

October 2006

REBUILDING IRAQ

Status of Competition for Iraq Reconstruction Contracts



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Highlights

Highlights of [GAO-07-40](#), a report to Congressional Committees

Why GAO Did This Study

Since 2003, Congress has appropriated more than \$20 billion through the Iraq Relief and Reconstruction Fund (IRRF) to support Iraq rebuilding efforts. The majority of these efforts are being carried out through contracts awarded by the Departments of Defense (DOD) and State and the U.S. Agency for International Development (USAID). When awarding IRRF-funded contracts for \$5 million or more noncompetitively, agencies are required by statute to provide notification and justification to Congress.

In June 2004, GAO found that agencies generally complied with laws and regulations governing competition to award new contracts, but did not always comply with competition requirements when issuing task orders under existing contracts.

As mandated by Congress, this report (1) describes the extent of competition in Iraq reconstruction contracts awarded by DOD, USAID, and State since October 1, 2003, based on available data, and (2) assesses whether these agencies followed applicable documentation and congressional notification requirements regarding competition for 51 judgmentally selected Iraq reconstruction contract actions.

In written comments, State and USAID concurred with the report findings. DOD provided a technical comment.

www.gao.gov/cgi-bin/getrpt?GAO-07-40.

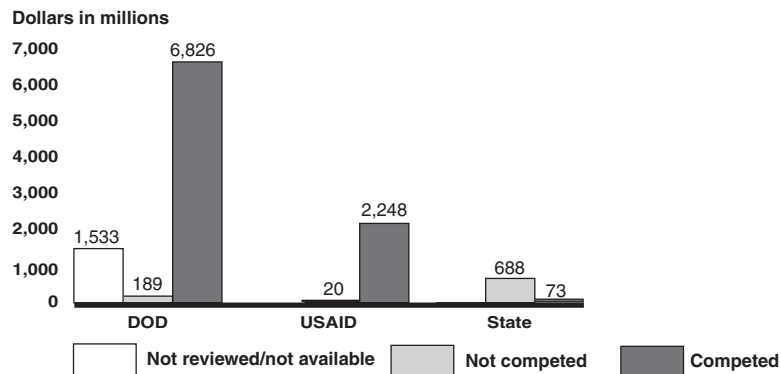
To view the full product, including the scope and methodology, click on the link above. For more information, contact John Hutton at (202) 512-4841 or huttonj@gao.gov.

REBUILDING IRAQ

Status of Competition for Iraq Reconstruction Contracts

What GAO Found

While no single, comprehensive system currently tracks governmentwide Iraq reconstruction contract data, available data showed that from October 1, 2003, through March 31, 2006, DOD, USAID, and State collectively awarded the majority of Iraq reconstruction contracts competitively. Based on competition information we obtained on \$10 billion of the total \$11.6 billion in IRRF obligations by these agencies during the period of our review, we found that about \$9.1 billion—or 91 percent—was for competitively awarded contracts. While our ability to obtain complete competition data for all DOD Iraq reconstruction contract actions was limited because not all DOD components consistently tracked or fully reported this information, we obtained information on approximately \$7 billion, or 82 percent, of DOD's total Iraq reconstruction contract obligations, and of this, we found that competition occurred for nearly all of the obligations. Additionally, based on complete data for the period of our review we found that USAID competitively awarded contract actions for 99 percent of its obligations, while State awarded contract actions competitively for only 10 percent of its obligations.



Source: GAO analysis.

GAO reviewed the files for 51 contract actions totaling \$1.55 billion—22 of which were awarded noncompetitively and 29 of which were awarded competitively—almost all of which contained proper documentation. One contract file—for a noncompetitively awarded task order issued by State—did not contain justifications or other required documentation. DOD was also unable to provide documentation for 4 of the competitively awarded contract actions. Of the 22 noncompeted contract actions in GAO's review, State should have notified Congress of 2 actions awarded using other than full and open competition in accordance with notification requirements but did not. State officials told GAO that they have taken steps to address the problem. GAO did not identify any DOD or USAID contract actions within the sample that required notification.

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Abbreviations

AIDAR	Agency for International Development Acquisition Regulation
CEFMS	Corps of Engineers Financial Management System
CICA	Competition in Contracting Act
DCC-W	Defense Contracting Command-Washington
DFARS	Defense Federal Acquisition Regulation Supplement
DOD	Department of Defense
DOSAR	Department of State Acquisition Regulation
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data Systems-Next Generation
IDIQ	Indefinite delivery/indefinite quantity
IRRF	Iraq Relief and Reconstruction Fund
JCC-I/A	Joint Contracting Command-Iraq/Afghanistan
LOGCAP	Logistics Civil Augmentation Program
USAID	U.S. Agency for International Development

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United States Government Accountability Office
Washington, DC 20548

October 6, 2006

The Honorable John Warner
Chairman
The Honorable Carl Levin
Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Duncan L. Hunter
Chairman
The Honorable Ike Skelton
Ranking Minority Member
Committee on Armed Services
House of Representatives

Since 2003, Congress has appropriated more than \$20 billion through the Iraq Relief and Reconstruction Fund (IRRF) to support Iraq rebuilding efforts, such as repairing oil facilities, increasing electricity capacity, and restoring water treatment plants. The majority of these efforts are being carried out by the Departments of Defense (DOD) and State (State) and the U.S. Agency for International Development (USAID) through contracts with private sector companies. Widespread congressional interest in ensuring competition when awarding contracts for Iraq has been evident since the war in Iraq began. Specifically, in the fiscal year 2004 supplemental appropriation for Iraq, concerns about competition in Iraq reconstruction contracting led Congress to require that notification and justification be sent to multiple congressional committees when other than full and open competition is used to award contracts for \$5 million or more.¹

In June 2004, GAO reported on contract award procedures for contracts and task orders to help rebuild Iraq in fiscal year 2003.² That report found agencies generally complied with applicable laws and regulations

¹ Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 § 2202 (Pub. L. No. 108-106, Nov. 6, 2003).

² GAO, *Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management Challenges*, [GAO-04-605](#) (Washington, D.C.: June 1, 2004).

governing competition to award new reconstruction contracts. However, the report also identified several instances in which task orders issued under existing contracts did not comply with applicable competition requirements.³ Appendix III describes actions taken in response to recommendations made in that report.

The fiscal year 2006 National Defense Authorization Act conference report required that GAO update its 2004 report on competition in Iraq reconstruction contracting.⁴ In response, this report (1) describes the extent of competition in Iraq reconstruction contracts awarded by DOD, USAID, and State since October 1, 2003, based on available data, and (2) assesses whether these agencies followed applicable documentation and congressional notification requirements regarding competition for selected Iraq reconstruction contract actions.

To address these objectives, we focused our review on three agencies, the Departments of Defense and State and USAID. These three agencies are responsible for 98 percent of the total obligations made with IRRF.⁵ For the first objective, we obtained data from DOD, USAID, and State on IRRF-funded reconstruction contract actions, including contracts awarded, task orders issued, and applicable modifications, from October 1, 2003, through

³ A task order means an order for services placed against an established contract or with Government sources. Task orders are deemed by law to satisfy competition requirements if they are within the scope of the work, period of performance, or maximum value of a properly awarded underlying contract. The scope, period, or maximum value may be increased only by modification of the contract and competitive procedures are required to be used for any such increase unless an authorized exception applies. If more than one contractor was awarded the same underlying task order contract, this is referred to as a multiple award indefinite delivery/indefinite quantity (IDIQ) contract. Generally, in issuing a task order under such a contract, a contracting officer is required to provide each awardee a “fair opportunity” to be considered for each order exceeding \$2,500 unless a statutory exception applies. Special competition requirements apply to certain orders for services by or on behalf of DOD under section 803 of the National Defense Authorization Act of Fiscal Year 2002 (Pub. L. No.107-107).

⁴ H.R. Conf. Rep. No. 109-360, at page 765 (2005).

⁵ This report focuses on reconstruction contract actions awarded using IRRF funds. Funds from the first IRRF appropriation were available to the Department of State, the United States Agency for International Development, the Department of the Treasury, the Department of Defense, and the Department of Health and Human Services; funds from the second IRRF appropriation were available to the same five agencies, as well as the Coalition Provisional Authority. Other sources of U.S. funding for Iraq military, reconstruction and stabilization efforts, such as the Iraq Security Forces Fund, were not included in our review.

March 31, 2006, with obligations of \$1 million or more.⁶ For the second objective, we judgmentally selected 51 contract actions—22 indicated as noncompeted and 29 indicated as competed—to determine compliance with competition documentation and congressional notification requirements as prescribed in statute, regulations, and other guidance. Our findings regarding documentation and notification are specific to these selected contract actions and are not projectable to the agencies’ total contract action universe.

We also reviewed statutory requirements, the Federal Acquisition Regulation (FAR) and applicable agency supplements, and agency policies and procedures related to competition in contracting. We interviewed contracting officers and other procurement officials and reviewed contract files in Washington, D.C.; Virginia; and Iraq. We did not evaluate the acquisition strategy used to award the contract actions, whether justifications for issuing awards noncompetitively were adequate, or whether task orders were within the scope of the underlying contract.⁷ While GAO and other audit agencies have identified problems in contract implementation and administration, we did not address these issues within our review. Appendix I contains the details of our scope and methodology. We conducted our review from April 2006 through August 2006 in accordance with generally accepted government auditing standards.

Results in Brief

While no single, comprehensive system currently tracks governmentwide Iraq reconstruction contract data, we obtained competition information on \$10 billion of the total \$11.6 billion in obligations for Iraq reconstruction contracts collectively awarded by DOD, USAID, and State from October 1, 2003, through March 31, 2006, and found that about \$9.1 billion, or 91 percent, of the obligations were for competitive awards. Several DOD systems track contract or competition data. However, not all DOD

⁶ For purposes of this report, the terms “contract action” and “award” refer not only to the award of a new contract, but also to a modification to an existing contract treated as a non-competitive award (i.e., increases the contract’s scope, period of performance, or maximum value), as well as to the issuance of a task order under a multiple-award IDIQ contract.

⁷ For purposes of this report, “noncompetitive” procedures shall include the use of other than full and open competition procedures authorized under FAR subpart 6.3 (2005), the use of statutory exceptions to the “fair opportunity” ordering procedures for multiple award IDIQ contracts under FAR § 16.505(b)(2), and State and USAID use of other statutory exceptions, specifically 40 U.S.C. § 113(e) (Supp. III 2003).

components consistently tracked or reported this information; therefore we cannot draw any conclusions on the extent of competition for all DOD Iraq reconstruction contracts. For example, we were not able to obtain complete competition data on DOD's Joint Contracting Command-Iraq/Afghanistan (JCC-I/A) and those of its predecessor organizations for the period of our review. Despite this, we obtained competition data for approximately 82 percent of DOD's contract obligations for Iraq reconstruction, the vast majority of which indicated that competition generally occurred since October 1, 2003. Additionally, based on complete data provided for the period of our review, 99 percent of USAID's Iraq reconstruction contract obligations were for competitive awards, while only 10 percent of State's obligations were for competitive awards.

For the contract actions we reviewed, the agencies generally followed the FAR and the applicable agency supplements regarding documentation requirements when awarding Iraq reconstruction contract actions but did not always comply with congressional notification requirements. We reviewed contract files for 51 contract actions totaling \$1.55 billion, 22 of which were awarded noncompetitively and 29 of which were awarded competitively. For the 22 noncompetitively awarded contract actions, agencies generally provided proper contract file documentation, including justification for using other than full and open competition. Only 1 contract file—for a task order issued by the State Department—did not contain justifications or other documentation as required in the FAR or agency supplements. For the 29 competitively awarded contract actions, agencies generally provided contract file documentation. However, in 4 cases DOD was unable to provide documentation that competition occurred, such as evidence of bidders or price negotiation memos. Additionally, of the 22 noncompeted contract actions, State should have notified Congress of 2 actions it awarded using other than full and open competition in accordance with the notification requirement in section 2202 of Public Law 108-106.⁸ While State failed to provide the required notifications, it has taken steps to address the problem for future awards. Within our sample, we did not find any additional instances where DOD, USAID, and State should have notified Congress of a noncompeted award but did not.

⁸ Pub. L. No. 108-106, Nov. 6, 2003.

We requested comments from DOD, USAID, and State on a draft of this report. In written comments, USAID and State agreed with our findings. State also provided additional information regarding steps taken to address the section 2202 reporting requirement. DOD provided a technical comment, which was incorporated into the report. Comments from State and USAID appear in appendixes IV and V.

Background

The United States, along with its coalition partners and various international organizations and donors, has embarked on a significant effort to rebuild Iraq following multiple wars and years of neglect. In April 2003, Congress passed the Emergency Wartime Supplemental Appropriations Act, which created the Iraq Relief and Reconstruction Fund and appropriated approximately \$2.48 billion for reconstruction activities.⁹ These funds—referred to as IRRF I—were to be used by USAID, State, DOD, Treasury, and Health and Human Services for a broad range of humanitarian and reconstruction efforts. In November 2003, Congress enacted an additional emergency supplemental appropriations act, which provided approximately \$18.4 billion for reconstruction activities in Iraq.¹⁰ This appropriation—referred to as IRRF II—focused on security and infrastructure, and the funding was allocated across multiple sectors.¹¹ Additionally, the November 2003 act required that full and open competition be used to enter into contracts using IRRF funds unless the use of an authorized statutory exception was properly documented and approved, and the specified congressional committees notified.¹² As of August 29, 2006, about 94 percent, or approximately \$20 billion, of all IRRF funds had been obligated by all agencies.

⁹ Pub. L. No. 108-11, Apr. 16, 2003.

¹⁰ Pub. L. No. 108-106.

¹¹ These sectors are Security and Law Enforcement; Electricity; Oil Infrastructure; Justice, Public Safety and Civil Society; Education, Refugees, Human Rights, Governance; Roads, Bridges, and Construction; Health Care; Transportation and Communications; Water Resources and Sanitation; and Private Sector Development.

¹² The statutory exception had to be properly documented and approved by the head of the contracting agency and the Administrator of the Coalition Provisional Authority.

The Competition in Contracting Act of 1984 (CICA) generally requires that federal contracts be awarded on the basis of full and open competition.¹³ This process is intended to permit the government to rely on competitive market forces to obtain needed goods and services at fair and reasonable prices. However, the law and implementing regulations recognize that there may be circumstances under which full and open competition would be impracticable, such as when contracts need to be awarded quickly to respond to urgent needs or when there is only one source for the required product or service. In such cases, agencies are given authority by law to award contracts without providing for full and open competition (e.g., using limited competition or on a sole-source basis), provided that the proposed approach is appropriately justified, approved, and documented. Additionally, regarding task orders issued under an existing contract, the competition law does not require competition beyond that obtained for the initial contract award, provided the task order does not increase the scope of the work, period of performance, or maximum value of the contract under which the order is issued.¹⁴

Vast Majority of Reported Contract Obligations Were for Competitive Awards

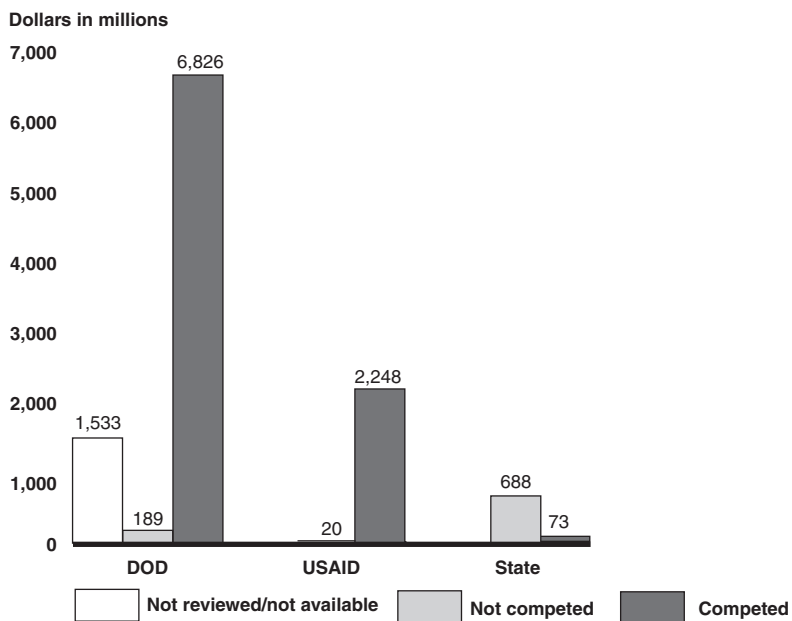
While no single, comprehensive system currently tracks governmentwide Iraq reconstruction contract data, we obtained competition information on \$10 billion of the total \$11.6 billion in obligations for Iraq reconstruction contracts collectively awarded by DOD, USAID, and State from October 1, 2003, through March 31, 2006, and found that about \$9.1 billion, or 91 percent, of the obligations was for competitive awards. We obtained information on approximately \$7 billion of the \$8.55 billion DOD obligated and found that competition occurred for nearly all of the obligations. Both USAID and State provided information on all of their IRRF obligations made during the period of our review. However, where USAID information showed that almost all of its Iraq reconstruction contract obligations were for competitive awards, State information showed that few of its contract

¹³ CICA, as enacted in 10 U.S.C. § 2304(a) (1) (2000) (applicable to DOD) and codified at 41 U.S.C. § 253(a) (1) (2000) (applicable to other executive agencies discussed in this report); 41 U.S.C. § 403(6) (2000) (definition of “full and open competition”). CICA’s competition requirements are implemented in the FAR, 48 C.F.R. part 6 and corresponding agency supplements.

¹⁴ The scope, period of performance, or maximum value may be increased only by modification of the contract, and competitive procedures are required to be used for any such increase unless an authorized exception applies. For multiple award IDIQ contracts, all of the contractors are required to be provided a fair opportunity to be considered for the task order. Special competition requirements apply to certain orders for services by or on behalf of DOD.

action obligations were for competitive awards. Figure 1 shows a breakdown of the three agencies' competed and noncompeted contract actions based on available data.

Figure 1: Obligations for Competitive and Noncompetitive Contract Actions by Agency



Source: GAO analysis.

Most DOD Obligations Were for Competitively Awarded Contract Actions

Based on available data, we found that the majority of DOD's IRRF contract obligations incurred during the period we reviewed were for competitive awards. Competition information was available for approximately 82 percent of DOD's total \$8.55 billion in Iraq reconstruction contract obligations. Of this, we found that DOD competitively awarded about \$6.83 billion, and noncompetitively awarded

about \$189 million.¹⁵ Most of the DOD offices we spoke with reported that, when possible, contract actions were competed.

JCC-I/A—the office performing the majority of Iraq contracting for the DOD offices we reviewed—and its predecessor organizations, including the Project and Contracting Office and Program Management Office, obligated \$3.82 billion, of which \$3.81 billion was obligated for competitive awards. Additionally, the other DOD offices we reviewed, including the Army Corps of Engineers' Gulf Region Division and Transatlantic Programs Center; the Army's TACOM Life Cycle Management Command; and the Air Force Center for Environmental Excellence obligated approximately \$2.25 billion, and of these obligations, approximately \$2.08 billion were for competitive awards and \$177 million for noncompetitive awards. Furthermore, the Army Corps of Engineers' Southwestern Division competitively awarded two contracts to rebuild Iraqi oil infrastructure with obligations totaling \$941 million.

Complete information on DOD's contract actions and competition type for the period of our review was not available, in part because not all offices consistently tracked or reported this information. Currently, DOD is transitioning its contract-writing systems to interface with the Federal Procurement Data System-Next Generation (FPDS-NG).¹⁶ Until this transition is completed, the majority of DOD components are expected to use DD Form 350s to report contract actions. However, we found that while the DD 350 system tracks competition information by contract, not all offices report their contracts to the system. For example, the JCC-I/A and its predecessor organizations did not fully input detailed, individual contract action information into DOD-wide systems including DD 350, which would provide information on competition. Furthermore, according to JCC-I/A officials, JCC-I/A did not track competition information until after May 2005. Consequently, we relied on multiple sources in order to

¹⁵ On December 5, 2003, the Deputy Secretary of Defense issued a Determination and Findings limiting competition for 26 construction and services contracts to firms from the United States, Iraq, Coalition partners, and force contributing nations. While competition was limited to firms from these countries, DOD components used competitive procedures required by the FAR to award these contracts. These contract award obligations represent approximately \$2.69 billion in competitive actions of the \$7.02 billion in DOD IRRF contract obligations included in our review.

¹⁶ The FPDS was implemented in 1978 to collect information about federal procurement contracts. Congress, GAO, executive branch agencies, and the public rely on FPDS data for information on agency contracting actions, governmentwide procurement trends, and achievement of small business goals.

obtain competition information for the DOD components within our review.

Almost All USAID Contract Obligations Were for Competitive Awards

USAID provided competition information for 100 percent of the \$2.27 billion in IRRF contract obligations that the agency reported incurring between October 1, 2003, and March 31, 2006. These data indicated that USAID competitively awarded contract actions for about \$2.25 billion, or 99 percent, of the approximately \$2.27 billion it obligated; approximately \$20.4 million, or about 1 percent, of these obligations were noncompetitively awarded. Agency contracting staff reported that USAID has pursued competition with very few exceptions when awarding contracts and issuing task orders for Iraq reconstruction.

During our contract file review, we identified three instances in which the competition information provided by USAID was inaccurate. In two cases, USAID reported contracts as being awarded competitively when they were actually awarded under limited competition.¹⁷ In the third case, USAID reported a contract as “not competed,” when it was actually awarded competitively. In each of these instances, we used corrected competition information for our analysis.

Only Small Percentage of State Contract Obligations Were for Competitive Awards

State obligated the smallest portion of IRRF funding among the three agencies, however, it incurred most of its obligations for noncompetitive awards. State provided competition information for 100 percent of the \$762 million in IRRF contract obligations that the agency reported incurring between October 1, 2003, and March 31, 2006. These data indicated that State incurred obligations of approximately \$73 million in competitive awards, or approximately 10 percent, of the approximate \$762 million it obligated for IRRF contract actions; approximately \$688 million, or about 90 percent, of these obligations were incurred under noncompetitive awards. In several of these cases, State cited urgency as the reason for awarding the contract actions noncompetitively. Specifically, justifications in two of the contract files we reviewed cited FAR § 6.302-2, unusual and compelling urgency, as the basis for using other than full and open competitive procedures. Additionally, one task

¹⁷ USAID is authorized under statute to limit competition when full and open competition would impair the administration of a foreign aid program. 40 U.S.C. § 113(e) (Supp. III 2003) (formerly 40 U.S.C. § 474); 48 C.F.R. § 706.302-70 (2005).

order we reviewed was an unauthorized commitment that had to be ratified by State.¹⁸ The ratification amounted to the issuance of a noncompetitive task order to the contractor.

During our contract file review, we identified three instances in which the competition information provided by State was inaccurate. In two of these cases, we found that contracts that were reported as awarded competitively were actually awarded noncompetitively. In the third case, State misclassified the competition type reported for a contract that was awarded competitively. In each of these instances, we used corrected competition information for our analysis.

Agencies Generally Provided Necessary Documentation but Did Not Always Comply with Congressional Notification Requirements

We reviewed 51 contract actions totaling \$1.55 billion—35 at DOD, 11 at USAID, and 5 at State. We found that the agencies generally followed the FAR and the applicable agency supplements regarding documentation requirements for contract actions but did not always comply with congressional notification requirements. Of the 51 contract actions that we reviewed, 22 were awarded noncompetitively, while 29 were awarded competitively. Only 1 of the 22 noncompetitive contract action files did not contain justifications or other documentation as required in the FAR or agency supplements. Of the 29 competed contract actions, DOD was unable to provide documentation that competition had occurred, such as evidence of bidders or price negotiation memos, in 4 cases. Additionally, of the 22 noncompeted contract actions, State should have notified Congress of 2 actions it awarded using other than full and open competition in accordance with the notification requirements. While State failed to provide the required notifications, State officials told us that they have taken steps to address the problem for future awards. Within our sample, we did not find any additional instances where DOD, USAID, and State should have notified Congress of a noncompeted award but did not.

Contract Action Files Generally Contained Required Documentation

Of the 35 DOD IRRF contract actions we reviewed, 15 were indicated as noncompeted and 20 indicated as competed. The files for the 15 noncompeted contract actions contained documentation required by the FAR, Defense Federal Acquisition Regulation Supplement and the Army

¹⁸ Ratification is the act of approving an unauthorized commitment by an official who has the authority to do so. The unauthorized commitment is not binding solely because the Government representative who made it lacked the authority to enter into the agreement on behalf of the Government.

Federal Acquisition Regulation Supplement. Of the 15 noncompeted actions, 4 were sole source contract awards; 4 were awarded using limited competition; 3 were noncompeted task orders under a multiple award IDIQ contract; 3 were sole source awards under the 8(a) program;¹⁹ and 1 was an out of scope modification. Based on our review, all of the contract actions that were awarded non-competitively had justification and approval documentation citing the reason for either limiting competition or using a sole source award when required. For example, JCC-I/A partially terminated an IDIQ contract used to rebuild hospitals in Iraq.²⁰ In order to complete the remaining work, JCC-I/A awarded a series of sole source contracts to the remaining Iraqi subcontractors to complete the work. In another example, the Project and Contracting Office awarded a series of contracts using limited competition to pave roads in 13 governorates in Iraq, citing unusual and compelling urgent circumstances due to security concerns and limited manpower to evaluate all submissions from Iraqi firms. For the 20 competed DOD contract actions, 16 files included documentation that competition occurred, such as evidence of bidders or price negotiation memos when required. However, DOD was unable to provide supporting evidence for the remaining 4 contract actions that were indicated as competed.

Of the 11 USAID contract actions we reviewed, 3 were indicated as noncompeted and 8 indicated as competed. The files for all 3 noncompeted actions included the documentation required by the FAR and the Agency for International Development Acquisition Regulation (AIDAR) regarding competition. Two of these contracts were awarded under limited competition—one for catering services and one for armored vehicles—providing an opportunity for multiple vendors to submit bids. For both of these contracts, USAID used a blanket waiver authority

¹⁹ The 8(a) Business Development program refers to section 8(a) of the Small Business Act, which establishes a program authorizing the Small Business Administration to enter into contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation (small disadvantaged business concerns). In some cases, such as for DOD, the Small Business Administration has delegated its 8(a) program contract execution function authority to the agency. Per FAR 6.203, separate justification or determination and findings are not required to set aside a contract for small business concerns. FAR 6.203(b) (Jan. 2006).

²⁰ The termination clause in Government contracts provides for the complete or partial termination of contracts for the convenience of the Government or default of the contractor. The authority to terminate contracts resides in the contracting officer and shall only be used, whether for default or convenience, when it is in the Government's interest. FAR Part 49, Termination of Contracts (Jan. 2006).

provided by the USAID Administrator pursuant to section 706.302-70(b)(3)(ii) of the AIDAR.²¹ This waiver was originally signed in January of 2003, later renewed in June 2004, and again in August 2005, and the agency is currently working on a 2006 version. The third noncompeted action was a modification extending the performance period and increasing the total award amount for a contract for facility security. The files for the 8 competed USAID contract actions included documentation that competition occurred, such as evidence of bidders or price negotiation memos.

Finally, of the 5 State contract actions we reviewed, 4 were indicated as noncompeted and 1 indicated as competed. Of the 4 noncompeted actions, 2 were single-award contracts for protective services, and 2 were task orders for police and guard services off of 1 IDIQ contract. The files for the 2 single-award contracts and one of the task orders included all of the documentation required by the FAR and the Department of State Acquisition Regulation (DOSAR) regarding competition. However, the file for one of the task orders for construction of a police training facility did not include documentation regarding the basis for using an exception to the fair opportunity process, as required in FAR § 16.505.²² The file for the 1 competed contract action included documentation that competition occurred, such as evidence of bidders or price negotiation memos.

State Did Not Always Provide Required Congressional Notifications

Of the 22 noncompeted contract actions in our review, State should have notified Congress of 2 actions it awarded using other than full and open competition in accordance with the congressional notification requirement in section 2202 of Public Law 108-106 but did not.

State failed to notify Congress when awarding 2 letter contracts for personal protective services noncompetitively.²³ State indicated that the

²¹ The Federal Property and Administrative Services Act permitted waiver of competitive contracting procedures that would impair foreign aid programs. This authority, previously codified at 40 U.S.C. § 474 (2000), was recently recodified and enacted into positive law, 40 U.S.C. § 113(e) (Supp. III 2003), by Pub. L. No. 107-217, § 1, 116 Stat. 1062, 1066 (2002). This authority is implemented in section 706.302-70 of the AIDAR.

²² FAR 16.505(b)(1) (Jan. 2006).

²³ A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. It is used when the Government's interests demand that the contractor be given a binding commitment so that work can start immediately and negotiating a definitive contract is not possible in sufficient time to meet the requirement.

department failed to comply with the notification requirement in these two cases because the Office of Acquisitions Management, which is responsible for awarding and administering contracts at State, was not notified that IRRF funds were applied to these contracts by the relevant program office. State officials told us they have coordinated with program office staff to ensure that they communicate funding types to contracting staff in the future. We did not identify any USAID or DOD contract actions within our sample that required congressional notification.²⁴

Agency Comments

We requested comments from DOD, USAID, and State on a draft of this report. DOD provided only one technical comment, which was incorporated into the report. USAID reviewed the report and found it to be factually correct. State acknowledged our findings and provided additional information regarding steps taken to address the section 2202 reporting requirement. Comments from State and USAID appear in appendixes IV and V.

We are sending copies of this report to the Secretaries of Defense and State; the Administrator, U.S. Agency for International Development; and the Commanding General and Chief of Engineers, U.S. Army Corps of Engineers. We will make copies available to others on request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

²⁴ We found that DOD, USAID, and State each provided one notification to Congress for IRRF-funded actions not included in our 51 selected contract actions.

The major contributors to this report are listed in appendix VI. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. If you have any questions about this report, please contact me at (202)-512-4841.

A handwritten signature in black ink that reads "John P. Hutton". The signature is written in a cursive style with a large initial "J" and a distinct "H".

John P. Hutton
Acting Director, Acquisition and Sourcing Management

Appendix I: Scope and Methodology

The fiscal year 2006 National Defense Authorization Act conference report required that GAO update its 2004 report on the extent of competition for Iraq reconstruction contracts. In response, we focused our review on reconstruction contract actions funded solely with the Iraq Relief and Reconstruction Fund (IRRF). IRRF represents the largest amount of U.S. appropriated funds for reconstruction purposes. Other sources of U.S. funding for Iraq military, reconstruction, and stabilization efforts that are not included in our review are the Iraq Security Forces Fund, the Commander's Emergency Response Program, and the Commander's Humanitarian Relief and Reconstruction Program. Additionally, the congressional notification requirement in section 2202 of Public Law 108-106 that was included in our review applies only to contract awards funded with IRRF.

We included the Departments of Defense (DOD) and State (State) and the U.S. Agency for International Development (USAID), as these agencies are responsible for 98 percent of the total obligations made with IRRF through June 2006. Additionally, within DOD, we used the Corps of Engineers Financial Management System (CEFMS) data to select individual components to include in our review that were responsible for the majority of IRRF II contracting during the time period of our review. The components we selected included the Joint Contracting Command-Iraq/Afghanistan, Army Corps of Engineers' Gulf Region Division and Transatlantic Programs Center, Army's TACOM Life Cycle Management Command, and the Air Force Center for Environmental Excellence.

To determine the approximate number of reconstruction contract actions, the types of actions, the funding sources, and the competition type of such actions, we found that no single source of information contained suitable amounts of both contracting actions issued using IRRF monies and competition information. Therefore, to obtain DOD data, CEFMS was selected as the basis for DOD's IRRF contract universe due to the fact that it is the payment system for most of the major offices performing DOD contracting and presented the most complete contract action list. Using CEFMS, we identified DOD components based on the Department of Defense Activity Address Code, and selected offices to include in our review based on total obligations under IRRF II. Since CEFMS does not capture competition information, however, we attempted to cross-reference contracts found in CEFMS with DOD's DD Form 350 Individual Contracting Action Report database. However, at the time of our review, we found that DD 350 did not include fiscal year 2006 data and not all DOD components fully reported contract actions to DD 350. As a result, we contacted the individual DOD components selected for inclusion in our

review and requested competition information for the offices' contracting actions funded with IRRF monies.

To obtain IRRF-funded contract actions from USAID and State, we relied on agency-provided data, since the Federal Procurement Data System-Next Generation (FPDS-NG) did not contain any of USAID's contracting actions at the time we began our review. Although State's contracting actions were contained within FPDS-NG, the system did not indicate which actions were funded using IRRF money and other criteria needed for our review.

We judgmentally selected 51 contract actions for further review to determine compliance with documentation requirements as prescribed in statutes, regulations, and other guidance, such as justification and approval documentation for noncompeted actions, and synopses of proposed contract actions, price negotiation memos, and evidence of bidder's lists for competed actions. To determine the applicable documentation requirements and policies governing competition when awarding contract actions, we reviewed the requirements of the Competition in Contracting Act of 1984 and the Federal Acquisition Regulation, and additional agency regulations including the Defense Federal Acquisition Regulation Supplement, Army Federal Acquisitions Regulation Supplement, Agency for International Development Acquisition Regulation, Department of State Acquisition Regulation, and other guidance. The contract actions were selected based on the following criteria:

- reconstruction contract actions funded with IRRF monies;
- actions awarded from October 1, 2003, through March 31, 2006;
- current obligations of \$1 million or more;
- represented both competed and noncompeted actions;
- selected more actions from DOD than USAID and State based on volume of contract actions obtained;
- included a variety of contracts, task orders, and modifications; and
- included a variety of goods and services provided.

Our findings regarding documentation are specific to these selected contract actions and are not projectable to the agencies' total contract action universe. Of the 51 contract actions selected, 22 were indicated as awarded noncompetitively and 29 were indicated as awarded competitively. We included competitively awarded actions in our review to verify the accuracy of reported actions and confirm evidence of competition. In the few cases noted where actions were incorrectly

reported as competed or noncompeted by USAID and State, we corrected the errors as appropriate for use in our analysis. Given that our actions to corroborate the data contained within agency systems or provided by the agencies identified only a few errors, which we corrected, we believe the data to be sufficiently reliable for our purposes.

To determine whether agencies complied with the congressional notification requirement contained in section 2202 of Public Law 108-106, we reviewed agency contract data within our selected contract actions to identify instances where the reporting requirement would apply and followed up with officials where appropriate.

In order to review and understand the contract files selected, we interviewed DOD, USAID, and State contracting officers and other procurement officials in Washington, D.C.; Virginia; and Iraq. Where possible, we obtained electronic documentation from agency officials. Appendix II lists the Iraq reconstruction contract actions we reviewed.

We conducted our work between April 2006 and August 2006 in accordance with generally accepted government auditing standards.

Appendix II: Iraq Reconstruction Contract Actions and Obligations Reviewed

Contracting agency/ contractor ^a	Purpose	Contract action type	Amount obligated
Department of Defense			
U.S. Air Force Center for Environmental Excellence			
Environmental Chemical Corporation	Convert Iraqi fort to prison	Task order	\$6,901,165.00
Shaw Environmental, Inc.	Army base renovation	Task order	\$45,492,214.00
Tetra Tech FW, Inc	Facility construction and renovation	Task order	\$41,361,224.00
Washington Group International, Inc.	School repairs	Task order	\$11,409,173.00
Weston Solutions, Inc.	Airport construction and improvements	Task order	\$4,700,826.00
Laguna Construction Company, Inc.	Commando satellite construction	Task order	\$20,555,941.00
U.S. Army TACOM Life Cycle Management Command			
Conley & Associates, Inc.	New equipment training	Contract	\$2,163,582.54
Conley & Associates, Inc.	New equipment training	Contract	\$2,417,967.80
MAC International FZE	Police truck	Contract	\$67,210,440.00
U.S. Army Transatlantic Programs Center			
Odebrecht-Austin (JV)	Gas power plant maintenance	Task order	\$38,663,252.20
Shaw Centcom Services LLD	Transmission line and substation rehabilitation	Task order	\$15,423,515.00
Washington International/Black & Veatch Joint Venture	Generator Rehabilitation	Task order	\$64,296,158.00
Joint Contracting Command – Iraq/Afghanistan			
ASRC Airfield and Range Services, Inc.	Facility construction and training	Contract	\$59,522,329.00
Eurest Support Services, Inc.	Base camp support services	Contract	\$48,844,954.00
SBIG Technical Services, Ltd.	Base support services	Contract	\$22,915,216.50
FluorAMEC LLC	Electric generation power plant construction	Task order	\$4,500,000.00
PAE Government Systems, Inc.	Firefighter training program	Contract	\$15,514,713.00
Iraqi Company A	Road construction	Contract	\$1,353,700.00
Iraqi Company B	Road construction	Contract	\$1,185,547.90
Iraqi Company B	Road construction	Contract	\$1,119,476.00
Iraqi Company C	Road construction	Contract	\$1,409,515.00
Raytheon Systems Development Company	Purchase and install communication systems	Contract	\$1,900,000.00
BLP	Civil intervention force class	Contract	\$9,340,912.38
U.S. Investigative Service	Training, force protection and life support services	Contract	\$42,197,992.13
Iraqi Company D	Renovate, repair, and upgrade hospital	Contract	\$2,919,752.90
iComPort	Install and test underground feeders	Modification	\$1,113,690.00
Iraqi Company E	Rehabilitate children's hospital	Contract	\$1,288,000.00
Comet Company LTD	Rehabilitate water pumping station	Contract	\$4,222,549.00

**Appendix II: Iraq Reconstruction Contract
Actions and Obligations Reviewed**

Contracting agency/ contractor^a	Purpose	Contract action type	Amount obligated
U.S. Army Corps of Engineers - Gulf Region Division			
Iraqi Company F	Water facility construction	Contract	\$3,500,000.00
IAP World Wide Services	Sewer and water networks	Task order	\$26,982,350.00
First Kuwaiti Contracting	Emergency response unit bureau dignitary protection training site construction	Task order	\$14,078,995.00
KEC-OZDIL JV	Design and reconstruct transmission line	Contract	\$23,865,426.00
Iraqi Company G	MNSTC-I logistical warehouse complex	Contract	\$2,099,556.00
Iraqi Company H	Iraqi National Guard battalion garrison	Task order	\$7,891,300.00
Iraqi Company I	Electrical complex construction	Contract	\$2,837,290.00
Total, Department of Defense			\$621,198,723.35
U.S. Agency for International Development			
Al Gosaibi Services	Catering services	Contract	\$1,360,094
America's Development Foundation	Civil society	Contract	\$42,880,157
Daimler Chrysler AG	Armored vehicles	Contract	\$4,261,182
Development Alternatives, Inc.	Grant support	Task order	\$348,039,843
Development Alternatives, Inc.	Agriculture	Contract	\$101,352,912
Gulf Catering Company	Catering services	Purchase order	\$1,139,320
International Business & Technical Consultants, Inc.	Monitoring and evaluation	Contract	\$7,938,544
Kroll Government Services International, Inc.	Facility security	Modification	\$3,368,311
The Louis Berger Group	Private sector growth and employment generation	Contract	\$95,000,000
The Partnership for Child Health Care, Inc.	Child health	Task order	\$2,000,000
Research Triangle Institute	Local Governance	Contract	\$85,000,000
Total, U.S. Agency for International Development			\$692,340,363
Department of State			
Dyncorp International LLC	Construction and training at police training facility	Task order	\$44,817,427.36
Dyncorp International LLC	Construction of police training facility	Task order	\$71,543,529.00
Triple Canopy, Inc.	Local guard services	Contract	\$73,344,007.29
Triple Canopy, Inc.	Personal protective services	Contract	\$20,800,000.00

**Appendix II: Iraq Reconstruction Contract
Actions and Obligations Reviewed**

Contracting Agency/ Contractor	Purpose	Contract Action Type	Amount Obligated
Blackwater Security Consultants, Inc.	Personal protective services	Contract	\$24,360,000.00
Total, Department of State			\$234,864,963.65^b
Grand Total			\$1,548,404,050.00

Source: GAO.

^aNames of Iraqi firms not listed.

^bThe two State contracts for personal protective services were only partially funded with IRRF. Obligations totals listed for these contracts represent only those obligations made with IRRF funds.

Appendix III: Actions Taken in Response to [GAO-04-605](#), *Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management Challenges*

GAO recommendations from [GAO-04-605](#) Iraq reconstruction contracting

To ensure that task orders issued to rebuild Iraq comply with applicable requirements, and to maximize incentives for the contractors to ensure effective cost control, the Secretary of the Army should review the out-of-scope task orders for Iraqi media and subject matter experts issued by the Defense Contracting Command-Washington (DCC-W) and take any necessary remedial actions.

Actions taken according to DOD officials

DCC-W agreed with the GAO findings concerning out-of-scope work for the orders awarded to SAIC for the Iraqi Media Network and the subject matter experts. Contracting officers ordering the out-of-scope work have been made aware that their actions were improper. DCC-W has instituted agencywide training in a number of topics, including the need to carefully review the scope of work of a contract to determine what may be legitimately ordered from that contract. This training will be periodically repeated. In addition, its postaward reviews will include an assessment of whether requiring work is within the scope of the basic contract.

GAO and DOD consider this recommendation closed.

To ensure that task orders issued to rebuild Iraq comply with applicable requirements, and to maximize incentives for the contractors to ensure effective cost control, the Secretary of the Army should ensure that any future task orders under the Logistics Civil Augmentation Program (LOGCAP) contract for Iraq reconstruction activities are within the scope of that contract.

According to DOD, the Procuring Contracting Officer for the LOGCAP contract reviews each proposed scope of work that will result in a task order and makes a determination whether the action is within the scope of the contract and obtains appropriate legal advice as necessary.

GAO and DOD consider this recommendation closed.

To ensure that task orders issued to rebuild Iraq comply with applicable requirements, and to maximize incentives for the contractors to ensure effective cost control, the Secretary of the Army should address and resolve all outstanding issues in connection with the pending Justifications and Approvals for the contracts and related task orders used by the Army Corps of Engineers to restore Iraq's electricity infrastructure.

As of June 2006, the justifications and approvals were being processed for Assistant Secretary of the Army for Acquisition, Logistics and Technology, approval.

GAO considers this recommendation open, though Defense Procurement and Acquisition Policy has indicated that this recommendation will be closed in the near term.

To ensure that task orders issued to rebuild Iraq comply with applicable requirements, and to maximize incentives for the contractors to ensure effective cost control, the Secretary of the Army should direct the Commanding General, Army Field Support Command, and the Commanding General and Chief of Engineers, U.S. Army Corps of Engineers, to definitize outstanding contracts and task orders as soon as possible.

DOD has definitized, or reached agreement on key terms and conditions for, all of the six contract actions identified in our June 2004 report. We noted in our March 2005 report entitled, *High-Level DOD Coordination is Needed to Further Improve the Management of the Army's LOGCAP Contract (GAO-05-328)*, that the Army had made improvements in definitizing task orders issued under the LOGCAP contract.

GAO and DOD consider this recommendation closed.

**Appendix III: Actions Taken in Response to
HTGAO-04-605TH, Rebuilding Iraq: Fiscal
Year 2003 Contract Award Procedures and
Management Challenges**

**GAO recommendations from [GAO-04-605](#)
Iraq reconstruction contracting**

To improve the delivery of acquisition support in future operations, the Secretary of Defense, in consultation with the Administrator, U.S. Agency for International Development, should evaluate the lessons learned in Iraq and develop a strategy for ensuring that adequate acquisition staff and other resources can be made available in a timely manner.

Actions taken according to DOD officials

In November 2005, DOD issued directive 3000.05, Military Support for Stability, Security, Transition, and Reconstruction Operations, which, in part, required that DOD ensure proper oversight of contracts in stability operations and ensure U.S. commanders deployed in foreign countries are able to secure contract support rapidly. DOD is also working on developing joint contingency contracting policy and doctrine and assessing DOD's contract administration services capability for theater support contracts. The estimated completion data of the ongoing actions is fall 2006.

GAO considers this recommendation open.

Source: GAO.

Appendix IV: Comments from the Department of State



United States Department of State

*Assistant Secretary for Resource Management
and Chief Financial Officer*

Washington, D.C. 20520

SEP 29 2006

Ms. Jacquelyn Williams-Bridgers
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "REBUILDING IRAQ: Status of Competition for Iraq Reconstruction Contracts," GAO Job Code 120547.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Gary Cabbage, Policy Analyst, Bureau of Diplomatic Security, at (571) 345-2743.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradford R. Higgins".

Bradford R. Higgins

cc: GAO – Katherine France
DS – Richard J. Griffin
State/OIG – Mark Duda

**Department of State Comments on GAO Draft Report
REBUILDING IRAQ:
Status of Competition for Iraq Reconstruction Contracts
(GAO-07-40, GAO Code 120547)**

The Department of State appreciates the opportunity to review and comment on the GAO Draft Report, "REBUILDING IRAQ: Status of Competition for Iraq Reconstruction Contracts." Pursuant to the findings noted in the GAO draft report, the Department acknowledges that it had two instances identified in the report where it failed to carry out the requirement under Section 2202 of Public Law 108-106 requiring Congressional Notifications prior to the award of non-competitive contracts with a value in excess of \$5,000,000 funded from an IRRF appropriation. This was due to an administrative error and the Department greatly appreciates the GAO bringing this matter to our attention.

During the period covered in the GAO report, October 1, 2003, through March 31, 2006, the Bureau of Diplomatic Security (DS) had four Iraq contracts, two of which were competed under full and open competition and two that were not. Of the two that were not, IRRF funds in the amount of \$37,300,000 were inappropriately obligated on these contracts. In correcting the error, the Bureau discovered that another supplemental appropriation for Iraq operations, available at the time, was supposed to have been used to fund these contracts. In August 2006, the Bureau de-obligated the IRRF funding in each of the two contracts and replaced them with Diplomatic and Consular Program (D&CP) funding, which consequently negates the requirement for Congressional Notification for other than full-and-open competition. The IRRF funds were then obligated under contracts that were awarded on a competitive basis. Additionally, DS has implemented procedures to ensure that everyone in the procurement chain is notified of funding types, limitations, and reporting requirements in order to advise the Contracting Officer how to proceed on the solicitation of any contracts being funded from these sources. Furthermore, the Worldwide Personal Protective Services (WPPS) II contract has been awarded and all former and new DS contract efforts in Iraq are now competed under Full and Open Competition.

Again, the Department acknowledges its error, the assistance GAO provided in bringing this matter to our attention and its appreciation for reflecting our corrective actions in the draft report.

Appendix V: Comments from the U.S. Agency for International Development



USAID
FROM THE AMERICAN PEOPLE

OCT - 2 2006

John P. Hutton
Director
Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Hutton:

I am pleased to provide the U.S. Agency for International Development's (USAID) formal response on the draft GAO report entitled Rebuilding Iraq: Status of Competition for Iraq Reconstruction Contracts (GAO-07-40).

USAID has reviewed the report and finds it to be factually correct. We have no further comments on the report at this time.

Thank you for the opportunity to respond to the GAO draft report and for the courtesies extended by your staff in the conduct of this review.

Sincerely,

A handwritten signature in black ink, appearing to read "Mosina H. Jordan".

Mosina H. Jordan
Counselor to the Agency

U.S. Agency for International Development
1300 Pennsylvania Avenue, NW
Washington, DC 20523
www.usaid.gov

Appendix VI: GAO Contacts and Acknowledgments

GAO Contacts

John Hutton, (202) 512-4841

Acknowledgments

Major contributors to this report were John Neumann, Daniel Chen, Kate France, Julia Kennon, John Krump, Art James, Shannon Simpson, Karen Sloan, Adam Vodraska, and Aaron Young.

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