



Competition Issues and Inherently Governmental Functions Performed by Contractor Employees on Contracts to Supply Fuel to U.S. Troops in Iraq

What We Did

We initiated this audit to review issues Congressman Henry Waxman, the former Chairman of the House Committee on Oversight and Government Reform raised relating to prices paid on a series of fuel supply contracts awarded to the International Oil Trading Company (IOTC). We reviewed the Defense Logistics Agency (DLA) Energy's decisions to award a series of contracts to IOTC for the delivery of fuel to U.S. troops in Iraq.

What We Found

DLA Energy contracting officers did not perform an adequate proposal analysis for three of four contracts valued at about \$2.7 billion that were awarded to the IOTC to supply fuel to U.S. troops in Iraq. The proposal analyses for the three contracts were inadequate because the contracting officer for those contracts:

- primarily used "adequate price competition" as the justification to support price reasonableness even though "IOTC may have reasonably anticipated no competition" because no one else could transport the fuel through Jordan, and
- did not identify that the unusual circumstances of these procurements dictated that some type of cost or pricing data and appropriate field pricing support were needed to support price reasonableness.

As a result, the contracting officer had limited data to support costs for the non-fuel component, such as transportation, of about \$1.1 billion and failed to obtain adequate support that the agreed-to fuel prices were fair and reasonable. We calculate that DLA Energy paid IOTC about \$160 to \$204 million (or 6 to 7 percent) more for fuel than could be supported by price or cost analysis.

In addition, DLA Energy contracting officers inappropriately used the Logistics Civil Augmentation Program (LOGCAP) contractor to accept fuel at three Defense Fuel Support Points located in Iraq. Although a contractor may be used to receive shipments of Government-owned fuel, a contractor may not be used to accept title to fuel on behalf of the Government. The LOGCAP contractor was accepting the fuel because DLA Energy contracting officers did not:

- assign "responsibility for acceptance" to either a contracting officer's representative, a cognizant contract administration office, or another agency;
- adhere to contract terms requiring the use of a DD Form 250 receiving report; and
- negotiate an agreement with the Army Sustainment Command for the Government acceptance of the fuel that IOTC delivered to the contractor-operated fuel sites.

As a result, Kellogg, Brown, and Root (the LOGCAP contractor) accepted the fuel that IOTC delivered for the Government.

Recommendations, Management Comments, and Our Response

We recommend the Commander, DLA Energy obtain some type of cost or pricing data and appropriate field pricing assistance to support the reasonableness of the offerors' proposed prices to supply fuel to contingency operations, and designate and use qualified Government personnel to accept the fuel. The Senior Procurement Executive, DLA, partially agreed with the recommendations, but the proposed actions were not responsive. Therefore, we request additional comments on Recommendations A.1, B.1, and B.2 by April 18, 2011. See the recommendations table on the back of this page.