

MEMORANDUM

May 9, 2003

TO: Confederation of Indian Industries
FROM: Steptoe & Johnson LLP
RE: Subcontracting Opportunities for Indian Companies in Iraq Reconstruction

I. Overview

As you are aware, the U.S. government has indicated that there will be opportunities for foreign companies as subcontractors on Iraq reconstruction projects. It is clear that the major prime contracts for Iraq-related procurement opportunities utilizing U.S. government funding will be designated by U.S. contracting agencies as available only to U.S. prime contractors. However, as was the case with Afghanistan reconstruction, opportunities will be open to foreign companies as subcontractors. The essence of any strategy by CII members will be alliances with major U.S. prime contractors at the subcontract level.

We understand that some Indian companies have been concerned that they will not be eligible to participate even as subcontractors because of the absence of Indian government support for the U.S. war against Saddam Hussein and his regime. The U.S. government will not institute any formal limitations on the participation of Indian companies in post-war reconstruction projects in Iraq. However, U.S. procurement agencies must approve the prime contractor's choice of subcontractor. While companies from countries more supportive of the U.S. during the war may be in a relatively favorable position, there may be important opportunities for Indian companies to benefit as subcontractors. This is particularly true given Indian companies' capabilities and experience in Iraq and the broader bilateral strategic relationship between the U.S. and India. There have been long associations between many Iraqi companies and Indian businesses, which understand the Iraqi business environment and infrastructure requirements. In addition, Indian companies may be attractive to certain U.S. prime contractors because of their geographic and cost advantages over U.S. subcontractors.

II. U.S. Funding Process and Sources

At this juncture, there are two primary sources of U.S. government funding for Iraq reconstruction: USAID and the Army Corps of Engineers. The dividing line between their spheres of activity will be somewhat fluid.

The Army Corps of Engineers will support infrastructure reconstruction that has a close link to security, including oil field clean-up and restoration. The Corps has issued the highly publicized Halliburton/KBR contract for oil fire suppression and restoration of production, plus three “contingency” contracts to Perini, Fluor, and Washington Group. These will be umbrella contracts which the Corps can use to order whatever reconstruction it needs. In addition, the Corps has publicly stated that it intends to issue additional contracts for repairing and operating oil fields rather than giving all of that work to Halliburton/KBR, and the competition for those contracts will not be limited to U.S. companies. In addition, there will be very substantial subcontracting opportunities. We expect the Corps to have significant input into who gets subcontracts for what work, although the prime contractors will also have a big role in those decisions.

USAID is the other major source and will likely have funds for a greater variety of opportunities. USAID funding will run in the billions of dollars with monies to be appropriated over multiple years. To date, USAID has publicly issued eight major solicitations for contract proposals. A number of these are in the economic development and good governance fields, and may not be of interest to CII members. These include the following: public health; primary and secondary education; local governance; and personnel support.

Four USAID solicitations appear potentially within the purview of CII members:

- Capital construction: including power generation facilities, electrical grids, roads and bridges, public buildings, water and irrigation systems, seaports etc.;
- Seaport administration;
- Airport administration; and
- Theater logistics support: including warehousing, customs clearance, trucking and provision of water.

For these projects, USAID has issued solicitation documents to selected potential U.S. prime contractors. Prime contracts have been awarded for all four of the above solicitations. Bechtel has been awarded the capital construction contract, with an initial estimated value up to \$680 million. Bechtel is thus the likely primary target for subcontract opportunities for CII members. Bechtel has publicly stated that it intends to use an open and competitive process for selecting subcontractors.

In addition, USAID has announced a \$4.8 million contract award to Stevedoring Services of America for assessment and management activities in the Umm Qasr port in Iraq, a \$2.5 million award to SkyLink Air and Logistic Support (USA) to provide technical expertise to assess and manage airports in Iraq, and a \$4 million award via the Air Force Contract Augmentation Program (“AFCAP”) for theatre logistics support in Iraq. AFCAP is a pre-existing blanket contractual arrangement entered into between the U.S. Air Force and a team of contractors -- including Fluor and ManTech -- which operates under the umbrella of Readiness Management Support L.C.

It is important to realize, however, that the continuing impact of United Nations sanctions upon the post-war reconstruction process may pose certain complications before contracts can be operationalized. We believe that the U.N. regime will likely be in place until June 3 of this year, although some effort may be made to temporarily and partially ‘suspend’ the sanctions. It remains to be seen precisely how the sanctions will be diluted or removed, and what implications such action has for Indian and other companies interested in reconstruction contracts.

III. Strategies to Enhance Subcontracting Opportunities

A business development strategy related to these projects might include the following steps:

- Identification of the U.S. prime contractors selected or those U.S. companies approached by the U.S. to respond to its solicitations. (This is the target group of U.S. companies with which CII companies should seek to ally themselves.) It appears that Bechtel, Halliburton, Perini, Fluor, and Washington Group are likely to be the prime contractors of interest to CII members, and they should begin immediately to assess their business relationships with those companies for purposes of making an early approach.
- Development of information on specific contract opportunities within the prime contract. The solicitation itself is insufficient; identification of subcontract opportunities is likely to be obtained most easily from the prime contractors, and to some extent, U.S. government sources. Undoubtedly, there also will be substantial sub-subcontracts. There will be substantial British participation at the subcontract level, and CII members may wish to consider working with British subcontractors as well.
- Preparation and submission to prime contractors of proposals for participation by interested CII members.

- Advocacy of CII companies' interest directly with the U.S. prime contractor. Consideration should also be given as to whether it may be helpful to involve on CII members' behalf the Government of India, including the Embassy in Washington, DC.
- Structuring of procurement transactions according to business requirements consistent with U.S. federal and agency-unique procurement regulations. CII members should examine their internal organizations early, such as in the cost accounting and material control areas, to take steps to ensure that they can comply with the U.S. procurement requirements and any applicable U.N. regulations. Prime contractors will likely prefer to deal with subcontractors who have competent legal advice on U.S. procurement requirements and who will not cause administrative problems or attract unfavorable attention from auditors and investigators. It is also important to understand significant terms and conditions -- such as indemnification and convenience termination -- so that an informed decision can be made about how to price the subcontract.
- To the extent that U.S.-origin items (including technical information) are involved in any subcontract, companies need to be sure they are in compliance with U.S. export control laws. In fact, U.S. prime contractors often impose on their subcontractors the responsibilities for compliance with all U.S. laws applicable to the subcontractors' performance.

Finally, we understand that the Commerce Department may be contemplating the establishment of a coordinating center to disseminate information relating to the availability of reconstruction contracts for U.S. and foreign companies. This could be a valuable source of information should this initiative become operational.

Ambassador Susan Esserman
sesserman@steptoe.com
(202) 429-6753

Peter Wellington
pwellington@steptoe.com
(202) 429-8115

Olin Wethington
owethington@steptoe.com
(202) 429-6207