The Road to Baghdad is Through Washington

Contracts Awarded by the Agency for International Development (AID):

- $34.6 million to Bechtel for Capital Construction
- $10 million to Abt Associates Ltd. For Public Health
- $7.9 Million to Research Triangle Institute for Local Governance
- $7.1 Million to International Resources Group for Personnel Support
- $4.8 million to Stevedoring Services of America for Seaport Administration
- $4 million to the Air Force Contract Augmentation Program for Theater Logistical Support
- $1 million to Creative Associates International, Inc. for Primary and Secondary Education

Private-Sector Opportunities in Iraq

Dorsey has learned that long-time, leading Kuwaiti businesses representing U.S. and European enterprises in the Arabian Gulf are reactivating their Iraqi partnerships. In addition, the largest shipping service company in the Gulf is re-opening in Um Qasar and Basra. With headquarters in Kuwait, the company develops real estate and services agencies for oil field supplies, pipe-fittings, hospital supplies, scientific instruments, electrical appliances, office furniture and building supplies, commercial laundry equipment, and kitchen and catering equipment. Senior managers of this shipping service company are available to meet with interested parties in the U.S. or Kuwait.

Embargo: Still a Barrier for U.S. Business?

The short answer is, “Yes” for now. The U.S. embargo is expected to be lifted shortly, which the President can now do without Congressional action. However, the Administration is hoping that the U.N. lifts its embargo first.

Consequently, firms interested in Iraq business should prepare now. Moreover, organizations can do business in Iraq under U.S. federal contracts, license authority from the Office of Foreign Asset Control (OFAC), and the U.N.’s “Oil for Food” program.

Regarding the U.S. embargo, the sanctions are still in place on virtually all commercial transactions with Iraq, but these sanctions do not apply to direct sales to U.S. agencies, such as the Armed Forces or AID. If a company wishes to do business in Iraq outside of federal contracts, the organization must submit an application to OFAC for license authority to do so.

As to the U.N. embargo, organizations presently can do business under the “Oil for Food” program. Moreover, the Bush administration plans to introduce a U.N. Security Council Resolution to free Iraq from U.N. sanctions imposed more than a decade ago. Current versions of the draft resolution provide for the Iraqi oil industry to shift the management of its profits from the United Nations to an Iraqi Central Bank fund to be spent on reconstruction activities designated by the Pentagon-run Office of Reconstruction and Humanitarian Assistance. Distributions from the fund would be monitored by an international
Interview with Former Under-Secretary of Commerce, David Aaron, Senior International Advisor at Dorsey & Whitney

Q. Ambassador, What can businesses do to get involved in the rebuilding of Iraq?
A. At this point almost all activity is being conducted through U.S. government contracts. The majority of contracts awarded by the AID have been to specific contractors via a “closed” procurement process. However, there are many opportunities still available through follow-up contracts and subcontract opportunities.

Businesses should inform AID in Washington and prime contractors that the organization is ready, willing, and able to provide services necessary to the rebuilding effort.

Q. Aside from government reconstruction contracts, what other business opportunities are available?
A. Once the U.N. and U.S. embargoes are lifted there will be numerous private contracting opportunities.

Q. What public sources of financing will be available for projects in Iraq?
A. Once the embargoes are lifted all the principal sources of U.S. Government financing and guarantees will be available: OPIC, EXIM, TDA. The World Bank is also preparing a specific program of development assistance both for major public projects in Iraq and for the private sector through IFC.

Report on Europe from London: IRAQ Trade Clash

Companies based in the United Kingdom are reportedly “upset” due to the apparent exclusion of these companies from bidding on initial AID contracts. They argue that under World Trade Organization (WTO) rules, procurement contracts are supposed to be open to all bidders, domestic and foreign. Notwithstanding the initial round of contracts, British companies may still have an advantage because the Bush Administration will favor contractors from coalition countries, such as Britain.

In fact, U.S. Congressman Mark Kennedy (R-MN) tacked on a proviso to the U.S. war budget that bars U.S. money being spent through companies incorporated in France, Germany, or Syria. Consequently, the European Commission has announced that it would “scrutinize” the way the United States awards reconstruction deals in Iraq in order to determine whether the process falls short of WTO rules on non-discriminatory government procurement.

Dorsey’s Iraq Practice Group

With the quick victory of U.S. and coalition forces, efforts in Iraq are now directed to three overlapping stages: (1) relief; (2) reconstruction; and (3) development. The initial source of public funding is in Washington D.C.

To provide guidance to clients at each of these stages, Dorsey has marshaled an interdisciplinary team. That team includes the following Dorsey practice areas: Agri-Business; Energy; Telecommunications; Construction; Dispute Resolution and Arbitration; Environmental; Government Procurement; Government Relations; Legal Assistance to Iraqi Authorities (Law & Regulations); Public Finance/Project Finance; Health Programs and Medical Devices.

Warning: Don’t Forget About the Foreign Corrupt Practices Act

Once the embargo is lifted, American companies and their affiliates must comply with the Foreign Corrupt Practices Act (FCPA) which prohibits direct or indirect payments or bribes of
foreign officials for the purpose of having or keeping business. Enforcement over the antibribery provisions are the responsibility of the Department of Justice (criminal) and the SEC (civil).

In addition, the FCPA requires all publicly-traded companies to keep records that are detailed enough to allow someone reviewing the records to determine whether a violation has occurred. There are numerous other provisions of the FCPA, and it is vital for U.S. businesses intending to do business in Iraq to fully understand its provisions.

Need More Information from Dorsey?

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