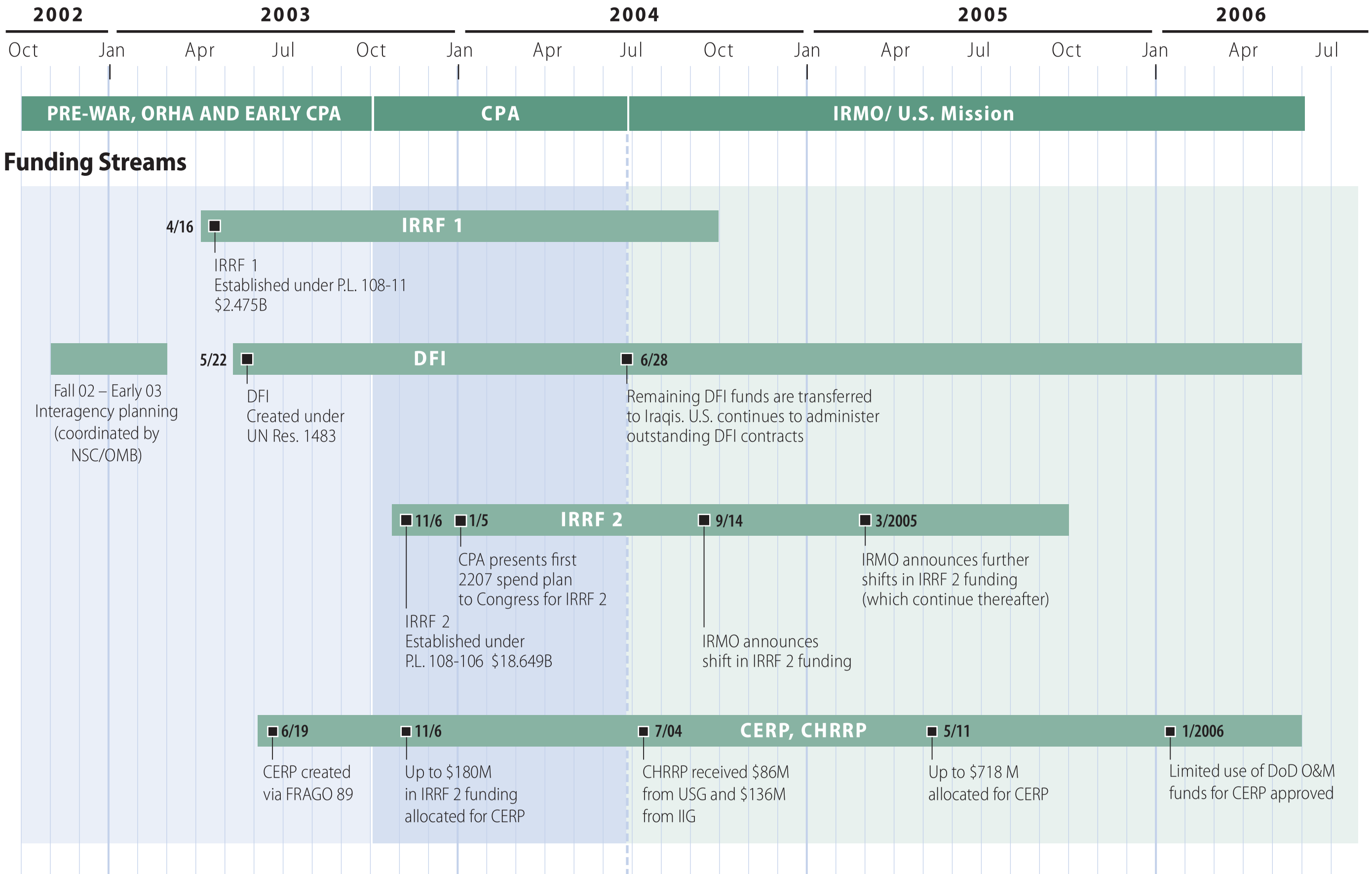
To review and evaluate the contracting and procurement processes that supported the relief and reconstruction program in Iraq, SIGIR divides this report into four chronological periods and one functional concept area:

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

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

IRAQ RECONSTRUCTION

Contracting and Procurement Timeline



Major Contracting Authorities and Events

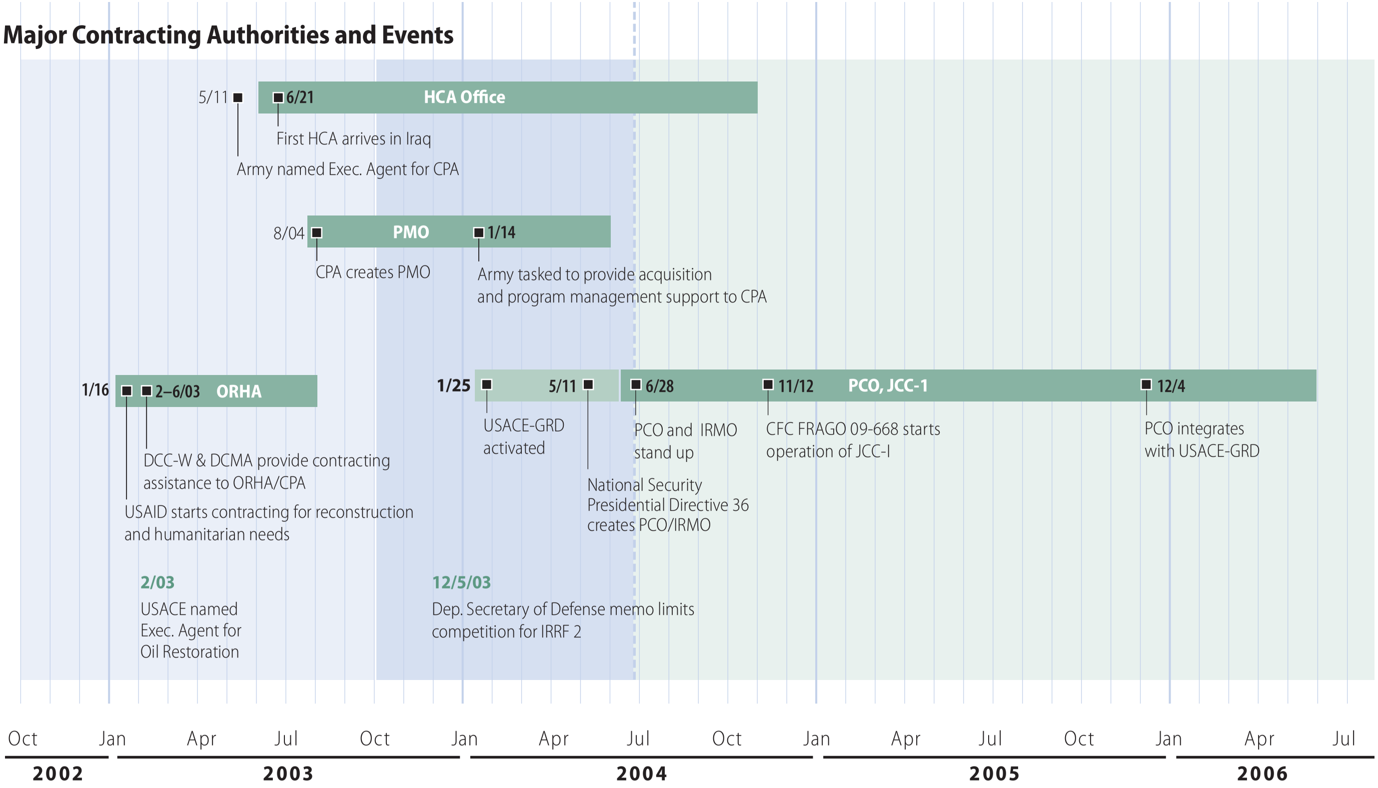


Figure 1

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

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

Department of Defense: The Decision to Use LOGCAP

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

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

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

LOGCAP's Focus Expands

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

LOGCAP Used for Contingency Planning in the Oil Sector

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

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

Faced with a December 2002 deadline for delivery of the draft oil sector contingency plan, the EIPG requested that the Department of the Army issue a task order under LOGCAP III to KBR to develop an Iraq oil sector contingency plan.[10] KBR had an existing relationship with CENTCOM, possessed the necessary security clearances, and was familiar with CENTCOM's technical and operational warplans into which the Iraq oil sector contingency plans would be integrated.[11]

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

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

In November 2002, the AFSC executed the first formal DoD contracting action related to Iraq reconstruction, awarding a LOGCAP III task order to KBR to develop contingency plans for the repair and operation of Iraq's oil infrastructure (should it be destroyed or damaged). The value of this initial task order was small ($1.9 million) compared to its eventual impact. In March 2003, before the commencement of hostilities, KBR was awarded a sole-source indefinite delivery/indefinite quantity (IDIQ) cost-plus contract, with a ceiling of $7 billion, to restore Iraq's oil infrastructure. *See infra* p. 19. This award was based in part on KBR's work on the initial oil sector contingency plan. During FY 2003, $1.4 billion was obligated under this contract as part this effort, designated Task Force Restore Iraqi Oil (RIO) and managed by the U.S. Army Corps of Engineers.[14]

U.S. Agency for International Development: Initial Planning

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

USAID'S HUMANITARIAN RELIEF PLANNING

In the fall of 2002, USAID's Office of Foreign Disaster Assistance (OFDA), which includes the Disaster Assistance Response Team (DART), and the Office of Transition Initiatives (OTI) began preparing for a possible post-conflict humanitarian disaster in Iraq. By February 2003, OFDA had committed $26.5 million in preparation for Iraq relief activities using International Disaster Assistance (IDA) funds, "for the purchase and pre-positioning of non-food relief commodities, and for assistance to UN agencies and NGOs [non-governmental organizations].” USAID provided these funds to the UN agencies and NGOs to support contingency planning and coordination efforts among various organizations that would be involved in Iraq relief and reconstruction efforts.[18]

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

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

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

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

ORHA was organized according to three pillars of responsibility: humanitarian assistance, reconstruction, and civil administration. Retired Lt. General Jay Garner (USA) was appointed ORHA's director. Upon his appointment, Lt. General Garner immediately ordered DoS to take charge of humanitarian assistance, USAID to assume responsibility for reconstruction activity, and DoD to oversee civil administration.[19]

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

USACE: Task Force Restore Iraqi Oil

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

In late February 2003, the Assistant Secretary of the Army for Acquisitions, Logistics, and Technology (ASA-ALT) approved USACE's justification for a sole-source, emergency response contract for Iraq's oil sector. On March 8, 2003, USACE awarded this contract to KBR for "an interim period as a bridge to a competitive contract," after receiving approval from the Under Secretary of Defense for Policy.[22] *See supra* p. 15. It justified issuing the IDIQ contract on a sole-source basis because KBR was "the only company [that] could immediately satisfy the requirements of the oil sector plan, considering the imminence of potential hostilities."[23] USACE relied on section 6.302.1 of the Federal Acquisition Regulation (FAR),[24] which allows sole-source awards whenever there is "only one responsible source and no other supplies or services will satisfy agency requirements."[25]

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

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

ORHA: Washington-Based Contracting Support

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

A March 2004 audit conducted by the DoD Office of Inspector General (DoD OIG) found that ORHA initially had "no written plans or strategies for obtaining acquisition support" and no assigned acquisition personnel.[28] The DoD OIG audit further criticized DCC-W contracts for circumventing proper procedures, but cited a lack of contracting personnel and extreme time constraints as extenuating circumstances.[29]

ORHA: In-Country Contracting Support

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

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

ORHA Develops a Contract Review Process

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

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

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

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

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

The Creation of CPA

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

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

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

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

DoD Tasks Army as Executive Agent for ORHA

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

Development Fund for Iraq: Key Source for CPA Contracts

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

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

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

ESTABLISHMENT OF THE CPA HEAD OF CONTRACTING ACTIVITY

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

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

CPA's HCA Office was given the Iraq reconstruction contracting mission "without limitations," meaning that it could "execute not only Iraqi funds, but also supplemental and appropriated funds for the United States."[56] In 2003, however, DFI funds accounted for 99% of the HCA Office's contracting activity. Only 1% came from funds appropriated by the U.S. Congress.[57] From June 2003 to March 2004, 99% of the contracts awarded through the HCA Office were competitive solicitations,[58] with 65% of these awarded to Iraqi firms.[59] This period of significant activity for the HCA Office was burdened by inadequate staffing, the absence of an effective requirements generation mechanism, and the lack of sufficient legal support to contracting officers.[60]

DFI REGULATIONS: THE PROGRAM REVIEW BOARD AND CPA MEMO 4

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

After the PRB began operation, the CPA Administrator approved formal procedures to regulate CPA's contracting and expenditure of the DFI.[63] These procedures were promulgated in CPA Memorandum 4, which the CPA Administrator signed on August 20, 2003. Memo 4 established comprehensive regulations for the execution of Iraqi funds through CPA contracts and provided that, though "Iraqi funds are not subject to the same laws and regulations that apply to funds provided to the [CPA] directly from coalition governments, they shall be managed in a transparent manner that fully comports with the CPA's obligations under international law."[64]

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

U.S. Appropriated Funds Designated for Reconstruction

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

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

USAID: Grants, Cooperative Agreements, and Contracts

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

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

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

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

THE DISASTER ASSISTANCE RESPONSE TEAM ISSUES COOPERATIVE AGREEMENTS

In March 2003, OFDA deployed a substantial DART team to the Gulf Region, which was tasked to provide initial humanitarian aid and disaster relief in post-war Iraq. DART team personnel comprised a mix of direct hires, contractor staff, and other USAID personnel, whose duties included assessing relief and reconstruction needs. The pre-positioned 65-person DART team – the largest ever deployed – was stretched across Kuwait, Qatar, Turkey, Jordan, and Cyprus, awaiting further movement into Iraq.

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

USAID BEGINS PROCUREMENT OPERATIONS

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

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

USAID: IRRF 1 INFRASTRUCTURE CONTRACT

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

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

OTHER USAID CONTRACTS DURING THE EARLY-CPA PERIOD

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

GRANTS UNDER CONTRACTS

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

USAID's Initial Iraq Reconstruction Contract Awards

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

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

Table 1

U.S. Department of State: DynCorp Contract

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

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

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

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

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

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

HCA Activities Continue

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

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

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

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

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

OIL

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

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

ELECTRICITY

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

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

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

Planning Begins for IRRF 2

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

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

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

CPA CREATES THE PROGRAM MANAGEMENT OFFICE

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

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

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

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

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

RECONSTRUCTION ESTIMATES AND BENCHMARKS

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

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

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

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

THE SUPPLEMENTAL REQUEST

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

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

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

Details of IRRF 2

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

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

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

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

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

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

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

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

LIMITING IRRF 2 COMPETITION TO COALITION COUNTRIES

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

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

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

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

PMO Operational Funding and HCA Staffing

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

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

CPA Develops a Spend Plan for IRRF 2

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

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

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

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

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

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

SECTION 2207 REPORT TO CONGRESS

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

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

Administrative and Funding Bottlenecks

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

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

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

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

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

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

DoD Sends an Acquisition Assessment Team to Iraq

In December 2003, DoD developed plans to send assessment teams to Iraq to review various problematic areas within CPA, including security, human resources, and contracting. The Acquisition Management Assessment Team, which was assigned to review CPA's contracting capability, was composed of representatives from USAID, USACE, and DoS, and led by a senior military contracting officer. In late January 2004, the team traveled to Baghdad with the charge to:

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

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

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

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

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

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

CPA Head of Contracting Activity Initiatives

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

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

Because of this shortfall in good requirements, HCA contracting officers devoted an inordinate amount of time helping PMO write project requirements. To remedy this situation, HCA assigned 12 staff members to handle requirements, which immediately alleviated the contracting bottleneck that had developed because of the requirements problem.

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

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

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

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

PMO Turns to the Air Force Center for Environmental Excellence

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

Since P.L. 108-106 required that all work funded by IRRF 2 be fully and openly competed, PMO investigated existing IDIQ construction contracts that met this competition requirement. In mid-December 2003, CPA officials approached the Air Force Center for Environmental Excellence (AFCEE), which had an IDIQ contract—the Worldwide Environmental Restoration and Construction (WERC) contract—to provide a wide range of construction and related services for U.S. military bases. In late 2003, the WERC contract had 27 qualified construction firms available to perform construction task orders, with a potential contracting capacity of $10 billion.[152]

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

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

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

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

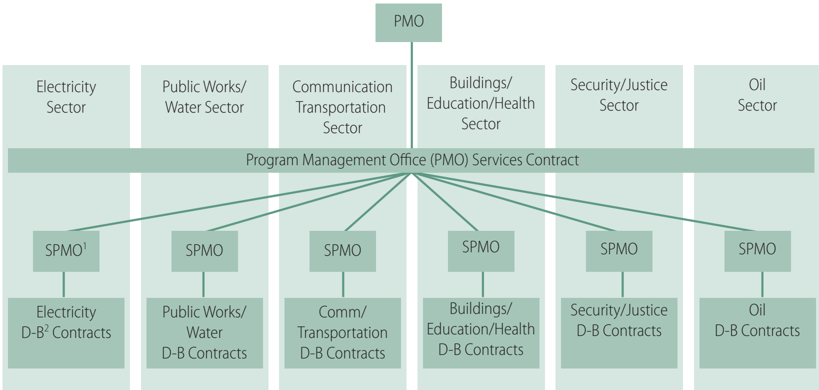
This continuing breach was resolved in June 2005, when AFCEE signed an MOA with the Multi-National Security Transition Command-Iraq (MNSTC-I), which had taken over security training and related contracting functions from the Project and Contracting Office (PMO's successor) during the previous year. Among other things, the MOA required that AFCEE support MNSTC-I "within the scope of their pre-solicited IDIQ contracts." The MOA also listed a variety of construction-related services that AFCEE may provide to MNSTC-I but noted that its services were "not limited" to those listed.[157]

CPA/DOD IRRF 2 Contracting Award Process

IRRF 2: INFRASTRUCTURE CONTRACTING STRATEGY

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

IRRF 2 Design-build Program Management Structure



1 Sector Program Management Office
2 Design-build

FIGURE 2

THE SINGLE ACQUISITION MANAGEMENT PLAN

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

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

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

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

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

KEY CONTRACTING TERMS

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

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

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

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

STANDARDIZING THE IRRF 2 DESIGN-BUILD CONTRACT SOLICITATION

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

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

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

IRRF 2 DESIGN-BUILD CONSTRUCTION CONTRACT AWARDS

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

After receiving the proposals, the source selection committees determined whether they complied with the solicitation's administrative requirements and then assessed them according to the selection factors provided in the RFP. This included factors required by the FAR: technical capability, management expertise, past performance, and cost effectiveness. The evaluators also assessed the bidders' approach to a hypothetical mobilization order and a sample project task order.[173] The committees then reviewed every proposal to assess which were the most competitive and provided the best value to the U.S. government.

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

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

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

IRRF 2 – Selected Contracts

PMO Program Management Contracts

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

IRRF 2 – Selected Contracts

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

Design-Build Construction Contracts

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

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

IRRF 2 – Selected Contracts

Bridge Contracts

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

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

Table 2

More on Design-Build Contracts

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

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

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

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

THE COSTS OF DELAY

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

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

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

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

RISING SECURITY COSTS AND ISSUES

Security problems (and their proximate costs) began rising during early 2004, spiking dramatically in April 2004 when deadly conflict erupted in Falluja. Because of the increasingly dangerous environment in Iraq, the percentage of security-related contract costs eventually rose from under 10% to as much as 20%.[183]

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

From PMO to PCO

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

A few days after the issuance of NSPD 36, the Department of the Army, ostensibly to clarify lines of authority defined by NSPD 36, issued a memo reiterating the Army's role in providing acquisition and program management support to the CPA and any successor entity.[187] On June 22, 2004, the Deputy Secretary of Defense issued a memorandum specifically establishing PCO "within the Department of the Army" to carry out these functions, including "support related to the close-out of the CPA."[188] Regardless of the intentions of these DoD directives, they tended to perpetuate the inter-departmental difficulties that NSPD 36 had sought to resolve.

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

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

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

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

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

THE BECHTEL II AWARD: FULL AND OPEN COMPETITION

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

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

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

DoS Re-competes the DynCorp Contract

DoS's main contracting action during this period was the re-competing of the DynCorp contract for Iraq police training. The re-competition happened under the supervision of the DoS Bureau of International Narcotics and Law Enforcement Affairs (INL). The decision to re-compete was made after the original DynCorp contract reached its ceiling of $145 million.

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

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

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

The End of CPA

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

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

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

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

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

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

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

Problem Areas during the CPA/Embassy Transition

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

Human Resource Issues

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

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

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

DFI Funds and Accelerated Iraqi Reconstruction Program

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

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

DFI Transfers to the Ministry of Finance

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

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

Slow Contracting Process: Security and Lack of Information

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

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

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

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

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

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

Shift in Project Emphasis and Contracting Strategy

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

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

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

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

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

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

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

Further Changes in Strategy and Structure

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

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

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

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

The Creation of the Joint Contracting Command-Iraq

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

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

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

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

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

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

USAID in the Post-CPA Contracting Environment

With the June 2004 transition of sovereignty from CPA to the IIG (and the Chief of Mission's contemporaneous assumption of control over reconstruction), USAID contracting transitioned from focusing on emergency and humanitarian response to economic assistance and development. Moreover, USAID contracting staff believed that the Chief of Mission placed a greater emphasis on strategic planning, which resulted in more orderly procurements. This was in contrast to CPA, which was viewed by USAID as operating in a perpetual "emergency mode."[240]

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

USAID'S CONTRACTING PROCESS

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

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

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

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

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

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

IRRF 2: Selected USAID Non-Construction Contracts and Grants

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

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

Table 3

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

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

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

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

CERP and CHRRP had several key differences:

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

Commander's Emergency Response Program

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

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

CERP Goes Operational

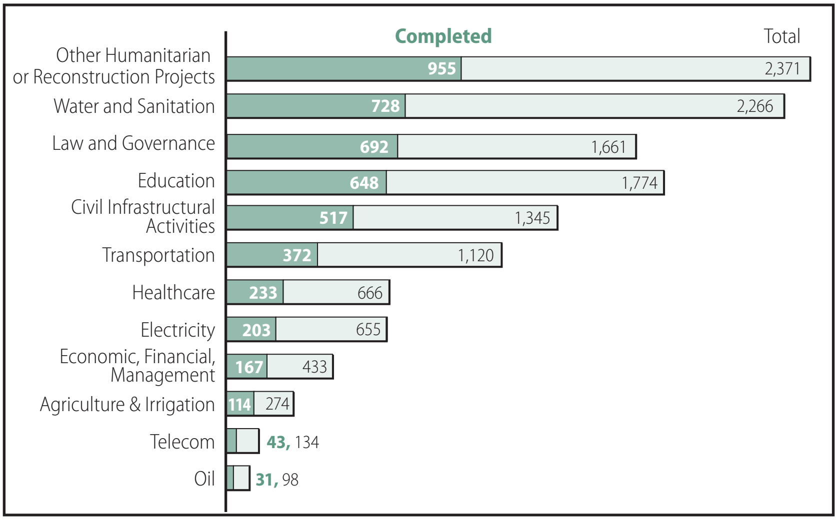
On June 19, 2003, the Commander of Combined-Joint Task Force 7 (CJTF-7) issued FRAGO 89, ordering CERP into operation. FRAGO 89 states that CERP activities include, but are not limited to:

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

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

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

Types of CERP Projects (as of September 1, 2005)



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

Figure 3

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

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

Funding for CERP

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

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

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

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

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

Total CERP Funding (In millions of $)

	Total Program Funding	Cumulative Funds Obligated	Cumulative Funds Expended
Seized Assets	$180.2	$178.6	$177.1
IRRF 2 (P.L. 108- 106)	140.0	140.3	130.5
P.L. 109-13	718.0	718.0	333.2
DFI	368.1	360.1	353.2
FY 2006 Request	500.0	NA	NA
Total*	$1,406.3	$1,397.1	$994.0

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

Table 4

Regulations and Responsibilities

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

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

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

SIGIR AND USAAA AUDITS OF CERP

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

In its audit, SIGIR found that:

- 58 of 74 projects reviewed did not have documentation showing that the commander obtained a contracting officer's approval.
- 5 of 46 projects that exceeded a $10,000 threshold did not have the required three quotes from vendors.
- 19 of 46 projects did not have documentation of obtaining a fair and reasonable price.
- A budget officer inappropriately signed the Statement of Agent Officer's Account form for more than $289 million.

In September 2005, the U.S. Army Audit Agency conducted an audit of CERP and found that "command personnel demonstrated adequate oversight over administrative processes and processed cash disbursements properly." The audit found, however, that there were some deficiencies in carrying out required oversight responsibilities.[263]

IMPACT OF CERP

CERP is widely viewed as a success story in Iraq reconstruction. Military commanders report that the "benefit received from CERP funds far outweighs the amount [of funds] provided. Funding minor efforts such as repairs to houses and buildings are helping to stabilize areas in Iraq."[264]

Iraqis immediately felt the impact of CERP projects: thousands in Baghdad were employed by the program to clean streets, alleys, buildings, and public spaces. CERP projects also employed Iraqis to install hundreds of generators and air conditioners, as well as repair jails and police stations in and around Baghdad. In other parts of the country, CERP projects accomplished water and sewerage repairs that provided clean water and improved health for local Iraqis.

CERP projects tended to be executed rapidly. For example, in the first 18 weeks of the program almost 1,800 CERP projects completed the repair of, among other things, bridges, roads, and schools. Northern Iraq was the site of a notable CERP initiative. In the fall of 2003, the 101st Airborne Division partnered with the local population to complete more than 3,600 projects valued at $28 million. The projects included the refurbishment of more than 400 schools, employing more than 1,000 Iraqis in the process.[265]

The CERP program received significant praise during the SIGIR government contracting forum, with one USAID participant noting that:

> Divisional Commanders told us that CERP money was as important as bullets because they could be used right away, [were] highly flexible, tactical as well as reconstruction. They loved it.[266]

Commanders Humanitarian Relief and Reconstruction Program

When the Interim Iraqi Government began operations on June 28, 2004, the MNC-I Commanding General asked the IIG Prime Minister to partner with MNF-I to support CERP by providing DFI funds for a number of proposed projects.[267] The Deputy Prime Minister agreed to provide $86 million in IIG funds, with the proviso that the United States must match the Iraqi contributions.[268] MNF-I agreed to use U.S. appropriated funds for this request, and designated this fund the "Commanders Humanitarian Relief and Reconstruction Program (CHRRP)."

The October 2004 DoS *Section 2207 Report* contained the first mention of CHRRP and explained the difference between this program and CERP:

> Although CHRRP and CERP funds are both for requirements defined by military commanders in the field, the laws and implementing regulations governing their expenditure differ. Procurements using CHRRP funds must follow the federal acquisition regulations and provisions pertaining to full and open competition in Public Law 108-106 for IRRF...specific focus of CHRRP is to provide urgent, essential water and sewage services with a primary focus on Baghdad.[269] Additionally, the goal of CHRRP was to support labor-intensive, high-impact programs that generate employment, stimulate economic activity, and provide immediate assistance in areas targeted by insurgents.[270]

The January 2005 SIGIR *Quarterly Report* explained that $86 million was reallocated from IRRF security and law enforcement funds to the CHRRP program to match the IIG contribution. During 2004 and early 2005, the Iraqi government transferred an additional $52 million to support the CHRRP program. That brought total program funding from all sources to more than $220 million.[271] This program also succeeded in rapidly producing hundreds of completed water and sewerage projects that benefited Iraqis in the Baghdad area.[272]

CHRRP FUNDING AND EXECUTION

Only the Multi-National Division-Baghdad (MND-B) and Multi-National Division-North Central (MND-NC) received CHRRP funds. To receive CHRRP money, the sponsoring command had to prepare a project proposal. For purchases of more than $2,500, the sponsoring command prepared a purchase request and commitment form and forwarded it to the contracting office. Purchases of less than $2,500 required only a purchase order form. CHRRP projects required a warranted contracting officer to execute any project above $2,500.

The DoS 2005 *Section 2207 Reports* highlighted CHRRP accomplishments. For example, completed CHRRP projects included:

- the completion of sewer line repair in Baghdad: $58,555
- seven water and sewer projects in Baghdad that focused on pumping stations and sewage line cleaning: $1.56 million
- renovation of the Al Jadriya Irrigation System in Baghdad: $869,000
- additional pump work at Pumping Station 14A in Baghdad: $45,635
- modification to the Baghdad Solid Waste Transfer Haul contract in Baghdad: $8.3 million[273]

Lessons Learned and Recommendations

LESSONS IN CONTRACTING FROM IRAQ RECONSTRUCTION

KEY LESSONS LEARNED: STRATEGY AND PLANNING

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

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

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

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

KEY LESSONS LEARNED: POLICIES AND PROCESS

- **Establish a single set of simple contracting regulations and procedures that provide uniform direction to all contracting personnel in contingency environments.** The contracting process in Iraq reconstruction suffered from the variety of regulations applied by diverse agencies, which caused inconsistencies and inefficiencies that inhibited management and oversight. CPA contracting developed CPA Memorandum 4 for contracts funded by the Development Fund for Iraq (DFI). Other agencies used the Federal Acquisition Regulation[274] (FAR) and its supplements. Certain agencies used departmental regulations to modify their application of the FAR for contracting in Iraq. USAID used its own statutory authority for contingency contracting (within the FAR).

- **Develop deployable contracting and procurement systems before mobilizing for post-conflict efforts and test them to ensure that they can be effectively implemented in contingency situations.** After reconstruction operations began in Iraq, contracting entities developed *ad hoc* operating systems and procedures for monitoring contracts and maintaining contracting and procurement histories; this limited contracting efficiency and led to inconsistent documentation of contracting actions.[275]

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

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

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

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

RECOMMENDATIONS

RECOMMENDATION 1:

Explore the creation of an enhanced Contingency FAR (CFAR). When the SIGIR met with the Commanding General of the Multi-National Forces-Iraq and told him of the contracting Lessons Learned Initiative, he observed that there was a compelling need for a single, simplified, and uniform contracting process for use during contingency operations. Although the existing FAR provides avenues for rapid contracting activity, the Iraq reconstruction experience suggests that the FAR lacks ease of use. Moreover, promoting greater uniformity through a single interagency CFAR could improve contracting and procurement practices in multi-agency contingency operations. An interagency working group led by DoD should explore developing a single set of simple and accessible contracting procedures for universal use in post-conflict reconstruction situations. Congress should take appropriate legislative action to implement the CFAR, once it is developed by the interagency working group.

RECOMMENDATION 2:

Pursue the institutionalization of special contracting programs. In Iraq, smaller scale contracting programs, like the Commander's Emergency Response Program (CERP) and the Commanders Humanitarian Relief and Reconstruction Program (CHRRP), achieved great success. Commanders used these programs to accomplish projects that immediately met the needs of a post-war population in distress. Given the positive performance of CERP and CHRRP in Iraq, the Congress should legislatively institutionalize such programs for easy implementation in future contingency operations.

RECOMMENDATION 3:

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

RECOMMENDATION 4:

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

RECOMMENDATION 5:

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

RECOMMENDATION 6:

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

Appendices

APPENDIX A: REQUESTED CHANGES TO THE FEDERAL ACQUISITION REGULATION

SIGIR research shows that throughout the Iraq experience there has been debate about whether the Federal Acquisition Regulation[276] (FAR) provides appropriate flexibilities for the fast-paced contracting required in conflict/post-conflict environments like Iraq. This debate continues. What is clear, however, is that after more than a year of contracting in Iraq, staff at different U.S. agencies in the fall of 2004 felt compelled to ask for relief from various FAR requirements.

At that time, an interagency effort coordinated through IRMO requested changes to the FAR for use in Iraq contracting. The organizations making requests included PCO, MNF-I and entities under its command, USAID, and USACE-GRD. The Chief of Mission in Iraq sent more than 20 proposed changes in a cable to the Secretary of State on October 4, 2004. The Secretary of State provided interagency responses to the requests on October 14, 2004, and October 27, 2004. These communications are summarized in Table A-1.

A review of the requested changes provides insight into the differing concerns of staff at various agencies working in Iraq, as well as their level of awareness of existing FAR flexibilities. Additionally, the responses highlight that the levels of flexibility allowed to contracting staff sometimes differed from agency to agency. Finally, although some of the flexibilities requested by agencies technically already existed in the FAR, some sources have told SIGIR that the process necessary to justify, document, and act on these flexibilities is too cumbersome and time-consuming to be practical in a contingency environment.

For example, many of USAID's requests for changes related specifically to contractor insurance rather than to more general issues with the FAR. USAID did not feel particularly constrained by FAR regulations, said one SIGIR interviewee, perhaps due to the degree of pre-planning they undertook for their contracts.[277]

Instead, some of USAID's suggested changes proposed the inclusion in contracts of contractors' costs for accidental death and dismemberment insurance and additional war risk insurance. The interagency response to these requests indicated that contracting officers had the flexibility to construct insurance as an allowable cost within individual contracts. However, the response also recognized the larger issues of insurance availability, as it indicated that the (lack of) availability of such insurance was an issue being addressed by an interagency working group.

In contrast, PCO's requests focused on increasing dollar thresholds for micro-purchases and reducing the length of notification time required for particular solicitation processes. The response to the PCO's notification request indicated that authority for this process already existed; however, the threshold request was addressed in the FY 2005 National Defense Authorization Act.

In addition to the requests made through IRMO, the HCA in Iraq also made requests directly to the Deputy Assistant Secretary of the Army (Policy and Procurement). Conversely, a DoS contracting official informed SIGIR that DoS has not requested any waivers outside of those allowed in the FAR or the DoS supplement to the FAR, known as the DOSAR.[278]

Table 5 provides a limited sample of excerpts from agency requests for changes in contracting regulations in Iraq during the fall of 2004, and the resulting interagency responses.[279] They reflect only this time period and only the agencies involved in the communications.

Written comments to SIGIR from DoD contracting officials regarding these fall 2004 communications suggest that both the requestors and responders may have been unaware of the existing flexibilities in the FAR. They may also have been unaware of waivers previously enacted, or other actions underway, to provide greater contracting flexibility.[280] Ensuring broad knowledge of contracting regulations pertinent to post-conflict contracting, as well as improving forward-rear and interagency visibility of activities underway would increase contracting flexibility. This in turn would assist contracting personnel in pre-stabilization or post-conflict environments to more effectively use all of the contracting mechanisms at their disposal.

Requested Changes to the FAR from Iraq-based Staff and Interagency Responses (October 2004)*

Request from Staff in Iraq	Requesting Agency	Interagency Response
Increase the Simplified Acquisition Threshold to $1 million**	MNSTC-I (MNF-I)	"The requested increase…is included in the final version of FY 05 National Defense Authorization Act, which will become law on signature by the President."***
Increase the Micro-purchase Threshold to $25,000	PCO	"The requested increase…is included in the final version of FY 05 National Defense Authorization Act, which will become law on signature by the President."
Waive the requirement for Performance and Payment Bonds of more than $100,000	USACE-GRD	"DoD, USAID and DoS concur that authority already exists under FAR 28.102-1 for the Contracting Officer to waive this requirement."
Equipment Risk of Loss. Make additional war risk insurance available; if not available, U.S. should accept equipment at border	USAID	"State, USAID, and DoD concur that flexibility currently exists to reimburse contractors for war risk insurance if it is available. The reasonableness of cost is a determination of each contract." "An interagency insurance working group [exists] to interact with the insurance industry and contractor associations on the larger issue of insurance availability."
Limit price reasonableness determinations to commercial standard for subcontractors	USACE-GRD	"State, USAID, and DoD concur that contracting officers already have the authority you seek, and Washington encourages Contracting Officers to use this authority in accordance with the FAR requirements to expedite reconstruction activities."
Reduce combined commercial synopsis/ solicitation time from 15 to 7 days	PCO****	"Agency Heads can already waive the 15-day requirement." "DoS currently has a waiver in effect for DoS procurement up to $5 million, as does USAID." "DoD regulations permit this waiver, using existing authorities. General authorities regarding synopsizing exist in regulation. The Army, as Executive Agency for contracting in Iraq is the waiver authority for DoD."

Requested Changes to the FAR from Iraq-based Staff and Interagency Responses (October 2004)*

Request from Staff in Iraq	Requesting Agency	Interagency Response
Revise the Determination and Findings (D&F) for waiver of Trade Agreements Act and Balance of Payments Act	HCA	"New D&Fs are awaiting [Deputy Secretary of Defense] signature, after having undergone a thorough DoD and interagency coordination process."

Sources: *Information included in the table was taken from a summary of communications between IRMO and the Department of State, which coordinated Baghdad-based and Washington-based interaction on contracting concerns during the fall of 2004. See Iraq Project and Contracting Office document, "Chronology of Cables," October 2004; IRMO memo, "Peace Time Rules in a Wartime Environment: Summary of Federal Acquisition Regulation (FAR)," September 24, 2004

**Simplified Acquisition and Micro-Purchase procedures are streamlined acquisition methods that are allowable below certain dollar thresholds. These requests were to increase the dollar value of purchases that could be made using these procedures.

***President George W. Bush signed the National Defense Authorization Act Fiscal Year 2005 (P.L. 108-375) in October 2004. Changes to the Simplified Acquisition and Micro-purchase thresholds were covered in Section 822 of the act (online at: http://www.defenselink.mil/dodgc/olc/docs/PL108-375.pdf, accessed April 25, 2006).

**** Written comments from DoD officials indicate that waivers of the Trade Agreements Act and Balance of Payments Program were issued in "Determination and Findings" documents by the Deputy Secretary of Defense in June 2003. (See DoD memo, Deputy Secretary of Defense, "Findings and Determination: Exemption from Balance of Payments Program," June 16, 2003; DoD memo, "Findings and Determination: Waiver of the Procurement Prohibition of Section 203(a) of the Trade Agreements Act of 1979, as amended." June 16, 2003. According to these sources, no new related waivers have been granted since that date. See DoD officials, written comments to SIGIR, March 10, 2006.

Table 5

APPENDIX B: TRENDS IN THE ACQUISITION WORKFORCE

Workforce Trends: Skills and Numbers

An April 2003 GAO report, *Federal Procurement: Spending and Workforce Trends*, reported that while federal contracting increased by 11% between 1997 and 2001, the federal acquisition workforce decreased by 5%. The report notes that the decline in the acquisition workforce varied by agency. DoD experienced the largest decrease—about 9%.[281]

A senior official at the OMB Office of Federal Procurement Policy provided an explanation of this trend. During the 1990s, there was a major acquisition reform movement in the U.S. government. It was believed that the increased use of technology and more efficient contracting vehicles, including the use of the purchase card, could result in a decrease of the acquisition workforce.[282]

GAO reported that these 1990 reforms created a need for an expanded skill set among acquisition personnel:

> Over the last decade, the federal acquisition workforce has had to adapt to changes in staffing levels, workloads, and the need for new skill sets. Procurement reforms have placed unprecedented demands on the acquisition workforce. For example, contracting specialists are required to have a greater knowledge of market conditions, industry trends, and the technical details of the commodities and services they procure.[283]

During the last several years, policies were issued to improve the management and training of acquisition workforce, including the Defense Acquisition Workforce Improvement Act, 1990, and the Services Acquisition Reform Act (SARA), 2003. More recently, Policy Letter 05-01, dated April 15, 2005, was issued by the OMB Office of Federal Procurement Policy. This policy letter "broadens the definition of acquisition workforce, expands duties of the agencies acquisition workforce manager, aligns civilian and defense acquisition workforce requirements…and increases continuous learning requirements."[284] The office also has launched a certification program that uses DoD modules as a standard for all acquisition personnel.[285]

Skills and Numbers: Effect in Iraq

In Iraq, acquisition numbers and skills seemed to be a challenge for DoD, USAID, and to a lesser extent, DoS, especially early in the reconstruction effort.

A senior DoD official stressed the importance of deploying with people who had proper skill sets, but felt that not everyone working with PMO had the "right skills to do the work in Iraq."[286] This official also noted that there was high turnover, especially among the legal support. He said that many of the lawyers did not have contracting backgrounds or the temperament and experience to work in a war zone. Instead, they were all trying to learn on the job.[287]

Another senior DoD official mirrored these opinions. He felt that some contracting staff lacked experience in large construction contracts. He said deployment was tied to the need to "have a warm body" and not necessarily to skills. However, he said that most people learned very quickly.[288] This official asserted that, "until we get a larger acquisition/contracting workforce, we will never resolve the deployment resources issue."[289]

A senior member of the USAID acquisition staff reflected on human resource challenges:

> I was proud of the way we handled the procurements and of our taking a strong stand on the need for competition. The biggest area of concern from my perspective was the lack of senior talent. I had to handle complex and politically sensitive contracts totaling multi-mil-

> lion dollars. We obviously put senior talent on the initial contracts, but as things started to move faster, and people became engaged on the award of earlier actions, we were forced to move to less senior contract specialist with tight oversight by a more senior contracting officer. This is perfectly o.k., and is the way junior contracting talent is developed. However, with such politically sensitive actions, I wanted only the best talent available, and I found myself having to assign people that may not have worked on multi-million dollar contracts under intense pressure to be awarded ASAP. I believe we helped grow USAID's contractual talent base considerably during this time, and that is good. However, I did not want younger talent learning on the job...I wanted senior contracting officers with 25 years of experience and we found them difficult to find in Washington.[290]

In the last two years, USAID has been able to increase its overall acquisition staff, and this is reflected in the number of contracting staff assigned to the Iraq effort. In 2004, USAID had 306 contracting officers and specialists; in 2005, this number grew to 358.[291] A USAID official described some of the reasons for this increase. He said that "after years of efforts, the Office of Acquisition and Assistance (OAA) obtained the resources in FY 2005 to fill vacancies that had gone long unfilled. Filling these vacancies has helped OAA reduce vulnerabilities caused by its previous understaffing."[292] In 2004, the USAID Iraq office (Baghdad and Amman, Jordan) had six contracting officers and specialists. In 2005 this number grew to nine.[293]

A senior DoS contracting official told SIGIR that, in general, DoS had the "right" number of contracting staff. However, this individual indicated that a number of people will be eligible for retirement in the next several years; therefore, hiring and developing the next generation of DoS contracting officers is of special importance.[294]

APPENDIX C: RECENT DEVELOPMENTS IN CONTRACTING FOR CONTINGENCIES/EMERGENCIES

More than three years have passed since the first contracts related to Iraq reconstruction were awarded. Modifications have been made to improve contracting, and lessons from the Iraq experience continue to inform new initiatives to improve U.S. readiness for contracting in contingency and post-conflict environments. This appendix offers details of recent developments.

Joint Policy on Contingency Contracting

Contingency contracting takes place during "an event which requires the deployment of military forces in response to natural disasters, terrorist or subversive activities, collapse of law and order, political instability, or other military operations…[and which] requires plans for rapid response and procedures to ensure the safety and readiness of personnel, installations, and equipment"[295]

The National Defense Authorization Act for FY 2006 requires the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, to develop a joint policy among all the military services for contingency contracting during combat and post-conflict operations.

The joint policy is to include, at a minimum, an organizational approach to contingency contracting, provision and maintenance of a training program for contingency contracting personnel,[296] and "such steps as may be needed to ensure jointness and cross-service coordination in the area of contingency contracting."[297]

Contractors on the Battlefield

A recent House of Representatives bill aimed at establishing specific requirements for contractors on the battlefield, including those who do not accompany military forces, did not win Senate approval. However, earlier in 2005, DoD issued regulations addressing requirements for contractors accompanying the military, as directed under section 1205 of the Ronald W. Reagan National Defense Authorization Act for FY 2005 (P.L. 108-375). House and Senate conferees instructed DoD to revise this guidance to include contractors or subcontractors:

> ...at any tier under a contract with any federal government agency, if the work to be performed is related to:
> - private security
> - reconstruction
> - humanitarian assistance
> - peacekeeping
> - other activities in an area of responsibility of a commander of a combatant command in which there are ongoing combat operations or there is a significant risk that contractor employees could come under hostile fire.[298]

The revisions are to address, among other things, the issues of force protection, weapons issuance, security, visibility and accountability, and provision of threat information to contractors not accompanying the force.

Contracting Guides

DoD

The Deputy Secretary of the Army for Policy and Procurement is currently preparing two guidebooks for contingency contracting: *The Army Guidebook for OCONUS Contingency Contracting* and

CONUS Guide for Supporting Emergencies within the United States and Supporting Overseas Contingencies from CONUS Locations.

The guidebooks are not training manuals, but rather refreshers for those who have already been trained in contingency contracting procedures. An official involved in the creation of the documents noted that the aim was twofold:

- to "fill in the gaps" of information highlighted by personnel who worked in Iraq and other recent contingencies
- to help contracting personnel focus on how they will need to operate differently in a contingency environment

As their primary source, the draft guidebooks use a Special Operations Command (SOCOM) compendium of contracting documents (pertinent regulations, procedures, and guidance) for use by SOCOM contracting officers. The guidebooks also draw on the *Air Force Guidebook on Contingency Contracting* and other materials for samples that contracting officers can refer to, highlighting established procedures and regulations, as well as special provisions that may need to be considered in different types of contingency situations. The draft documents also address some of the tactical-level challenges that contracting personnel have relayed to SIGIR during interviews.[299]

Both draft guidebooks outline wartime regulations, approval levels and thresholds triggered by contingency declaration, as well as information on relationships with contractors and planning for contingency contracting. The draft OCONUS guidebook also contains information for "customers" on how to write requirements, and includes a copy of CPA Memo 4 as a sample policy for use when procuring with seized funds.

The draft OCONUS guidebook makes reference to relief from regulatory requirements that certain contingencies may demand,

and contains sample documents, memos, and checklists for a wide variety of items. An official familiar with the draft guides informed SIGIR that DoD and DASA P&P are developing standby packages of waivers, documentation, and other mechanisms to initiate relief from regulatory requirements. DASA P&P plans to release the documents on the Army Contracting Agency (ACA) website and to make them available to contracting personnel deploying to work on contingencies.

USAID and DoS

A USAID contracting official informed SIGIR that his agency does not have such a guidebook, nor is one planned. Rather, the agency's practice is to set up a task force for each emergency or assistance situation in which it works. A memorandum establishes and outlines the task force, special authorizations or waivers, and contracting procedures.[300] Such a memo was created for Iraq. Because of experiences in Iraq, task forces set up for complex environments will include representatives from all relevant bureaus, including procurement and contracting staff. Also, the task forces now work to ensure that planning for relief and reconstruction is undertaken as an interdepartmental effort.[301]

A DoS contracting official told SIGIR that DoS has not found a need to provide any unique training to its contracting personnel for contracting in contingency environments. He noted that, to a large extent, DoS personnel contracted in Iraq as they would elsewhere—construction of the embassy, purchasing supplies and materials for staff, etc.[302] With the exception of early contracts awarded by DoS for police sector reconstruction, this statement is supported by SIGIR research.

APPENDIX D: ORGANIZATIONAL VETTING COMMENTS

SIGIR circulated a draft of its contracting lessons learned paper to a number of U.S. government organizations to obtain their official views on SIGIR's findings, particularly the recommendations. Although most vetting comments have been incorporated into the body of the report, SIGIR has placed the following comments in this appendix because they represent dissenting views or provided important qualifications concerning SIGIR's overall recommendations.

Several organizations responded to *Recommendation 1, "Explore the creation of an enhanced Contingency FAR (CFAR),"* indicating that they did not believe a formal enhanced Contingency FAR (CFAR) was necessary, and that current FAR provisions, properly understood and/or appropriately altered, would be sufficient.

The Department of State's Office of Acquisition Management (DoS-AQM) indicated that it did not believe there was a need for an enhanced Contingency FAR, stating that the current FAR provides "flexibility in multiple areas depending on the type of contracting" The office suggested additional training for contracting personnel in existing flexibilities to remedy current problems. DOS-AQM suggested altering audit standards to include consideration of unusual conditions in contingency operations to alleviate reluctance to use waivers and special provisions.[303]

The White House Office of Management and Budget – Office of Federal Procurement Policy (OMB-OFPP) did not specifically state that an enhanced CFAR was unnecessary, but told SIGIR that it did not believe that legislative changes are needed at this time. OMB-OFPP pointed out that the FAR council is making a "significant effort" to create new emergency acquisitions regulations in order to consolidate emergency procurement authorities for contingency operations.

Similarly, the Office of the Under Secretary of Defense-Acquisition, Technology, and Logistics (OUSD-ATL) described the "real issue as the need to have a useable, straight-forward compilation of existing regulations and applicable flexibilities…" with personnel appropriately trained before deployment to use these provisions.[304]

USAID/Iraq stated that rather than focus on the creation of a "special FAR," consideration might be given to "a better delegation of authority within the US Government." This would "authorize departments/agencies to implement clearly defined objectives," and gives them "the budget and operational control to execute."[305]

For *Recommendation 4, "Create a deployable reserve corps of contracting personnel…,"* the OUSD-ATL told SIGIR that they supported this recommendation, provided that corps personnel "…are part of existing contracting operations, where they can ply their skills on an ongoing basis before deployment."[306]

OUSD-ATL also responded to *Recommendation 6, "Pre-compete and pre-qualify a diverse pool of contractors with expertise in specialized reconstruction areas,"* stating that such a program would be most useful if done relatively soon before deployment.[307]

ENDNOTES

1. On June 22, 2006, the Deputy Secretary of Defense commendably responded to the draft recommendations in this report by announcing the formation of a Task Force to Support Improved DoD Contracting and Stability Operations in Iraq. The task force is charged with evaluating DoD processes and systems in Iraq affecting contracting, logistics and financial management, among other areas, and will provide recommendations and implementation plans to the Deputy Secretary of Defense on:
    - Deployment of a common system and business process for contingency contract management in Iraq
    - Establishment of appropriate contracting authority for CENTCOM
    - Policy and processes to ensure the effective and rapid utilization of CERP
    - Potential changes to the FAR and DFARS to address future contingency operations
    - Appropriate legislative strategies to address statutory issues impacting contingency contracting capability

    This dynamic responsiveness by DoD will enable Iraq reconstruction contracting lessons learned to be immediately applied to the current situation in Iraq.
2. See e.g. Senior USAID official, interview, November 2, 2005; Former senior DoD contracting official, interview, January 20, 2006.
3. U.S. Army Materiel Command document, "LOGCAP: Who and Where We Are," October 8, 2004 (online at: http://www.amc.army.mil/LOGCAP/WhoWhere1.html, accessed April 24, 2006).
4. MAJ M. Salah Ehab, CPT Dawn M. Cox et al, "Logisticians Don't Always Wear Green – Contractors as Force Multipliers," Staff of the Quartermaster Professional Bulletin, summer 1999 (online at: http://www.quartermaster.army.mil/oqmg/professional_bulletin/1999/summer1999/Contractors%20as%20Force%20Multipliers.htm, accessed April 24, 2006).
5. Donald L. Trautner, "A Personal Account and Perspective of the U.S. Army Logistics Civil Augmentation Program (LOGCAP)," 2004 Conference of Army Historians, July 15, 2004.
6. GAO report, "Defense Logistics: High-Level DoD Coordination is Needed to Further Improve Management of Army's LOGCAP Contract," GAO-05-328, March 2005.
7. DoD official, SIGIR Lessons Learned Forum: Contracting I, Washington D.C., December 5, 2005, (transcript pp. 51-53).
8. Ibid., p. 54.

9. Ibid., p. 54.
10. DoD official, written comments to SIGIR, March 10, 2006.
11. DoD official, written comments to SIGIR, June23, 2006.
12. DoD former senior contracting official, interview, January 20, 2006.
13. GAO report, "Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management," GAO- 04-605, June 2004, pp. 19-20.
14. Ibid, p. 20.
15. These groups included the: Interagency Iraq Political-Military Cell; Interagency Executive Steering Group; Interagency Humanitarian/Reconstruction Group; Interagency Energy Infrastructure Working Group; Interagency Coalition Working Group; and Office of Global Communications (Source, Air War College, "Pre-war Planning for Post-war Iraq" (online at http://www.au.af.mil/au/awc/awcgate/dod/postwar_iraq.htm, accessed on July 6, 2006).
16. OMB Director, testimony before the U.S. Senate Foreign Relations Committee, July 29, 2003, (online at: http://www.defenselink.mil/speeches/2003/sp20030729-depsecdef0385.html, accessed April 24, 2006).
17. GAO report, "Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management," GAO-04-605, June 2004, p. 7.
18. USAID document, "USAID Consultations on Iraq Contingency Planning," February 24, 2003, (online at: http://pdf.dec.org/pdf_docs/PDABY342.pdf, accessed April 24, 2006).
19. Former senior ORHA official, interview, March 30, 2004.
20. Senior DoD official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript, pp. 33-34).
21. Contract Statement of Work, Iraqi Oil Infrastructure Additional Pre-positioning of Fire Fighting, Rapid Response, Damage Assessment and Oil Spill Assessment and Response Teams, March 10, 2003. Declassified on April 22, 2004.
22. USACE official, written comments to SIGIR, March 20, 2006.
23. USACE document, "Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom. USACE Missions – Oil Fire Suppression and Restoration of Production," updated January 20, 2004 (online at: http://www.hq.usace.army.mil/cepa/iraq/faq.htm, accessed April 24, 2006).
24. The FAR is the body of regulation used by federal executive agencies for acquiring supplies and services with appropriated funds. Additionally, DoD, USAID, and DoS have specific supplements to the FAR.
25. USACE document, "Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom. USACE Missions – Oil Fire Suppression and Restoration of Production," updated January 20, 2004 (online at: http://www.hq.usace.army.mil/cepa/iraq/faq.htm, accessed April 24, 2006).
26. GAO report, "Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management," GAO-04-605, June 2004, p. 7.

27. DoD OIG report, "Contracts Awarded for the CPA by the Defense Contracting Command-Washington," Report D-2204-057, March 18, 2004, p. 2.
28. Ibid., p. 13.
29. Ibid., pp. 4-7.
30. Former ORHA contracting official, interview, November 22, 2005.
31. See DoD memo, Principal Under Secretary of Defense (AT&L) to Director, DCMA, "Contracting Support for Office of Reconstruction and Humanitarian Assistance," March 28, 2003.
32. Former ORHA contracting official, written comments, December 21, 2005.
33. Ibid.
34. DoD OIG, "Contracts Awarded for the CPA by the Defense Contracting Command-Washington," Report D-2204-057, March 18, 2004.
35. Ibid., p. 7.
36. Contracting and planning for the humanitarian assistance pillar was also being carried out at this time by DoS in conjunction with USAID. Members of the USAID team involved in this planning noted that their agencies' planned work did not include tasks in civil administration, however.
37. DoD OIG, "Contracts Awarded for the CPA by the Defense Contracting Command-Washington," Report D-2204-057, March 18, 2004, p. 3.
38. White House memo to Presidential Envoy to Iraq, May 9, 2003.
39. Congressional Research Service document, "The Coalition Provisional Authority (CPA): Origin, Characteristics, and Institutional Authorities," updated June 6, 2005, p. 3.
40. DoD memo, Deputy Secretary of Defense to DoD officials, "Authority of the Administrator of the Coalition Provisional Authority and Supporting Relationships," June 16, 2003.
41. CENTCOM document, "Freedom Message to the Iraqi People," April 16, 2003.
42. White House document, Statement by the Press Secretary, "President Names Envoy to Iraq," May 6, 2003.
43. DoD memo to Presidential Envoy to Iraq, "Designation as Administrator of the Coalition Provisional Authority," May 13, 2003.
44. Congressional Research Service document, "The Coalition Provisional Authority (CPA): Origin, Characteristics, and Institutional Authorities," updated June 6, 2005, p. 20.
45. DoD memo, Deputy Secretary of Defense to DoD officials, "Designation of the Army as Department of Defense Executive Agent for the Office of Reconstruction and Humanitarian Assistance," May 21, 2003.
46. DoD memo, Deputy Secretary of Defense to DoD officials, "Authority of the Administrator of the Coalition Provisional Authority and Supporting Relationships," June 16, 2003. This memo outlined the dissolution of ORHA and

noted that the responsibilities of the Secretary of the Army as DoD's executive agent would be exercised in support of the CPA.

47. DoD memo, Deputy Secretary of Defense to DoD officials, "Designation of the Army as Department of Defense Executive Agent for the Office of Reconstruction and Humanitarian Assistance," May 21, 2003.
48. See UN document, United Nations Security Council Resolution 1483, May 22, 2003 (online at: http://www.iamb.info/pdf/unsc1483.pdf, accessed April 24, 2006).
49. UN document, United Nations Security Council Resolution 1483, May 22, 2003 (online at: http://www.iamb.info/pdf/unsc1483.pdf, accessed April 24, 2006).
50. KPMG report. "Development Fund for Iraq. Statement of Cash Receipts and Payments, 22 May, 2003 to 31 December 2003," Note 4, undated (online at: http://www.iamb.info/auditrep/r052203a.pdf, accessed April 24, 2006).
51. See, KPMG report, "Development Fund for Iraq. Statement of Cash Receipts and Payments, 1 January 2004 to 28 June 2004," page 4, undated (online at: http://www.iamb.info/auditrep/r052203a.pdf, accessed April 24, 2006).
52. This figure does not include funds spent on Iraqi ministry budgets. See CPA document, "Development Fund for Iraq Financial Reporting Matrix," June 26, 2004 (online at: http://www.iraqcoalition.org/budget/DFI_intro1.html, accessed April 11, 2006).
53. To avoid confusion, throughout this paper SIGIR refers to HCA as the "HCA Office" when speaking of HCA as an organization. When referring to the person in charge of the HCA Office, "HCA" is used without any further descriptors. Also, it should be noted that the HCA Office acted as the contracting organization for CPA, and later for CPA's Project Management Organization (PMO) after the PMO was created in fall 2003. After the end of the CPA, the HCA Office continued this function for the Project and Contracting Office (PCO), which took over many of the PMO's duties. SIGIR understands that throughout the post-conflict reconstruction period up to the creation of the Joint Contracting Command-Iraq, the HCA and the HCA Office was closely associated with, but formally independent of these organizations. In fall 2004, the HCA became the commander of the JCC-I.
54. Senior DoD contracting official, interview, October 24, 2005.
55. Ibid.
56. Senior DoD contracting official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript p. 16).
57. DoD briefing, Deputy Assistant Secretary of the Army (Policy and Procurement), "CPA Contracting Support: Information Briefing," March 10, 2004.
58. Given that the majority of contracts awarded by the HCA office during this period were funded through DFI, one assumes that these were competitively awarded under the competition requirements in CPA Memorandum Number 4, not the FAR.
59. Senior DoD contracting official, written comments to SIGIR, March 10, 2006.
60. Senior DoD contracting official, Lessons Learned Forum: Contracting I, Washington D.C., December 5, 2005 (transcript p. 19- 25).

61. CPA document, "Regulation Number 3: Program Review Board," June 16, 2003 (online at: http://www.iraqcoalition.org/regulations/index.html#Regulations, accessed April 24, 2006).
62. Ibid.
63. Minutes from early meetings of the PRB indicate that the board was given updates by CPA staff on the development of formal procedures during meetings where funding decisions were also made. See e.g. CPA document, "PRB Meeting Minutes", July 8, 2003.
64. CPA memo, "Memorandum Number 4: Contract and Grant Procedures Applicable to Vested and Seized Iraqi Property and the Development Fund for Iraq," June 18, 2004. (online at: http://www.iraqcoalition.org/regulations/index.html#Regulations, accessed April 24, 2006).
65. Former senior DoD contracting official, interviews, November 2-3, 2005.
66. SIGIR report, "Oversight of Funds Provided to Iraqi Ministries through the National Budget Process," 05-004, January 30, 2005, p. 5.
67. SIGIR Report, Quarterly Report to the United States Congress, Appendix B, April 2006.
68. SIGIR document, Quarterly Report to the United States Congress, Appendix B, October 30, 2005.
69. Senior USAID official, interview, November 2, 2005.
70. USAID press release, "USAID Contingency Plans for Post-Conflict Reconstruction in Iraq", March 20, 2003 (online at: http://www.usaid.gov/press/factsheets/2003/fs030320_1.html, accessed June 26, 2006).
71. Senior USAID official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript p. 67).
72. Senior USAID official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript p. 69).
73. USAID officer, interview, November 2005.
74. USAID document, Bechtel I contract award, April 17, 2003, (online at: http://www.usaid.gov/iraq/contracts/pdf/bechtel.pdf, accessed May 22, 2006).
75. Former USAID contractor, interview, January 5, 2006.
76. SIGIR believes that the few shortcomings in the Bechtel award were relatively minor and would not have attracted public attention were it not for the value of the contract. See also USAID audit memorandum, Assistant Inspector General for Audit to Assistant Administrator ANE, "USAID's Compliance with Federal Regulations in Awarding the Iraq Infrastructure Reconstruction Contract," AIG/A Memorandum 03-003, July 23, 2003.
77. USAID memo, Assistant IG for Audit to Acting Assistant Administrator ANE, "USAID's Compliance with Federal Regulations in Awarding the Agriculture Reconstruction and Development Program for Iraq Contract," AIG/A Memorandum 04-002, January 14, 2004.

78. USAID document, "ADS 300," (online at: http://www.usaid.gov/policy/ads/300/302.pdf, accessed June 28,2006), No date, p. 9.
79. RTI report to USAID, "RTI Iraq Local Government Final Report," June 2005, p. xi.
80. DoS-INL document, "Justification for Other Than Full and Open Competition," (online at: http://iraqcoalition.org/economy/PMO/State_Justification.htm, accessed March 21, 2006).
81. Ibid.
82. Deputy Assistant Secretary of the Army (Policy and Procurement), Testimony before the Committee on Government Reform, U.S. House of Representatives, March 11, 2004 (online at: http://www.house.gov/hasc/openingstatementsandpressreleases/108thcongress/04-06-24ballard.pdf, accessed April 25, 2006).
83. SIGIR report, "CPA's Contracting Processes Leading Up to and Including Contract Award," SIGIR 04-013, July 27, 2004, p. i.
84. USACE document, "Frequently Asked Questions: USACE Missions—Oil Fire Suppression and Restoration of Production." January 20, 2004 (online at: http://www.hq.usace.army.mil/cepa/iraq/faq.htm, accessed April 3, 2006).
85. SIGIR report, "Attestation Engagement Concerning the Award of Non-Competitive Contract DACA63-03-D005," SIGIR-05-019, September 30, 2005, p. 4.
86. GAO report, "Rebuilding Iraq, Fiscal Year 2003, Contract Award Procedures and Management," GAO-04-605, June 2004, p. 21.
87. Ibid., p. 20.
88. Ibid.
89. GAO report, "Rebuilding Iraq, Fiscal Year 2003, Contract Award Procedures and Management," GAO-04-605, June 2004, p. 21.
90. OMB document, 1506 Report, October 2003, p. 16, (online at: http://www.sigir.mil/reports/pdf/1506_final101503.pdf, accessed April 25, 2006).
91. Fluor Intercontinental, Inc. won a design-build award as part of a joint venture with the British firm, AMEC.
92. CRS document, "Iraq: Recent Developments in Reconstruction Assistance," May 12, 2005, pp. 2-3.
93. Former senior CPA official, written comments to SIGIR, April 14, 2006.
94. Senior USAID official, interview, November 3, 2005; Former USAID official, interview, February 9, 2006.
95. CPA memo, "Taking Forward the CPA Strategic Plan for Iraq," undated.
96. Former senior CPA official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005, p. 77.
97. CPA memo, Administrator to SECDEF, August 6, 2003.
98. Former senior CPA official, interview, January 13, 2006.

99. CPA Action memo, CPA Director of OMB to CPA Administrator, "Management of Large Appropriated Construction Contracts," August 15, 2003. Approval indicated by Administrator's signature, also dated August 15, 2003.
100. CPA memo, Chief of Staff to CPA officials, "President's Supplemental–CPA Program Management Office," Unclassified, September 9, 2003.
101. Former senior CPA official, interview, January 13, 2006.
102. Ibid.
103. See e.g. Former USAID official, interview, February 9, 2006.
104. Senior USACE officer, SIGIR Lessons Learned Forum: Program and Project Management, April 12, 2006, (transcript p. 97).
105. See e.g. Senior USACE official interview, February 8, 2006; Former USAID official, interview, February 9, 2006.
106. The UN/World Bank information was formally published in a report in October 2003, see: UN document, "United Nations/World Bank Joint Iraq Needs Assessment," October 2003, p. ix-x (online at: http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/Iraq+Joint+Needs+Assessment/$File/Joint+Needs+Assessment.pdf, accessed April 25, 2006).
107. Former senior CPA official, interview, January 13, 2006.
108. CPA Administrator, testimony before the Appropriations Committee, U.S. Senate, September 22, 2003 (online at: http://www.iraqwatch.org/government/Index_US_Hearings.htm, accessed April 20, 2006).
109. Former senior CPA official, interview, January 13, 2006.
110. Ibid.
111. Ibid.
112. USAID/Iraq, written comments to SIGIR, June 8, 2006.
113. Of this amount, $100 million was to be "made available for democracy-building activities, and $10 million made available to the United States Institute for Peace for activities supporting peace enforcement, peace keeping and post-conflict peace-building." See PL 108-106, p.1225 (online at: http://www.export.gov/iraq/pdf/public_law_108-116.pdf, accessed April 25, 2006).
114. Public Law 108-106, Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, November 6, 2003, p.1225 (online at: http://www.export.gov/iraq/pdf/public_law_108-116.pdf, accessed April 25, 2006).
115. Former senior CPA official, interview, July 1, 2004.
116. Public Law 108-106, Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, November 6, 2003, p.1225 (online at: http://www.export.gov/iraq/pdf/public_law_108-116.pdf, accessed April 25, 2006).
117. SIGIR document, Quarterly Report to the United States Congress, April 2006.
118. DoD document, Deputy Secretary of Defense, Determination and Findings, December 5, 2003.

119. GAO report, "Rebuilding: Fiscal Year 2003 Contract Award Procedures and Management Challenges." GAO-04-605, July 2004, p. 46.
120. Ibid.
121. CPA document, CPA Budget Director to CPA Administrator, "Management of Large Appropriated Construction Contracts," August 15, 2003.
122. Former senior CPA official, interview, January 13, 2006; Senior USACE official, interview, February 8, 2006.
123. These funds were expended for reporting purposes while under the control of the Department of the Army, acting as executive agent for the CPA. However, after dissolution of the CPA in late June 2004, the remaining funds were transferred to DoS, which used $23.8 million for salary expenses associated with the newly formed Iraq Reconstruction Management Office (IRMO). SIGIR did not question the authority of DOS to obligate these funds; however it did question "disbursing the remaining funds for salary expenses without being able to provide either rationale or support for how these expenditures complied with the congressional intent for the appropriation," (i.e. reporting). See SIGIR memo, SIGIR to U.S. Ambassador to Iraq and Director, IRMO and Commanding General, USACE-GRD, "Fact Sheet on the Use of the $50 million Appropriation to Support the Management and Reporting of the Iraq Relief and Reconstruction Fund," SIGIR 05-026, January 27, 2006.
124. PCO staff, interview, November 15, 2005.
125. Senior DoD contracting official, written comments to SIGIR, March 10, 2006.
126. Former senior DoD contracting official, written comments to SIGIR, April 26, 2006.
127. Former senior CPA official, interview, March 3, 2006.
128. Former senior and deputy ministerial advisors, interview, December 22, 2005.
129. See e.g. Senior DoD contracting official, interview, November 17, 2005; DoD contractor, interview, March 19, 2006.
130. Former senior CPA official, interview, January 13, 2006.
131. Former senior CPA official, interview, January 13, 2006.
132. Senior USACE official, interview, February 8, 2006.
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134. Former CPA official, interview, July 1, 2004.
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137. Former senior DoD contracting official, interview, January 20, 2006.
138. Senior DoD official, interview, December 12, 2005.
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147. Senior DoD contracting official, interview, November 17, 2005.
148. Senior DoD contracting official, written comments to SIGIR, March 10, 2006.
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150. Ibid.
151. SIGIR report, "Task Orders Awarded by the Air Force Center for Environmental Excellence in Support of the Coalition Provisional Authority, SIGIR- 04-004, July 28, 2004, p. 4.
152. Ibid., p. 1.
153. AFCEE contracting official, interview, July 1, 2004.
154. SIGIR was formerly known as the Coalition Provisional Authority-Inspector General (CPA-IG).
155. SIGIR report, "Task Orders Awarded by the Air Force Center for Environmental Excellence in Support of the Coalition Provisional Authority," SIGIR- 04-004, July 28, 2004, p. 7-8.
156. AFCEE contracting official, conversation with SIGIR staff, February 2006.
157. Ibid.
158. Former senior DoD contracting official, interview, January 20, 2006.
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161. Ibid., p. 34.
162. Ibid., p. 74.

163. SIGIR report, “Award of Sector Design-Build Construction Contracts,” SIGIR-04-005, July 23, 2004, p. 2.
164. DoD briefing, “Iraq Reconstruction Pre-proposal Conference Briefing. Program Management and Design-Build Construction,” January 21, 2004, pp. 21 and 42 (online at: http://www.ndia.org/Content/NavigationMenu/Meetings_and_Events/Past_Events/2004_Iraq_Reconstruction_491C.htm , accessed April 19, 2006).
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169. DoD briefing document, “Iraq Reconstruction Pre-proposal Conference Briefing. Program Management and Design-Build Construction,” January 21, 2004, p. 39 (online at: http://www.ndia.org/Content/NavigationMenu/Meetings_and_Events/Past_Events/2004_Iraq_Reconstruction_491C.htm , accessed April 19, 2006).
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176. Former senior CPA official, interview, July 1, 2004.
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179. Senior DoD contracting official, SIGIR Lessons Learned Forum: Contracting I, Washington D.C., December 5, 2005 (transcript p. 151).
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182. Various participants, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript p. 161).
183. Senior DoD contracting official, interview, November 17, 2005.
184. Ibid.

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188. DoD memo, Deputy Secretary of Defense to DoD Officials, “Organizational Establishment and Placement of the Project and Contracting Office within the Department of the Army,” June 22, 2004.
189. Former senior DoD contracting official, interviews, November 2-3, 2005.
190. Senior USAID contracting official, interview, November 2, 2005.
191. Senior USAID official, interview, November 3, 2005.
192. Senior USAID official, interview, November 2, 2005.
193. OTI supports U.S. foreign policy objectives by providing grants to local community leaders and organizations to assist during periods of political crisis and transition. See USAID Contracting Official, interview, November 9, 2005.
194. OTI official, interview, December 20, 2005.
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196. USAID press release, “USAID Awards Iraq Infrastructure Contract II,” January 6, 2005 (online at: http://www.usaid.gov/press/factsheets/2004/fs040106.html, accessed April 25, 2006).
197. Former senior USAID official, interview, January 19, 2006; former USAID official, interview, February 9, 2006.
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199. Former senior CPA official, interview, January 13, 2006.
200. Senior DoS official, interview, November 29, 2005.
201. DoS document, “Justification for Other than Full and Open Competition,” undated (online at: http://iraqcoalition.org/economy/PMO/State_Justification.htm, accessed March 21, 2006).
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204. GAO report, "Rebuilding Iraq: Status of Funding and Reconstruction Efforts," GAO-05-876, July 2005, pp.4-5.
205. Former USAID contractor, interview, December 1, 2005.
206. Senior DoD contracting official, interview, November 17, 2005.
207. Ibid.
208. There are three levels of certification for DoD contracting officers. To reach certification one must meet requirements in both education and professional experience.
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214. CPA document, "CPA Situation Reports," unclassified, April 2004.
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220. U.S. Army Audit Agency report, "Program Management in Support of Iraq Reconstruction," A-2005-0194-ALA, May 26, 2005, pp. 15-16.
221. Senior DoD contracting official, interview, February 10, 2006; Former senior DoD contracting official, interviews, November 2-3, 2005; U.S. Army Audit Agency report, "Program Management in Support of Iraq Reconstruction," A-2005-0194-ALA, May 26, 2005.
222. Senior DoD contracting official, interview, February 10, 2006.
223. Senior USACE official, interview, February 8, 2006.
224. USACE-GRD contracting official, interview, November 15, 2005.
225. Senior DoD contracting official, interview, February 10, 2006.
226. See Public Law 108-375 (online at: http://www.defenselink.mil/dodgc/olc/docs/PL108-375.pdf, access April 25, 2006).
227. Former senior DoD contracting official, written comments to SIGIR, April 24, 2006.
228. Senior DoD contracting official, SIGIR Lessons Learned Forum: Contracting I, Washington D.C., December 5, 2005 (transcript p. 152).
229. Ibid.
230. DoS document, *Section 2207 Report*, April 6, 2005, p. 2.

231. DoS document, *Section 2207 Report*, April 6, 2005.
232. Former PCO Director, interview, April 24, 2006.
233. USACE-GRD contracting official, interview, November 15, 2005.
234. CFC FRAGO 09-668, "Contracting and Organizational Changes," 122143Z November 2004.
235. Former senior DoD contracting official, interviews, November 2-3, 2005; Senior DoD contracting official, interview, November 17, 2005.
236. A FRAGO, or fragmentary order, is a military order that reflects a change in a previous operation order.
237. USACE, written comments to SIGIR, April 12, 2006.
238. Former senior DoD contracting official, interview, November 2-3, 2005.
239. Former JCC-I staff person, written comments to SIGIR, November 22, 2005.
240. Senior USAID contracting official, conversation with SIGIR staff, December 1, 2005.
241. Ibid.
242. The original contracts were awarded under a modified process. RFPs were not posted, but sent to pre-determined organizations. See USAID press release, "USAID Procurement Process and Iraq Contingency Planning," March 19, 2003 (online at: http://www.usaid.gov/press/factsheets/2003/fs030320.html, accessed April 23, 2006).
243. P.L. 108-106, November 6, 2003, Section 2202 (online at: http://www.export.gov/iraq/pdf/public_law_108-116.pdf, accessed April 25, 2006).
244. GAO report. "Rebuilding Iraq: U.S. Water and Sanitation Efforts Need Improved Measures for Assessing Impact and Sustained Resources for Maintaining Facilities," GAO 05-872, September 2005, p. 12.
245. OMB document, *Section 2207 Report*, April 2004.
246. DoD memo, "Waiver of Limiting Legislation for Commanders' Emergency Response Program," October 5, 2005.
247. Multi-National Corps-Iraq (MNC-I), written comments to SIGIR, October 5, 2005.
248. CPA Memo, Administrator of the CPA to the Commander of Coalition Forces, "Commanders' Emergency Response Program", June 16, 2003, as cited in Mark Martins, "The Commander's Emergency Response Program (CERP)," Joint Forces Quarterly, Issue 37, 2005.
249. Ibid.
250. Combined-Joint Task Force 7 (CJTF-7) document, "Fragmentary Order 89: Commanders' Emergency Response Program (CERP) Formerly the Brigade Commanders' Discretionary Fund to CJTF-7 OPORD 03-036," June 19, 2003. Unclassified. Copy of copies.
251. Multi-National Corps-Iraq (MNC-I), written comments to SIGIR, October 5, 2005.
252. Ibid.
253. See P.L. 108-106, November 6, 2003.

254. See P.L. 108-287, August 5, 2004.
255. See P.L. 108-447, December 8, 2004; P.L. 109-13, May 11, 2005.
256. See P.L. 108-287, August 5, 2004.
257. H.R. 1815, "National Defense Authorization Act for Fiscal Year 2006," January 6, 2006. p. 320, (online at: http://www.govtrack.us/data/us/bills.text/109/h1815.pdf, accessed April 25, 2006).
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259. Procurements of more than $100,000 were directed through C8/Comptroller Channels, procedures for which, according to FRAGO 89, would be outlined in a separate document.
260. Mark Martins, "The Commander's Emergency Response Program (CERP)," Joint Forces Quarterly, Issue 37, 2005.
261. Ibid.
262. SIGIR report, "Management of Commander's Emergency Response Program for Fiscal Year 2004," SIGIR 05-014, October 13, 2005.
263. U.S. Army Audit Agency, "Follow-up Audit of the Commander's Emergency Response Program and Quick Response Fund," A-2005-0332-ACE, September 30, 2005.
264. OMB document, *Section 2207 Report*, April 2004, p. 12.
265. Mark Martins, "The Commander's Emergency Response Program (CERP), Joint Forces Quarterly, Issue 37, 2005.
266. Senior USAID official, SIGIR Lessons Learned Forum: Contracting I, Washington, D.C., December 5, 2005 (transcript p. 69).
267. MNC-I, written comments to SIGIR, November 24, 2005.
268. SIGIR document, Quarterly Report to the U.S. Congress, January 2005.
269. DoS document, *Section 2207 Report*, October 2004.
270. DoS document, *Section 2207 Report*, October 2005.
271. SIGIR document, Quarterly Report to the U.S. Congress, January 2005.
272. Senior MNF-I officials, conversion with SIGIR.
273. DoS report, *Section 2207 Report*, October 2004.
274. The Federal Acquisition Regulation (FAR) is the body of regulation used by federal executive agencies for acquiring supplies and services with appropriated funds. Additionally, DoD, USAID, and DoS have specific supplements to the FAR.
275. USAID has recently developed a "Complex Emergency Waiver Package" that can be modified for differing events – e.g., the Southeast Asian Tsunami, the Pakistan Earthquake, Iraq, etc., that may serve as a model for this. (Source: USAID/Iraq, written comments to SIGIR, June 8, 2006).
276. The FAR is the body of regulation used by federal executive agencies for acquiring supplies and services with appropriated funds. Additionally, DoD, USAID, and DoS have specific supplements to the FAR.

277. Former senior USAID official, interview, February 9, 2006.
278. DoS contracting official, written comments to SIGIR, February, 24, 2006.
279. These communications provide a snapshot of a point in time, fall 2004, and the interaction on contracting concerns between Iraq-based and Washington, DC-based staff. They do not reflect changes to regulations that may have taken place after this time, nor do they provide visibility into activities that may have been taking place simultaneously, but of which requesting and responding agencies were not aware.
280. DoD officials, written comments to SIGIR, March 27, 2006 and March 30, 2006.
281. GAO report, "Federal Procurement: Spending and Workforce Trends," GAO-03-443, April 2003, pp. 5 and 21.
282. OMB officials, interview, January 4, 2006.
283. GAO report, "Federal Procurement: Spending and Workforce Trends," GAO-03-443, April 2003, p. 20.
284. Gloria Sochon and John Krieger, Presentation to the Government Contract Management Conference, December 5-6, 2005.
285. OMB memo, Deputy Director of Management to Chief Acquisition Officials and Senior Procurement Officials, January 20, 2006 (online at: http://www.whitehouse.gov/omb/procurement/acq_wk/fac_contracting_program.pdf, accessed May 1, 2006).
286. Senior DoD contracting official, interview, November 17, 2005.
287. Ibid.
288. Senior JCC-I contracting official, interview, December 30, 2005.
289. Senior USAID contracting official, written comments to SIGIR, November 22, 2005.
290. Ibid.
291. Ibid.
292. USAID contracting official, written comments to SIGIR, December 21, 2005.
293. Ibid.
294. Senior DoS contracting official, interview, January 31, 2006.
295. Elliott Corey Yoder, "The Yoder Three-Tiered Model for Optimal Contingency Planning and Execution of Contingency Contracting," Naval Post-Graduate School, Contracting for Deployed Forces Panel, May 19, 2005 (online at: http://www.nps.navy.mil/gsbpp/ACQN/publications/FY05/AM-05-004_Proceedings_ThursdayPM.pdf, accessed April 25, 2006).
296. The training requirements include education on the Commander's Emergency Response Fund, which was created for use in Iraq and is discussed in a previous section of this paper.
297. See National Defense Authorization Act for Fiscal Year 2006, "Joint Policy on Contingency Contracting," Sec. 817, December 18, 2005 (online at: http://www.wifcon.com/dodauth6/dod06_817.htm, accessed April 25, 2006).

298. See Conference Report 109-360, National Defense Authorization Act for Fiscal Year 2006, “Contractors on the Battlefield,” p. 764 (online at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:hr360.109.pdf, accessed July 12, 2006).
299. DoD document, “Draft Army Guidebook for OCONUS Contingency Contracting,” December 15, 2005; DoD document, “Draft Army CONUS Guide for Supporting Emergencies within the United States and Supporting Overseas Contingencies from CONUS Locations,” December 2005.
300. USAID contracting official, conversation with SIGIR staff, February 8, 2006.
301. USAID contracting official, conversation with SIGIR staff, November 15, 2005.
302. DoS contracting official, conversation with SIGIR staff, March 2006.
303. DoS-AQM, written comments to SIGIR, April 11, 2006.
304. OUSD-ATL, written comments to SIGIR, April 21, 2006.
305. USAID/Iraq, written comments to SIGIR, June 8, 2006.
306. Ibid.
307. Ibid.

Forum Participants

Mr. Stuart W. Bowen, Jr., serves as the Special Inspector General for Iraq Reconstruction (SIGIR). He was appointed as Inspector General for the Coalition Provisional Authority (CPA-IG) on January 20, 2004, by the Secretary of Defense with the concurrence of the Secretary of State. With the enactment of the Defense Authorization Act for 2005, CPA-IG was re-designated as SIGIR.

Prior to his appointment as CPA-IG, Mr. Bowen was a partner at the law firm of Patton Boggs. Before that, Mr. Bowen served as Special Assistant to the President and Associate Counsel, and later as Deputy Assistant to the President and Deputy Staff Secretary at the White House under President George W. Bush.

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Major General Nash commanded the United States Army's 1st Armored Division from June 1995 to May 1997. In late 1995, he became the Commander of Task Force Eagle, a multinational division of 25,000 soldiers from 12 nations charged to enforce the military provisions of the Dayton Peace Accords in northeastern Bosnia-Herzegovina. He also served in Vietnam and in Operation Desert Storm.

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Mr. James M. Crum is the Department of the Army's Washington Director of the Project and Contracting Office (PCO) for the Iraq reconstruction mission. He leads an inter-disciplinary program team that focuses management support in the areas of logistics, financial management, personnel, strategic communications, legislative affairs, and contracting for the Secretary of the Army and the PCO team in Baghdad. Having served 18 years for the U.S. Army Corps of Engineers, he has been involved in planning, design, construction, operations and emergency response phases of infrastructure development and operations.

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Mr. Joseph Farinella, is the Assistant Inspector General for Audit, U.S. Agency for International Development. He has held various positions worldwide with USAID, the United Nations, and the U.S. General Accounting Office. Mr. Farinella joined USAID's Office of Inspector General in 1989.

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General Paul J. Kern, U.S. Army (Ret.) joined The Cohen Group as a Senior Counselor in January 2005. In addition, he holds the Class of 1950 Chair for Advanced Technologies at West Point. In 2004, General Kern concluded his 40-year U.S. Army career, when he retired as Commanding General, Army Materiel Command (AMC). In June 2004, General Kern led the military's internal investigation into the abuses at the Abu Ghraib prison in Iraq.

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Mr. Michael H. Mobbs is the Staff Director to the Under Secretary of Defense for Policy, a position to which he was appointed in November 2003. Mr. Mobbs also has served since November 2001 as Special Advisor to the Under Secretary of Defense for Policy. His Iraq-related assignments have included service as Civil Administration Coordinator in ORHA and head of the Energy Infrastructure Planning Group (an interagency group that developed contingency plans for post-conflict reconstruction and operation of the Iraqi oil sector).

Rear Admiral David J. Nash, U.S. Navy (Ret.), is with BE&K, a 33-year-old international engineering and construction company, as president of its newly formed Government Group. Prior to joining BE&K, Rear Admiral Nash was the director of the Iraq Program Management Office (PMO) in Baghdad.

Mr. Doug Packard was the Deputy to the Principal Assistant Responsible for Contracting at the Joint Contracting Command-Iraq/Afghanistan, Office of the PARC-Reconstruction. He is a career contracting executive, having worked for the U.S. Army Contracting Agency, U.S. Army Contracting Command-Europe, and the Acquisition Career Management Office, ASA(ALT).

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Mr. Stan Z. Soloway is president of the Professional Services Council, the principal national trade association representing the government professional and technical services industry. PSC is known for its leadership on the full range of government acquisition/procurement and outsourcing and privatization issues. Prior to joining PSC, Mr. Soloway served nearly three years as the Deputy Under Secretary of Defense (Acquisition Reform) and concurrently as Director of Secretary of Defense William Cohen's Defense Reform Initiative.

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Mr. Ross Wherry was a U.S. Agency for International Development (USAID) Foreign Service Officer, whose most recent USAID position was the Director, Office of Iraq Reconstruction. Mr. Wherry served in Iraq supporting reconstruction efforts, and while in Washington prior to the commencement of hostilities, designed and maintained high-level approval for USAID's $4 billion portion of the postwar reconstruction program.

Dr. Dov S. Zakheim is Vice President of Booz Allen Hamilton, a global strategy and technology consulting firm. From 2001 to April 2004, he served as the Under Secretary of Defense (Comptroller) and Chief Financial Officer for the Department of Defense.