DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000
April 8, 2003

REPLY TO
ATTENTION OF:

Office of the Principal Assistant
Responsible for Contracting

Honorable Henry A. Waxman
House of Representatives
Washington, DC 20515-6143

Dear Mr. Waxman:

This is in response to your inquiry of March 26, 2003 regarding the contract to extinguish oil fires in Iraq.

We in the United States Army Corps of Engineers take great pride in assuring that our procurements comply with all legal requirements. This is certainly the case regarding the subject of your inquiry, and the issues raised by your questions are addressed below.

There will be ample opportunity for competition of the overall requirements to support the restoration of Iraq's oil infrastructure. Preparation for that competition began before the outbreak of hostilities and is continuing, and the requirements will be competed at the earliest opportunity consistent with mission needs. Competition for initial performance of portions of the Central Command's (CENTCOM) classified contingency support planning was not possible due to the requirements of the CENTCOM mission.

Kellogg Brown & Root Services (BRS) was directed to develop contingency plans for repairing and continuing operations of the Iraqi oil infrastructure under its existing Logistics Civil Augmentation Program (LOGCAP) contract with the Army. The LOGCAP contract was awarded to BRS in December 2001 as a result of competition, and provides for ordering a wide variety of services, including the development of plans required by Combatant Commanders. The Commander, CENTCOM, identified the requirement for contingency planning, including planning for extinguishing oil well fires and assessing damage to oil facilities in the immediate aftermath of hostilities. This requirement was within the scope of the LOGCAP contract, and BRS performed the planning under a task order issued under the LOGCAP contract. To invite other contractors to compete to perform a highly classified requirement that BRS was already under a competitively awarded contract to perform would have been a wasteful duplication of effort. It would also have delayed CENTCOM's war planning in order to obtain security clearances for potential competitors as well as to conduct the additional competition.

Only Kellogg Brown & Root Services (BRS), the contractor that developed the complex, classified contingency plans, could commence implementing them on extremely short notice. That timing was driven by CENTCOM's operational requirement to have support available in advance of possibly imminent hostilities. Under the circumstances, no other contractor could satisfy mission requirements in the time available. Consistent with the Federal Acquisition Regulation, award of the current contract to BRS commencing implementation of the contingency plans was justified and approved under laws providing exceptions to full and open competition.

The total estimated cost (ceiling cost) of the contract is $7 billion, and the term of the contract is two years. The actual value of the contract will depend on the cost of the orders placed under it. It is impossible to predict how much damage there will be and what work will be required in the near term, and the ceiling was derived from an estimate of worst-case damage to the Iraqi oil fields. However, as of April 4, 2003, only four orders had been placed totaling $50.3 million. Under these orders, the contractor was required before hostilities began to mobilize fire fighting, damage assessment and oil spill assessment and response teams, to train and rehearse with military units, and to design long lead-time equipment. After the beginning of hostilities, the contractor was tasked to perform fire fighting, respond to oil spills, assess damage and provide life support facilities and services to contractor and government employees working on the project. The government will limit orders under the contract to those services necessary to support the mission in the near term. The procurement strategy is to compete subsequent effort at the earliest reasonable opportunity consistent with the needs of the mission. The government expects to replace the current contract with multiple contracts.

The current contract is not structured to encourage unnecessary cost. It is an Indefinite Delivery/Indefinite Quantity (ID/IQ) contract providing for cost plus award fee (CPAF) orders. The maximum potential award fee is seven percent of the negotiated total estimated cost of the work to be performed. CPAF was used because the scope and cost of work cannot be estimated with enough precision to permit fixed prices. The award fee will be used as an incentive for the contractor to minimize costs and maximize quality of performance. The CPAF and ID/IQ structures are found in the Federal Acquisition Regulation, Part 16, entitled *Types of Contracts*.

Prior to award of the current BRS contract and consistent with our standard practice, the administrative contracting officer verified that BRS has accounting, purchasing, and property systems suitable for administration of this type of contract. Further, the government will monitor contract operations on-site. The award fee provides a strong incentive for the contractor to control costs, because the amount of the fee is based upon government evaluation of the contractor's performance, including cost control, during each three-month period. At the time of contract award, public notice could not be made because the effort was classified. Upon declassification by the Department of Defense, the public notice was released.

I trust this information answers your questions. Thank you for your interest in the procurement process of the United States Army Corps of Engineers.

Sincerely,

Robert B. Flowers
Lieutenant General, U.S. Army
Commanding