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United States Department of State  
and the Broadcasting Board of Governors  
Office of Inspector General

## **Office of Audits**

### Audit of Procurement Competition for the New Embassy Compound at Baghdad, Iraq

Report Number AUD/IQO-09-04, December 2008

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**United States Department of State  
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*Office of Inspector General*

**PREFACE**

This report was prepared by the Office of Inspector General (OIG) pursuant to the Inspector General Act of 1978, as amended, and Section 209 of the Foreign Service Act of 1980, as amended. It is one of a series of audit, inspection, investigative, and special reports prepared by OIG periodically as part of its responsibility to promote effective management, accountability and positive change in the Department of State and the Broadcasting Board of Governors.

This report is the result of an assessment of the strengths and weaknesses of the office, post, or function under review. It is based on interviews with employees and officials of relevant agencies and institutions, direct observation, and a review of applicable documents.

The recommendations therein have been developed on the basis of the best knowledge available to the OIG and, as appropriate, have been discussed in draft with those responsible for implementation. It is my hope that these recommendations will result in more effective, efficient, and/or economical operations.

I express my appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "H. W. Geisel".

Harold W. Geisel  
Acting Inspector General

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## EXECUTIVE SUMMARY

In 2005, Congress authorized \$592 million in emergency funding for the new embassy compound (NEC) in Baghdad, Iraq, with the intent of having the construction completed within 24 months of the project start date.<sup>1</sup> In January 2005, the Department of State (Department) began procurement activities, and by June 2005, the first of several contracts was awarded. As of December 11, 2007, there were 56 procurement actions (contracts and task orders) for about \$593 million related to the construction of the NEC. Two additional contracts that were not part of the original authorization or project plan for the NEC were awarded for operations and maintenance and the construction of a guard camp for the Bureau of Diplomatic Security (DS). The Department completed the certification for occupancy of the NEC Baghdad in April 2008.

The Office of Inspector General (OIG) initiated this audit of the procurement competition for the NEC Baghdad to determine whether the Department followed applicable regulations, policies, and procedures in the solicitation and award phases of the procurement process to ensure that selected contracts were solicited and awarded to obtain the best price and value. This audit also responds to a January 2007 request and an April 2007 followup letter from the Chairman, U.S. Senate Committee on Foreign Relations, to review procurement procedures used to award selected NEC Baghdad contracts.

OIG judgmentally selected eight Department contracts that included the majority of the NEC Baghdad construction contracts that were processed by the Department's Bureau of Administration, Office of Logistics Management, Office of Acquisitions Management (A/LM/AQM), on behalf of the Bureau of Overseas Buildings Operations (OBO).<sup>2</sup> OIG assessed the competition and award of these selected contracts that totaled almost \$672 million. Six were awarded to First Kuwaiti Trading

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<sup>1</sup>Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act, 2005 (Pub. L. No. 109-113, May 11, 2005).

<sup>2</sup>For one of the contracts, OIG reviewed two task orders.

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& Contracting (First Kuwaiti), totaling about \$490 million. The other two were an engineering and support services contract awarded to MILVETS Systems Technology, Inc., for \$4.7 million and an operations and maintenance contract for the new embassy awarded to PAE Government Services, Inc., for about \$177 million. In addition to the emergency appropriation, other Department funds were used for the PAE contract and for one of the First Kuwaiti contracts (the guard camp construction), which totaled about \$198 million of the \$672 million that OIG reviewed.

Five of the contracts OIG reviewed were awarded competitively in accordance with the Federal Acquisition Regulation (FAR), and three were sole sourced. This report addresses five of the eight contracts reviewed. OIG will report separately on the solicitation and award of three competitively bid contracts (for housing, infrastructure, and support facilities).<sup>3</sup>

One sole-source contract (for a guard camp) was awarded under the “unusual and compelling urgency” provision<sup>4</sup> of the FAR, which can be used to waive the competition requirement in certain circumstances. The Department used its statutory authority under section 3 of the Foreign Service Buildings Act (FSBA) of 1926 to award the remaining two sole-source contracts: for construction of the unclassified portions of the new office building and for engineering and support services.

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Department procurement officials stated that although there are no formal Department regulations or guidance governing the FSBA section 3 waiver practice, they follow the FAR to ensure that the Department receives a fair and reasonable price. This includes applying the FAR “unusual and compelling urgency” standard in awarding sole-source contracts under the FSBA.

OIG determined that the Department generally followed applicable contracting laws, regulations, policies, and procedures in soliciting and awarding four of the five contracts (two sole-source contracts and two contracts that were competed). However, the contract files supporting actions for three of the four contracts were not complete. In addition, for the sole-source contract for the guard camp, OIG found that the Department did not meet the “unusual and compelling urgency” standard of the FAR because it did not adequately plan for the procurement.

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<sup>3</sup>In April 2008, new information pertaining to these contracts came to OIG’s attention that warranted additional audit procedures. Additionally, in September 2008, an OIG audit team performing a separate audit of contract administration, commissioning, and accreditation of the NEC Baghdad identified a large volume of information that related to these three contracts. As a result, our review of these contracts will be incorporated into that audit.

<sup>4</sup>FAR § 6.302-2.

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Because the Department determined that it was necessary to sole source three contracts in order to meet the 24-month schedule to complete the NEC and because there was incomplete sole-source justification documentation in the contract files, OIG could not determine whether the government received the best value and paid the best price for the \$110.6 million awarded in sole-source contracts for the new office building, engineering and support services, and the guard camp.

OIG recommends that A/LM/AQM, in coordination with the Office of the Procurement Executive (A/OPE), strengthen procurement competition procedures and adhere to applicable acquisition requirements as follows:

- (1) Review the applicable procurement guidance for using the “unusual and compelling urgency” authority of the FAR to determine changes to the guidance or additional controls needed to address FAR requirements for limiting competition under these situations, and report the results of that review to OIG.
- (2) Amend the Foreign Affairs Manual (FAM) and the Foreign Affairs Handbook (FAH) and other applicable procurement guidance to establish a formal process, and adequately document the solicitation, review, justification, and award of sole-source contracts made pursuant to section 3 of the FSBA using the “justification for other than full and open competition” requirements of the FAR.

OIG also received an allegation from another federal agency that a NEC Baghdad contractor directed subcontracts to a company owned by a Department employee who may have participated in the review of the bid proposal submitted by the same contractor. The audit team received a similar allegation from a Department official during fieldwork. Accordingly, the Office of Audits referred these allegations and supporting documentation to OIG’s Office of Investigations.

OIG met with officials from A/LM/AQM and OBO on December 18 and December 20, 2007, respectively, to discuss the findings and proposed recommendations. OIG provided the draft report to the Bureau of Administration (A), OBO, and DS. A provided written comments to the draft report, citing current regulations and procedures. In addition, OBO provided general comments pertaining to the first recommendation. DS did not provide comments.

OIG considered the comments provided for the draft report when preparing the final report, and it incorporated the comments as appropriate. The responses from A and from OBO are presented in their entirety in Appendices C and D, respectively.

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## BACKGROUND

In 2005, Congress authorized \$592 million in emergency funding for the construction of the NEC in Baghdad, which was to include office, housing, and support facilities; infrastructure; project supervision; and construction security.<sup>5</sup> Congress also intended that the construction of the NEC be completed within 24 months of the project start date.

The NEC is being constructed on 104 acres of land transferred at no cost by the Iraqi Government to the United States. According to Department officials, the NEC is the largest U.S. Embassy in the world. It will include apartments, a warehouse, commissary facilities, a community center, utility plants, compound access control facilities, a chancery, an annex office building, Marine security guard quarters, and ambassador and deputy chief of mission residences.

OBO directs the worldwide building program for the Department and the U.S. Government community serving abroad under the authority of the chiefs of mission. In concert with other Department bureaus, foreign affairs agencies, and the Congress, OBO sets worldwide priorities for the design, construction, acquisition, maintenance, use, and sale of real properties, as well as the use of sales proceeds. In recent years, to reduce construction time and costs, OBO has followed a standard embassy design approach in constructing new embassies overseas that includes a design-build contract delivery process and standardized building designs for a typical large, medium, and small embassy. OBO estimates that design and construction time takes 36, 30, and 21 months, respectively. OBO planning teams developed the initial NEC project solicitations.

To implement the construction plan for the NEC Baghdad, OBO created the Emergency Project Coordination Office (EPCO),<sup>6</sup> which was headed by the project coordinator, who is a personal services contractor, and was composed of both personal services contractors and Department staff. This office conducted the technical evaluations of the bids submitted in response to the project solicitations.

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<sup>5</sup>H. R. Conf. Rpt. 109-72.

<sup>6</sup>Formerly named the Iraq Project Coordination Office (IPCO).

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A/LM/AQM manages, plans, and directs the Department's acquisitions programs and conducts contract operations in support of activities worldwide. The office provides a full range of contract management services, including acquisition planning, contract negotiations, cost and price analysis, and contract administration. Within A/LM/AQM, the Facilities, Design, and Construction Division establishes acquisition agreements for OBO's construction requirements with the private and public sector. This division awarded the competitive contracts for the NEC Baghdad based on the technical evaluations completed by OBO/EPCO.

The Department's primary authority for diplomatic facilities construction is derived from the FSBA and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (Omnibus Act). Both acts stipulate that the Department give preference to U.S. firms in awarding contracts. In addition, the Omnibus Act mandates the use of U.S. contractors to build classified portions of buildings that have technical security requirements (i.e., classified facilities).

In addition to the FSBA and the Omnibus Act, several government procurement authorities govern Department diplomatic construction activities overseas. In particular, acquisitions for the construction of diplomatic facilities are governed by the FAR, which provides for uniform policies and procedures for acquisition by all executive agencies in order to ensure the timely delivery of products or services to the government while maintaining the public's trust. The Department of State Acquisition Regulations (DOSAR) implement and supplement the FAR and apply to all acquisitions of personal property and services, including construction, both within and outside the United States. However, these Department and government procurement authorities do grant exceptions to competition if adequate competition does not exist or if circumstances require it.

## OBJECTIVES, SCOPE, AND METHODOLOGY

OIG initiated this review to determine whether the Department followed applicable regulations, policies, and procedures in the solicitation and award phases of the procurement process to ensure that selected contracts were solicited and awarded to obtain the best price and value.

As audit planning on the NEC project was underway, the Chairman, U.S. Senate Committee on Foreign Relations, asked OIG to review certain contracts related to the project. OIG judgmentally selected eight contracts (including two task orders under one contract) for review, with an initial award amount of about \$672 million. As shown in Table 1, of the eight contracts reviewed, six were awarded to First Kuwaiti for \$490 million. The other two were awarded to MILVETS Systems Technology, Inc., for engineering and support services for \$4.7 million and to PAE Government Services, Inc., for operations and maintenance for \$177 million.

Six of the eight contracts reviewed, valued at \$474 million (80 percent), were funded from the original \$592 million in emergency NEC funding authorized by Congress in 2005. The \$198 million for the PAE operations and maintenance contract and the First Kuwaiti guard camp contract was provided from other Department funds.

Before reviewing these eight contracts, OIG researched the FAR to determine which major procurement requirements applied to the awards. From these requirements, OIG developed checklists to facilitate its review to determine whether the requirements were satisfied and procedures were accomplished. OIG prepared a checklist for each of the two categories of awards reviewed: competitive and sole source, as shown in Appendices A and B, respectively. For each contract, OIG reviewed and analyzed contract file documentation, including, as applicable, requests for proposal, project specifications and independent government cost estimates, bidders' technical questions, and technical proposals.

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**Table 1. NEC Baghdad Contracts Reviewed<sup>7</sup>**

	Contract #	Type of Contract	Purpose	Contractor	Award Date	Initial Contract Award Amount
1	SALMEC-05-D-0042					
	Task Order 0001	Competitive Fixed-Price	Site Clearing	First Kuwaiti	June 2, 2005	\$8,362,500
	Task Order 0002	Competitive Fixed-Price	Pre-Engineered Buildings	First Kuwaiti	June 29, 2005	5,499,999
2	SALMEC-05-C0020	Competitive Fixed-Price	Housing	First Kuwaiti	July 8, 2005	197,613,292
3	SALMEC-05-C0019	Competitive Fixed-Price	Infrastructure	First Kuwaiti	July 8, 2005	90,588,227
4	SALMEC-05-C0021	Competitive Fixed-Price	Support Facilities	First Kuwaiti	July 8, 2005	82,269,967
5	SALMEC-05-C0030	Sole-Source Fixed-Price	New Office Building (Unclassified) <sup>a</sup>	First Kuwaiti	Sept. 16, 2005	84,999,650
6	SALMEC-06-C0049 <sup>b</sup>	Sole-Source Fixed-Price	Guard Camp	First Kuwaiti	Sept. 28, 2006	20,853,240
<b>First Kuwaiti Total</b>						<b>\$490,186,875</b>
7	SALMEC-06-C0004	Sole-Source Fixed-Price	Engineering and Support	MILVETS	Nov. 29, 2005	\$4,704,554
8	SALMEC-07-D0033 <sup>c</sup>	Competitive Fixed-and Reimbursable Line Items	Operations and Maintenance	PAE	April 27, 2007	176,963,311
<b>Total Initial Contract Award Amount</b>						<b>\$671,854,740</b>

<sup>a</sup> The original contract to First Kuwaiti was for unclassified portions of the new office building (also called the “chancery”). The facilities mission has changed to accommodate classified processing.

<sup>b</sup> Funded by DS.

<sup>c</sup> Funded by the Bureau of Near Eastern Affairs.

Source: A/LM/AQM.

During the review, OIG met with OBO and A/LM/AQM personnel. OIG also reviewed the DOSAR, the FAM, the FAH, A/OPE guidance,<sup>8</sup> OBO and A/LM/AQM internal operating and quality assurance procedures, Government Accountability Office reports, and OIG reports pertaining to embassy construction and procurement functions.

OIG conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that OIG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. In OIG’s opinion, the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

<sup>7</sup>This audit focuses on contract Nos. 1 and 5-8 listed in the chart.

<sup>8</sup>A/OPE provides management direction pertaining to acquisitions.

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OIG performed initial fieldwork in the Washington, DC, metropolitan area from June to October 2007. OIG met with A/LM/AQM and OBO officials on December 18 and December 20, 2007, respectively, to discuss the findings and proposed recommendations. In addition, OIG provided the draft report to the A Bureau, OBO, and DS. OIG considered the written comments provided by the A Bureau and OBO on the draft report when preparing the final report and incorporated these comments as appropriate. The responses are presented in their entirety in Appendices C and D, respectively. DS did not provide written comments.

New information came to OIG's attention in April 2008 on three contracts that were competitively awarded that warranted additional audit procedures. While performing those procedures, an OIG audit team performing a separate audit of contract administration, commissioning, and accreditation of the NEC Baghdad identified a large volume of information in September 2008 that also related to these three contracts. OIG has decided to report separately on the solicitation and award of these three competitively bid contracts in that audit.

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## RESULTS

The Department has authority under the FSBA that allows for some exceptions from the FAR and limits competition for some OBO contracts. OIG determined that the Department generally followed applicable contracting laws, regulations, policies, and procedures in soliciting and awarding four of the eight contract awards selected for review. OIG also determined that one sole-source contract awarded under the FAR for the guard camp did not comply with applicable requirements, and it inappropriately restricted competition.

OIG found that the Department generally:

- followed government acquisition requirements in soliciting and awarding two contracts, for operation and maintenance and for site clearing and pre-engineered building task orders, and
- properly used its statutory authority under FSBA section 3 in awarding two of three sole-source contracts for the construction of the unclassified portion of the new office building and for engineering and support services.

However, OIG found control weaknesses regarding the justifications for sole-source contracts whether they were awarded using FSBA or the FAR. OIG found that the Department did not meet the “unusual and compelling urgency” FAR standard in sole sourcing the guard camp contract and did not adequately document the contract files to support the sole-source decisions.

Because the Department determined it was necessary to sole source three contracts in order to meet the 24-month schedule to complete the NEC and because there was incomplete sole-source justification documentation in the contract files, OIG could not determine whether the government received the best value and paid the best price for the \$110.6 million awarded in sole-source contracts for the new office building, engineering and support services, and the guard camp.<sup>9</sup>

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<sup>9</sup>New office building, \$85 million; guard camp, \$21 million; and engineering and support, \$4.7 million—all rounded to \$110.6 million.

OIG received an allegation from another federal agency that an NEC Baghdad contractor directed subcontracts to a company owned by a Department employee who may have participated in the review of the bid proposal submitted by the same contractor. The audit team received a similar allegation from a Department official during fieldwork. Accordingly, the Office of Audits referred these allegations and supporting documentation to OIG's Office of Investigations.

## PROCUREMENT AUTHORITIES

In addition to FAR requirements, FSBA section <sup>11</sup> (also known as the "Percy Amendment")<sup>10</sup> and section 402 of the Omnibus Act 11 have been implemented in the DOSAR.<sup>12</sup> These sections specifically limit construction abroad to U.S. firms as follows:

- FSBA section 11 states that the

eligibility for award of contracts under this chapter or of any other contract by the Secretary of State, . . . which is to obtain the construction, alteration, or repair of buildings or grounds abroad when estimated to exceed \$5,000,000, . . . shall be limited, after a determination that adequate competition will be obtained thereby, to (1) American-owned bidders and (2) bidders from countries which permit or agree to permit substantially equal access to American bidders for comparable diplomatic and consular building projects, . . . .

In accordance with the section, when at least two prospective responsible bidders indicate intent to submit a bid, American-owned firms receive a 10 percent price preference reduction.

- Section 402 of the Omnibus Act provides for the preference for U.S. contractors in the construction of (1) diplomatic construction or design projects abroad exceeding \$10 million or (2) diplomatic construction projects abroad at any dollar amount that involve technical security, unless the project involves low-level technology.

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10 22 U.S.C. § 302, as amended.

11 22 U.S.C. § 4852.

12 DOSAR §§ 636.104-70 and 636.104-71.

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The Director and Chief Operating Officer of OBO has been delegated authority<sup>13</sup> to recommend sole-source awards under FSBA section 3 and DOSAR § 636.101-70 for construction, alteration, and repair of foreign service building contracts “where necessary” in foreign countries. This authority may be used only after a determination is made that there is not “adequate competition” under either FSBA section 11 or section 402 of the Omnibus Act. When section 3 authority is used, contracts can be negotiated “without regard to such statutory provisions as they relate to the negotiation, making, and performance of contracts and performance of work in the United States.”<sup>14</sup> Therefore, when section 3 authority was used when soliciting or awarding the NEC contracts, the competition provisions of the FAR § 6<sup>15</sup> did not apply.

## PROCUREMENT DETERMINATIONS

The Department is required to make certain determinations regarding the applicability of each of the procurement authorities to limit competition. Specific demonstrations of eligibility are needed for determining competition with regard to U.S. persons and firms in other countries under FSBA section 11 and section 402 of the Omnibus Act. These demonstrations are in the form of certifications attached to responses to solicitations.

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<sup>13</sup>Delegation of Authority to Act as Authorized Representative of the Secretary of State in Department of State Foreign Buildings Construction Contracts (DA 102-1, Dec. 20, 1965).

<sup>14</sup>22 U.S.C. § 294.

<sup>15</sup>FAR § 6.001(b).

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OBO and A/LM/AQM stated their intentions to acquire design-build services via four acquisition packages for the NEC: (1) classified and unclassified diplomatic facilities; (2) site infrastructure, including utilities and perimeter security; (3) housing, including staff apartments and ambassador and deputy chief of mission residences; and (4) miscellaneous buildings on the compound, including warehouse, cafeteria, and other support facilities for the compound.

In January and February 2005, the Department published a “sources-sought notice” on the Federal Business Opportunities Web site (FedBizOpps), seeking to prequalify firms for design-build services for the NEC Baghdad project. Eight contractors responded to the notice: four U.S. and four non-U.S. contractors. The solicitation stated that FSBA section 11 and section 402 of the Omnibus Act would apply and contained three prequalifying factors to be used, as well as the scope of work for the project. The prequalification packages of the eight firms were evaluated by OBO based on (1) technical approach and business management plan, (2) technical qualifications, and (3) past and present performance. Seven of the eight firms were determined to be qualified to bid on the planned project solicitations. The eighth firm was disqualified because it submitted a fragmented business management plan; did not demonstrate the ability to either fund OBO projects or provide adequate professional, personnel, or facilities resources capacity; and provided project descriptions of different scope, complexity, or dollar value than those identified in the solicitation.

In reviewing the procurement files, OIG found that two of the four U.S.-owned firms submitted the required certifications indicating that they were U.S.-owned firms. One firm was not required to submit the certification because, according to an A/LM/AQM official, it had provided one previously for another project. The fourth American firm did not provide the certification, but it was prequalified

nevertheless. Although an A/LM/AQM official could not explain why this prequalification occurred, he stated that any U.S. firm neglecting to submit the certification would be treated as a foreign firm and not qualify for the price preference reduction.

The results of OIG's audit of the selected NEC Baghdad contract awards based on the Department's procurement determinations and the two categories of procurements, competitive and sole-source, are presented in the sections that follow.

## COMPETITIVE PROCUREMENTS

Five of the contracts reviewed were competitively awarded. One contract reviewed included two task order awards to First Kuwaiti, for site clearing and for pre-engineered buildings. The second contract reviewed for this audit, for operations and maintenance services, was awarded to PAE.<sup>16</sup>

### Task Orders

Contract number SALMEC-05-D-0042 was an indefinite-delivery, indefinite-quantity contract for various construction projects in Baghdad. Task order 0001 was for site clearing, consisting of debris removal, demolition, utility relocation, tree harvesting, and preservation; site grading; and the building of a perimeter wall. Competition for the task order was based on the lowest price, technically acceptable proposal in accordance with the solicitation. Four firms submitted proposals, all of which were found to be technically acceptable, and the award was made to the lowest bidder, First Kuwaiti, on June 2, 2005, for \$8.4 million.

Task order 0002 of the same contract was for construction of five pre-engineered buildings: a warehouse, a motor pool, two guard shelters, and a service station canopy. The task order was competed among four firms based on lowest price, technically acceptable proposals. Proposals were submitted by four firms, and the award was made to the lowest bidder, First Kuwaiti, on June 29, 2005, for \$5.5 million.

OIG determined that the Department followed the applicable FAR regulations in the competitive award of the two task orders issued under contract number SALMEC-05-D-0042.

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<sup>16</sup>The remaining three contracts will be reviewed as part of a separate audit.

## Operations and Maintenance

The operations and maintenance contract provides for engineering, logistics, and administrative services to operate and maintain facilities in support of the new U.S. Embassy Baghdad. These services include the operation, maintenance, and repair of compound utility and life-support systems, including electrical, water, sewage, fire suppression, heating, ventilation, and air conditioning systems; residential kitchens; minor carpentry; and swimming pool maintenance.

The presolicitation announcement for this contract was issued by A/LM/AQM in November 2006 and followed the FAR requirements for competitive procurements (as noted in Appendix A). Seven responsive proposals were received by the due date of February 12, 2007. The OBO/EPCO technical evaluation panel reviewed the seven proposals and rated one as acceptable, three as marginal, and three as unacceptable. The A/LM/AQM contracting officer determined that the competitive range consisted of the firms that received acceptable and marginal rankings and held discussions with those four qualifying firms in March 2007. One week after discussions, revised proposals were received from the four offerors. Each revision was given another full technical evaluation using the same criteria and score sheets as in the original evaluation. Two proposals were rated as acceptable, and two were rated as marginal.

PAE, with the lowest price, technically acceptable proposal, was awarded the contract based on the best value analysis and determination made by the contracting officer. An indefinite-delivery, indefinite-quantity contract with both fixed and reimbursable line items was awarded to PAE on April 27, 2007, for \$177 million.

OIG found that the Department generally followed applicable regulations, policies, and procedures to obtain the best price and value in the award of the operations and maintenance contract.

## SOLE-SOURCE PROCUREMENTS

Three of the contracts reviewed were sole-source awards. One contract, for the guard camp, was awarded based on the “unusual and compelling urgency” provision of the FAR. The other two contracts, one for the construction of the unclassified portion of the new office building and the other for engineering and support services, were sole sourced using FSBA section 3.

## Sole-Source Contract Awarded Under the FAR

The Department did not meet the “unusual and compelling urgency” standard of the FAR in sole sourcing the guard camp contract because it did not adequately plan for the procurement. More timely action by OBO in addressing the acquisition planning and procurement actions necessary to meet the request by DS for the guard camp might have precluded the need for a sole-source award. As a result of the sole-source action, competition was restricted, and OIG could not determine whether the contract awarded to build the guard camp resulted in the best price and value for the government.

As early as May 2005, DS informed OBO of the need to construct a new guard camp in Baghdad to replace the existing camp, which was below acceptable living standards. The new camp was needed to house security personnel, hired under a DS contract, to guard embassy staff. On December 1, 2005, DS formally transmitted requirements to OBO to build the camp and requested site layout and pricing information as soon as possible.

OBO’s initial estimate, dated January 27, 2006, stated that the guard camp would cost between \$95.2 million and \$96.2 million. DS provided OBO with revised requirements for the camp on March 1, 2006. Based on the revised requirements, OBO then provided DS with an estimate of \$23.1 million on April 26, 2006. Subsequently, the Office of Management and Budget questioned the use of DS funds to support the project. As a result, the former Director of OBO<sup>17</sup> instructed OBO/EPCO on June 29, 2006, to disengage from the guard camp project until funding for the project was provided by DS. However, OBO/EPCO continued to work with DS to finalize the requirements through July 11, 2006.

In its July 17, 2006, Justification for Sole-Source Solicitation, OBO/EPCO recommended awarding the guard camp contract to First Kuwaiti, pursuant to OBO’s procurement authority under FSBA section 3, citing First Kuwaiti’s experience in building man camps and having access to material, equipment, and manpower available on site to complete the project on time, within 90 days. OBO/EPCO concluded that competitively bidding this project would extend the time until completion by a minimum of 3 months. In addition, OBO/EPCO noted that although “other qualified firms certainly exist,” there was no time to conduct a competitive procurement and meet the request by DS to complete the guard camp. This justification was made

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<sup>17</sup> The OBO Director retired on December 31, 2007.

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without regard to the requirements of FSBA section 11 or section 402 of the Omnibus Act that a determination of adequate competition should be made before use of section 3 sole-source justifications.

On August 2, 2006, OBO notified A/LM/AQM that DS had provided the funding.

### FAR § 6.302-2

In its August 18, 2006, justification to limit competition under this FAR provision, OBO said that it was unaware of other firms operating in Baghdad that had the capability to immediately begin design and construction of the required facility and complete it within three months after award of the contract.

On August 31, 2006, First Kuwaiti submitted its proposal for the guard camp. OBO/EPCO convened a technical evaluation panel on September 6, 2006. OBO/EPCO completed its evaluation of First Kuwaiti's proposal on September 18, 2006, and recommended awarding the contract to First Kuwaiti. Additionally, A/LM/AQM's price negotiation memorandum stated that the proposal complied with all technical requirements and that First Kuwaiti's price proposal was considered fair and reasonable compared with the independent government estimate. The sole-source contract was awarded on September 28, 2006, for \$20.9 million, and it specified a completion date of three months from issuance of the notice to proceed. The notice was issued on September 29, 2006. Thus the established December 29, 2006, completion date for the guard camp was well within the June 2007 target date for completing all NEC construction.

## Improper Use of the FAR

FAR § 7.102(a) requires agencies to perform acquisition planning and conduct market research for all acquisitions to promote and provide for full and open competition. Additionally, FAR § 7.102(b) requires that planning integrate the efforts of all personnel responsible for significant aspects of the acquisition. Furthermore, FAR § 7.104(a) states that planning should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which the contract award is necessary. According to FAR § 6.301(c), contracting without full and open competition cannot be justified by a lack of advance planning or concerns related to the amount of funds available. FAR § 6.302-2(c) also requires agencies to request offers from as many potential sources as practicable under the circumstances.

## **UNCLASSIFIED**

OIG's review of contract documents supporting the sole-source procurement showed that the Department developed the requirements for the guard camp. However, OBO/EPCO did not involve A/LM/AQM to competitively award the contract for construction of the guard camp. OBO took no formal procurement action until recommending the sole-source award, using FSBA section 3, to First Kuwaiti more than six months after the formal request for assistance by DS. Moreover, there was no attempt to prequalify potential contractors to bid on the camp construction, even though prequalification is required under section 11 and, as OBO concluded in its sole-source justification to limit competition, "other qualified firms certainly exist." OIG noted that the lack of open competition for the guard camp was in contrast to the new office building and the MILVETS sole-source awards that, as discussed later in this report, were initially solicited under open competition.

Furthermore, the OBO/EPCO project coordinator told OIG in an August 2007 meeting that his office was not going to develop a solicitation for the guard camp project until DS provided funding.

From its review of available documentation and discussions with Department officials, OIG concluded that OBO improperly used the FAR's "unusual and compelling urgency" authority as a substitute for the lack of adequate advance planning for the guard camp. For this type of justification, a description of efforts made to ensure that offers are solicited from as many potential sources as practicable is required. Although OBO's sole-source justification states that "there are no other firms known to OBO/IPCOC currently operating in Baghdad that have the capacity to immediately begin design and construction of the required facility and complete it expediently or within three months after the award of the contract," it fails to describe the efforts undertaken to make this determination, which resulted in the selection of First Kuwaiti.

Statements made to OIG by the OBO/EPCO project coordinator further support OIG's conclusion that the urgency to award the guard camp contract as sole source was not justified. Specifically, the project coordinator told OIG that the construction of the camp would never compromise the construction schedule for the NEC. The project coordinator specifically stated, "First Kuwaiti would not start construction of the guard camp until it finished its other NEC projects." Therefore, it would appear that First Kuwaiti was not going to be allowed to divert resources to begin work on the guard camp when the notice to proceed was issued. In addition, at the audit exit conference on December 21, 2007, OBO's former Director agreed that no planning was done for the guard camp project, maintaining that planning should have been performed by DS.

Accordingly, in OIG’s opinion, the Department records showed that the urgency justifying the sole-source procurement for the guard camp resulted from inadequate planning for this procurement. OBO did not demonstrate that required actions were taken to solicit offers from as many potential sources as practicable before justifying other than full and open competition, and OBO ceased ongoing planning activities because of the lack of funding. This precluded the use of “unusual and compelling urgency” to justify limiting competition, in accordance with FAR §§ 6.301(c) and 6.302-2(c).

The Department limited competition for the guard camp, and OIG therefore could not determine whether the \$20.9 million sole-source contract with First Kuwaiti to build the guard camp resulted in the best price and value for the government. At the exit conference with the audit team, OBO discussed the effort made with DS to refine the requirements; however, OBO did not address efforts made to issue the contract under full and open competition.

To strengthen written justifications that support acquisition decision-making, A/OPE should reaffirm this statutory requirement for Department contracting activities in guidance that requires that the formal justification and approval for other than full and open competition specifically document the extent of efforts made to obtain competition.

**Recommendation 1:** OIG recommends that the Bureau of Administration, Office of Logistics Management, Office of Acquisitions Management, in coordination with the Office of the Procurement Executive, review the applicable procurement guidance for using the “unusual and compelling urgency” authority of the Federal Acquisition Regulation to determine changes to the guidance or additional controls needed to address FAR §§ 6.301(c) and 6.302-2(c) requirements for limiting competition under these situations. The results of that review should be reported to OIG.

## A Bureau Response and OIG Reply

In its response to the draft report (see Appendix C), regarding recommendation 1, A noted several FAM and FAH requirements pertaining to the “unusual and compelling urgency” authority. The two FAM sections cite the same requirements as those contained in the FAR for using the “unusual and compelling urgency” justification and the requirement to solicit from as many potential sources as practi-

cable before using this authority. The FAH citation refers to the contracting officer's representative handbook, which, according to the handbook, does not apply to OBO construction contracts.

Based on the comments received from A and OBO (see Appendix D), OIG has modified the finding and recommendation for clarification. OIG believes that both bureaus misunderstood the intent of the recommendation. In OIG's opinion, the existing guidance and internal procedures are insufficient to ensure that the justification for using "unusual and compelling urgency" FAR authority is proper and supported. To resolve the finding, A/LM/AQM should review the existing guidance and associated procedures for contracting using other than full and open competition. From its review, A/LM/AQM should determine changes in guidance or additional procedures needed to address the lack of planning for competition and, within 90 days, provide OIG with the proposed corrective actions to address the recommendation. Until then, OIG considers this recommendation unresolved.

## OBO Response and OIG Reply

Although recommendation 1 was not addressed to OBO for action, OBO was given an opportunity to comment on the draft report. In its response, OBO generally agreed with the statement in the report that the guard camp contract was not bid competitively; however, OBO noted that it was not responsible for planning for the guard camp and that the lack of funding contributed to OBO's actions. OIG agrees that OBO was under no obligation to plan for the guard camp in advance of funding. However, when the decision was made to delay planning because of funding concerns, OBO should not have used the "unusual and compelling authority" provision of the FAR to justify limiting competition, as this is an explicit prohibition cited in FAR § 6.301(c).

OBO also said that by the time funding was available, the security situation "had deteriorated and living conditions in the man-camp were very unsatisfactory." OIG noted in the report, however, that in May 2005, about 14 months before funding was identified, DS informed OBO that the existing guard camp was below acceptable living standards and that, as a result, maintaining an adequate guard staff was problematic.

Furthermore, OBO's justification to limit competition is inconsistent with statements made by OBO/EPCO that other contractors were available to construct the guard camp. Even if the justification was in the best interests of the Department,

OBO, when making the recommendation for using other than full and open competition procedures to select First Kuwaiti, did not follow the FAR requirement that other potential contractors that could construct the guard camp should have been consulted.

### Sole-Source Contracts Awarded Under FSBA Section 3

As discussed, OBO has the authority to limit competition and recommend sole-source awards under FSBA section 3 for construction, alteration, and repair of foreign service building contracts “where necessary” to deal with local conditions in foreign countries. Awards made under FSBA section 3 are not subject to the competitive requirements of the FAR. Also, there is no formal Department policy on how the sole-source decision should be justified and documented. Nevertheless, after a sole-source decision is made, A/LM/AQM officials said that as standard practice, they follow FAR requirements leading up to award of the contract. For example, solicitations for section 3 sole-source contracts issued with a request for proposal require OBO to conduct a technical evaluation of the sole-source proposal and require contract price negotiations with the contractor. However, OIG’s review of the contract files for the new office building and engineering services awards showed that A/LM/AQM did not follow its stated practice of properly documenting sole-source awards in accordance with the FAR to ensure that the contracts were awarded at a fair and reasonable price.

### New Office Building Solicitation and Award Process

On May 23, 2005, the Department posted a firm, fixed-price solicitation for constructing the new office building, which included both classified and unclassified portions. One firm submitted a proposal to design and build the new office building contingent upon award of a cost-reimbursable, rather than a firm, fixed-price, contract. This proposal was considered nonresponsive to the solicitation requirements and failed the technical evaluation. Subsequent discussions with the firm failed to produce acceptable results. At least two other firms were approached by the Department to design and build the new office building, but they also were unwilling to meet the solicitation requirement for a firm, fixed-price proposal.

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In a July 28, 2005, memorandum, A/LM/AQM proposed to OBO that the original solicitation be canceled and that separate contracts be awarded for the new office building unclassified and classified construction.<sup>18</sup> On July 29, 2005, under the authority of FSBA section 3, OBO/EPCO determined that a sole-source contract should be awarded to First Kuwaiti for the unclassified portion of the new office building.

In its sole-source justification memorandum dated August 4, 2005, OBO/EPCO stated that there was no longer sufficient time in the 24-month NEC construction schedule to make a competitive award for the unclassified construction. The memorandum also said that First Kuwaiti was the only firm (1) willing and able to provide a firm, fixed-price for construction services based upon the conceptual design documents; (2) willing to commit to the demanding performance period; and (3) able to pass the technical evaluation board for the three other design and build solicitations (for housing, infrastructure, and support facilities).

Following OBO's determination to sole source the unclassified portion of the new office building, A/LM/AQM issued a request for proposal to First Kuwaiti on August 12, 2005. First Kuwaiti was awarded the contract for \$85 million on September 16, 2005. A/LM/AQM issued a notice to proceed on December 5, 2005, with a 9-month performance period ending September 4, 2006.

### Engineering and Support Services Solicitation and Award Process

On August 19, 2005, the Department published an independent government estimate of \$2.9 million for construction inspectors (engineers) for the NEC Baghdad. The Department originally planned to award the construction inspectors contract to a disadvantaged small business. The Historically Underutilized Business Zone (HUB-Zone) Act of 1997, incorporated in FAR § 19.13, provides federal contracting assistance for qualified small business concerns located in historically underutilized geographic business zones to increase employment, investment, and economic development in those areas. Congress has set the procurement goals for the Department to set aside and award at least 3 percent of all prime contracts to HUB-Zone businesses.

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<sup>18</sup>The classified construction was completed by OBO.

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Eleven firms submitted proposals for this firm, fixed-price procurement by the September 21, 2005, response date. Five were qualified HUB-Zone businesses. A/LM/AQM asked these five firms to submit revised proposals because their original proposals exceeded the government estimate for the procurement. Only two of the revised proposals were determined to be within an acceptable price range of the estimate. One proposal was technically acceptable and near the government estimate for the solicitation, according to the Determination and Findings document in the contract file, and A/LM/AQM began negotiations with this firm.

Nevertheless, on October 5, 2005, the former OBO Director concluded that the contract should be awarded to a different firm, MILVETS, pursuant to FSBA section 3. In its sole-source justification memorandum, OBO/EPCO said that there was insufficient time to competitively award this contract and maintain the project's 24-month construction schedule. OBO/EPCO also said that all of the technically acceptable proposals it received "far exceeded the budget for this work" except for MILVETS, which, according to available documentation, submitted the lowest bid but did not qualify for the award because it was considered a large business for engineers.

Concurrently, the contracting officer determined that continued negotiations with the qualified HUB-Zone firm would result in a quicker award and meet the original intent of the procurement. However, on October 7, 2005, A/LM/AQM notified the HUB-Zone firm that it could not use engineers from India. The firm then submitted a new proposal, within 4 days and at no additional cost, to use Filipino engineers. OBO/EPCO reviewed the technical proposal and decided it needed to interview the proposed engineers. The interviews were conducted in Kuwait and resulted in only three acceptable engineers of the 15 required for the project. On October 27, 2005, OBO/EPCO informed the contracting officer that Filipinos were prohibited from working in Iraq, according to the Philippine Embassy in Washington, and requested the cancellation of the original solicitation.

As a result, A/LM/AQM stopped negotiations, canceled the solicitation, and began negotiations with MILVETS, as directed by the former OBO director on October 5, 2005. OBO/EPCO held discussions with the contractor to add support services personnel to the procurement, which was not a requirement of the initial solicitation. MILVETS submitted a final proposal for engineering and support services on November 29, 2005. The sole-source contract for these services was awarded to MILVETS on November 29, 2005, for \$4.7 million, which was \$1.8 million more than MILVETS had proposed for the original solicitation.

## Documentation of FSBA Section 3 Sole-Source Awards

Although the Department is authorized to waive the competition requirements of the FAR in making sole-source awards under FSBA section 3, once such a decision is made, A/LM/AQM reported that its standard practice is to follow provisions of the FAR in soliciting, reviewing, and awarding the sole-source contract.

A/LM/AQM officials said that although the practice is not required by formal regulation or guidance, they follow the FAR to ensure that the Department receives a fair and reasonable price. Nevertheless, OIG's review of the contract files supporting the new office building and engineering and support services awards determined that key documents in support of the two contracts were missing or were incomplete.

In reviewing Department official contract files for the procurements for the new office building and for engineering and support services, OIG found that A/LM/AQM had documented some, but not all, of the key FAR steps for these awards. In particular, for the new office building, the files showed that OBO/EPCO notified the contracting officer by e-mail that OBO had completed an evaluation and found the contractor's proposal to be acceptable; however, the contract file did not include the actual technical evaluation of the proposal to ensure that a detailed evaluation was done and that First Kuwaiti could perform the construction of the new office building. In addition, both the Determination and Findings and the Price Negotiation Memorandum for the new office building contract were unsigned and undated. Likewise, OIG's review of the contract file for the engineering and support services procurement found that A/LM/AQM documented some, but not all, of the key steps required by the FAR. For example, the contract file did not include the technical evaluation of the proposal, which supported that MILVETS could perform the engineering and support services. In addition, a Price Negotiation Memorandum for the contract was not included in the contract file.

Although the Department acted within its authority in sole sourcing NEC contracts for the new office building and for engineering and support services, following this approach limited competition for the procurements. Also, after OBO's determination to sole source the two contracts, A/LM/AQM did not follow its stated practice of properly documenting the contract files supporting the award process. Because of the restricted competition and the incomplete contract files, OIG could not determine whether the original \$85 million price for the new office building and the \$4.7 million cost for engineering and support services provided the government with the best price and value. In the future, to ensure that a decision to sole source

a contract is fully documented in the contract files, A/LM/AQM should establish and codify a formal process and document the solicitation, review, justification, and award of such sole-source contracts in the Department's acquisition regulations.

**Recommendation 2:** OIG recommends that the Bureau of Administration, Office of Logistics Management, Office of Acquisitions Management, in coordination with the Office of the Procurement Executive, amend the Foreign Affairs Manual and the Foreign Affairs Handbook and other applicable procurement guidance to establish a formal process and to document the solicitation, review, justification, and award of sole-source contracts that are made pursuant to the Department's authority under Foreign Service Buildings Act section 3 by using the "justification for other than full and open competition" requirements of the Federal Acquisition Regulation.

## A Bureau Response and OIG Reply

In its response to the draft report, A officials said that a formal process for the solicitation, review, justification, and award of sole-source contracts pursuant to "the justification for other than full and open competition" was contained in A/LM/AQM's Quality Assurance Plan.<sup>19</sup> The authority referenced for the required actions in this plan is the FAR. However, as OIG has noted in this report, the FAR does not apply to procurements made under FSBA section 3. Therefore, A/LM/AQM needs to amend its Quality Assurance Plan to formally document that the requirements of the plan for the review, signature, and approval of justifications for other than full and open competition also apply to procurements made using FSBA section 3. Until the plan is amended, and on the basis of A's response, OIG considers this recommendation unresolved.

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<sup>19</sup>A/LM/AQM Memorandum 07-02, dated December 20, 2006.

## LIST OF RECOMMENDATIONS

**Recommendation 1:** OIG recommends that the Bureau of Administration, Office of Logistics Management, Office of Acquisitions Management, in coordination with the Office of the Procurement Executive, review the applicable procurement guidance for using the “unusual and compelling urgency” authority of the Federal Acquisition Regulation to determine changes to the guidance or additional controls needed to address FAR §§ 6.301(c) and 6.302-2(c) requirements for limiting competition under these situations. The results of that review should be reported to OIG.

**Recommendation 2:** OIG recommends that the Bureau of Administration, Office of Logistics Management, Office of Acquisitions Management, in coordination with the Office of the Procurement Executive, amend the Foreign Affairs Manual and the Foreign Affairs Handbook and other applicable procurement guidance to establish a formal process and document the solicitation, review, justification, and award of sole-source contracts that are made pursuant to the Department’s authority under Foreign Service Buildings Act section 3 by using the “justification for other than full and open competition” requirements of the Federal Acquisition Regulation.

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## ABBREVIATIONS

A/LM/AQM	Bureau of Administration, Office of Logistics Management, Office of Acquisitions Management
A/OPE	Bureau of Administration, Office of the Procurement Executive
Department	Department of State
DOSAR	Department of State Acquisition Regulations
DS	Bureau of Diplomatic Security
EPCO	Emergency Project Coordination Office
FAH	Foreign Affairs Handbook
FAM	Foreign Affairs Manual
FAR	Federal Acquisition Regulation
FedBizOpps	Federal Business Opportunities
First Kuwaiti	First Kuwaiti Trading & Contracting
FSBA	Foreign Service Buildings Act of 1926
HUB-Zone	historically underutilized business zone
IPCO	Iraq Project Coordination Office
MILVETS	MILVETS Systems Technology, Inc.
NEC	new embassy compound
OBO	Bureau of Overseas Buildings Operations
OBO/EPCO	Emergency Project Coordination Office
OIG	Office of Inspector General
Omnibus Act	Omnibus Diplomatic Security and Anti-Terrorism Act of 1986
PAE	PAE Government Services, Inc.

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# APPENDIX A

## **Checklist of FAR Criteria for Evaluating Awards of Competitive Contracts**

The Office of Inspector General prepared this checklist of procedures required by the Federal Acquisition Regulation (FAR) to determine whether the procedures were documented in the files for contracts that were awarded competitively.\*

Procurement Step	FAR Citation	Documented in File (Y/N <sup>a</sup> )
		O&M <sup>b</sup>
Market research	10.001	Y
Acquisition plan	7.102(a)	N
Acquisition plan coordinated with small business specialist	7.104(d)	N
Solicitation requires separate submission and evaluation of technical and price proposals	36.303-2(b)	Y
Government estimate of construction costs	36.203(a)	Y
Advance notice to as many prospective offerors as practicable	36.211	Y
FedBizOpps publication or exception documented	5.101(a)(1); 5.002; 5.202	Y
FedBizOpps publication at least 15 days before issuance of solicitation (unless exception applies)	5.203(a)	Y
Solicitation includes information required to be in proposals	15.203(a)(3)	Y
Solicitation includes factors used to evaluate proposals and their relative importance	15.203(a)(4)	Y
Requirement for submission of cost or pricing data	15.403-4	Y
Technical, legal, and business reviews obtained and resolved	1.602-2(c)	Y
Proposal evaluation based on solicitation factors, including past performance and technical evaluations	15.305(a)	Y
Competitive range established properly	15.306(c)	Y
Notice of exclusion from competitive range	15.503(a)(1)	N
Exchanges with offerors after establishment of competitive range follow stipulated guidelines	15.306(d)	Y
Exchanges with bidders comply with stipulated limits	15.306(e)	Y
Pre negotiation objectives established	15.406-1	Y
Preaward debriefing conducted if requested	15.505	Y
Affirmative determination of responsibility	9.103(b); 36.201(c)(2)	Y
FedBizOpps award notice	5.301	Y
Public award announcement	5.303(a)	Y

<sup>a</sup> Y/N = Yes/No.

<sup>b</sup> O&M = Operations and Maintenance.

\* This checklist was not used for the competitive awards for site clearing and pre-engineered buildings. All firms submitting bids for these two task orders were qualified and the firm with the lowest bid was selected for each.

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**APPENDIX B**

**Checklist of FAR Criteria  
for Evaluating Awards of Sole-Source Contracts**

The Office of Inspector General prepared this checklist of procedures required by the Federal Acquisition Regulation (FAR) to determine whether the procedures were documented in the files for sole-source contracts.

Procurement Step	Documented in File (Y/N/NA <sup>a</sup> )			
	FAR Citation	New Office Building	Guard Camp	Engineer Support
Market research	10.001	N	N	N
Acquisition plan	7.102(a)	N	N	N
Acquisition plan coordinated with small business specialist	7.104(d)	N	N	N
Sole-source or limited competition justified and properly approved	6.304	Y	N	Y
Solicitation requires separate submission and evaluation of technical and price proposals	36.303-2(b)	Y	Y	N
Government estimate of construction costs	36.203(a)	Y	Y	Y
FedBizOpps publication or exception documented	5.101(a)(1), 5.002, 5.202	N	Y	N
Solicitation includes information required to be in proposals	15.203(a)(3)	Y	Y	N
Solicitation includes factors used to evaluate proposals and their relative importance	15.203(a)(4)	Y	Y	N
Contracting officer determination of need for liquidated damages	11.502, 36.206	NA	Y	N
Requirement for submission of cost or pricing data	15.403-4	N	Y	N
Technical, legal, and business reviews obtained and resolved	1.602-2(c)	Y	Y	N
Proposal evaluation based on solicitation factors, including past performance and technical evaluations	15.305(a)	Y	Y	N
Prenegotiation objectives established	15.406-1	Y	Y	N
Assurance that the construction contract is not awarded to firm or subsidiary that designed the project without appropriate approval	36.209	N	N	N
Affirmative determination of responsibility	9.103(b), 36.201(c)(2)	Y	Y	N
FedBizOpps award notice	5.301	N	N	N
Public award announcement	5.303(a)	N	N	N

<sup>a</sup> Y/N/NA = Yes/no/not available.

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## APPENDIX C



**United States Department of State**

*Washington, D.C. 20520*

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### **MEMORANDUM**

**TO:** OIG/AUD – Mark W. Duda

**FROM:** A – Raj Chellaraj

**SUBJECT:** Comments on Draft Audit of Procurement Competition for the New Embassy Compound at Baghdad, Iraq (AUD/CG-08-XX)

Thank you for the opportunity to review and comment on the draft audit report concerning procurement actions taken in support of the new Embassy compound in Baghdad. Lisa Million, A/LM/AQM/BOD, is the point of contact and can be reached at (703) 875-5230.

**Recommendation 1:** OIG recommends that the Bureau of Administration, Office of Logistics Management, Office of Acquisitions Management, in coordination with the Office of the Procurement Executive, amend the applicable procurement guidance to emphasize that using the “unusual and compelling urgency” authority of the FAR is specifically not intended to justify procurement actions when there is a lack of advance planning or concerns about available funding.

**A/LM/AQM Comments:** A/LM notes that current FAM and FAH regulations clearly state that unusual and compelling urgency authority of the FAR is specifically not intended to justify procurement actions when there is a lack of advance planning or concerns about available funding. Specific citations are located in:

- 14 FAM 221.1 Advance Acquisition Planning
- 14 FAM 221.2 Year-End Spending
- 14 FAH-2 H-225.2 Unusual and Compelling Urgency

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**Recommendation 2:** OIG recommends that the Bureau of Administration, Office of Logistics Management, Office of Acquisitions Management, in coordination with the Office of the Procurement Executive, amend the Foreign Affairs Manual and Foreign Affairs Handbook and other applicable procurement guidance to establish a formal process and document the solicitation, review, justification, and award of sole-source contracts that are made pursuant to the Department's authority under FSBA section 3 by using the "justification for other than full and open competition" requirements of the FAR.

**A/LM/AQM Comments:** A formal process for the solicitation, review, justification, and award of sole-source contracts pursuant to the "justification for other than full and open competition" is shown on page 4 of the AQM Quality Assurance Plan (attached). Adherence to the Quality Assurance Plan is standard operating procedure in A/LM/AQM.

Attachment: As stated.

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**United States Department of State**

*Washington, D.C. 20520*  
*www.state.gov*

December 20, 2006

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**A/LM/AQM MEMORANDUM 07-02**

**TO: All A/LM/AQM Personnel**

**FROM: A - Raj Chellaraj, Chief Acquisition Officer**

A handwritten signature in black ink, appearing to read 'Raj Chellaraj', written over the printed name in the 'FROM' field.

**SUBJECT: A/LM/AQM Quality Assurance Plan**

The AQM Quality Assurance Plan provides an easy to use, ready reference for determining the proper level of review, approval and signature authority for A/LM/AQM contractual documents.

DOSAR 604.71 requires each Department of State contracting activity to develop a quality assurance plan for review and approval of contract actions to ensure that all requirements of law, regulation, policy, and sound procurement practices are met. In addition, the Quality Assurance Plan serves to make certain that taxpayers' interests are adequately protected and that the Department's mission is well-served. Accordingly, the attached AQM Quality Assurance Plan has been reviewed and approved by A/OPE.

All AQM staff should review this new plan as it contains revisions to the one it replaces. Most changes are government-wide threshold increases. There is a threshold increase for the submission of cost or pricing data from \$550,000 to \$650,000, and other threshold increases for justifications for other than full and open competition.

This memorandum and attachment supersede the AQM memorandum dated March 4, 2005 and related Quality Assurance Plan. Effective immediately, all A/LM/AQM personnel, including RPSOs, shall prepare contractual documents for review, approval and signature in accordance with this plan.

**Attachment:**

A/LM/AQM Quality Assurance Plan

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**A/LM/AQM Quality Assurance Plan**

<b>DOCUMENT</b>	<b>REVIEWS</b>	<b>SIGNS</b>	<b>APPROVES</b>	<b>REFERENCE/ AUTHORITY</b>	<b>REMARKS</b>
ACQUISITION PLANS ACQUISITION PLANS, HIGH IMPACT	High Impact: A/OPE	High Impact: A/OPE and HCA		FAR 7.1, DOSAR 607.1  A/OPE PIB 2004-8	As a part of annual acquisition planning, the HCA will recommend a selection of transactions meeting criteria of PIB 2004-8 for joint selection with A/OPE for year-long tracking and consultation.
BUY AMERICAN ACT:  Public Interest Exception	Branch Chief Division Chief	HCA	HCA	FAR 25.103(a) DOSAR 625.103(a)	May not be redelegated
Non-availability determination	Branch Chief Division Chief	HCA	HCA	FAR 25.103(a) DOSAR 625.103(a)	May not be redelegated
CERTIFICATE OF COMPETENCY – REFERRAL TO SBA	Branch Chief Division Chief A/SDBU	CO	HCA	FAR 19.602-1 DOSAR 619.602-1	
CLAIMS SETTLEMENT – CO FINAL DECISIONS:  1. Up to \$1,000,000	Branch Chief L/BA	CO	Division Chief or RPSO Director	FAR 33.211 DOSAR 633.211	
2. Over \$1,000,000	Branch Chief Division Chief L/BA	CO	HCA	FAR 33.211 DOSAR 633.211	

\* Throughout this document, Branch Chief = Team Leader and/or Independent GS-14, with appropriate warrant, when designated specified authority by the cognizant Division Chief. HCA = AQM Director unless otherwise specified.

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<b>DOCUMENT</b>	<b>REVIEWS</b>	<b>SIGNS</b>	<b>APPROVES</b>	<b>REFERENCE/ AUTHORITY</b>	<b>REMARKS</b>
CONTINGENT FEES – MISREPRESENTATIONS or VIOLATIONS	Branch Chief Division Chief L/BA	CO	HCA	FAR 3.405(b) DOSAR 603.405(a)	Forward copy of decision to OPE
<b>DEBARMENT/SUSPENSION:</b>					
1. Recommendation to debar or suspend a contractor	Branch Chief Division Chief L/BA	HCA	OPE	FAR 9.406-1; 9.407-1 DOSAR 609.406-1 DOSAR 609.407-1	
2. Determination to award to debarred or suspended contractor	Branch Chief Division Chief L/BA	HCA	OPE	FAR 9.405(a) DOSAR 609.405(a)	
<b>DETERMINATIONS AND FINDINGS - (D&amp;F):</b>					
1. Full & Open Competition After Exclusion of Source(s)	Tech./Rqmts Branch Chief DivChief L/BA AQMComAdv HCA	Tech./ Rqmts CO AQMComAdv	OPE	FAR 6.202(b)(1) DOSAR 606.202	
2. Public Interest Exception to Full & Open Competition	Tech./Rqmts Branch Chief DivChief L/BA AQMComAdv HCA A/LM, OPE, A	Tech./ Rqmts CO AQMComAdv OPE	Secretary of State	FAR 6.302-7 DOSAR 606.302-7	May not be delegated
3. When Not Withstanding Authority Is Invoked	Branch Chief L/BA	CO	HCA or other responsible customer- Bureau executive	A/OPE PIB 2004-31	
4. Letter Contracts	Branch Chief	CO	HCA	FAR 16.603, DOSAR 616, FAR 16.101(b)	

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**A/LM/AQM Quality Assurance Plan**

<b>DOCUMENT</b>	<b>REVIEWS</b>	<b>SIGNS</b>	<b>APPROVES</b>	<b>REFERENCE/ AUTHORITY</b>	<b>REMARKS</b>
5. Cost Reimbursement Contracts	Branch Chief	CO	Branch Chief	DOSAR 616.603	
DEVIATIONS – REQUESTS FOR FAR OR DOSAR	Branch Chief Division Chief	HCA	OPE	FAR 1.4, DOSAR 601.4	
<b>ECONOMY ACT:</b>					
1. Economy Act Interagency Agreements (EAIAs)	Branch Chief L/BA	DAS, EX Dir. or CO	DAS, Bureau Executive Director or Division Chief	DOSAR 617.504-70(a)	Required when funds will be transferred to or from another Federal agency
2. Economy Act Determinations and Findings	Branch Chief Division Chief L/BA	CO	HCA	FAR 17.503 DOSAR: 617.504-70(d)(3)	Required when DOS is the requesting agency (Also reference DOSAR 607.103-70—State 1st)
<b>FINANCING:</b>					
1. Advance payments authorization	Branch Chief Division Chief	HCA	HCA	FAR 32.402(c)(1) (iii) DOSAR 632.402(c)(1)(iii)	See FAR 32.410 for format. May not be redelegated
2. Advance payments without interest authorization	Branch Chief Division Chief HCA	OPE	OPE	FAR 32.407(d) DOSAR 632.407(d)	See FAR 32.410 for format
3. Commercial items financing	Branch Chief	CO	Division Chief or RPSO Director	FAR 32.202-1(b)	
<b>GSA SCHEDULE AND GWAC CONTRACTS:</b>					
Orders \$1,000,000 up to \$5,000,000	Branch Chief and L/BA	CO	Branch Chief		
Orders above \$5,000,000	Branch Chief and L/BA	CO	Division Chief		

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**A/LM/AQM Quality Assurance Plan**

<b>DOCUMENT</b>	<b>REVIEWS</b>	<b>SIGNS</b>	<b>APPROVES</b>	<b>REFERENCE/ AUTHORITY</b>	<b>REMARKS</b>
<b>INVITATIONS FOR BIDS:</b>  1. Cancellation of IFB after Bid Opening – reject all bids  2. Cancellation of IFB after bid opening – convert to negotiation	Branch Chief Division Chief L/BA	CO	HCA	FAR 14.404-1(c) DOSAR 614.404-1	May not be redelegated DOSAR requires L/BA review
	Branch Chief Division Chief L/BA	CO	HCA	FAR 14.404-1(e)(1)	
<b>JUSTIFICATION AND APPROVALS FOR OTHER THAN FULL AND OPEN COMPETITION:</b>  Up to \$100,000  Over \$100,000 up to \$550,000  Over \$550,000 up to \$11,500,000  Over \$11,500,000 up to \$57,000,000  Over \$57,000,000	CO  Technical/Rqmts Branch Chief L/BA  Technical/Rqmts Branch Chief Division Chief L/BA  Technical/Rqmts Branch Chief Division Chief L/BA AQMComp Adv. HCA  Technical/Rqmts Branch Chief Division Chief L/BA AQM Comp. Adv., HCA	CO  Tech/ Rqmts  Tech/ Rqmts CO  Tech/ Rqmts CO AQMComp Adv.  Tech/ Rqmts CO AQMComp. Adv.	CO  Level above CO  AQM Comp. Advocate  HCA  OPE	FAR Subpart 6.3 DOSAR Subpart 606.3  FAR 6.304(a)(1)  FAR 6.304(a)(2)  FAR 6.304(a)(3) DOSAR 606.304-71  FAR 6.304(a)(4)	OPE must approve all Standardization J&A See DOSAR 606.302-1(b)(4)  Copy to AQM Competition Advocate  Copy to AQM Competition Advocate  *(The requirements set forth in the <u>first four columns</u> also pertain to task orders issued under FAR 16.505(b)(2), Exceptions to the Fair Opportunity Process

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**A/LM/AQM Quality Assurance Plan**

<b>DOCUMENT</b>	<b>REVIEWS</b>	<b>SIGNS</b>	<b>APPROVES</b>	<b>REFERENCE/ AUTHORITY</b>	<b>REMARKS</b>
LATE BIDS/PROPOSALS – Determination Whether Bid/Proposal Is Considered Late	Branch Chief L/BA	CO	Division Chief or RPSO Director	FAR 14.304(b)(1) FAR 15.208(b)	
MISTAKES IN BIDS:					
1. Before award	Branch Chief L/BA	CO	HCA or RPSO Director	FAR 14.407-3 DOSAR 614.407-3	Approval By HCA May Not Be Redelegated
2. After award	Branch Chief Division Chief L/BA	CO	HCA or RPSO Director	FAR 14.407-4 DOSAR 614.407-4	
ORGANIZATIONAL CONFLICTS OF INTEREST – clauses to mitigate potential	Branch Chief Division Chief L/BA	CO	HCA	FAR 9.506(b)	
OPTIONS:					
1. Justification of quantities or term	Branch Chief	CO	CO	FAR 17.205(a)	
2. Determination not to evaluate options	Branch Chief	CO	Level above CO	FAR 17.206(b)	
3. Determination to exercise option	Branch Chief	CO	CO	FAR 17.207(f)	
4. Option quantities in excess of 50% of initial quantity when the solicitation requires that options be offered at prices no higher than those for the initial requirement	Branch Chief	CO	Level above CO	FAR 17.203(g)	
OVERTIME PREMIUMS - Under Cost Reimbursement Or Time And Materials Contracts	Branch Chief	CO	Division Chief or RPSO Director	FAR 22.103-4	

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**A/LM/AQM Quality Assurance Plan**

<b>DOCUMENT</b>	<b>REVIEWS</b>	<b>SIGNS</b>	<b>APPROVES</b>	<b>REFERENCE/ AUTHORITY</b>	<b>REMARKS</b>
PERIOD OF CONTRACT THAT EXCEEDS FIVE YEARS	Branch Chief Division Chief HCA	CO	OPE	FAR 17.204(e) FAR 22.1002-1 DOSAR 617.204(e)	
PRECONTRACT COSTS – Advance Agreements for	Branch Chief L/BA	Division Chief	Division Chief	FAR 31.109 FAR 31.205-32	
NEGOTIATION/PRICE NEGOTIATION MEMORANDA:					
Up to \$1 million	CO	CO	CO		
Over \$1 million up to \$5 million	Branch Chief	CO	Branch Chief or RPSO Director/ Deputy		
Over \$5 million up to \$10 million	Branch Chief	CO	Division Chief or RPSO Director		
Over \$10 million	Branch Chief Division Chief	CO	HCA		
Over \$50 million	Branch Chief Division Chief HCA	CO	DAS A/LM		
PRICING:					
1. Authorization to obtain cost or pricing data for pricing actions below \$650,000	Branch Chief Division Chief	CO	HCA	FAR 15.403-4(a)(2)	May not be delegated below GS-14 level staff with the appropriate warrant
2. Determination that proposal price is based on adequate price competition when only one offer is received in response to a competitive solicitation	Branch Chief	CO	Level above CO	FAR 15.403-1(c)(1)(ii)(B)	May not be delegated below GS-14 level staff with the appropriate warrant

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**A/LM/AQM Quality Assurance Plan**

<b>DOCUMENT</b>	<b>REVIEWS</b>	<b>SIGNS</b>	<b>APPROVES</b>	<b>REFERENCE/ AUTHORITY</b>	<b>REMARKS</b>
3. Waivers from requirement for submission of cost or pricing data when no exception applies	Branch Chief Division Chief	CO	HCA	FAR 15.403-1(c)(4)	Must notify OIG and OPE
PROCUREMENT INTEGRITY ACT – Violations And Possible Violations	Branch Chief Division Chief L/BA	CO	HCA	FAR 3.104-7 DOSAR 603.104-7	Must notify OIG and OPE
PROTESTS:  1. Agency protest decision  2. GAO protest report  3. Decision to proceed with contract award or to continue contract performance despite pending protest  4. Notice to GAO that agency has not fully implemented GAO recommendations within 60 days	Branch Chief L/BA  Branch Chief Division Chief L/BA  Branch Chief Division Chief L/BA  Branch Chief Division Chief L/BA	CO  CO L/BA  HCA  HCA	Division Chief or RPSO Director  HCA  HCA  HCA	FAR 33.103 DOSAR 633.103  FAR 33.104 DOSAR 633.104 4 CFR Part 21  FAR 33.104(b)&(c) DOSAR 633.104  FAR 33.104(g) DOSAR 633.104	All protests shall be reported immediately to the HCA  A/OPE shall be notified regarding all Agency protests as well as about the Agency disposition  All protests shall be reported immediately to the HCA
QUALIFICATION REQUIREMENTS – Justifications to Establish	Branch Chief Division Chief	HCA	HCA	FAR 9.202(a)(1) DOSAR 609.202	May not be redelegated
RATIFICATION OF UNAUTHORIZED COMMITMENTS	Branch Chief Division Chief L/BA HCA	Tech Reqmts CO	OPE	FAR 1.602-3 DOSAR 601.602-3	HCA can approve if less than \$1000 A/LM/AQM/BOD coordinates submission to A/OPE

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**ALM/AQM Quality Assurance Plan**

<b>DOCUMENT</b>	<b>REVIEWS</b>	<b>SIGNS</b>	<b>APPROVES</b>	<b>REFERENCE/ AUTHORITY</b>	<b>REMARKS</b>
REJECTIONS OF SBA RECOMMENDATIONS	Branch Chief Division Chief	CO	HCA	FAR 19.505 DOSAR 619.505	OPE decides SBA appeals to Agency Head
SOLICITATIONS, CONTRACTS AND MODIFICATIONS:					
Up to \$1 million	CO	CO	CO		
Over \$1 million up to \$5 million	Branch Chief L/BA	CO	Branch Chief or RPSO Dir/Deputy	DOSAR 604.71(c)	May not be redelegated
Over \$5 million up to \$10 million	Branch Chief L/BA	CO	Division Chief or RPSO Director	DOSAR 604.71(c)	
Over \$10 million	Branch Chief Division Chief L/BA	CO	HCA - for solicitations and contracts Division Chief - for modifications	DOSAR 604.71(c)	HCA may require independent review(s) on a case by case basis
SOURCE SELECTION AUTHORITY OTHER THAN THE CONTRACTING OFFICER	Branch Chief Division Chief	HCA	HCA	FAR 15.303(a)	The CO is designated as the SSA, unless the HCA appoints another individual for a particular acquisition or group of acquisitions. EXCEPTION: For A/E acquisitions, see DOSAR 636.6.
STATE FIRST POLICY	Branch Chief Division Chief	HCA	HCA and OPE	DOSAR 607.103-70	Reference: May 10, 2002, memorandum signed by the Under Secretary of State for Management

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**A/LM/AQM Quality Assurance Plan**

<b>DOCUMENT</b>	<b>REVIEWS</b>	<b>SIGNS</b>	<b>APPROVES</b>	<b>REFERENCE/ AUTHORITY</b>	<b>REMARKS</b>
STOP WORK ORDERS	Branch Chief	CO	Division Chief or RPSO Director	FAR 42.1303	
TERMINATIONS FOR CONVENIENCE:					
1. Notice of Termination	Branch Chief Or L/BA	CO	Division Chief or RPSO Director	DOSAR 609.405-70	
2. Settlement agreements (including no-cost)	Branch Chief Division Chief L/BA	CO	HCA	DOSAR 649.111	
TERMINATION FOR DEFAULT:					
1. Notice of termination	Branch Chief Division Chief L/BA	CO	Division Chief or RPSO Director	DOSAR 609.405-70	HCA , A/LM/DAS, and A/OPE shall be notified of all potential terminations for default
2. Settlement agreements (including no-cost)	Branch Chief Division Chief L/BA	CO	HCA	DOSAR 649.111 4 CFR Part 21	Reviewed and approved by legal; approved by HCA
3. 10-day cure notice	Branch Chief L/BA	CO	Division Chief or RPSO Director	FAR 49.402-3(d)	
4. Show cause notice	Branch Chief L/BA	CO	Division Chief or RPSO Director	FAR 49.402-3(e)	

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**A/LM/AQM Quality Assurance Plan**

DOCUMENT	REVIEWS	SIGNS	APPROVES	REFERENCE/ AUTHORITY	REMARKS
TYPE OF CONTRACT:					
Time and Materials or Labor Hour	Branch Chief	CO	Branch Chief	FAR 16.601(c)	
Fixed Price with Economic Price Adjustment Based on Cost Indexes of Labor or Material	Branch Chief Division Chief L/BA	CO	HCA	FAR 16.203-3 DOSAR 616.203-4	Reviewed and approved by legal; approved by HCA
Firm Fixed Price, Level of Effort, Term over \$100,000	Branch Chief Division Chief	CO	HCA	FAR 16.207-3	
Incentive/Award Fee	Branch Chief Division Chief	CO	HCA	FAR Subpart 16.4	
Letter Contracts	Branch Chief Division Chief	CO	HCA	FAR 16.603-3 DOSAR 616-603-2	HCA must approve any extension date and/or increase to maximum Government liability. HCA may instruct AQM/BOD to follow-up on proper adherence to any definitization schedule
Cost Reimbursement Contracts	Branch Chief	CO	Branch Chief		
NOT Performance Based Service Contracts (PBSC)	CO Branch Chief Division Chief	CO	A/OPE's Competition Advocate	DOSAR 637.601	This refers to required D&F document when PBSC <b>is not going to be used</b> on an eligible new and/or recompile action

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APPENDIX D



United States Department of State

Washington, D.C. 20520

February 20, 2008

**UNCLASSIFIED**  
**MEMORANDUM**

TO: OIG/AUD – Mr. Mark W. Duda

FROM: OBO/RM – Jurg Hochuli 

SUBJECT: Draft Report on *Procurement Competition for the New Embassy Compound at Baghdad, Iraq (AUD/CG-08-XX)*

As requested by your memorandum of January 29, OBO has reviewed the subject draft report and offer the attached comments. We appreciated the opportunity to review and comment. A/LM has reviewed these comments and has concurred. Please do not hesitate to contact me if you have any questions.

Attachment: As stated

Drafted: OBO/RM/P:Alba  
RM/P Shared/AMGT ia3.doc

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**OBO Comments to OIG, Office of Audits, on Draft Report for Audit of Procurement Competition for the New Embassy Compound at Baghdad, Iraq**

**OBO Comments**

OBO thanks the OIG for the opportunity to review the subject report and we offer the following comments:

1 All contracts awarded for the construction of the Baghdad Embassy Compound Development, with the exception of the man-camp, were initially bid competitively through A/LM. It was only after the competitive bidding process could not be implemented, the alternative method of sole source procurement for awarding projects, was granted for the NOB at the NEC and for the MILVETS contract. Additionally, OBO was obligated to stay within budget appropriated by Congress.

The report notes a lack of planning for the DS man-camp by OBO. Neither OBO nor EPCO was responsible for developing a plan to accomplish the DS man-camp removal to a new site. In FY 2004, Post planned to move the existing camp prior to the NEC construction. By the end of 2004, before the EPCO group was formed and the NEC project approved, Post accepted the responsibility to move the man-camp. Simply put, OBO could not plan for a project that was not theirs to develop.

In May 2005, the Bureau of Diplomatic Security (DS) determined that a new camp was needed and formally asked OBO to provide pricing information and details regarding its construction. In June 2006, the Director of OBO emphasized that there was no funding available to proceed with the project and that OBO's involvement in DS's planning efforts must cease. In August 2006, funding materialized from DS and OBO. OBO/EPCO recommended to A/LM/AQM that the award for the man-camp be issued to First Kuwaiti, given the company's previous experience building man-camps and their immediate access to material, equipment, and manpower available on-site to complete the project within 90 days.

The OIG acknowledges that OBO was under no obligation to plan for the contract until funding became available, however, by the time funding was

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available in August 2006, the security situation in Iraq had deteriorated and living conditions in the existing man-camp were very unsatisfactory.

The emphasis, in the report, placed on First Kuwaiti's insistence to not start construction of the guard camp until after it finished its other NEC projects is not accurate. The projects occurred concurrently however the resources, funding, and materials for the man-camp project were always managed completely separately from the NEC project.

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