



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3000

DPAP/PAIC

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS *NS 11/29/04*

SUBJECT: GAO Final Report "REBUILDING IRAQ: Fiscal Year 2003 Contract Award Procedures and Management Challenges," dated June 1, 2004 (GAO Code 120248/GAO-04-605)

This is in response to your memorandum of June 18, 2004, requesting review of the subject final report in preparation of official DoD comments. Our proposed comments on the final report are attached. My point of contact for this matter is Craig Curtis at (703) 614-6719 and craig.curtis@osd.mil.

Deidre A. Lee
Director, Defense Procurement &
Acquisition Policy

Attachment:
As stated



Mr. William T. Woods
Director, Acquisition and Sourcing Management
U.S. General Accounting Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Woods:

This is the Department of Defense (DoD) response to the GAO report, "REBUILDING IRAQ: Fiscal Year 2003 Contract Award Procedures and Management Challenges," dated June 1, 2004 (GAO Code 120248/GAO-04-605). We have received the final report and note that our comments on the earlier draft of this report are set out in Appendix III, and reiterate that the Department's position in this matter has not changed.

Enclosed are updates to the recommendations which are listed on page 43 of your report and responses to your comments which are listed on page 46 of your report. My point of contact for this effort is Mr. Craig Curtis, (703) 614-6719 or craig.curtis@osd.mil.

Sincerely,

Deidre A. Lee
Director, Defense Procurement &
Acquisition Policy

Enclosures:
As stated

DRAFT

GAO REPORT - DATED JUNE 1, 2004
GAO CODE 120248/GAO-04-605

**“REBUILDING IRAQ: FISCAL YEAR 2003 CONTRACT AWARD
PROCEDURES AND MANAGEMENT CHALLENGES”**

**DEPARTMENT OF DEFENSE UPDATES TO THE RECOMMENDATIONS AND
RESPONSES TO THE COMMENTS**

RECOMMENDATION 1: The GAO recommended that the Secretary of the Army review the out-of-scope task orders for Iraqi media and subject matter experts, issued by the Defense Contracting Command-Washington, and take the necessary remedial actions. (p. 33/GAO Draft Report)

GAO COMMENT: There is no specific GAO comment to the DoD response.

UPDATE: Defense Contracting Command-Washington agrees with the GAO findings concerning out of scope work for the orders awarded to SAIC for the Iraq 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 agency wide 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. In the case of ordering against a GSA Federal Supply Schedule (FSS) contract, for example, this would require the contracting officer to compare the scope of work in the FSS contract with the scope of work under the current requirement to determine if there is an adequate fit for scope. We are hopeful that this training, which will be periodically repeated, will be sufficient to preclude a recurrence of this type of contracting problem. In addition, our post award reviews will include an assessment of whether work being required is within scope of the basic contract. DoD considers this action closed.

RECOMMENDATION 2: The GAO recommended that the Secretary of the Army 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. (p. 33/GAO Draft Report)

GAO COMMENT 1: The Department of Defense (DoD) incorrectly noted that the recommendation was based on only one instance. In addition to the example cited by DoD, we also expressed concern about whether the task orders to provide logistical support for the Coalition Provisional Authority (CPA) and to the New Iraqi Army training program were within the scope of the underlying Logistics Civil Augmentation program (LOGCAP) contract.

UPDATE: Per the initial response, the Procuring Contracting Officer for the LOGCAP contract reviews each proposed Scope of Work which will result in a task order and makes a determination whether the action is within the scope of the contract. Appropriate legal advice is obtained as necessary. DoD considers this action closed.

RECOMMENDATION 3: The GAO recommended that the Secretary of the Army 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. (p. 33/GAO Draft Report)

GAO COMMENT: There is no specific GAO comment to the DoD response.

UPDATE: All Task Orders for this work have been definitized, as of 05 May 2004. Following are the Task Order numbers, contract numbers, dates of definitization, and definitized amounts: 1. DACA78-03-D-0004 (WGI) Task Order 0002 for Restore Iraqi Electricity was definitized on 5 May 04 in the amount of \$300,318,460; 2. DACA78-03-D-0005 (Fluor) Task Order 0006 for Restore Iraqi Electricity was definitized on 3 Mar 04 in the amount of \$295,257,226; and, 3. DACA78-03-D-0006 (Perini) Task Order 0002 for Restore Iraqi Electricity was definitized on 26 Mar 04 in the amount of \$356,497,194. DoD considers this action closed.

RECOMMENDATION 4: The GAO recommended that the Secretary of Army 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. (P. 33/GAO Draft Report)

GAO COMMENT 2: The actions being taken by the Army Field Support Command are positive steps to monitor progress in reaching agreement on the contracts' key terms and conditions. DoD did not indicate, however, what steps the Army Corps of Engineers was taking to definitize the actions for which the Corps is responsible. As noted in table 7, the Army Corps of Engineers had two undefinitized contracts obligating more than \$1.5 billion as of March 2004.

UPDATE: Regarding the Restore Iraq's Oil Infrastructure -- As of 12 July 2004 the Not-to-Exceed amount is \$2,511,887,044 for contract DACA63-03-D-0005. Of this amount \$58,456,000 has been definitized. The balance to be negotiated/definitized is \$2,453,431,044 or 98 percent. Pending release of DCAA audits by 31 July 2004 should enable rapid definitization of the remaining balance.

RECOMMENDATION 5: The GAO recommended that the Secretary of Defense, in consultation with the Administrator, U.S. Agency for International Development, evaluate the lessons learned in Iraq and develop a strategy for assuring that adequate acquisition staff and other resources can be made available in a timely manner. (p. 33/GAO Draft Report)

GAO COMMENT: There is no specific GAO comment to the DoD response.

UPDATE: DPAP is canvassing DoD components to determine the availability of existing and planned studies to enable insertion of acquisition planning and support for future contingency operations.

GAO COMMENT 3 : DoD asserts that the determination and finding was not made on a class basis because it included a common justification for 26 specifically identified “particular procurements.” The Federal Acquisition Regulation (FAR) provides for determination and findings for individual contract actions (FAR 1.702) and a class of contract actions (FAR 1.703). Because the determination and finding encompasses 26 contract actions, we concluded that it is a class determination and finding. Specifically enumerating members of the class does not alter the fundamental fact that it is for more than one action. Class determination and findings are specifically prohibited by FAR 6.302-7(c)(4). As to the questions of authority to execute the determination and finding, we do not dispute that the Deputy Secretary has broad authority to act on behalf of the Secretary. We note, however, that the plain language of the law provides that authority to approve public interest exceptions may not be delegated¹ and conclude that the Deputy Secretary did not have authority in this instance.

Footnote: With regard to the public interest exception (10 U.S.C. 2304(c)(7)), the law specifically states that, “the authority of the head of an agency under subsection (c)(7) may not be delegated.” 10 U.S.C. 2304(d)(2).

DoD RESPONSE: DoD comments on the earlier draft of this report are set out in Appendix III, and the Department confirms that the original position in this matter has not changed.

GAO COMMENT 4 : Legal analysis by its nature reflects opinion. In the opinion of GAO, the Army, and DoD, the actual restoration of Iraqi oil infrastructure was not within the scope of the LOGCAP contract. We also noted that the LOGCAP contract anticipates contingency planning or work that can be executed under the contract. In other words, contingency planning is within the scope of the contract. In this instance, all parties agree that actual restoration of the oil infrastructure was not within the scope of the contract. Consequently, we concluded that planning the oil infrastructure restoration was also not within the scope of the contract.

We would encourage the contracting officer to continue to obtain legal assistance given the complexity of the LOGCAP contract, but we also believe that DoD needs to ensure analytical rigor in its review of task orders.

DoD RESPONSE: DoD comments on the earlier draft of this report are set out in Appendix III, and the Department confirms that the original position in this matter has not changed.
