

MAY 23 2006

Office of Legislative Affairs

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

The Honorable Zoe Lofgren
U.S. House of Representatives
Washington, DC 20515

Dear Representative Lofgren:

On behalf of Secretary Chertoff, thank you for your letter regarding the contract issued to KBR, Inc. (formerly Kellogg Brown and Root) for emergency housing and detention facilities support services.

A critical aspect to the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement's (ICE) mission is the responsibility for promoting public safety and national security by ensuring that removable aliens depart the United States. To accomplish this mission, ICE must maintain the capability to provide a steady supply of detention facilities to house detained illegal aliens during immigration emergencies such as a mass migration.

To prepare for such conditions, the U.S. Army Corps of Engineers (USACE) awarded a contingency support contract in 2001. In 2005, the contract was again competitively offered to the public and awarded to KBR, Inc. in December 2005, by USACE. The contract was issued for a base period of 1 year, with four 1-year options. The contract ceiling is \$385 million based on the potential 5-year period of performance. KBR, Inc. would only receive funding if a provision of the contract is exercised.

This contract provides ICE with an emergency response mechanism to deploy support services and temporary shelters within short response times for both emergency responders and migrant populations. Such support services are necessary to ensure a high level of readiness when responding to emergency conditions such as a mass migration. All deployment locations supported under this contract are temporary.

The following information is provided in response to your inquiries. With the exception of question 2, these responses were prepared by USACE. As the agency responsible for conducting the competitive procurement under which this award was made, USACE has access to the facts necessary to respond to your specific questions.

Question 1: Since KBR has admitted to overcharging the federal government for goods and services during the last three years, what was the rationale for allowing them to continue as the contractor?

Response from USACE: KBR, Inc. responded to the competitive solicitation for the new contract and was identified as the qualified candidate in accordance with the Federal Acquisition Regulation (FAR). USACE takes its responsibility seriously in only awarding *contracts to amenable contractors*. KBR, Inc. has not been suspended or debarred and was

therefore given equal consideration. The Federal Government cannot exclude a company that has not been debarred as a potential source.

Question 2: Please provide a clear and concise narrative of the definition of an "immigration emergency" as used in this contract and whether any entity outside of the Department of Homeland Security would be empowered to declare such an "immigration emergency."

Response from ICE: An "immigration emergency" is determined by the situation and may be caused by a variety of factors, including but not limited to humanitarian interventions, mass migrations, populations rapidly arriving in the United States, and other unforeseen situations. In no event will any entity other than DHS declare an "immigration emergency."

Question 3: The amount that can be potentially paid to KBR under the new contract is more than 50 times the amount paid under the previous contract. Please explain what circumstances justify such an increase in the potential payment under this new contract.

Response from USACE: The contract in question was awarded as an Indefinite Delivery, Indefinite Quantity Contract by the Fort Worth District of USACE. The previous contract, DACW63-00-D-0013, was awarded in June 2000, with a maximum value of \$350 million. The new contract was awarded for a maximum value of \$385 million and is comparable to the previous contract. KBR, Inc. is only paid for work assigned to them through specific task or delivery order.

Question 4: Given the number of firms involved with construction and logistics, it seems unusual that KBR was the only bidder. Please provide details on the issuance and closing dates of the Request for Proposal (RFP), the bid and performance bonds required under the solicitation, a copy of the RFP, a copy of the KBR submission and a copy of the final contract.

Response from USACE: A copy of the RFP and final contract are enclosed. KBR, Inc.'s proposal, including its subcontracting plan proposal is considered to be proprietary and generally not provided without their consent.

The solicitation was issued on August 19, 2005. The closing date was November 22, 2005. This was a service contract, not a construction contract. Therefore, bid and performance bonds were not required under this solicitation. USACE made every attempt to inform the public of the solicitation. USACE posted a "sources sought synopsis," and conducted 2 industry days that were attended by many companies. Also, when only a single proposal was received, USACE's contracting office contacted another candidate who had expressed interest to find out why they had not submitted a proposal and was told that the company had deployed numerous staff members and was not able to respond because their team was no longer available.

Question 5: Please provide any and all information on KBR's subcontracting plan.

Response from USACE: KBR, Inc. submitted a subcontracting plan in accordance with FAR 52.219-9. The solicitation included desired subcontracting goals. USACE's contracting officer and the Small Business Administration's Procurement Center Representative for the Dallas Region approved KBR, Inc.'s subcontracting plan.

Question 6: *Please provide all correspondence between KBR and the contracting officer or other Department official regarding this contract.*

Response from USACE: The only correspondence relating to the award of this contract, other than the enclosed award letter, were questions relating to the solicitation, and the answers to those questions. This information was in an amendment to the solicitation and posted on the Electronic Bid System for USACE Fort Worth District for all interested parties to review.

Question 7: *What role did the Army or the Army Corps of Engineers play in developing the solicitation, approving the bids or recommending the award of this contract?*

Response from USACE: USACE acted on behalf of DHS to solicit, evaluate, award, and administer the contract.

Question 8: *What official within the Department will be responsible for overseeing payments, monitoring performance, and ensuring compliance with the contract requirements?*

Response from USACE: All billing received from KBR, Inc. for this contract is processed through the Defense Contract Audit Agency, within the Department of Defense, before reaching USACE for payment. Performance is reviewed as part of a detailed quarterly-award fee process. Upon receipt, USACE's contracting officers' representative, USACE's program manager, and an ICE representative review each invoice before a payment is made.

ICE's efforts to respond to mass migrations are critical to DHS' overall mission in protecting the homeland during emergencies. ICE's success in meeting this mission mandate was evident in recent humanitarian and security operations during the response and recovery efforts relating to Hurricane Katrina. The contract, awarded on behalf of ICE by USACE, was a critical component of this effort and enabled DHS to immediately react to this disaster in a responsible manner.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative and Intergovernmental Affairs at (202) 205-4412.

Sincerely,



Pamela J. Turner
Assistant Secretary for Legislative and Intergovernmental Affairs

Enclosures