Irresponsible Contracting

Under the Bush administration, federal contracting and grantmaking has frequently been done in secret, without accountability, and for apparently political purposes.

The most high profile example has been the no-bid contracts for Iraq reconstruction, the largest of which went to Halliburton, where Vice President Cheney previously served as CEO. However, the administration has undermined sound contracting in other ways as well.

From the start, the administration moved to repeal Clinton-era contractor responsibility standards while simultaneously pushing for federal funding of religious congregations, which are exempt from civil rights laws. Meanwhile, federal grantees that disagree with the president's policies – including, for instance, those that favor comprehensive sex education – have been singled out for intimidation and subjected to retaliatory audits.

Later, in May 2003, the administration issued new rules for privatizing the federal workforce that threaten to create a modern-day spoils system and a government run by special interests for special interests.

Turning Away from Contractor Responsibility

Say you are the government. You are considering two contractors, equal in every way except that one has repeatedly violated labor and environmental laws. Common sense says you contract with the law-abiding company. But then, you wouldn't be the Bush administration.

Two days after Christmas 2001, with no one around to object, the administration quietly revoked[1] a rule issued at the end of the Clinton administration[2] that instructed government contracting officers to consider a bidding company's record of compliance with the law – including tax laws, labor laws, employment laws, environmental laws, antitrust laws and consumer protection laws – before awarding taxpayer dollars.

Too frequently, federal contractors do not take these laws seriously, as a number of recent reports have documented.[3] Between 1990 and 2002, the nation's top 43 contractors paid about $3.4 billion in penalties, restitution, settlements, and Superfund cleanup costs, according to the Project on Government Oversight. Sixteen of these contractors were convicted of a total of 28 criminal violations, yet only one was suspended from doing business with the government, and that suspension lasted just five days. The Clinton contractor responsibility rule would have provided a powerful new incentive for these contractors to clean up their act.

Not surprisingly, industry groups, such as the U.S. Chamber of Commerce, strongly urged the Bush administration to repeal the rule, dishonestly arguing that it amounted to "blacklisting" – that companies could be barred from receiving federal contracts with no due process. In fact, each determination under the rule was to be made on a case-by-case basis for the contract in question and would not have constituted "debarment" for all federal contracts; in other words, a company denied one contract on the basis of its legal track record would still have been eligible for another contract. The blacklist existed only in the imagination of industry lobbyists.

As for due process, the rule required contracting officers to coordinate adverse determinations with agency legal counsel, notify bidders if they were found non-responsible, and provide justification for such a determination – which could then be challenged through an appeals process.[4] Contracting officers were further instructed to give the greatest weight to convictions or civil judgments against the prospective contractor in the preceding three years.

In justifying repeal, the Bush administration largely ignored industry's cries of blacklisting, and instead argued in vague terms that it would be impossible to implement and too burdensome on industry. Again, these were not serious arguments – particularly when considered next to the benefits of ensuring that the government does not contract with chronic lawbreakers.

To facilitate implementation, the rule required bidding companies to disclose whether they had been found liable of violating the law within the preceding three years. This minimal disclosure requirement – which was the only "burden" placed on industry – would have made it easy for contracting officers to make the necessary determinations.

In the end, there is just one core question (which the objections of industry and the administration sought to mask): Should we consider a company's compliance with the law in awarding taxpayer dollars? Common sense says yes. Industry lobbyists and their allies in the Bush administration clearly believe the answer is no.

Fair Labor Standards

On Feb. 17, 2001, President Bush signed an executive order[5] abolishing a requirement that construction contractors engage in project labor agreements (PLAs) with their workers. PLAs help to ensure fair treatment of workers and have been shown to save the government money by resolving potentially contentious labor issues in advance. Elimination of the requirement was a top priority for builders seeking to avoid fair labor practices and hold down wages and benefits.

The Equal Opportunity Survey

The Bush administration has failed to implement a tool known as the Equal Opportunity Survey, which is designed to help the Office of Federal Contract Compliance Programs (OFCCP) better target reviews of federal contractors and identify potential violations.

The survey gathers employment information from federal contractors and subcontractors – including information on affirmative action plans as well as compensation practices broken down by sex and race – to help uncover illegal pay disparities.[6]

The OFCCP completed surveys of 50,000 contractors in 2001, but has so far failed to use them to target reviews. The office also waited more than a year before sending out a scaled-down second round of surveys to just 10,000 contractors[7] in late 2002.

Authorization for the Equal Opportunity Survey expired in March 2003, and the OFCCP is seeking a limited extension for just 10,000 surveys a year for two years.[8]

Federal Funding for Religious Organizations

President Bush has moved to provide federal funding to religious institutions for social services – in what's widely known as the "faith-based initiative" – even though he has failed to win Senate backing.

Groups such as Catholic Charities, United Jewish Communities, and Lutheran Social Services have long been involved in federal service delivery. However, these groups are distinct from any house of worship, and subject to the same standards as all other federal grantees. The Bush administration has pushed to remove this wall between church and state and allow federal dollars to go directly to religious congregations, which operate by their own distinct rules.

In July 2001, the House voted largely along party lines to approve the president's plan[9] after Democrats failed to add an amendment (which the administration opposed) that sought to prohibit religious groups from discriminating on the basis of religion when hiring for federally funded positions. The Senate debated similar legislation throughout 2001 and 2002, but never reached agreement, with many, like the House Democrats, concerned over the issue of employment discrimination.

On Dec. 12, 2002, the president took matters into his own hands and issued Executive Order 13279, which instructed federal agencies to alter preexisting policies to allow religious congregations to receive federal funds for non-religious social services. On Sept. 22, 2003, HHS responded by issuing three implementing regulations[10] – covering the Community Service Block Grant (CSBG) program, Temporary Assistance for Needy Families (TANF), and a number of substance abuse programs – and HUD issued another regulation covering eight different programs.[11] Later, in March 2004, the Department of Agriculture also proposed implementing regulations,[12] and HUD proposed to extend coverage to state Community Development Block Grant (CDBG) programs.[13]

The administration has publicly argued that these actions simply "level the playing field" for religious organizations. However, administration officials told the Associated Press that the executive order was "aimed at giving those groups a leg up in the competition for federal money"[14] – and indeed, this is consistent with other administration actions, as detailed below. At one point, for instance, the administration actually moved overtly to set aside grant funds for faith-based organizations, backing down only under threat of litigation.

Disturbingly, the administration's preference seems rooted in the religious character of these organizations rather than their performance, which has never been proven superior to that of secular groups. On the contrary, in October 2003, academic researchers found (in the first ever such comparative study) that secular groups in two Indiana counties were more effective at job training, placing 53 percent of their

clients in full-time employment compared to 31 percent for faith-based groups.[15] Soon after, researchers at Pepperdine University also released a study showing that secular welfare-to-work programs in Los Angeles had outperformed faith-based ones in terms of moving clients off welfare.[16]

Regulatory Implementation

Just days after taking office, President Bush issued executive orders creating the White House Office of Faith-Based and Community Initiatives as well as faith-based offices in the departments of Education, HHS, HUD, Justice, and Labor. Offices within the Department of Agriculture and the U.S. Agency for International Development have also since been established.

With faith-based legislation stalled in the Senate, these offices have looked for ways to implement the president's plan administratively. "We really want the legislation badly," said Jim Towey, director of the White House's faith-based office, "but this office isn't just about federal legislation. This office is going to move forward with the president's agenda."[17] This effort culminated with the December 2002 executive order and subsequent implementing regulations described above, circumventing Congress and raising a host of significant concerns:

- **Federal funding of religious activity.** Under the executive order, a faith-based organization can accept federal funding without altering its structure or giving up its religious mission, provided that such funds are not used for "inherently religious activities, such as worship, religious instruction or proselytization." Nonetheless, partially religious activities could still conceivably be funded or supported. For example, a soup kitchen that says grace before each meal or a shelter that says goodnight prayers could claim the overall service is not inherently religious. The order also explicitly allows such organizations to provide services in areas that display religious icons and art.

- **Subsidizing religious construction projects.** The HUD rule permits federal dollars to be used for constructing and renovating buildings that are used for both worship and federally funded programs so long as funds are not spent on the principal room used for prayer.

- **No assurance of non-religious alternatives.** Two of the HHS rules – those applicable to TANF and substance abuse programs – require that faith-based organizations notify beneficiaries of their right to receive alternative services if they object to the religious provider. In such an event, beneficiaries must receive a prompt referral to a provider of equivalent services – of course, assuming one actually exists.

  The other rules, however, do not contain such a guarantee. Rather, they merely require that "inherently religious activities" conducted by the service provider be held at either a different place or time than federally funded programs. Because of confusion over the definition of "inherently religious activities," beneficiaries could be offered services with significant religious content, but would not have the right to demand an alternative program.

- **Sanctioning employment discrimination.** Under Title VII of the Civil Rights Act, religious congregations can discriminate based on religious affiliation when hiring for positions that involve worship-related skills; for example, a synagogue can hire only Jewish rabbis. While this makes sense, it only applies to privately funded religious positions. The administration's new rules now permit religious organizations to discriminate on the basis of religion when hiring for federally funded positions that are not supposed to involve religious activities. "In any employment decision, there's discrimination," Towey explained. "Universities hire smart people."[18]

- **No requirement to disclose financial information.** Unlike other charitable

organizations, religious groups do not have to publicly disclose their financial information.[19] This will make it almost impossible for the public to determine whether federal funds are being used in an appropriate manner, and not to promote religious activity.

A Preference for Religious Grantees

The administration claims its efforts are about leveling the playing field. However, in January 2002, HHS moved to give explicit preference to faith-based organizations. For instance, HHS's Administration for Children and Families issued a program announcement setting aside $210,000 to promote partnerships between community agencies and faith-based organizations.

HHS eventually backed off after Americans United for Separation of Church and State threatened to sue, objecting that the government is barred from favoring religious groups over secular ones. However, the administration appears to be playing favorites informally.

Many recent grant announcements have contained the disclaimer, "Faith-based organizations are encouraged to apply." In March 2004, Towey boasted, "The results will show that there's been a dramatic increase in funds going to faith-based organizations," touting a $144 million increase from FY 2002 in faith-based grants by HHS and HUD, the "two agencies where there is comparison data available." Likewise, a White House fact sheet claims that funding of faith-based organizations increased 41 percent at HHS and 16 percent at HUD from FY 2002 to FY 2003.[20] "You'll see at HUD now that over half of the money that goes to Section 202, elderly housing, which is a program of about $750 million, with about half of that money going to faith-based organizations," Towey said.

An organization can register as a faith-based entity with the White House, entitling it to technical assistance and information about grant opportunities (secular groups do not have this service). Towey's comments raise concern that such registration can give an organization a leg up in funding, and that the playing field is tilted against secular groups.

In one suspicious case, John F. Downing received a significant influx of funds after he registered his organization (a homeless shelter and substance abuse program for veterans) as a faith-based entity. Downing made this move in 2003 after the Department of Veterans Affairs (VA) declined to renew a $415,000 grant. He also contacted his congressional representatives, whose staff helped with the preparation of grant applications, and testified before Congress about his organization's loss of funds. The next year, he was showered with almost $2 million from the VA and HUD. Both agencies deny that the organization's faith-based status played no role. However, the administration's general preference for religious grantees seems clear.

Misusing the Compassion Capital Fund

The administration also appears to have inappropriately steered money to religious groups through the Compassion Capital Fund,[21] which was created in 2001 at the urging of President Bush to help provide advice and develop "best practices" on the most successful methods of operation for social service charities.

Of the $30 million appropriated to the Compassion Capital Fund in 2002[22] (its first year of existence), the administration awarded $24.8 million to 21 intermediary organizations, which were instructed to redistribute the money to faith-based and community organizations for a multitude of capacity-building purposes[23] – an approach that has been extended in subsequent years.

These intermediary grantees have been given almost no guidance to ensure separation of church and state. On the contrary, in June 2003, the administration issued a grant announcement that instructs intermediary organizations to disregard the religious nature of programs in selecting sub-grantees.[24]

This instruction clearly undermines the president's executive order prohibiting federal funds from supporting inherently religious activities.[25] If intermediary organizations disregard the religious nature of programs, this prohibition cannot be enforced.

It also ignores the wishes of Congress, which specifically sought to avoid direct federal funding of religious groups. During a Senate colloquy over the matter, Sen. Tom Harkin (D-IA), then chairman of the Labor-HHS Appropriations Subcommittee, assured that "this fund is only for the development of model best practices" for "social programs and community initiatives." Likewise, Sen. Arlen Specter (R-PA) said, "It is important to note that this appropriations bill is not changing any of the rules or standards for government funding of religious organizations…"[26]

Moreover, there are inherent problems with the practice of funneling funds through intermediaries. Federal grant rules – such as cost principles that identify unallowable expenses – are supposed to follow the federal dollar wherever it goes.[27] However, sub-grantees are seldom monitored for compliance with these rules and it is "nearly impossible" to track sub-grants to ensure that money is properly spent, according to a report by the Roundtable on Religion and Social Welfare Policy.[28]

This leaves the door wide open for abuse, and the administration has given plenty of reason to worry. For example, during the summer of 2002, the Republican Party in South Carolina sponsored a "seminar on faith-based and community initiatives" attended by about 100 ministers and charity leaders. Jeremy White of the White House's faith-based office was the keynote speaker, and according to The State newspaper in Columbia, S.C., focused on how pastors can "get their part of $30 million in federal money," referring to the Compassion Capital Fund.[29]

A follow-up mailing from Ron Thomas, political director of the South Carolina GOP, provided more details on how to apply for federal funds. Church and State (published by Americans United) noted that the event was geared toward African-American pastors as part of the GOP's "outreach" program.[30]

Similarly, during a Minnesota seminar hosted by HHS, also in the summer of 2002, "The Rev. Floyd Blair, an African American minister and a Bush HHS official, was seen … literally directing African American religious leaders to special sessions for exclusive information. Blair also spoke extensively about the Compassion Capital Fund to attendees, calling the available tax dollars 'faith money,'" according to Church and State.[31]

Muzzling and Intimidating Grantees

While the Bush administration has relaxed oversight of faith-based grantees, it has sought to muzzle and intimidate other grantees with which it has policy disagreements. The following are some of the known examples.

Sex Education

In the summer of 2003, HHS launched an audit of a federal grantee, Advocates for Youth, apparently for the group's opposition to the administration's abstinence-only strategy. The audit was the third such review in a year – even though the previous two audits found no problems[32] – and followed a letter from Rep. Joseph Pitts (R-PA) and 23 other members of Congress complaining about a web site sponsored by Advocates of Youth, NoNewMoney.org, which urges opposition to funding for abstinence-only programs. Federal grantees are permitted to engage in such advocacy provided it is done with private funds.

"Advocates is concerned that it appears that the selective and political use of these audits is to intimidate organizations such as ours that support comprehensive sex education," said Bill Barker of Advocates for Youth. "They want to impose a kind of censorship."[33]

Indeed, this appears to be part of a larger effort to silence criticism of the administration. In 2001, an internal HHS memo identified "critics of the Bush administration,"[34]

which included Advocates of Youth. Audits apparently were then targeted at these critics. In response to a letter from Rep. Henry Waxman (D-CA), HHS indicated on Nov. 27, 2002, that its Office of Inspector General had only performed audits of programs that use comprehensive approaches to sex education, and no audits of abstinence-only programs were being conducted.

Likewise, the Department of Education chose not to audit a grantee that promotes charter schools and vouchers, the Black Alliance for Educational Options, after a board member, state Rep. Dwight Evans (D-Phila.), told the Philadelphia Inquirer that some federal funds would be used to lobby for a bill he was sponsoring on the subject – which would be a violation of federal law.[35]

Head Start

On May 8, 2003, HHS threatened Head Start grantees with sanctions for lobbying, even with private funds, after the president's proposed restructuring of Head Start met stiff resistance.[36] The National Head Start Association responded by suing the agency, and less than two months later, a federal district court forced HHS to back off, at least temporarily.[37]

On Nov. 13, 2003, HHS indicated its intention to survey all 2,700 Head Start grantees in the country on salaries and benefits to identify the top 25 earners among Head Start executives.[38] HHS estimated that it would take each grantee nine hours to complete the survey for a total of 24,300 burden hours nationwide.[39]

HHS asked OMB to approve this survey within 30 days using emergency powers. However, no explanation was given as to why this qualified as an emergency. The real "emergency" appears to be the continued resistance of the Head Start community to the president's proposed restructuring of the program.

AIDS Awareness

On June 13, 2003, the director of the Centers for Disease Control and Prevention, Julie Louise Gerberding, warned Stop AIDS and the city of San Francisco's public health department that continued use of certain promotional materials – which Gerberding claimed encouraged sexual activity – could result in "disallowance or discontinuation of federal funding." This threat was made even though these materials were used for a workshop funded by the city of San Francisco, without any federal dollars. CDC informally told Stop AIDS that the same rules for federally funded activity apply to programs funded with non-federal dollars, but provided no legal justification for this claim.

Gerberding's threat was especially outrageous because Stop AIDS had followed federal rules even though it was not required to do so; the group sought and received approval for the materials in question from a local review board, as called for by CDC guidelines[40] for federally funded activity.

International Family Planning

Soon after taking office, President Bush reinstated what's know as the "global gag rule,"[41] which forbids any international family planning organization that receives federal funds from talking about abortion, counseling women on abortion, providing abortions, or advocating for changes in abortion law, even with private funds. (President Reagan first imposed this gag rule in 1984, and President Clinton repealed it in 1993.)

Bush also backed two amendments during FY 2004 appropriations that carve out special privileges from the $15 billion awarded for international family planning and reproductive health. One requires one-third of the money to be used to promote abstinence. The other permits religious grantees to reject successful AIDS prevention strategies that conflict with their beliefs, such as instruction in condom use.

Privatizing the Federal Workforce

Early in his term, President Bush made privatization of government jobs and services a top priority, identifying

"competitive sourcing" as one of five areas of management weakness.[42]

Competitive sourcing (whereby private bidders compete with public employees for government work) has been employed on a limited basis for years, but the Bush administration has taken a radically aggressive approach, demanding that agencies study at least 425,000 federal jobs for potential privatization. This covers half of all government jobs considered "commercial," from prison guards to border patrol officers to park and forest service employees (see box on next page).

In May 2003, the administration issued the first major revisions in two decades to OMB Circular A-76,[43] which governs public-private competition for federal jobs, raising significant concerns over accountability and possible abuse. Specifically, this change:

- **Opens the door for corruption and politically motivated contracting.** The revisions allow political appointees and managers to decide the winners of public-private competitions based on a subjective "best value" standard rather than cost. This change invites corruption, such as bribes and kickbacks, and threatens to create a modern-day spoils system, whereby the presiding administration can steer contracts to cronies and political supporters[44] – even when federal employees can perform the work for less money.

- **Does not insist that taxpayers receive a superior deal.** Besides removing cost as the determining factor, the revisions also eliminate a previous requirement that a contractor must bid at least 10 percent or $10 million less than the in-house team to win work involving more than 10 jobs. Privatization presents significant accountability issues, and without a superior deal, there is little reason to do it.

  Moreover, taxpayers could actually end up paying more. Private contractors might produce short-term savings, but they frequently lowball long-term cost projections. Over time, the government loses the ability to perform the work and becomes dependent on the contractor, which then has the power to run up costs and pad its bottom line.

- **Strongly tilts in favor of privatization.** First, the new A-76 significantly narrows the definition of "inherently governmental" positions, which are exempt from privatization, and allows OMB officials to easily overrule agency decisions that certain work is too important to be handed over to private contractors. Second, it allows jobs to be automatically privatized if government managers miss deadlines for reviewing jobs for potential privatization. And third, it requires federal workers that win competitions to re-compete every five years, with no such requirement for private contractors.

  Indeed, after work has been turned over to private companies, it will almost certainly stay there. Under the administration's plan, public-private competition is not a two-way street. Rather, the administration has insisted that agencies set arbitrary competitive-sourcing targets for government work, while ignoring the concept for new work or work already privatized.

  The assumption is that the private sector can perform these jobs better than the public sector at less cost; OMB claims that public-private competitions consistently generate cost savings of 10 to 40 percent. However, the supporting evidence that OMB cites consists of just three studies, all conducted by contractors. These studies rely largely on those with a vested interest in the results and report savings without regard to performance.[45]

  This last point is especially important. Many federal workers whose jobs are now up for privatization have held their positions for years. Replacing this expertise and experience with contractors could lead to deterioration in the quality of work performed.

- **Ignores the hidden costs of privatization.** The administration is forcing agencies to

conduct studies to determine whether jobs should be privatized. These studies cost about $3,000 per full time job, according to the director of the National Park Service, and agencies have been forced to cut back other services to pay for them.[46]

Of course, there may be instances when potential savings justify such costs. However, the Bush administration has moved forward as if privatization were an end in itself, rather than carefully considering agency needs and missions. At first, the administration arbitrarily directed federal agencies to open 15 percent of all jobs identified as "commercial" to competitive sourcing by 2003. However, the administration backed off this plan under pressure from Congress, and instead is developing "customized" targets for each agency while maintaining the same ultimate goal: entertaining private bids for all of the 850,000 government jobs identified as "commercial" (labeled as such because they do not necessarily need to be performed by government employees). "All commercial activities performed by government personnel should be subject to the forces of competition," the revised circular states.

This relentless drive to privatization could force agencies to hold competitions when they're not called for or needed, wasting hundreds of thousands of dollars while diverting government personnel – which among other things must determine the parameters of the work to be performed and comb through prospective bids. Potentially making matters worse, the revised circular puts in place new

Privatizing the National Park Service

The National Park Service (NPS) might be forced to cut back visitor services, dismiss dedicated staff scientists and technical experts, and reduce the diversity of its workforce as a result of the Bush administration's aggressive push for privatization of government services.

In December 2002, the Office of Management and Budget directed NPS to examine 1,708 full-time positions by the end of FY 2004. Some months later, NPS Director Fran Mainella announced that 900 jobs were already lined up for immediate privatization with another 1,323 jobs slated for study.[47]

Most of these 2,000-plus jobs, which represent 13 percent of the Park Service's total workforce, are maintenance and administrative positions, but the list also includes hundreds of archeologists, scientists, historians and environmental experts.[48] This is especially alarming because for-profit companies will inevitably be more interested in making a profit than protecting the parks.

"What is at risk is reducing a once proud, highly productive workforce in an agency with immense public respect and admiration, into a run-of-the-mill government bureaucracy," testified Bill Wade, former superintendent of Shenandoah National Park, before the Senate National Parks Subcommittee.[49]

The Reagan, Bush I, and Clinton administrations all conducted studies concluding that the National Park Service was already turning over the appropriate jobs to private contractors, including operation of hotels, gift shops, restaurants, and gas stations.[50] Nonetheless, NPS is being forced to pay for this new round of privatization studies – which run about $3,000 per position studied – out of its already cash-strapped budget; in a memo to officials at the Department of the Interior, Mainella suggested that cutbacks affecting "visitor services and seasonal operations" would be necessary as a result.[51] (NPS already operates with only two-thirds of the funding required to properly maintain parks, according to the National Parks Conservation Association, which believes that an additional $600 million is needed annually.[52])

Mainella also expressed concern that privatization could negatively impact diversity among the NPS workforce, since women and minorities hold a large number of the jobs being studied.

deadlines for competitions, requiring those involving 65 or fewer jobs to be completed in 90 days, while larger competitions must be completed in a year (previously competitions were required to be completed in a "reasonable" time). As the numbers of competitions skyrocket, this could present an overwhelming burden in the absence of significant new resources. Moreover, once contracts are awarded, they must be monitored for performance and compliance.

- **Reduces accountability for government work.** Congress carefully monitors federal employees and their work through the budget and appropriations process. Private companies, however, are subject to far less scrutiny.

  When the government contracts out services, it loses the capacity to directly obtain information about the work being performed. If a private company is performing services for the government, problems with service delivery are more difficult to address than when work is performed in-house.

  In late 2003, Congress moved on a bipartisan basis to block part of the administration's plan and bring some balance to the process through language added to the FY 2004 spending bill covering the Transportation and Treasury departments. Specifically, this language sought to restore the requirement that private bids show savings of at least 10 percent or $10 million, and provide government workers the right to appeal to the General Accounting Office if they lose their jobs to private contractors. However, President Bush responded with a veto threat, blocking the bill from moving forward, and eventually House and Senate negotiators removed the offending language.

  Likewise, the president used a veto threat to block a provision on the Senate version of the Commerce-Justice-State appropriations bill that would have prohibited competitive sourcing at DOJ's Office of Justice Programs, a 700-person office that distributes and monitors billions of dollars in grants to state and local governments.[53]

Secret Contracts for Iraq

Before bombs even began falling on Baghdad, the Bush administration awarded a secret, no-bid contract to repair and operate Iraq's oil infrastructure – worth up to $7 billion – to Kellog Brown & Root (KBR), a subsidiary of Halliburton, the world's largest oil services and construction company.

Typically, when the government awards such a contract, particularly one of this size, it releases a project description on which anyone can bid. Prospective contractors are then evaluated based on their quality, reliability, and price.

The fact that this process was not adhered to – that KBR was handpicked by a special administration task force – has led to concerns that favoritism played a role. Vice President Cheney, after all, led Halliburton prior to the 2000 election and collected more than $33 million in stock following his departure.[54] In fact, Cheney continues to receive deferred compensation from the company worth more than $160,000 a year,[55] and retains stock options of more than $18 million.[56] The White House quickly denied charges that the vice president was involved, yet suspicion grew as the administration refused to release even basic information about the deal with KBR, and later defended the company – and awarded more taxpayer dollars – after massive overcharging was uncovered.

Details Withheld

The contract, issued by the U.S. Army Corps of Engineers, was shrouded in secrecy from the beginning – it was signed March 8, 2003, but wasn't publicly announced until weeks later, on March 24.[57] Even then, the Corps released only a vague description of the work to be performed. The Corps did not reveal the potential value of the contract until April 8, a disclosure that came only in response to questions from Rep. Henry

Waxman (D-CA). (As of November 2003, the Corps had awarded KBR task orders worth $1.59 billion under the contract.[58])

As interest in the contract grew, the administration continued to stonewall and in certain instances provided misleading information. This was possible because the KBR contract and the documents justifying and approving the Corps' decision to forego competitive bidding are classified and unavailable for public review.

Initial reports from the Bush administration, as well as Halliburton, indicated that the deal involved only short-term emergency work – putting out oil well fires and repairing damage. In May, however, the Corps acknowledged that the deal carried a two-year term, and included "operation of facilities" and "distribution of products," allowing KBR to profit from producing and distributing Iraqi oil.[59]

Shortly thereafter, the administration declared that the KBR deal would be cut short and replaced with a contract awarded through competitive bidding, likely at the end of August, according to an administration official.[60] In June, however, Gary Loew, planning director of the Corps' project, cast doubt on this assurance, stating, "There may not be time to actually award a second contract."[61] Sure enough, in late October, the administration announced that KBR would retain its no-bid contract longer than expected,[62] citing sabotage of oil facilities and a need to rethink the scope of the work.

Without competitive bidding, U.S. taxpayers cannot be assured that they are getting the best plan at the best price. In this case, the administration claimed that it had little choice – that quick action was required and that KBR was in the best position to deliver.

During the Gulf War, acts of sabotage by Iraqi troops damaged more than 700 oil wells. In November 2002, as war with Iraq loomed, the Pentagon began planning for a similar scenario.[63] Under a preexisting contract, the U.S. Army Material Command directed Brown & Root Services, a division of KBR, to develop contingency plans for repairing and continuing operations of the Iraqi oil infrastructure. This contract, the Logistics Civil Augmentation Program (LOGCAP), which was awarded competitively in December 2001, allows the company to provide a wide range of logistical services to the Army.

The Corps claims it did not learn until February 2003 – less than two months before the start of the war – that it was responsible for executing the plan to repair and operate Iraq's oil infrastructure. "When the Corps considered ways to accomplish this mission," Lieutenant Army General Robert Flowers explained, "there was only one practical alternative: use KBR who was already mobilized in the region and was fully knowledgeable of the mission."[64]

As war rapidly approached, a task such as putting out oil-well fires may have been urgent enough to justify the circumvention of standard procedures. It is not clear, however, why long-range tasks, such as the distribution of Iraqi oil, were included in the KBR contract and not opened for competition.

An Open-Ended Contract

On top of the March contract, KBR has also earned billions under the earlier LOGCAP contract for Iraq "task orders" that are not subject to competitive bidding. For instance, this LOGCAP work has included the repair of a presidential palace being used by Americans,[65] as well as assistance to the Pentagon's Office of Reconstruction and Humanitarian Assistance (ORHA).[66] When asked specifically what is covered by KBR's assignment to assist ORHA, an official with the reconstruction agency replied, "I guess the real question is, what doesn't it cover?"[67]

At least three of the task orders given to KBR were each worth $60 million or more, yet they were treated merely as small duties to be carried out under the LOGCAP. "One of the unique features of the LOGCAP contract is that it apparently allowed Halliburton to profit from virtually every phase of the war with Iraq," noted Waxman in a letter to the acting secretary of the Army.[68] All told, KBR has

received about $4 billion in task orders under the LOGCAP for Iraq work.

Accountability Issues

The LOGCAP contract was awarded to KBR on a "cost-plus" basis, meaning that the contractor receives payment for its expenditures as well as an additional percentage of those costs. Such awards are susceptible to abuse because they give companies an incentive to pad their profits by increasing costs. The fact that the administration decided to award work to KBR in this way was particularly alarming given the company's track record (see box).

Not surprisingly, there is mounting evidence that KBR is exploiting its cost-plus arrangement. In October 2003, Waxman and Rep. John Dingell (D-MI) discovered that KBR was "inflating gas prices at a great cost to American taxpayers," charging the government $2.65 a gallon for over 60 million gallons of gasoline imported from Kuwait into Iraq.

Experts report that the cost of buying and transporting gas into Iraq should cost less than $1.00 per gallon.[69] The Iraqi oil company, the State Oil Marketing Organization (SOMO), for example, pays only 97 cents per gallon to import gas from Kuwait,[70] and gasoline imported from Kuwait is sold inside Iraq for as little as four to 15 cents a gallon.[71]

Amazingly, the Corps has continued to publicly defend KBR from charges of overbilling; one spokesman said the company is getting "the best price possible" for the fuel.[72] Nonetheless, the Corps subsequently announced that it would transfer the job to the Pentagon's Defense Energy Support Center, which has said it can import gasoline into Iraq for less than half the price.[73]

In the months since, two new Halliburton scandals have emerged. In January 2004, the company acknowledged that two employees had taken kickbacks involving a Kuwaiti subcontractor, leading to overcharges of $6.3 million. (The employees were dismissed and the money returned, according to Halliburton.) Nonetheless, a day later, the company received a brand new $1.2 billion contract to rebuild southern Iraq's oil industry.[77] Then, the following month, the Wall Street Journal revealed that the company had overcharged the government for feeding troops at a Kuwaiti military base by $16 million in one month alone.

This problem is not an isolated incident for Halliburton, but rather "it is systemic," according to the Defense Contract Audit Agency. Halliburton whistleblowers told Waxman that the company's motto was, "Don't worry. It's cost-plus."[78]

The Halliburton/KBR Record

- In a 1997 report, the General Accounting Office revealed that Brown & Root Services – performing work under an earlier LOGCAP contract in the Balkans – charged the Army $85.98 per sheet of plywood. The actual price tag was $14 per sheet.[74]
- In performing work in Kosovo, Brown & Root Services overcharged taxpayers by overstaffing projects and providing more goods and services than necessary, according to a 2000 GAO report. For example, it provided nearly twice the electricity necessary for the Army's facilities and cleaned offices four times a day.[75]
- A former employee charges that Brown & Root defrauded the government out of millions by inflating prices for repairs and maintenance at the former Fort Ord, Calif., military installation.[76] The Justice Department and the Department of Defense reportedly initiated an investigation of the matter.

More Secret Deals

The Bush administration followed a familiar pattern in awarding contracts to repair Iraq's crumbling infrastructure (including water systems, power plants, roads and bridges, and schools and hospitals). In particular, this included a $680 million contract won by the engineering-construction firm Bechtel Corp. – a company that shelled out

more than $770,000 to Republicans between 1999 and 2002.[79]

This contract, the largest of the post-Iraq awards, was the product of a closed process in which the administration secretly invited a number of politically well-connected companies to submit bids. These lucky invitees – Bechtel, Fluor Corp., KBR, Louis Berger Group Inc., Parsons Corp., and Washington Group International Inc. – contributed a combined $3.6 million in individual, PAC, and soft money donations between 1999 and 2002, 66 percent of which went to Republicans.[80] Of these companies, Bechtel – the ultimate winner – contributed the largest amount of money to Republicans. Bechtel also claims George Schultz, former secretary of State under the first Bush administration, as a board member.

Scandal-ridden telecommunications firm MCI, formerly known as WorldCom, has also profited from the administration's backroom deals – receiving a $45 million no-bid contract to construct a small wireless network in Iraq, even though it has limited experience doing this sort of work.

Telecom competitors cried foul when they learned of the contract, objecting not only to the secretive nature of the deal, but also to the government's indifference to WorldCom's disgraceful record. In 2003, WorldCom agreed to pay a $500 million fine to the Securities and Exchange Commission for overstating its cash flow by nearly $4 billion between 2000 and 2002. This accounting scandal sent the company's stock plummeting and led WorldCom to file for bankruptcy in 2002.[81]

In July 2003, the General Services Administration temporarily banned MCI/WorldCom from receiving new and renewed contracts after determining that the company "lacks the necessary controls and business ethics."[82] Nonetheless, the administration has continued to show preference to MCI/WorldCom, which contributed nearly $2.5 million to Republicans from 1997 to 2002.[83] During the first three months of this contracting ban, federal agencies awarded the company

Questions Over Port Security Grant

In June 2003, the Department of Homeland Security awarded a giant $13.5 million port-security grant to Citgo Petroleum Corp. for its refinery at Lake Charles, La.,[84] outweighing nine grants for Los Angeles, the busiest container port in the country, as well as the 17 grants won by other businesses and port authorities in Louisiana.[85]

"I could contract a private security company to provide round-the-clock surveillance for the entire waterway for two years on that size of a grant," said Jim Robinson, director of navigation and security for the state-run Port of Lake Charles. "But I doubt that's what they're going to spend it on."

Out of 1,112 applicants for $245 million in port security funds, only one in five landed grants, and most of these awards were worth less than $1 million.[86] Homeland Security would not disclose its reasons for awarding Citgo such a disproportionate amount,[87] nor would Citgo say what it intended to do with the money.

"That was a part of the application, that the information we provided in that application would remain confidential, so we're abiding by that," said Kent Young, a spokesman at Citgo's Tulsa, Okla., headquarters. "It's a part of the application process and it's stated in the application"[88] Young also noted that the information has been declared off-limits under the Freedom of Information Act.[89]

Citgo, a subsidiary of the national oil company of Venezuela, was also given smaller grants for work at plants in Georgia and Texas, receiving a total of $15.7 million, far more than any other company.[90] Sunoco Inc. was second, with $5.1 million in grants for facilities in Philadelphia and the Houston area.[91]

Without additional information, there can be little assurance that port-security funds are being well spent. The administration and its awardees are operating in the absence of public accountability.

more than $100 million using a little-known waiver process to extend existing contracts.[92]

"I'm angry about this," responded Rep. John Sweeney (R-NY). "There is a codependence there. WorldCom is very adept at playing the old inside-the-Beltway game. They've got friends in high places."[93]

Of course, other Iraq contractors also play this inside game. The Hatch Act forbids most government employees from giving to political campaigns. However, government contractors are under no such constraints. The roughly 70 contractors working in Iraq gave more money to President Bush than any other candidate in the last 12 years, with Halliburton donating $17,677 to the 2000 campaign.[94] In the three months after Saddam Hussein's ouster, Halliburton, Bechtel, and DynCorp International (which received a $50 million contract for civilian law enforcement) together gave $82,600 in contributions to congressional candidates, nearly four times the amount of the previous three months.

Unanswered Questions

The public cannot be assured that KBR, Bechtel, and MCI/WorldCom represent the best options in the absence of open competitive bidding. As a result, questions linger over whether favoritism played a role.

In the case of KBR, why did the administration decide to forgo competitive bidding even for long-term work? Why has so much work been routed through KBR's open-ended LOGCAP contract, which includes incentives to run up costs? Why was the contract for infrastructure repairs closed to just five handpicked companies (all generous contributors to the Republican Party)? Why was MCI/WorldCom awarded a no-bid contract given its suspect qualifications and even more suspect ethical transgressions?

These questions can only be answered if the administration lifts the veil of secrecy and fully explains the contracts. Unfortunately, this seems unlikely considering the track record.

Sweetheart Deal for Boeing

In 2003, Boeing Co. landed a deal worth about $17 billion to lease planes to the U.S. Air Force despite studies that showed the planes weren't needed and that the contract was highly overpriced.[95] OMB had initially opposed the deal, but relented after White House Chief of Staff Andrew Card intervened on the president's behalf. Later it was revealed that Boeing might have improperly influenced the contract through a job offer to an Air Force acquisitions official, and the administration, following a congressional outcry, decided to delay execution pending an investigation.

The deal emerged in February 2001 when Boeing submitted an unsolicited bid that proposed converting 36 Boeing 767s to aerial refueling tankers at $124.5 million per plane.[96] However, the Air Force could not afford to buy the tankers, so in September 2001, Boeing executives met with a senior Air Force acquisitions official, Darleen Druyun, and instead worked out a 10-year lease deal for 100 planes. Druyun agreed to promote the leasing idea on Capitol Hill, and free up money by curtailing a program used to modernize existing tankers – an arrangement Boeing and the Air Force acknowledged would "retire flightworthy tankers early to procure new ones."[97] Boeing subsequently hired Druyun as its deputy general manager for missile defense systems, which ultimately raised questions of impropriety.

The Air Force pursued the leasing plan even though there appeared to be no need for it. In fact, in 2001, the Air Force itself determined that existing tankers would be usable through 2040 and that no new purchases would be needed until after 2010. (The Air Force also did not include tankers on its FY 2002 "unfunded priorities" list, which details weapons that the Air Force needs but cannot afford,[98] and made no mention of a need for tankers in hearings held by Senate authorization and appropriations committees.[99]) Likewise, the General

Sweetheart Deal for Boeing *continued*

Accounting Office concluded in May 2002 that with relatively inexpensive upgrades, the Air Force would not need to begin replacing the current fleet of 545 KC-135 tankers until 2040.[100] Under the lease arrangement, however, tankers would be made available beginning in FY 2005.[101]

The Air Force never conducted a formal study of alternatives to this deal, as is normally done, nor did it hold a formal competition before handing the contract to Boeing,[102] which was overcharging by at least $21 million per plane, according to the Institute for Defense Analyses, an independent think tank.[103] The Congressional Budget Office also found that the leasing plan would cost $5.7 billion more than an outright purchase of the tankers.[104]

At first, Mitch Daniels, then director of the Office of Management and the Budget, called the deal "irresponsible," and in a series of letters to members of Congress, pointed out that it violated federal leasing standards,[105] OMB rejected the plan in October 2002, telling the Air Force that it "was not urgent and would squander billions of dollars."[106]

Shortly thereafter, however, Card intervened at the direction of President Bush and asked OMB and the Air Force to "resolve their differences."[107] OMB subsequently muted its objections, possibly because the White House saw the deal as a way to bail out an ailing Boeing, which donated $100,000 to the president's inaugural fund.[108] Boeing had seen orders for 767s plummet following the 9/11 terrorist attacks.

In the fall of 2003, the plan stalled in the Senate Armed Services Committee, where members raised concerns about the costly arrangement. Eventually, the committee put forth a compromise under which the Air Force would lease 20 tankers and purchase 80, reducing the original $21 billion price tag by $4 billion.[109] This deal was included in the FY 2004 Defense spending bill, which was signed by President Bush on Nov. 24, 2003.

The very same day, Boeing announced that it had fired Executive Vice President Mike Sears and former Air Force employee Druyun for violating company ethics policies. Apparently, the two had discussed potential employment opportunities for Druyun while she was still employed by the Pentagon and was in a position to influence the Boeing contract.[110] The company also found that the two attempted to conceal their communications.[111] Shortly thereafter, Boeing's chairman and chief executive officer, Philip Condit, resigned.

In response to the scandal, Sens. John McCain (R-AZ) and Peter Fitzgerald (R-IL) sent a letter urging the Pentagon to reassess the multi-billion dollar deal. Subsequently, Deputy Secretary of Defense Paul Wolfowitz announced that the Pentagon would indefinitely delay execution while Pentagon Inspector General Joseph Schmitz assesses "any negative impact that improper conduct by Mr. Sears and Ms. Druyun may have had on the negotiation of the contracts that the Air Force proposes to execute."[112]

Sen. McCain, however, remained uneasy and followed up with a letter to Wolfowitz expressing his worry that the administration was still moving forward.[113]

"I was concerned about the fact that, as recently as Wednesday, November 26, 2003, Air Force Acquisitions Chief Dr. Marv Sambur was prepared to have the contract signed immediately – without any further review," McCain wrote.[114]

McCain also repeated a longstanding request for DOD documents related to the leasing deal.[115] Not surprisingly, the administration was stonewalling.