



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
ARLINGTON, VA 22203-1837

6

REPLY TO
ATTENTION OF

(b)(6)

February 23, 2004

Contract Appeals Division

Office of the General Counsel
U.S. General Accounting Office
441 G. Street, NW
Washington, D.C. 20548
Fax: (b)(6)

**PROTECTED MATERIAL
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GENERAL ACCOUNTING
OFFICE PROTECTIVE ORDER**

Subject: Protest of Bumar Ltd. (B-293676.2)

(b)(5); (b)(6)



01141

(b)(5)



(b)(5)



(b)(5)



Sincerely,

(b)(6)

Major, U.S. Army
Trial Attorney

(b)(6)

Major, U.S. Army
Trial Attorney

Enclosure
as

Copies Furnished:

Protester:

(b)(6)



801 13th Street, NW
Suite 600 South
Washington, DC 20005

Telephone: (b)(6)

Facsimile: (b)(6)

Installation Attorney:
Department of the Army
Coalition Provisional Authority
- Contracting Activity

ATTN: (b)(6)

(b)(6)

Directorate of Contracting:
Coalition Provisional Authority
Room M210
Republican Presidential Palace

ATTN: (b)(6)

(b)(6)

(b)(6) (O-4)

2 different addresses

From: (b)(6) MAJ USALSA
Sent: Thursday, February 19, 2004 11:12 PM

To: (b)(6) (O-4)

Cc: (b)(6) (O3); (b)(6) (O-4)

Subject: RE: Protests

De Luca - cover

*Cemex - deputed proposal
 Cemex - proposal*

(b)(6)

(b)(5)

[Redacted content]

(b)(6)

-----Original Message-----

From: (b)(6) (O-4) [mailto:(b)(6)]

Sent: Thursday, February 19, 2004 9:02 AM

To: (b)(6) MAJ USALSA

Cc: (b)(6) (O3)

Subject: RE: Protests

(b)(6)

(b)(5)

[Redacted content]

(b)(6)

(b)(6)

Maj, USAF

Judge Advocate
 Coalition Provisional Authority
 Office of the General Counsel
 Baghdad, Iraq

(b)(6)

2/20/2004

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-----Original Message-----

From: (b)(6) MAJ USALSA
Sent: Thursday, February 19, 2004 4:52 PM
To: (b)(6) (O-4)
Cc: (b)(6) (O-4); (b)(6) Mr., LITCTR
Subject: RE: Protests

(b)(5)

-----Original Message-----

From: (b)(6) MAJ USALSA
Sent: Thursday, February 19, 2004 8:39 AM
To: (b)(6) (O-4)
Cc: (b)(6) (O-4); (b)(6) Mr., LITCTR
Subject: Protests

(b)(6)

(b)(5)

2/20/2004

(b)(5)

(b)(6)

-----Original Message-----

From: (b)(6) (O-4) [mailto:(b)(6)]
Sent: Wednesday, February 18, 2004 1:46 PM
To: (b)(6) MAJ USALSA
Subject: Battalion Sets- Export Licenses

-----Original Message-----

From: (b)(6) [mailto:(b)(6)]
Sent: Wednesday, February 18, 2004 7:21 PM
To: (b)(6) (O-4)
Cc: (b)(6)
Subject: RE: Export Licenses

Dear Major (b)(6)

Please find attached an explanatory document as well as the dealer registration for Ostrowski Arms. I will call shortly to discuss any questions.

Kind Regards, (b)(6)

2/20/2004



G A O

Accountability • Integrity • Reliability

United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Turkcell Consortium

File: B-293048.2

Date: November 12, 2003

Stephen G. Anderson, Esq., and Charles R. Johnston, Jr., Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, for the protester.

Maj. Frank A. March, Department of the Army, for the agency.

Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging Coalition Provisional Authority's issuance of licenses for telecommunications services in Iraq is not for consideration under General Accounting Office's bid protest function ~~since the licenses do not involve the provision of property or services to the federal government.~~ #2

DECISION

Turkcell Consortium protests the decision by the Coalition Provisional Authority (CPA), which currently exercises governmental powers in Iraq, not to issue to Turkcell a mobile telecommunications license under a solicitation issued by, in the protester's words, "the CPA, in consultation with the Iraqi Ministry of Communications."¹ The licenses are granted to allow companies to offer wireless

¹ On October 22, 2003, our Office dismissed Turkcell's original protest of this same matter because that protest failed to meet the requirements at 4 C.F.R. § 21.1(c)(4) and (f) (2003) of our Bid Protest Regulations, which require that a protest include a detailed statement of the legal and factual grounds for protest, and that the grounds stated be legally sufficient. In its original protest, Turkcell stated that it had almost no information about the evaluation of competitors proposals and any licenses that might have been issued, but that "Turkcell finds it inconceivable that errors were not made in the evaluation process." Protester's Original Protest, Oct. 14, 2003, at 3. We concluded that such speculation did not meet the requirements in our Regulations. See Little Sustina, Inc., B-244228, July 1, 1991, 91-2 CPD ¶ 6 at 4. Turkcell filed this second protest after receiving a debriefing from the CPA. #1

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communications services to private subscribers for a fee. Army's Dismissal Request, November 3, 2003, at 5.

We dismiss the protest.

The authority of our Office to decide bid protests is based on the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556 (2000), and encompasses "a written objection by an interested party to a solicitation or other request by a federal agency for offers for a contract for the procurement of property or services." Our jurisdiction does not turn on whether appropriated funds are involved, West Coast Copy, Inc.; Pacific Photocopy & Research Servs., B-254044, B-254044.2, Nov. 16, 1993, 93-2 CPD ¶ 283 at 5, or on whether the competition requirements of CICA apply.

The Department of the Army argues that our Office lacks jurisdiction to hear this protest because the CPA is not a "federal agency" and alternatively, this transaction is not a "procurement of property or services" under CICA. Army's Dismissal Request, Nov. 3, 2003, at 5.

Where a concession or similar type of contract or agreement, such as a license, does not include the delivery of goods or services to the federal government, the contract is not one for the procurement of property or services as envisioned by CICA. Starfleet Marine Transp. Inc., B-290181, July 5, 2002, 2002 CPD ¶ 113 at 6. Thus, for example, where the agency's issuance of concession permits merely allowed entry by visitors into a national park, and did not also include the provision of services to the government, we did not exercise jurisdiction. Crystal Cruises, Inc., B-238347, Feb. 1, 1990, 90-1 CPD ¶ 141, aff'd, B-238347.2, June 14, 1990, 90-1 CPD ¶ 560. Similarly, the license at issue here involves no provision for property or services to the federal government. This transaction is not for the acquisition of goods and services, but the granting of the right to the selected telecommunications firms to establish and sell mobile telecommunications services in Iraq to business and social users. Coalition Provisional Authority Order 11, Licensing Telecommunications Services and Equipment (June 11, 2003) and Statement of Objectives for Iraq Mobile License Offer at Annex B. The federal government is not purchasing or receiving any goods or services. Under these circumstances, we do not view the award of these licenses as a procurement of property or services and, therefore, the matter cannot be considered under our CICA bid protest authority.

In light of the above, we need not resolve at this time whether the CPA is a federal agency for purposes of our bid protest jurisdiction under CICA. We note, however, that even if we ultimately determine that the CPA is not a federal agency, we may well assume jurisdiction if the challenged procurement is conducted on the CPA's behalf by an entity that is a federal agency (such as the Department of the Army). Cf. Cline Enters., Inc., B-252407, June 24, 1993, 93-1 CPD ¶ 492 at 1 n.1 (GAO has jurisdiction to decide protest of procurement conducted by federal agency on behalf of nonappropriated fund activity). In any event, we would also consider a request by

the CPA for our Office to consider protests outside the framework of CICA.
Cf. 4 C.F.R. § 21.13 (concerning nonstatutory protests involving, among other things, procurements by government agencies that do not meet the definition of "Federal agencies" in 4 C.F.R. § 21.0(c)).

The protest is dismissed.

Anthony H. Gamboa
General Counsel

**FILTRATION DEVELOPMENT CO., LLC, Plaintiff, v. THE UNITED STATES,
Defendant.**

No. 03-2835C

UNITED STATES COURT OF FEDERAL CLAIMS

2004 U.S. Claims LEXIS 20

February 3, 2004, Filed

PRIOR HISTORY: [*1]

DISPOSITION: Defendant's motion to dismiss for failure to state a claim upon which relief can be granted denied.

LexisNexis (TM) HEADNOTES - Core Concepts:

COUNSEL: Robert S. Metzger, Washington, D.C., attorney of record for plaintiff, and Bryan Arnold and Mary Ita Snyder, of counsel.

David A. Harrington, Department of Justice, Washington, D.C., with whom was Assistant Attorney General Peter D. Keisler, for defendant. David M. Cohen, Director, and Robert E. Kirschman, Jr., Assistant Director. Mike Lonsberry, U.S. Department of the Army, of counsel.

JUDGES: BOHDAN A. FUTEY Judge.

OPINIONBY: BOHDAN A. FUTEY

OPINION: Bid protest; Justiciability; Unusual and compelling urgency exception to the Competition In Contracting Act, 10 U.S.C. § 2304(c)(2); Administrative Procedure Act, 5 U.S.C. § 706(2)(A); Organizational Conflict of Interest.
Futey, Judge.

This post-award bid protest case is before the court on defendant's motion to dismiss for failure to state a claim upon which relief can be granted. From the onset, defendant argued that the court need look no further than to principles of justiciability to resolve this controversy. The issues raised within are of paramount importance, as

they concern not only the next rotation of military equipment which is scheduled to arrive [*2] in Iraq in the spring of 2004, but also because they define the parameters in which the military may exercise its discretion in invoking the "unusual and compelling urgency" exception to the *Competition in Contracting Act's* (CICA) requirement of full and open competition. Issues of national defense and national security permeate, and will continue to permeate, the issues addressed at all stages of this litigation.

For purposes of this motion, defendant concedes that plaintiff would be able to substantiate both its CICA and Organizational Conflict of Interest (OCI) claims. n1 Defendant maintains, however, that the United States Army's (Army) decision to procure a set number of engine inlet barrier filters for use on UH-60 Blackhawk helicopters in Operation Iraqi Freedom is purely a military question and, therefore, nonjusticiable. Defendant avers that the court should defer to the military in matters pertaining to equipping the armed forces. Defendant also contends that there are no tests or standards for the court to apply in order to ascertain the number of engine filters that are required to sustain the operation in Iraq. On the other hand, plaintiff maintains that this court possesses [*3] the authority to review alleged CICA and OCI violations. Plaintiff contends that the Army did not solicit proposals from the maximum number of contractors as practicable. Further, plaintiff avers that the Army did not limit the procurement to "the minimum quantity needed to satisfy the immediate urgent requirement." n2 Plaintiff also asserts that it has carefully crafted the relief it seeks so as not to interfere with the military's current operations.

n1 Defendant's Reply In Support Of Its Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted at 2; see also Transcript of Oral Argument (Tr.) at 6-7.

n2 Plaintiff's Response In Opposition To Defendant's Motion To Dismiss (Pl.'s Resp.) at 15-16 & n.27 (citing *Matter of: Signals & Sys., Inc.*, B-288107, 2001 CPD P 168, 2001 U.S. Comp. Gen. LEXIS 149, at *26 (Sept. 21, 2001))

Factual Background

Sikorsky Aircraft Company (Sikorsky) was awarded a sole-source contract, under which it is responsible for designing, [*4] developing, and manufacturing the UH-60 Blackhawk helicopter. n3 Although the parties are in disagreement as to the exact timing of the revelation, the Utility Helicopter Project Management Office (UHPMO) became aware that the engines propelling the UH-60 Blackhawk helicopters were quickly deteriorating due to the excessive ingestion of sand particles. In July 2003, to commence the development and selection of appropriate preventive measures, UHPMO directed Sikorsky to conduct an engine filtration trade study. n4 The trade study contemplated that Sikorsky would evaluate, in addition to the two concepts chosen at its discretion, a filter concept developed by Aerospace Filtration Systems (AFS), a "division" of Westar Corporation (Westar) n5

n3 Complaint (Compl.) Exhibit (Ex.) 2, at 1.

n4 Contract No. DAAH23-02-D-000-0148.

n5 Compl. PP 1, 23, 45. The source of plaintiff's allegation of an OCI violation appears to derive from Westar's affiliation with AFS. Westar was awarded an Omnibus 2000 contract in the year 2000. Generally speaking, Westar's obligations under the contract consisted of providing a "broad range of technical, programmatic and logistics advisory and assistance support services." *Id.* P 15 (quoting Omnibus 2000 Handbook). Within these broad categories of responsibility, Westar dispensed advice concerning barrier filters and inlet particle separators. *Id.* PP 17-19. Plaintiff, therefore, concludes that both OCI regulations and the terms of the Omnibus 2000 contract precluded Westar or its affiliates from supplying engine barrier filters for the UH-60 Blackhawk helicopter. *Id.* P 20.

[*5]

According to defendant, in August 2003, the Army was confronted with a situation in which the demand for replacement engines increased, the costs attendant with their replacement mounted, and there was a lack of engines to meet the demand. n6 Shortly thereafter, in light of the foregoing considerations, the trade study was suspended and Sikorsky was directed to incorporate and qualify AFS's filter concept on a sole-source basis. Sikorsky was required to finalize the design by mid-October 2003 and secure an airworthiness release by March 2004.

n6 *Id.* Ex. 1, at 1-2; see also Defendant's Motion To Dismiss For Failure To State Claim Upon Which Relief Can Be Granted (Def.'s Mot.) Appendix (App.) A at 2.

Invoking the "unusual and compelling urgency" exception, 10 U.S.C. § 2304(c)(2), and implementing Federal Acquisition Regulations (FAR), 48 C.F.R. § 6.302-2, the Army procured 183 "A kits" and 150 "B kits" without full and open competition. The Justification [*6] and Approval (J&A) executed on November 5, 2003, provided that the United States Army Aviation Missile Command "proposed to acquire, utilizing an acquisition method other than full and open competition, 240 [engine inlet barrier filter] Desert Kits." n7 The J&A also noted, *inter alia*, that: 1) the kits would substantially reduce engine deterioration, and 2) Sikorsky was the only contractor that could complete the assignment within the requisite time frame. n8

n7 Def.'s Mot. App. A at 1.

n8 *Id.* at 1-3.

To place the significance, or lack thereof, of the discrepancy between the number of kits ordered and the number of kits referenced in the J&A into context, a brief discussion of the manner in which the kits are used is warranted. At an initial glance, it appears that the total number of kits ordered (333) exceeds the number referenced in the J&A (240). The "A kits" and the "B kits," however, are utilized in tandem. Each helicopter is first fitted with an "A kit," which serves a dual purpose: [*7] 1) it is the hardware to which the filter itself is mounted, and 2) it permits monitoring of the filter system. The B kit" is the actual interchangeable filter. The so-called filtration system, therefore, requires both an "A kit" and a "B kit." n9

n9 Tr. at 13-14

Plaintiff, Filtration Development Company, LLC, had met with Army officials on several occasions to express its interest in providing engine filters. Despite the meetings and subsequent phone calls and emails, its efforts were to no avail. Plaintiff filed suit in this court on December 18, 2003. The court held a telephonic conference the next day and the matter was placed on an expedited schedule. Defendant filed its motion to dismiss on December 30, 2003. Plaintiff responded on January 13, 2004, and defendant replied on January 16, 2004. Pursuant to the parties' request, the court held oral argument on January 21, 2004. The case is, therefore, appropriate for resolution. n10

n10 Pursuant to *RCFC* 24(a)(2), Sikorsky was given an opportunity to intervene in this matter, but declined to do so.

[*8]

Discussion

This court's bid protest jurisdiction is set forth in the *Tucker Act*, which provides:

The Unites [sic] States Court of Federal Claims . . . shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for . . . the award of a contract or any alleged violation of statute or regulation in connection with a procurement or proposed procurement.

28 U.S.C. § 1491(b)(1). In 1996, Congress enacted the Administrative Disputes Resolution Act, Pub. L. No. 104-320 § 12, 110 Stat. 3870, 3874-75 (1996), which expanded the court's bid-protest jurisdiction to hear both pre-award and post-award challenges. When adjudicating bid protests, "the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5," 28 U.S.C. § 1491(b)(4), which states that agency actions may be set aside when they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" 5 U.S.C. § 706(2)(A). The court is empowered to "award any relief that [it] considers [*9] proper." *Id.* at § 1491(b)(2). The court's jurisdiction over the subject matter is not at issue in this case.

Whether this court possesses jurisdiction to adjudicate a claim, however, is a matter separate and distinct from whether the claim is justiciable. *Murphy v. United States*, 993 F.2d 871, 872 (Fed. Cir. 1993). A claim is justiciable where "the duty asserted can be

judicially identified and its breach judicially determined, and . . . protection for the right can be judicially molded." *Baker v. Carr*, 369 U.S. 186, 198, 7 L. Ed. 2d 663, 82 S. Ct. 691 (1962). Stated another way, "judicial review is only appropriate where the Secretary's discretion is limited, and Congress has established 'tests and standards' against which the court can measure his conduct." *Murphy*, 993 F.2d at 873 (citing *Sargisson v. United States*, 913 F.2d 918, 922 (Fed. Cir. 1990)); see also *Voge v. United States*, 844 F.2d 776, 780 (Fed. Cir. 1988). A determination of justiciability is also dependent on the court's "ability to supply relief." *Adkins v. United States*, 68 F.3d 1317, 1322 (Fed. Cir. 1995) [*10] (quoting *Murphy*, 993 F.2d at 872); see also *Gilligan v. Morgan*, 413 U.S. 1, 5-12, 37 L. Ed. 2d 407, 93 S. Ct. 2440 (1973).

The court is also cognizant of the plethora of authority mandating judicial deference in the area of military affairs. *North Dakota v. United States*, 495 U.S. 423, 443, 109 L. Ed. 2d 420, 110 S. Ct. 1986 (1990) ("When the Court is confronted with questions relating to . . . military operations, we properly defer to the judgment of those who must lead our Armed Forces in battle."); *Orloff v. Willoughby*, 345 U.S. 83, 93, 97 L. Ed. 842, 73 S. Ct. 534 (1953) ("Judges are not given the task of running the Army."); *Murphy*, 993 F.2d at 872 ("Justiciability is a particularly apt inquiry when one seeks review of military activities."); *Voge*, 844 F.2d at 779 ("Judicial deference must be 'at its apogee' in matters pertaining to the military and national defense."). It is against this backdrop of intertwining concepts of justiciability and deference to the discretionary decisions of military officials that the court proceeds with its analysis.

These two concerns undoubtedly cause the court to proceed with caution; they do not, however, [*11] categorically preclude review of discretionary military decisions. The United States Court of Appeals for the Federal Circuit (Federal Circuit) has made clear that "not every claim arising from a military decision presents a nonjusticiable controversy" *Adkins*, 68 F.3d at 1323; see also *Gilligan*, 413 U.S. at 12 & n.16. The courts have drawn a line in this area, consistently distinguishing between causes of action seeking review of the merits of a decision and those seeking to enforce compliance with procedural requirements. Turning first to the former, "the merits of a service secretary's decision regarding military affairs are unquestionably beyond the competence of the judiciary to review." *Adkins*, 68 F.3d at 1322 (citations omitted). The same cannot be said, however, for properly pled allegations of procedural violations.

Regulations are given the force of law even though the decision to promulgate them may have been

inherently discretionary. *United States v. Nixon*, 418 U.S. 683, 695-96, 41 L. Ed. 2d 1039, 94 S. Ct. 3090 (1974); *Service v. Dulles*, 354 U.S. 363, 368, 1 L. Ed. 2d 1403, 77 S. Ct. 1152 (1957); *Voge*, 844 F.2d at 779 [*12] (explaining that "government officials must follow their own regulations, even if they were not compelled to have them at all . . ."); *Barnes v. United States*, 57 Fed. Cl. 204, 209 (2003). "Once the Secretary promulgated regulations and instructions and made them the basis [for his decision], his action became subject to judicial review for compliance with those regulations and instructions, even though he was not required to issue them at all." *Sargisson*, 913 F.2d at 921; see also *Spherix, Inc. v. United States*, 58 Fed. Cl. 351, 355 (2003). The regulations are there for a reason, and once in place, they must be adhered to.

Plaintiff has made a prima facie allegation that defendant violated provisions of CICA, OCI, as well as implementing FAR regulations. The substance of plaintiff's complaint is that the military failed to follow its own regulations. Such allegations are plainly reviewable in this court. *Adkins*, 68 F.3d at 1323; *Murphy*, 993 F.2d at 873-74; *Sargisson*, 913 F.2d at 921-22. None of the concerns which would arise if the court reviewed [*13] the merits of a decision are present when the court reviews the military's actions to ascertain if they comply with regulatory constraints. It has long been within the province of this court's competence to ensure that regulations are being followed. See *Voge*, 844 F.2d at 780 (noting that the inquiry must be one which the court can "soundly administer within [its] special field of competence"). It likewise cannot seriously be contended that the court is in any manner intruding upon the military's discretionary domain. Rather, "the tests or standards against which this court measures the military's conduct are inherent: they are the applicable statutes and regulations." *Adkins*, 68 F.3d at 1323 (citing *Murphy*, 993 F.2d at 873) (emphasis added). The court would be doing nothing more than discerning whether the applicable statutes or regulations were complied with.

I. Unusual and Compelling Urgency Plaintiff alleges a violation of CICA and implementing FAR regulations. With the

exception of several limited circumstances, 10 U.S.C. § 2304 mandates procurement through "full and open competition." [*14] "Pursuant to the authority vested in the head of an agency, however, 'procedures other than competitive procedures [may be used] only when - the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals . . .'" 10 U.S.C. § 2304(c)(2); see also 48 C.F.R. § 6.302-2.

In keeping with its preference for "full and open competition," the statute indicates that "the head of an agency using procedures other than competitive procedures . . . by reason of the application of subsection (c)(2) . . . shall request offers from as many potential sources as practicable under the circumstances." 10 U.S.C. § 2304(e). The agency head's discretion to invoke the exception is also not unfettered; a justification is required and "each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited." 48 C.F.R. § 6.303-2(a). In addition, the exception has been interpreted as containing [*15] an implicit limitation that "the agency take reasonable steps to accurately determine its needs and describe them." *Matter of: Signals & Sys., Inc.*, B-288107, 2001 CPD P 168, at 12, 2001 U.S. Comp. Gen. LEXIS 149, at *26 (Sept. 21, 2001). The agency head's discretion is subject to this limitation because "the urgency justification cannot support the procurement of more than a minimum quantity needed to satisfy the immediate urgent requirement." *Id.*

In an analogous setting, the Federal Circuit cast significant light on the issue. In *Ramcor*, the Federal Circuit held that this court had jurisdiction to review the Immigration and Naturalization Service's (INS) decision to override the automatic stay which goes into effect upon the filing of a pre-award bid protest. *Ramcor Servs. Group, Inc. v. United States*, 185 F.3d 1286 (Fed. Cir. 1999). The significance of *Ramcor* to the issue before the court derives from the standard which the INS employed in making its determination to override the stay. The INS was permitted to override the stay only upon a written finding of "urgent and compelling circumstances which [*16] significantly affect interests of the United States which will not permit waiting" *Id.* at 1287 (quoting 31 U.S.C. § 3553(c)(2)). The Federal Circuit explained that 28 U.S.C. § 1491(b)(4), which incorporated the *Administrative Procedure Act's* (APA) standard of review into bid protests, provided the "substantive requirements" for review of the written findings supporting the "urgent and compelling circumstances" necessary for an agency override. *Id.* at 1290.

The operative language of 10 U.S.C. § 2304(c)(2) and 31 U.S.C. § 3553(c)(2) is substantively similar. The former permitting the agency to bypass full and open competition upon a showing of "unusual and compelling urgency;" the latter allowing an agency to override an automatic stay upon demonstrating "urgent and compelling circumstances." Putting aside the linguistic similarity between the two phrases, the reasoning of *Ramcor* is equally applicable here: 28 U.S.C. § 1491(b)(4), through its incorporation of APA standards of review, provides the "substantive [*17] requirements" for review of an agency's invocation of the "unusual and

compelling urgency" exception to full and open competition. See *id.*; see also *Wash. Baltimore Cellular Ltd. P'ship v. United States*, No. 98-50C, 1998 U.S. Claims LEXIS 282, at *1-4 (Sept. 17, 1998) (examining carefully the justification for invoking the "unusual and compelling urgency" exception and concluding that it was "weak and conclusory with respect to the urgency . . . and potential for serious injury"). Further, the Federal Circuit's opinion was without reference to any indication that review of the issue was precluded on the basis of nonjusticiability. *Ramcor*, therefore, supports the proposition that an agency's invocation of the "unusual and compelling urgency" exception, and its inherent limitations, is subject to judicial review.

This conclusion is consistent with other decisions of this court which have found agency actions reviewable. For example, in *PBGA* the agency invoked 31 U.S.C. § 3553(d)(3)(C) to override CICA's automatic stay. *PBGA, L.L.C. v. United States*, 57 Fed. Cl. 655, 656 (2003). [*18] Specifically, the agency relied on the following provisions: 1) "performance of the contract is in the best interest of the United States," and 2) "urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting . . ." *Id.* The defendants in *PBGA* conceded that this court could review the justifications for the "urgent and compelling circumstances" exception. *Id.* at 659. Although the defendants argued that "best interest" was unreviewable, this court concluded the override decision was "subject to review under the section 706 standard." *Id.* at 660. Therefore, the court's review of the military's justification for the exception is not as novel as defendant suggests. As can be gleaned from both *Ramcor* and *PBGA*, which applied and interpreted statutory and regulatory provisions, it is apparent that the APA standard of review has been held to provide the "substantive requirements" necessary for judicial review. Cf. *Spherix*, 58 Fed. Cl. at 357 (concluding that the Secretary's determination of "public interest" must comply with applicable [*19] statutes and regulations).

The government's invocation of an exception to full and open competition has also been reviewed on two additional grounds by other tribunals. In *Aero Corp.*, the United States District Court for the District of Columbia (D.C. District Court) analyzed whether in deciding to issue a sole-source award the contractor attempted to solicit proposals "'from the maximum number of qualified sources consistent with the nature and requirements of the services to be procured' when 'time of delivery will permit.'" *Aero Corp. v. Dep't of the Navy*, 540 F. Supp. 180, 207 (D.D.C. 1982); see also 10 U.S.C. § 2304(e). Further, in *Signals & Systems*, the Army had issued a sole-source award for an enormous quantity of electrical start systems for one of its vehicles. *Signals &*

Sys., B-288107, 2001 CPD P 168, at 7, 2001 U.S. Comp. Gen. LEXIS 149, at *14. The Comptroller General reviewed what actions, if any, the Army undertook to discern the "minimum quantity needed to satisfy the immediate urgent requirement." 2001 U.S. Comp. Gen. LEXIS 149 at *19. That tribunal also noted that the Army should [*20] have exercised reasonable diligence in ascertaining this number, and in failing to do so, plainly did not know how many items it needed. 2001 U.S. Comp. Gen. LEXIS 149 at *24, 27. Once again, the import of these cases is clear; they demonstrate a lack of hesitation on the part of the judiciary to review military actions for compliance with regulations. n11

n11 Although the court is not bound by decisions of the D.C. District Court or the Comptroller General, the court finds their reasoning persuasive in this regard.

II. Organizational Conflict of Interest

Plaintiff has also alleged that defendant violated OCI regulations. For that matter, 48 C.F.R. § 9.505-1 provides, in pertinent part:

A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production, shall not (1) be awarded a contract to supply the system or any of its major components or (2) [*21] be a subcontractor or consultant to a supplier of the system or any of its major components.

The court is not persuaded that the Army may simply disregard OCI constraints under the auspices of an "unusual and compelling urgency." Notwithstanding the invocation of the exception to full and open competition, this court has repeatedly reviewed an agency's compliance with OCI requirements. In *Informatics*, four of the six counts in the plaintiff's complaint explicitly alleged that the agency failed to adhere to OCI regulations. *Informatics, Corp. v. United States*, 40 Fed. Cl. 508, 512-513 (1998). The plaintiff argued that the agency's actions contravened FAR regulations by failing to consider the conflict mitigation plan it submitted and by failing to explain how the plan did not avoid or mitigate the alleged conflict. *Id.* at 514. This court acknowledged that a "disappointed bidder may argue that the award violated an applicable procurement regulation," *id.* at 513 n.9, and engaged in an analysis of the agency's actions to determine if they adhered to regulation. *Id.* at 514-18.

Likewise, [*22] in *DSD Laboratories*, the plaintiff protested the decision of the United States Air Force to exclude it from a procurement because of an organizational conflict of interest. *DSD Labs., Inc. v. United States*, 46 Fed. Cl. 467, 468 (2000). This court extensively analyzed whether the contracting officer had a reasonable basis for concluding that an OCI existed and whether the contractor should have been excluded on this basis. *Id.* at 472-77. This court also examined whether the contractor was afforded an opportunity to respond to the contracting officer's OCI concerns and submit a mitigation plan. *Id.* at 475-77. Irrespective of the ultimate holdings in *Informatics* and *DSD Laboratories*, both cases stand for the proposition that a plaintiff's allegation of a violation of OCI regulations is reviewable.

Based on the foregoing, it is, therefore, hardly surprising that defendant exerted little effort in contesting whether a violation of CICA, OCI, and implementing FAR regulations could be reviewed.

III. Requested Relief

Defendant devotes most of its attention to arguing that there are no [*23] tests or standards by which to gauge the propriety of the decision to authorize the procurement of 240 engine inlet barrier filters. Defendant contends that the court cannot supply relief because it does not have the ability to determine the number of engine inlet barrier filters that are necessary to fulfill the operational needs of the armed forces in Iraq. Further, defendant maintains that the relief sought would require the court to engage in the continued surveillance of military operations, an approach rejected by the United States Supreme Court (Supreme Court) in *Gilligan*.

Defendant's reliance on *Gilligan* is misplaced as its selective quotation fails to acknowledge the portions of the opinion which run contrary to its position in this litigation. In *Gilligan*, the Supreme Court did hold that the case presented a nonjusticiable controversy because the relief requested was in essence a request for initial judicial review, and continuing judicial supervision, of an equal branch of government. *Gilligan*, 413 U.S. at 5-12. The Supreme Court, however, in the same breath also limited its holding in the following manner:

In concluding [*24] that no justiciable controversy is presented, it should be clear we neither hold nor imply that the conduct of the National Guard is always beyond judicial review or that there may not be accountability in a judicial forum for violations of law or for specific unlawful conduct by military personnel, whether by way of damages or injunctive relief. We hold only that no such questions are presented in this case.

Id. at 11-12. The Supreme Court further elaborated: "There is nothing in our Nation's history or in this Court's decided cases, including our holding today, that

can properly be seen as giving any indication that actual or threatened injury by reason of unlawful activities of the military would go unnoticed or unremedied." *Id.* at 12 n.16 (quoting *Laird v. Tatum*, 408 U.S. 1, 15-16, 33 L. Ed. 2d 154, 92 S. Ct. 2318 (1972)). Plaintiff's causes of action alleging a "violation[] of law for specific unlawful conduct by military personnel" fall squarely within the situation envisioned by the Supreme Court as one in which the judiciary could supply relief. *Gilligan*, therefore, does not assist defendant.

In addition, defendant fails [*25] to appreciate the subtle distinction between its position and plaintiff's request for relief. Defendant is technically correct that "the APA, CICA, the implementing regulations - none of those speak, or give the Court any guidance, as to how many [engine inlet barrier filter] systems the Army should be allowed to procure." n12 Defendant's position is tantamount to the argument that because the statutes and regulations do not expressly provide, for example, that the number of engine inlet barrier filters must be limited to three times the number of UH-60 Blackhawk helicopters in combat, judicial review is precluded. Plaintiff's argument, however, delves deeper than defendant's superficial reliance on the lack of an explicit formula for ascertaining the minimum number of engine inlet barrier filters. Apart from the requirements that the government justify its invocation of the "unusual and compelling urgency" exception and seek proposals from the maximum number of contractors as practicable, the government is obligated to espouse a rationale that is neither arbitrary nor capricious that the number of items procured pursuant to the exception do not exceed the number necessary to alleviate [*26] the current or immediately impending emergency situation. See *Ramcor*, 185 F.3d at 1290; *PBGA*, 57 Fed. Cl. at 659-60; *Wash. Baltimore Cellular*, 1998 U.S. Claims LEXIS 282, at *1-4; *Signals & Sys., B-288107*, 2001 CPD P 168, at 9, 11-12, 2001 U.S. Comp. Gen. LEXIS 149, at *19, 25-27. Although this test falls short of a characterization as a rigid formula, it is nevertheless a manageable standard by which the court can judge the government's conduct and by which the government must comply.

n12 Tr. at 44.

To require that the military operate within the above-enumerated principles does not in any way constrain its ability to effectively function and perform, and in application is preferable to the position advanced by defendant. Taking defendant's argument to its logical extreme, any and all regulations could simply be disregarded any time the military invoked the "unusual

and compelling urgency" exception. For example, [*27] it would be permissible for the military to procure an unlimited number of engine inlet barrier filters despite the fact that only 240 helicopters were currently being utilized. There would simply be no limit to the number of items the military could procure. The fact that the ultimate destination of the filters is Iraq does not alter this proposition. It is inconceivable that the "unusual and compelling urgency" exception was intended to be used in this fashion in any sphere. The court, therefore, declines to endorse defendant's reasoning in this regard.

In conclusion, the standards employed by the court nevertheless afford the military great latitude in the administration and execution of its affairs. As a corollary to the practical application of these standards, the court is mindful of the "widely acknowledged" principle that it "possesses the power to enter summary judgment[] *sua sponte*. . . ." *Celotex Corp. v. Catrett*, 477 U.S. 317, 326, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986); see also *RCFC 12(b)* (explaining that a motion for failure to state a claim shall be treated as a motion for summary judgment under *RCFC 56* if "matters outside the pleading are presented to and [*28] not excluded by the court"); see also *Figueroa v. United States*, 57 Fed. Cl. 488, 504 (2003) (citing *Rockefeller Ctr. Props. v. United States*, 32 Fed. Cl. 586, 589 n.6 (1995)).

In this regard, the court has closely examined the following factors. The J&A referenced in the complaint and attached to defendant's motion to dismiss provides, and plaintiff does not dispute, n13 that the kits "are an integral part of the maintenance effort and will enhance sustainability by protecting aircraft engines and [Auxiliary Power Units] from the degradation due to ingestion of sand/dust while operating in the desert environment." n14 The J&A also explains that "since the[] operations [in Iraq] began, 400 engines have been removed/replaced at an approximate cost of \$ 300 [million]." n15

n13 It should be noted that plaintiff acknowledges that there exists a need for the engine inlet barrier filters. See Compl. P 3; Pl.'s Resp. at 5.

n14 Def.'s Mot. App. A at 1. n15 *Id.* at 2.

[*29]

The court, however, will set aside the notion of entering summary judgment at this time. The only issue argued and briefed before the court was that of justiciability. Plaintiff was also not in the position to come forward with all of its evidence on the merits as the Administrative Record was only filed on January 28, 2003. See *Celotex*, 477 U.S. at 326. Although the court provided notice at oral argument that it would examine the Administrative Record when it was filed, the court recognizes that the Federal Circuit has emphasized the importance of providing a party "the opportunity to present reasons why summary judgment would not be appropriate." *Thoen v. United States*, 765 F.2d 1110, 1113 (Fed. Cir. 1985); see also *id.* at 1113-15. Plaintiff, therefore, will not be deprived of the chance to argue its position at the next stage of this litigation.

Conclusion

For the above-stated reasons, Defendant's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted is hereby DENIED. Plaintiff's allegations that the military exceeded its authority by failing to adhere to statutory and regulatory [*30] prescriptions, and its attendant request for relief, present a justiciable controversy. The parties shall file motions for judgment upon the administrative record simultaneously by Friday, February 13, 2004. The parties shall respond simultaneously by Thursday, February 19, 2004. The parties may reply by Monday, February 23, 2004.

IT IS SO ORDERED.

BOHDAN A. FUTEY
Judge

1. Based on the Determination and Findings, dated 5 Dec 03, signed by the Deputy Secretary of Defense in accordance with 41 U.S.C. 253 (C)(7) AND 10 U.S.C. 2304(c)(7) as implemented by FAR 6.302-7, it is necessary in the public interest to use other than full and open competition for the purchase of equipment for the New Iraqi Army. This procurement shall use competitive procedures, with participation limited to sources from the United States, Iraq, Coalition partners and force contributing nations. See list of eligible countries below.

Afghanistan	Moldova
Albania	Mongolia
Angola	Morocco
Australia	Netherlands
Azerbaijan	New Zealand
Bahrain	Nicaragua
Bulgaria	Norway
Colombia	Oman
Costa Rica	Palau
Czech Republic	Panama
Denmark	Philippines
Dominican Republic	Poland
Egypt	Portugal
El Salvador	Qatar
Eritrea	Romania
Estonia	Rwanda
Ethiopia	Saudi Arabia
Georgia	Singapore
Honduras	Slovakia
Hungary	Solomon Islands
Iceland	South Korea
Iraq	Spain
Italy	Thailand
Japan	Tonga
Jordan	Turkey
Kazakhstan	UAE
Kuwait	Uganda
Latvia	Ukraine
Lithuania	United Kingdom
Macedonia	United States
Marshall Islands	Uzbekistan
Micronesia	

This limitation only applies to prime contractors and does not limit subcontracting to the referenced countries.

2. Companies are reminded that proposals for individual items or groups will be rejected. Offerors are required to submit their proposal for all items identified in the schedule.

1 of 1 DOCUMENT

Matter of: Zublin Delaware, Inc.

B-227003.2

Comptroller General of the United States

1987 U.S. Comp. Gen. LEXIS 645; 87-2 Comp. Gen. Proc. Dec. P149

August 11, 1987

HEADNOTES:

[*1]

Protest that the Navy after submission of initial offers unreasonably restricted competition to United States firms for construction of Navy housing in the Philippines is denied. The Secretary of the Navy made the requisite determination under the Competition in Contracting Act that the restriction was in the public interest because hiring of foreign firms could jeopardize vital United States bases in the Philippines.

OPINION:

Zublin Delaware, Inc. protests the Navy's issuance of amendment Nos. 0004 and 0005 to request for proposals No. N62742-86-R-0081 for the design, construction and installation of family housing units at the United States Naval Base at Subic Bay, Republic of the Philippines. Zublin argues that these amendments, issued after the closing date for receipt of initial offers, improperly excluded Zublin from further participation in this procurement. The amendments restricted competition for this procurement to United States prime contractors. Zublin, which submitted an initial offer determined by the Navy to be in the competitive range, seeks proposal preparation costs and the cost of pursuing its protest.

(We deny Zublin's protest and its claim for costs.)

The RFP was [*2] issued in June 1986, and established a closing date for receipt of initial proposals of September 10, 1986. Five firms, including Zublin, submitted initial proposals. All proposals were considered in the competitive range; however, the source selection board (SSB), after evaluating proposals, had serious concerns about the "liveability" of the housing units as proposed.

For example, Zublin offered a design for "downhill units" with the living areas at the upper entry level and the sleeping area located in the lower level. The SSB considered this design inappropriate for "the Subic Bay climate and terrain which is prone to landslides and flooding during the monsoon season." The Navy reevaluated the specifications and concluded that revisions to the specifications were necessary to meet the Navy's needs. The Navy sent offerors a letter dated January 9, 1987, setting forth the contemplated specification changes. During this period, the Philippine government expressed concern with other than Philippine or United States firms performing contracts in the Philippines and the United States, due to the changes in the political situation in the Philippines, announced a policy of supporting [*3] the Philippine government in its efforts to bolster its failing economy. To implement this United States policy, on March 19, 1987, the Secretary of the Navy made a "Determination and Findings" (D&F) to restrict competition under the RFP to United States companies. This action was taken pursuant to the Competition in Contracting Act, 10 U.S.C. § 2304(c)(7) (Supp. III 1985), which, in pertinent part, permits the award of a contract when

"the head of the agency --

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned"

The Secretary of the Navy determined that in order to continue to operate United States bases in the Philippines which are "vitally important to the national defense" it was crucial that the Philippines have a stable political and economic situation. The D&F issued by the Secretary notes that no proposals were received from Philippine companies. The Secretary reports that award of this contract to non-United States and non-Philippine firms "could provoke an unfavorable reaction from parties in the Philippines who seek to end or reduce United States presence there." [*4] The Secretary's concern was that such a reaction could undermine the Philippines government's stability and, thus, the Secretary concluded that it was essential that only those proposals from United States companies be given further consideration. The Secretary also required, where feasible, that all work on this project, including supplies, services, labor and materials be subcontracted to Philippine sources.

Amendment Nos. 0004 and 0005 contain provisions implementing the Secretary of the Navy's determination. Amendment No. 0004, issued on March 26, 1987, provides that the RFP is restricted to "United States prime contractors" in accordance with the Secretary's determination of March 19, and also contains a requirement that the contractor use Philippine sources to perform this contract to the maximum extent feasible. Amendment No. 0005, issued on April 29, further clarified the definition of "United States contractor." The amendment required that key management personnel including the project manager, architect, engineer and superintendent be United States citizens to meet the RFP definition of a United States contractor.

Zublin contends that the amendments unreasonably restrict [*5] competition and violate CICA provisions for full and open competition. Zublin specifically protests as unduly restrictive the definition of a United States contractor.

After the submission of initial offers, the Secretary of the Navy, faced with changed political and economic conditions in the Philippines, made a decision to restrict competition to United States firms. The Secretary of the Navy found that award to a non-United States or non-Philippine company could provoke an unfavorable reaction from parties in the Philippines who seek to end or reduce United States presence in the Philippines, thus jeopardizing United States bases in the Philippines.

Zublin does not rebut this basis for the Navy's decision to limit competition. It states, however, that although it is a Delaware corporation with United States officers and employees and has paid United States taxes for 2 years, it is excluded by the RFP's United States contractor definition. The specific definition provision which concerns Zublin is the requirement that "key management personnel," including the project manager, architect, engineer and superintendent, be United States citizens.

We think the requirement is reasonable [*6] in view of the Secretary's concern that foreign companies not be employed in the Philippines at this time. n1

n1 The D&F indicates a preference for Philippine firms for this contract. However, United States personnel apparently are considered unobjectionable because the work is to be performed on a United States base.

The designated key management personnel positions entail work which includes supervision of, and coordination with, the Philippine subcontractor labor force. In our view, since the intent is to limit friction and resentment resulting from the use or presence of other than American or Philippine individuals it is reasonable to limit the key management people who will be working in the Philippines to United States citizens since these are precisely the employees who will live, work, and interrelate with the Philippine people. See, e.g., A.T. Kearney, Inc., B-205898.2, Feb. 28, 1983, 83-1 CPD P190.

Zublin also argues that the amendments were improper because they were issued after the firm submitted its initial proposal. An RFP, however, may be revised after receipt of initial proposals when such action is necessary to ensure the government's needs [*7] will be satisfied. See Kisco Co., Inc., B-216953, Mar. 22, 1985, 85-1 CPD P334; Sub-Sea Systems, Inc., B-195741, Feb. 12, 1980, 80-1 CPD P123. Here, the amendment was related to the agency's needs, and Zublin does not allege, nor do we find, that the Navy, prior to issuing the RFP, was aware of the conditions which resulted in the need to restrict this procurement to United States firms. There is also no indication of bad faith on the part of the Navy.

With respect to Zublin's request for proposal preparation costs and the costs of pursuing its protest, since we find the amendment reasonable and deny Zublin's protest, we also deny its claim for costs. See 4 C.F.R. § 21.6(d) (1987); ADAK Communication Systems, Inc., B-222546, July 24, 1986, 86-2 CPD P103.

Eligible countries are:

Afghanistan	Moldova
Albania	Mongolia
Angola	Morocco
Australia	Netherlands
Azerbaijan	New Zealand
Bahrain	Nicaragua
Bulgaria	Norway
Colombia	Oman
Costa Rica	Palau
Czech Republic	Panama
Denmark	Philippines
Dominican Republic	Poland
Egypt	Portugal
El Salvador	Qatar
Eritrea	Romania
Estonia	Rwanda
Ethiopia	Saudi Arabia
Georgia	Singapore
Honduras	Slovakia
Hungary	Solomon Islands
Iceland	South Korea
Iraq	Spain
Italy	Thailand
Japan	Tonga
Jordan	Turkey
Kazakhstan	UAE
Kuwait	Uganda
Latvia	Ukraine
Lithuania	United Kingdom
Macedonia	United States
Marshall Islands	Uzbekistan
Micronesia	

A source from an eligible country is:

1. A corporation or partnership that is organized under the laws of an eligible country and that has its principle place of business in an eligible country. Further, the corporation or partnership cannot be a subsidiary (wholly owned or otherwise) of a parent company that is organized under the laws of a non-eligible country.
2. An individual that is a citizen of and has a principle place of business in an eligible country or a non-U.S. citizen lawfully admitted for permanent residence in the United States whose principle place of business is in the United States.
3. A joint venture or unincorporated association if each of its members is eligible under 1. or 2. above.
4. By submitting an offer under this solicitation, the Offeror attests that it is a qualified entity as defined above

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE	PAGE	OF	PAGES
				J	1		1
2. AMENDMENT/MODIFICATION NO. A0006		3. EFFECTIVE DATE 12/09/03		4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO. (If applicable)	
6. ISSUED BY CPA - CONTRACTING ACTIVITY REPUBLICAN PRESIDENTIAL COMPOUND BAGHDAD IRAQ APO AE 09335		CODE		7. ADMINISTERED BY (If other than Item 6)		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)				(X) 9A. AMENDMENT OF SOLICITATION NO. FY5866-04-R-0001			
				9B. DATED (SEE ITEM 11) 11/11/03			
				10A. MODIFICATION OF CONTRACT/ORDER NO.			
				10B. DATED (SEE ITEM 11)			
CODE		FACILITY CODE					

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☒ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☒ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

SEE PAGE TWO.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) (b)(6)	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
(Signature of person authorized to sign)		(Signature of Contracting Officer)	

INSTRUCTIONS

Instructions for items other than those that are self-explanatory, are as follows:

- (a) Item 1 (Contract ID Code). Insert the contract type identification code that appears in the title block of the contract being modified.
- (b) Item 3 (Effective date).
- (1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.
 - (2) For a supplemental agreement, the effective date shall be the date agreed to by the contracting parties.
 - (3) For a modification issued as an initial or confirming notice of termination for the convenience of the Government, the effective date and the modification number of the confirming notice shall be the same as the effective date and modification number of the initial notice.
 - (4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.
 - (5) For a modification confirming the contracting officer's determination of the amount due in settlement of a contract termination, the effective date shall be the same as the effective date of the initial decision.
- (c) Item 6 (Issued By). Insert the name and address of the issuing office. If applicable, insert the appropriate issuing office code in the code block.
- (d) Item 8 (Name and Address of Contractor). For modifications to a contract or order, enter the contractor's name, address, and code as shown in the original contract or order, unless changed by this or a previous modification.
- (e) Item 9, (Amendment of Solicitation No. - Dated), and 10, (Modification of Contract/Order No. - Dated). Check the appropriate box and in the corresponding blanks insert the number and date of the original solicitation, contract, or order.
- (f) Item 12 (Accounting and Appropriation Data). When appropriate, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries.
- (1) Accounting classification
Net increase \$ _____
 - (2) Accounting classification
Net decrease \$ _____
- NOTE: If there are changes to multiple accounting classifications that cannot be placed in block 12, insert an asterisk and the words "See continuation sheet".
- (g) Item 13. Check the appropriate box to indicate the type of modification. Insert in the corresponding blank the authority under which the modification is issued. Check whether or not contractor must sign this document. (See FAR 43.103.)
- (h) Item 14 (Description of Amendment/Modification).
- (1) Organize amendments or modifications under the appropriate Uniform Contract Format (UCF) section headings from the applicable solicitation or contract. The UCF table of contents, however, shall not be set forth in this document
 - (2) Indicate the impact of the modification on the overall total contract price by inserting one of the following entries:
 - (i) Total contract price increased by \$ _____
 - (ii) Total contract price decreased by \$ _____
 - (iii) Total contract price unchanged.
 - (3) State reason for modification.
 - (4) When removing, reinstating, or adding funds, identify the contract items and accounting classifications.
 - (5) When the SF 30 is used to reflect a determination by the contracting officer of the amount due in settlement of a contract terminated for the convenience of the Government, the entry in Item 14 of the modification may be limited to --
 - (i) A reference to the letter determination; and
 - (ii) A statement of the net amount determined to be due in settlement of the contract.
 - (6) Include subject matter or short title of solicitation/contract where feasible.
- (i) Item 16B. The contracting officer's signature is not required on solicitation amendments. The contracting officer's signature is normally affixed last on supplemental agreements.

1. Based on the Determination and Findings, dated 5 Dec 03, signed by the Deputy Secretary of Defense in accordance with 41 U.S.C. 253 (C)(7) AND 10 U.S.C. 2304(c)(7) as implemented by FAR 6.302-7, it is necessary in the public interest to use other than full and open competition for the purchase of equipment for the New Iraqi Army. This procurement shall use competitive procedures, with participation limited to sources from the United States, Iraq, Coalition partners and force contributing nations. See list of eligible countries below.

Afghanistan	Moldova
Albania	Mongolia
Angola	Morocco
Australia	Netherlands
Azerbaijan	New Zealand
Bahrain	Nicaragua
Bulgaria	Norway
Colombia	Oman
Costa Rica	Palau
Czech Republic	Panama
Denmark	Philippines
Dominican Republic	Poland
Egypt	Portugal
El Salvador	Qatar
Eritrea	Romania
Estonia	Rwanda
Ethiopia	Saudi Arabia
Georgia	Singapore
Honduras	Slovakia
Hungary	Solomon Islands
Iceland	South Korea
Iraq	Spain
Italy	Thailand
Japan	Tonga
Jordan	Turkey
Kazakhstan	UAE
Kuwait	Uganda
Latvia	Ukraine
Lithuania	United Kingdom
Macedonia	United States
Marshall Islands	Uzbekistan
Micronesia	

This limitation only applies to prime contractors and does not limit subcontracting to the referenced countries.

2. Companies are reminded that proposals for individual items or groups will be rejected. Offerors are required to submit their proposal for all items identified in the schedule.



DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

DEC 5 2003



DETERMINATION AND FINDINGS

This Determination and Findings (D&F) applies to the 24 construction and services, and indefinite-delivery, indefinite-quantity contracts described in the attachment that are to be awarded by the Coalition Provisional Authority (CPA) and by the Department of Defense, on behalf of the CPA. It also applies to one overall program management contract to be awarded to oversee the total effort. Finally, it applies to the indefinite-delivery, indefinite-quantity contract to equip the new Iraqi army. These contracts will obligate \$18.6B in funds from the Iraqi Relief and Reconstruction Fund (IRRF), which were appropriated by Public Law 108-106 for the purpose of relief and reconstruction of Iraq. These contracts will upgrade and rebuild the electrical sector, public works and water, military courts and borders, building, housing and health, transportation, communications, and oil infrastructure. This D&F is executed under the authority of 41 U.S.C. 253 (c)(7) and 10 U.S.C. 2304(c)(7), as implemented by FAR 6.302-7.

I hereby make the following findings regarding the limitation of competition for the particular procurements of Iraqi Relief and Reconstruction prime contracts identified in attachment number 1 to firms from the United States, Iraq, Coalition partners and force contributing nations:

FINDINGS

1. In light of the global war on terrorism and the end of major combat operations, the task of rebuilding the infrastructure of a free Iraq remains critical. The mission to rebuild Iraq is massive in nature and requires major improvements and redevelopment in electricity, public works/water (including wastewater treatment and water distribution), security/justice, transportation/communications (including ports, roads, and airports), and buildings/housing/health (including public and government buildings, schools, and medical facilities). The state of the Iraqi infrastructure is a reflection of decades of neglect by a totalitarian regime. Under a free Iraq, the reconstruction process will involve the input of the Iraqi people and their governmental ministries in the development of projects and products that will reinvigorate the country for self-sufficiency in the future.
2. The Coalition Provisional Authority (CPA) has been established to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people

can freely determine their own political future. In awarding the contracts, competition and responsiveness to the needs of Iraqi people will be emphasized.

3. The successful reconstruction of Iraq is critical to the viability of the new Iraqi economy. International support and cooperation are necessary for progress in Iraq. An unsuccessful reconstruction effort would have serious negative effects on the ultimate success of the war effort. The President has made clear that the Coalition's actions to reconstruct Iraq are indispensable for national security and national defense purposes.
 4. 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 United 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.
 5. Every effort must be made to expand international cooperation in Iraq. Since May 2003, Coalition forces other than those from the United States have increased from 14,000 to 23,700. U.S. force levels, accordingly, have decreased by approximately 12,000. Limiting competition for prime contracts will encourage the expansion of international cooperation in Iraq and in future efforts.
 6. Coalition partners share in the US vision of a free and stable Iraq. The limitation of sources to prime contractors from those countries should encourage the continued cooperation of coalition members.
 7. Including Iraqi firms in the reconstruction process makes them an active stakeholder in the rebuilding of their country. Besides helping the Iraqis generate the income to rebuild their country, it enables the Iraqi people to assume more responsibility for their country's economic and infrastructure development. This leads to a sense of ownership and pride in the reconstruction process and provides long-term stability to the political and economic transformation in Iraq, making it a model for other countries to follow and sending a clear message to the people of the Middle East and beyond that freedom and democracy are the best paths for the future.
 8. Upon limitation of sources to firms from the United States, Iraq, Coalition partners and force contributing nations, acquisition of the 26 Iraqi Relief and Reconstruction contracts will use the competitive procedures prescribed in FAR 6.102.
-

DETERMINATION

Based upon the findings above, I hereby determine that, in accordance with 41 U.S.C. 253 (c)(7) and 10 U.S.C. 2304(c)(7), as implemented by FAR 6.302-7, it is necessary in the public interest to use other than competitive procedures in the procurements for the prime contracts described on the attachment. Such procurements shall use competitive procedures, with participation limited to sources from the United States, Iraq, Coalition partners and force contributing nations.



Paul Wolfowitz

Attachment(s)

1. Contract Listing
2. Eligible Countries

ATTACHMENT 1 OF 2

Iraqi Reconstruction & Relief Contracts to be Awarded

1. Program Management Office Services
2. Program Management Services - Electrical Sector
3. Design-Build IDIQ Construction Services for New Power Generation (Southern region)
4. Design-Build IDIQ Construction Services for New Power Generation (Northern region)
5. Design-Build IDIQ Construction Services for Rehabilitation of Existing Power Generation Facilities (Country-wide)
6. Design-Build IDIQ Construction Services for Transmission/Distribution/Communication and Control (Northern region)
7. Design-Build IDIQ Construction Services for Transmission/Distribution/Communication and Control (Central (Baghdad) region)
8. Design-Build IDIQ Construction Services for Transmission/Distribution/Communication and Control (Southern region)
9. Program Management Services - Public Works/Water Resources Sector
10. Design-Build IDIQ Construction Services for Public Works and Water Projects (Northern region)
11. Design-Build IDIQ Construction Services for Public Works and Water Projects (Central region)
12. Design-Build IDIQ Construction Services for Public Works and Water Projects (Baghdad region)
13. Design-Build IDIQ Construction Services for Public Works and Water Projects (Southern region)
14. Design-Build IDIQ Construction Services for Public Works and Water Projects (Nationwide)
15. Program Management Services - Security/Justice Sector
16. Design-Build IDIQ Construction Services for Security and Justice facilities
17. Design-Build IDIQ Construction Services for Iraq National Defense Force Facilities
18. Program Management Services - Buildings/Health Sector
19. Design-Build IDIQ Construction Services for the Building, Housing and Health sector
20. Program Management Services - Transportation and Communications Sector
21. Design-Build IDIQ Construction Services for Transportation Projects
22. Design-Build IDIQ Construction Services for Communication Projects
23. Program Management Services - Oil Sector
24. Restore Iraq Oil Services (Northern region)
25. Restore Iraq Oil Services (Southern region)
26. Equip New Iraqi Army

ATTACHMENT 2 OF 2

Countries Eligible to Compete for Contracts Funded with U.S. Appropriated Funds for Iraq Reconstruction:

Afghanistan	Moldova
Albania	Mongolia
Angola	Morocco
Australia	Netherlands
Azerbaijan	New Zealand
Bahrain	Nicaragua
Bulgaria	Norway
Colombia	Oman
Costa Rica	Palau
Czech Republic	Panama
Denmark	Philippines
Dominican Republic	Poland
Egypt	Portugal
El Salvador	Qatar
Eritrea	Romania
Estonia	Rwanda
Ethiopia	Saudi Arabia
Georgia	Singapore
Honduras	Slovakia
Hungary	Solomon Islands
Iceland	South Korea
Iraq	Spain
Italy	Thailand
Japan	Tonga
Jordan	Turkey
Kazakhstan	UAE
Kuwait	Uganda
Latvia	Ukraine
Lithuania	United Kingdom
Macedonia	United States
Marshall Islands	Uzbekistan
Micronesia	

As of November 25, 2003 per NSA, Defense Policy


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Subpart 1.7- Determinations and Findings

... Requirements for specific types of D&F's can be found with the appropriate subject matter. 1.701 Definition. "**Determination and Findings**" means a special form ...

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Subpart 6.2- Full and Open Competition After Exclusion of Sources

... (b)(1) Every proposed contract action under the authority of paragraph (a) of this section shall be supported by a **determination and findings** (D&F) (see ...

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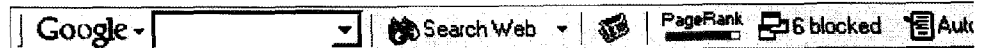
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AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE	PAGE	OF	PAGES
				J	1	1	1
2. AMENDMENT/MODIFICATION NO. A0006		3. EFFECTIVE DATE 12/09/03		4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO. (if applicable)	
6. ISSUED BY CPA - CONTRACTING ACTIVITY REPUBLICAN PRESIDENTIAL COMPOUND BAGHDAD IRAQ APO AE 09335		CODE		7. ADMINISTERED BY (if other than Item 6)		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Cemex Global, Inc. 1899 Pennsylvania Ave, NW DC 20005 USA - Tel: +1 (202) 822 6300				(X) 9A. AMENDMENT OF SOLICITATION NO. FY5866-04-R-0001			
				9B. DATED (SEE ITEM 11) 11/11/03			
				10A. MODIFICATION OF CONTRACT/ORDER NO.			
				10B. DATED (SEE ITEM 11)			
CODE		FACILITY CODE					

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

- ☒ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended. ☒ is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
(a) By completing items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted;
or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not. ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

SEE PAGE TWO.

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Eyas Qatanani / B.D. Manager		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) (b)(6)	
15B. CONTRACTOR/OFFEROR <i>Eyas Qatanani</i> (Signature of person authorized to sign)	15C. DATE SIGNED 12/15/03	16B. UNITED STATES OF AMERICA (Signature of Contracting Officer)	16C. DATE SIGNED

NSN 7540-01-152-8070
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STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA FAR (48 CFR) 53.243

[illegible]

1 Statement of Work for Iraqi Judicial, Prosecutor and Defense
2 Attorney Rule of Law Training Program

3
4 Coalition Provisional Authority/Iraqi Reconstruction Management
5 Office
6 High Juridical Counsel/Ministry of Justice
7
8
9

10
11 **1.0 SUBJECT**
12

13 The goal of this project is to provide rule of law training for
14 the Iraqi Ministry of Justice and Iraqi High Juridical Counsel.
15

16 **2.0 PROBLEM DESCRIPTION**
17

18 The past year has seen major strides in establishing democratic
19 rule of law in Iraq. Early on, CPA identified the rule of law as
20 one of his "four pillars" for establishing a civil society in
21 Iraq. As the war ended, there were no functioning courts and
22 many courthouses had been looted. Coalition donors have rebuilt
23 much of the court infrastructure, and provided personal security
24 details to the members of the bench, and force protection to
25 their facilities. Additionally, the bench has been vetted for
26 high-level Ba'athists.
27

28 Legal specialists who have looked at the Iraqi criminal law and
29 criminal procedural codes believe that they have the potential to
30 function reasonably well now that the overlay of the Saddam-era
31 system have been removed. The Transitional Administrative Law
32 (TAL) is the most important achievement for advancing the rule of
33 law in Iraq. The TAL creates new institutions such as an
34 independent judiciary and a re-constituted Ministry of Justice
35 and a new, independent, body, the High Juridical Counsel. These
36 institutions need to function immediately, effectively and
37 transparently to gain the confidence of the public and ultimately
38 be adopted into a constitution. If the rule of law is to succeed
39 in Iraq, these judicial institutions and rules must work - their
40 failure is not an option for the USG. Therefore, in order to
41 help establish an effective, capable, independent judiciary, this
42 RFP for a training program is being proffered.
43
44

45 **3.0 OBJECTIVE**
46

47 The US Department of Defense (DOD), via the Coalition Provisional
48 Authority (CPA) and the Iraqi Reconstruction Management Office
49 (IRMO) (hereinafter referred to as "DOD") seek a contractor to
50 provide "nuts and bolts" rule of law training to Iraqi criminal
51 law judges, prosecutors (including investigative judges) and
52 defense attorneys.

53
54 Because of the present security situation in Iraq, as well as the
55 need to expose Iraqi jurists to other systems of law after
56 thirty-five years of isolation, all training will be held outside
57 of Iraq. Seventeen workshops are contemplated, with a portion to
58 be held in Amman, a portion in Prague and a portion in the US, as
59 described infra.

60
61 This program is part of a coordinated Iraqi rule of law program
62 in which DOD will provide the training outlined herein, US AID
63 will provide institution building and policy support to the Iraqi
64 judiciary; The State Department's Bureau for International
65 Narcotics and Law Enforcement Affairs (INL) will develop an anti-
66 corruption and judicial integrity program for the courts; and the
67 US Department of Justice Overseas Professional Development and
68 Training (OPDAT) office will provide operational support to the
69 courts, as well as staff the Judicial Training Institute in
70 Baghdad.

71 72 **4.0 TRAINING REQUIREMENTS AND METRICS**

73

74 4.1 The Contractor must have pre-existing and permanently-staffed
75 offices in Amman, Prague, and Washington, DC, for the following
76 reasons: because of the urgency of this project, there cannot be
77 a long lead-time for office establishment; a professional
78 presence will best demonstrate experience in these three regions;
79 these three regions will expose the Iraqi participants to Middle
80 Eastern legal practices (Amman); Continental legal practices
81 (Prague); and Anglo-American legal practices (Washington, DC);
82 ease of communication; since a portion of the training will be
83 done at these locations; and because air transport is readily
84 available to these locations. Envisioned is a series of
85 programs, with one program to be held every four to six weeks,
86 over an eighteen-month period, to begin in August 2004.

87
88 4.2 Criminal Law Capacity Building Program. Provide training
89 for judges, attorneys, prosecutors and defense attorneys in
90 substantive criminal law and procedure, including international
91 human rights law and comparative approaches to domestic
92 application. This initiative would include developing and
93 conducting training programs in the "nuts and bolts" of Iraqi
94 criminal law and procedure as modified by CPA orders and the TAL,
95 developing the capacity of a core group of Iraqi trainers in each
96 major province, and the publication of a handbook containing
97 basic guidance on practice in this area as well as major relevant
98 international legislation. A domestic terrorism component should
99 be included as well. This initiative might also include cross-
100 training with police. (3 programs, app. 35 judges each, all in
101 Amman).

102
103 Expected Results:
104

- 105 • Give basic, nuts-and-bolts training to trial level Judges,
106 Prosecutors and Attorneys (JPA).
- 107 • Impart intensive practical and skills-based instruction to
108 help Iraqi JPA meet the challenges of democratization.
- 109 • Give managerial and leadership skills to supervisory level
110 JPA, so that they administer their new departments.
- 111 • Provide teaching skills so that this US trained core group
112 can lecture their counterparts in rule of law matters upon their
113 return.
- 114 • Supply a basic understanding of trial procedures and an
115 Arabic-language handbook to use in court.
- 116 • Prepare officials to investigate and prosecute terrorist
117 financing matters, including material support cases.
- 118 • Present comprehensive approach to the design,
119 implementation, and support of law enforcement efforts,
120 legislative initiatives, policies and strategies relating to
121 combating international and domestic terrorism in Iraq.

122
123 4.2 Iraqi Legal Profession Foreign Study Program. A number of
124 legal institutions and other individuals will play a leading role
125 in the development of Iraq's legal culture, yet they suffer from
126 critical capacity shortfalls and lack of intellectual depth, as
127 well as the effects of thirty-five years of isolation. Through a
128 series of foreign study tours, the contractor will expose leaders
129 of the Iraqi Bar Association, high court judges, prosecutors, and
130 legally focused NGOs to their counterparts in developed
131 countries, emphasizing such issues as contemporary implementation
132 of training for judges, prosecutors, and lawyers, structure and
133 operations of legal service organizations. Both Anglo-American
134 and Continental systems should be studied. Washington is the
135 obvious situs for Anglo-American law, given its judicial system
136 and that it is the home to many of the Iraqi officials'
137 counterparts; while Prague is chosen to build upon the
138 Continental law study programs that already have been conducted
139 there for Iraqi officials (10 programs for 10 people each; 6 in
140 the US and 4 in Prague).

141
142 Expected Results:

- 143
- 144 • Exposure to legal systems different from those in the
145 Middle East, specifically Anglo-American and Continental systems.
- 146 • An Arabic language comparative law handbook that can be
147 used by policy-makers and legislative drafters in modifying Iraqi
148 legal codes.

149

150

151 4.3 Development of the Legal Profession Program. Build the
152 institutional capacity of the organized bar. This initiative
153 would include helping the bar to develop qualification,
154 admission, and ethical standards as well as mechanisms for
155 implementing/enforcing them. Assistance would also include

156 helping the bar to develop and administer continuing legal
157 education programs and professional publications.
158 The contractor will provide assistance to the Iraqi Bar
159 Association and other lawyers' groups. At a minimum, the
160 assistance will focus on developing qualifications and standards
161 for admission to the bar; creating an effective structure for
162 ensuring ethical standards within the bar; enhancing general
163 qualifications of bar members, through continuing legal education
164 programs and publications; and providing specific programming and
165 support to initiatives affecting the legal profession; e.g.
166 appointment and compensation of defense counsel appearing before
167 the Central Criminal Court. (This would be a single, on-going 18-
168 mos. program, for an undetermined number of judges, planned from
169 Amman, executed in Iraq).

170
171 Expected Results:

- 172
173 • Uniform qualifications for bar admission.
174 • Cleanse the bar association of its Ba'athist reputation.
175 • Assist in training court-appointed counsel.
176
177

178 4.4 Public Legal Education on Constitutional Law, Democracy And
179 Legal Rights Program. This program should build upon the model
180 used for training legal professionals and NGOs in South Central
181 Iraq, which has provided training on substantive issues related
182 to constitutional law and democracy and public legal education
183 skills. The initiative would involve multi-level training for a
184 core group of trainers representing different regions of the
185 country. Additional substantive modules could be developed for
186 additional topic areas such as human rights, criminal law, and
187 women's rights. The program could include an institution-
188 building component to build the capacity of organizations to
189 conduct ongoing programs in this area. This initiative might
190 also include collaborating with a few law faculties to develop
191 "street law" type clinics. The clinics would train students in
192 public legal education skills and assist them in conducting
193 educational programs on these issues in secondary schools and the
194 community more generally. (2 programs, app. 35 judges each,
195 planned from Amman, executed in Iraq).
196

197 Expected Results:

- 198
199 • Teach principles of constitutional law in a democracy.
200 • Educate the bar on public interest law.
201 • Begin trends toward using the courts to settle disputes.
202
203

204 4.5 Legislative Workshop on Justice Issues. Although they are
205 functioning, as has been the case in most post-conflict nations,
206 the criminal code and criminal procedure code in Iraq are in need
207 of reform. This series of workshops would prepare Iraqi drafters

208 for this process by exposing them to experts in the field, to
209 various model penal codes, and legislative drafting techniques (1
210 program, app. 20 judges and other judicial officials, in Amman).
211

212 Expected Results:

213

214 • Give lessons in criminal law legislative drafting
215 techniques, with emphasis on internationally recognized
216 templates, e.g., the Model Penal Code.

217 • A modern criminal code and criminal procedure code, in
218 accordance with the TAL and subsequent Constitution.
219

220

221

222 **5.0 GOVERNMENT-FURNISHED PROPERTY AND INFORMATION**

223

224 5.1 Student population, position descriptions and standards.

225 5.2 A minimum of one instructor, expert in Iraqi law, will be
226 provided at each workshop, without fee.

227 5.2 Secure ground transport to and from BIAP for JPA officials
228 attending training.

229 5.3 Until security conditions permit commercial air traffic in
230 and out of Baghdad, DOD will provide secure military air
231 transport from Baghdad to a Middle East (Amman, Kuwait City or
232 Qatar) hub for connections to commercial air transport.

233 5.4 On-the-ground liaison with Judiciary here in Iraq.

234 5.4 For the Amman and Prague foreign study programs, the
235 government will select one instructor per session (one for each
236 trip). The remainder will be selected by the contractor.

237

238 **6.0 CONTRACTOR-FURNISHED PROPERTY AND INFORMATION**

239

240 The Contractor shall provide:

241

242 6.1 All necessary instructional materials including texts, class
243 exercises, handouts, tests, and audio-visual media.

244 6.2 All necessary site support materials and equipment,
245 including such items as flip chart and easel, chalkboard or
246 erasable marker-whiteboard, videocassette player,
247 overhead projector, and expendable/consumable classroom supplies
248 such as paper, pencils, pens, chalk, markers and binders. The
249 Contractor shall replenish such expendable/consumable items as
250 needed to provide for the performance of the work.

251 6.3 All needed classroom space, and if necessary or desired,
252 private or separate, preparation space for contractor
253 instructor(s), to include all furnishings necessary for a proper
254 learning atmosphere.

255 6.4 Qualified instructor(s), who are well versed in all topics
256 to be covered, who are capable of answering in-depth questions on
257 each topic, and who will provide the required training in
accordance with the contract, in a classroom setting, based on

258 the schedule of training modules or lessons and the objectives
259 and goals for that training (but see §5.4).
260 6.5 Instructor supervisor(s) who will supervise the performance
261 of work under the contract, and who will perform quality
262 assurance in meeting the objectives and goals
263 for that training.
264 6.6 Other required classroom materials such as newspapers,
265 magazines, dictionaries, or photocopied materials, written in the
266 designated language for use by students in exercises or testing.
267 6.7 Simultaneous translation, including associated electronic
268 equipment, from Arabic-English and English-Arabic.
269 6.8 For US-based programs, roundtrip commercial air transport
270 from Amman to the location of training, for all students and for
271 two American escorts (two coach tickets), and local ground
272 transport.
273 6.9 For Amman- and Prague-based programs, local ground transport
274 from the Amman airport (AMM) to hotel and lecture hall(s).
275 6.10 Three meals/day for all participants, suitable for Moslem
276 dietary requirements.
277 6.11 Suitable hotel lodging for all participants.
278 6.12 Comprehensive health insurance for all Iraqi participants
279 during their stay outside Iraq.

280
281 **7.0 RESPONSE OUTLINE**

282
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284
285 **8.0 DISCLAIMER**

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287
288
289 **9.0 CONTACT INFORMATION**

290