

COALITION PROVISIONAL AUTHORITY MEMORANDUM NUMBER 4

**CONTRACT AND GRANT PROCEDURES
APPLICABLE TO VESTED AND SEIZED IRAQI PROPERTY AND THE
DEVELOPMENT FUND FOR IRAQ**

**IMPLEMENTATION OF REGULATION NUMBER 3, PROGRAM REVIEW
BOARD (CPA/REG/18 June 2003/03)**

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA) and the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolution 1483 (2003),

Underscoring that the Development Fund for Iraq (DFI) shall be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq, and that the Program Review Board as authorized by CPA Regulation Number 3 (18 June 2003) is responsible for recommending expenditures of resources from the DFI.

Noting that Resolution 1483 (2003) states that independent public accountants approved by and reporting to the International Advisory and Monetary Board (IAMB) shall audit the DFI to ensure that the DFI is used exclusively for the purposes stated in Resolution 1483 (2003),

Reaffirming that the CPA is committed to ensuring that all state- or regime-owned cash, funds or realizable securities that have been seized by Coalition Forces in Iraq consistent with the laws and usages of war, shall be used only to assist the Iraqi people and support the reconstruction of Iraq,

Implementing CPA Regulation Number 3, Program Review Board (CPA/REG/18 June 2003/03),

I hereby promulgate the following:

**Section 1
Purpose**

This memorandum establishes procedures applicable to the execution of contracts and grants for the benefit of the Iraqi people using Iraqi Funds, as defined herein. As steward

for the Iraqi people, the CPA will manage and spend Iraqi Funds, which belong to the Iraqi people, for their benefit. Although Iraqi Funds are not subject to the same laws and regulations that apply to funds provided to the CPA directly from Coalition governments, they shall be managed in a transparent manner that fully comports with the CPA's obligations under international law, including Resolution 1483.

Section 2

Applicability

This Memorandum applies to contracts and grants executed by or on behalf of the CPA., when those instruments obligate and expend Iraqi Funds. It covers contracts and grants executed by:

- 1) CPA Regional Directors carrying out the Regional Directors' Emergency Response Program;
- 2) CPA Regional Directors carrying out the Construction Initiative for Iraq Program;
- 3) Interim Ministry Officials, working in conjunction with Senior Ministry Advisors, when carrying out requirements that are not funded through the national Ministry budget process;
- 4) CPA's Head of Contracting Activity, or designee(s), and
- 5) Others delegated such authority by the Administrator.

This Memorandum does not apply to:

- 1) Iraqi Ministries and governmental agencies executing contracts or grants to fulfill requirements approved through the national budget process if the Administrator, or his designee, determines that the contracting procedure of the Ministry or agency is adequate to ensure the transparent use and management of Iraqi funds. However, if the contracting procedures of the particular Ministry or agency are not determined to be adequate, this Memorandum shall apply, and
- 2) Coalition Forces commanders carrying out the Commanders' Emergency Response Program. The Commanders' Emergency Response Program will use the procedures contained in FRAGO 89 (Appendix E) or any subsequent amended guidance to FRAGO 89.

Section 3

Definitions

- 1) **“Competitive Range”**: A group of proposals that are eligible for award of a particular contract or grant, as determined by a Contracting Officer on the basis of cost and other factors stated in the solicitation.
- 2) **“Contract”**: A written agreement whereby the CPA or Coalition Forces acquire goods, services or construction from a person or entity under prescribed terms and conditions, for the purpose of assisting the Iraqi people or assisting in the recovery of Iraq.
- 3) **“Contract Award Committee”**: As used in this Memorandum, a group of three or more officials selected by the Contracting Officer appointing authority responsible for reviewing preliminary award decisions of Large Purchases for compliance with this Memorandum and sound business judgment. The Contract Award Committee need not convene as a group; however, except as provided in Section 7 below, a majority of the members must concur in the award decision prior to award.
- 4) **“Contracting Officer”**: As used in this Memorandum, an individual who has been authorized by the Administrator, CPA, in accordance with Section 4 below, to enter into Contracts or Grants using Iraqi Funds.
- 5) **“Grant”**: A written instrument that transfers Iraqi Funds from the CPA or Coalition Forces to a recipient grantee, in order to carry out a program or project that directly benefits the Iraqi people or assists in the recovery of Iraq.
- 6) **“Invitation for Bids”**: An invitation to prospective contractors to submit proposals to meet CPA requirements. An invitation for bids describes a requirement for a prospective contract by explaining the nature of the opportunity, including the goods or services to be provided, required performance, the time for performance, requirements to demonstrate the responsibility of the potential source, unique requirements, the closing date for bids, and other information necessary for a potential source to submit a bid. With an IFB, the award is determined solely on the basis of price or price-related factors.
- 7) **“Iraqi-based”**: A company (including a subsidiary company) whose principal place of business is located within Iraq.
- 8) **“Iraqi Funds”**: Funds under the control of the Authority consisting of (a) proceeds from Iraqi state-owned property that has been vested or seized in accordance with applicable law and made available to the CPA to assist the Iraqi people and assist in the reconstruction of Iraq; and (b) funds in the Development Fund for Iraq, the establishment of which is noted in Resolution 1483 (2003). As used in this Memorandum, “Iraqi Funds” do not include funds provided through the appropriations process of Coalition member governments (for example, funds

provided directly to the CPA by the governments of the United States or the United Kingdom).

- 9) "Large Purchase": A contract with a value of greater than US\$500,000.
- 10) "Micropurchase": A contract with a value of US\$5,000 or less.
- 11) "Request for Proposal": An invitation to prospective contractors or grant recipients to submit proposals to meet CPA requirements. A request for proposal usually includes a description of a requirement for a prospective Contract or Grant that explains the nature of the opportunity including the goods or services to be provided, required performance, the time for performance, the evaluation criteria for Contract award, requirements to demonstrate the responsibility of the potential source, unique requirements, the closing date for proposals, and other information necessary for a potential source to submit a proposal.
- 12) "Small Purchase": A contract with a value greater than US\$5000 and less than or equal to US\$500,000.
- 13) "Solicitation": A request to submit offers or quotations to fulfill a requirement for goods or services that can be met through a Contract. "Request for Proposal" and "Invitation for Bids" are types of solicitation.

Section 4

Appointment of Contracting Officers

- 1) General. For the purpose of carrying out programs to assist the Iraqi people and assist in the recovery of Iraq using Iraqi Funds, the officials identified in paragraph 2 may appoint Contracting Officers who may enter into Contracts or Grants on behalf of the CPA. Unless otherwise terminated by the Administrator, this delegation shall remain in effect until the establishment of an internationally recognized, representative government by the people of Iraq.
- 2) The following officials are authorized to appoint Contracting Officers within their directorates, commands or organizations, in writing and in a form prescribed by the Head of Contracting Activity, CPA, in consultation with the CPA General Counsel:
 - a) Head of Contracting Activity, CPA, or the Principal Assistant Responsible for Contracting, CPA;

- b) CPA Directors of Oil Policy; Civil Affairs; Economic Development; AID; Operations and Infrastructure; Interior Affairs; Private Sector Development; and Security Affairs.
 - c) Senior Iraqi Ministry Advisors, in coordination with the interim Iraqi Ministers, for contracting officers within the ministry concerned, and.
 - d) Other persons specifically authorized by the Administrator.
- 3) In exercising their authority to appoint Contracting Officers, the officials listed in paragraph 2 above shall consider the training and experience of prospective appointees and shall, to the extent practicable, confer Contracting Officer authority on those officers already holding Coalition government contracting warrants and/or experience as contingency contracting officers or field ordering officers. The Head of Contracting Activity, CPA, with the approval of the Administrator, may prescribe additional requirements (such as completion of prescribed training requirements) that persons must hold prior to receiving Contracting Officer appointments.
- 4) Contracting Officers responsible for carrying out programs must actively coordinate proposed funding initiatives with all other Contracting and Grant-making officials in their geographic areas, in order to ensure against duplication of effort.

Section 5

Technical Supervision of Contracting Officers

The Head of Contracting Activity, CPA, shall be responsible for providing technical supervision over Contracting Officers appointed pursuant to Section 4, above. This technical supervision may include prescribing training requirements and prescribing appropriate forms for use in solicitations, contract awards, and grant awards. For contracting officers assigned to the CPA Contracting Activity, the Head of Contracting Activity, CPA, shall provide administrative oversight as well as technical supervision.

Section 6

Principles Applicable to Instruments

- 1) Identification of Parties. Contracts and Grants must prominently contain the following language to identify the parties:

“This contract/grant is entered into under the authority of the Administrator as head of the Coalition Provisional Authority (CPA), which is temporarily exercising governmental authority in Iraq pursuant to the law and usages of war and relevant United Nations Security Council Resolutions, including Resolution 1483 (2003) (“Coalition”) and by _____ (“Contractor”)

2) Competition.

- a) **Contracts.** Unless otherwise exempted under this Memorandum, competition is mandatory for all Contracts. Reasonable efforts will be made to obtain competitive offers by publicizing a solicitation through bulletin boards, the CPA World Wide Web page, the UNDB, vendor databases developed by the Head of Contracting Activity, and other means. If circumstances require award of a contract without competition, a written justification describing the exigencies requiring contracting without competition will be documented in the Contract file. Contracts will be awarded to the offer providing the greatest value to the CPA or Coalition Forces, based on price and all other evaluation factors contained in the solicitation.
 - b) **Grants.** Reasonable efforts will be made to identify all organizations capable of performing the Grant. Grants in excess of \$500,000 will be tendered for proposals by capable organizations, except as authorized for good cause, in writing, by the official that appointed the Contracting Officer involved.
- 3) Preference for Iraqi Vendors. Iraqi-based vendors who are capable of performing a Contract or Grant in a responsible and responsive manner will be afforded the following preferences when competing with foreign firms. If the Contracting Officer determines that at least two Iraqi-based vendors are available, the Contracting Officer may limit the competition to Iraqi-based vendors only. If the Contracting Officer determines that limiting competition to Iraqi-based vendors is not appropriate, the Contracting Officer may use the amount of Iraqi participation in the contract (as a subcontractor or otherwise) as an evaluation criterion for purposes of determining who is entitled to the award of the contract.
- 4) Fair and Reasonable Price. The Contracting Officer must determine that the price of a contract is fair and reasonable. Prices for goods and services will not exceed their fair market value—as determined by the Contracting Officer—after considering the time for delivery or urgency of the service, and other relevant factors.

- 5) **Conflicts of Interests.** Contracts or Grants administered under this Memorandum will not directly or indirectly benefit any Ministry, CPA or Coalition Forces official or employee involved in the contracting or grant-making process, or the family members of such officials or employees. Persons involved in the contracting process, from the development of the requirement through the completion of performance, shall not:
- a) Hold financial interests that conflict with the conscientious performance of duty.
 - b) Engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
 - c) Solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the CPA, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
 - d) Knowingly make unauthorized commitments or promises of any kind purporting to bind the CPA.
 - e) Use public office for private gain.

An official or employee of the CPA or Coalition Forces involved in the contracting process shall:

- a) Act impartially and not give preferential treatment to any private organization or individual.
 - b) Disclose waste, fraud, abuse, and corruption to appropriate authorities.
 - c) Endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards.
- 6) **Combining and Dividing Awards.** To the extent practicable, requirements for a project or related projects may be consolidated into one contract, in order to reduce the administrative burden of contracting. Requirements may not be split to avoid the application of these rules.
- 7) **Responsibility.** Contracting officers must determine that a contractor who receives a contract award must be responsible. This means that the contractor must:

- a) Have adequate financial resources to perform the contract, or the ability to obtain them;
- b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- c) Have a satisfactory performance record, if the contractor has performed contracts in the past;
- d) Have a satisfactory record of integrity and business ethics;
- e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Section 7

Contracts

- 1) **Micro-Purchases.** Micro-Purchase Contracts may be awarded without competition if the Contracting Officer determines that the offered price and terms are fair and reasonable. However, Contracting Officers are encouraged to obtain competition when possible. Oral solicitations may be used. Micro-Purchases will be documented in summary files demonstrating competition (if any), basis for award (if other than lowest price), and material terms. The documentation will be tailored to the size and nature of the acquisition.
- 2) **Small Purchases.** Contracting Officers, when possible, will obtain at least three competitive offers for Small Purchases. For Small Purchases from \$5,000.01 to \$25,000, oral solicitations may be used; however, Contracting Officers must maintain documentation of sources solicited. For Small Purchases greater than \$25,000, written solicitations will be used. Sufficient information will be included in the contract file to enable a review of the transaction, including evidence of competition or the basis for contracting without competition, price quotations, and the basis for the contract award if price is not the determining factor. Written justifications detailing the unique qualifications of the contractor or other exigent

circumstances requiring an award without competition will be prepared for Small Purchases. Requirements for justifications are contained in Appendix A.

- a) Blanket Purchase Agreements. Contracting Officers are encouraged to use blanket purchase agreements for repetitive requirements to reduce administrative burdens and to obtain favorable pricing.
- b) All Small Purchase contracts will contain payment terms including an agreed upon payment schedule (preferably with milestones tied to performance) for service contracts, and performance requirements clearly defining the responsibilities and time for performance. Additionally, the Contracting Officer will use appropriate contract provisions listed in Appendix B to this Memorandum for the particular solicitation or contract involved.
- c) Requirements in excess of \$10,000 should be posted at a public location and disseminated in a manner that will foster competition, including advertising in local media when appropriate, through bulletin boards, the CPA World Wide Web page, vendor databases developed by the Head of Contracting Activity, and other means.

3) Large Purchases.

- a) Large Purchase Contracts will be competed, except as authorized below. All Large Purchase contract opportunities will be posted and advertised to the maximum extent practicable, with a goal of obtaining at least three competitive offers.
- b) The Head of Contracting Activity, CPA, will ensure that experienced contracting officials are assigned to execute contracts underneath the HCA and provide technical assistance to all other appointed Contracting Officers or Iraqi Ministry Contracting Activities with respect to all Large Purchase solicitations.
- c) Acquisitions generally will be made through negotiation. The contracting agency will develop a Request for Proposal (RFP) for submission to prospective contractors. The RFP will set forth the essential information necessary to fully describe the contracting opportunity. Contracting Officers may hold a pre-proposal conference to answer questions and to clarify the RFP, provided all prospective contractors are informed of the conference. Award evaluation factors will be tailored to the acquisition, but must include price as a factor. Other factors may include technical expertise, financial stability of the contractor based upon a review of

financial statements, and prior contract performance. The Contracting Officer may request final proposals from contractors in the competitive range. Based upon the review of the proposals, a preliminary award decision will be made.

- d) If a contracting officer determines that (1) time permits the solicitation, submission and evaluation of sealed bids; (2) award will be made only on the basis of price or price-related factors; (3) discussions with prospective bidders will not be necessary, and (4) there is a reasonable expectation of receiving more than one sealed bid, the contractor may, instead of an RFP, use an Invitation for Bids (IFB) to compete the acquisition. The IFB will set forth the essential information necessary to fully describe the contracting opportunity. Contracting Officers may hold a pre-bid conference to answer questions and to clarify the IFB provided all prospective contractors are informed of the conference. Because an IFB requires that the requirement be clearly stated prior to issuing the solicitation, IFB's will only be used by contracting officers under the direct control of the Head of the Contracting Activity, CPA.
- e) Written justifications detailing the unique qualifications of the contractor or other exigent circumstances requiring an award without competition will be prepared for all Large Purchases awarded without competition. Requirements for justifications are contained in Appendix A. All Large Purchase justifications will be reviewed and approved in writing by either the Contracting Officer's appointing authority or the Head of Contracting Activity, CPA, or his designee.
- f) Except for awards by Contracting Officers appointed by the Head of Contracting Activity or the Principal Assistant Responsible for Contracting, CPA, Large Purchase preliminary award decisions will be reviewed by a Contract Award Committee of at least three officials, designated by the official who appointed the Contracting Officer for the particular project, prior to award. The Committee will review the proposals and Contract file to ensure compliance with procedural and competition requirements, that the contract represents sound business judgment, that the process used was fair and impartial, and that the proposed award represents the best value based upon the evaluation factors. Large Purchase preliminary award decisions by Contracting Officers appointed by the Head of the Contracting Activity, CPA will be coordinated with the Head of Contracting Activity, CPA, or his designee, prior to award.
- g) Notwithstanding paragraph 3(e) above, Large Purchase Contracts may be executed in the absence of a Contract Award Committee, provided the

Head of Contracting Activity, CPA, determines that there are sufficient alternative means to ensure that the particular solicitation action has been appropriately managed.

- h) Contracting officers are encouraged to establish payment schedules that provide for payments as the vendor accomplishes specified performance milestones.
- 4) **Contract Modifications and Amendments.** Contract modifications and amendments are subject to the same documentation provisions as original contracts. Contracting Officers must ensure the cost of the contract modification or amendment is fair and reasonable. Amendments or modifications that are outside the scope of the contract or that constitute new requirements should be addressed through new contracts.

Section 8 Monitoring Contract Performance

Consistent with their programmatic responsibility to ensure that contractors and grantees properly perform their duties, Contracting Officers shall be responsible for regularly monitoring the post-award execution of all Contracts they approve. This monitoring process includes ensuring that the contractor provides the agreed upon goods, services or construction in accordance with the provisions, and that payments are made in a timely manner. Contracting Officers shall include in the Contract file a written report describing post-award performance by contractors or grantees, including a final assessment upon completion of the Contract. Contracting officers shall rely upon locally available military engineering resources in assessing all repair and construction projects. All documents related to the establishment and execution of Contracts will be maintained in a Contract file that includes the materials described in Appendix A to this Memorandum.

Section 9 Grants

Consistent with Program Review Board requirements, Grants may be made available to support important public initiatives.

- 1) Applications for Grants must describe the initiative, anticipated costs and the desired results. The applications should also set forth objective standards for measuring the success of the Grant.

- 2) In reviewing grant applications, consideration shall be given to the number of people affected by the grant and the impact on community development. Grants should be reviewed during implementation and where appropriate funds should be made available on a schedule tied to the accomplishment of specific milestones specified by the CPA or Coalition Forces, and related to the objective measures of success.
- 3) Although there generally is little substantial involvement between the CPA or Coalition Forces and the grantee following the award of the Grant, a grant agreement will be conducted according to a form prescribed by the Head of Contracting Activity, CPA, in coordination with the Office of the General Counsel, CPA, and the grantee's performance must be monitored to ensure that the granted funds are expended for appropriate purposes consistent with the Grant, and to assess the grantee's suitability for future Grants. Contracting Officers responsible for Grants shall include in the Grant file a written report describing post-award performance by or grantees, including a final assessment upon completion of the Grant.

Section 10

Funds Allocated through the National Budget Process

- 1 Funds allocated through the National Budget Process will be made available to the interim Iraqi Ministries in accordance with the National Budget. The CPA Office of Management and Budget will allocate funds to the Iraqi Ministry of Finance for further distribution to the Iraqi Ministries, in accordance with the National Budget and in a manner that will ensure appropriate transparency. The interim Iraqi Ministries may draw on allocated funds by submitting a request for funds to the Iraqi Ministry of Finance,.
- 2) Contracts or grants executed by interim Iraqi Ministries may be carried out in accordance with applicable Iraqi laws and Ministry contracting procedures only if the Administrator or his designee determines that the Ministry's application of these controls will ensure transparency. However, in the event that a protest is filed against the proposed award of a contract or grant, the provisions of the Protests clause in Appendix B of this Memorandum shall apply. If the Administrator or his designee does not determine that applicable Iraqi laws and Ministry contracting procedures can ensure transparency in the use of Iraqi funds, the rules of this Memorandum shall apply.
- 3) As part of the CPA's responsibility to ensure that CPA Funds are used for their intended purpose, the CPA Comptroller, in coordination with the Head of

Contracting Activity, CPA, may, in his discretion, review contracting actions of interim Iraqi Ministries.

Section 11 Appendices


The Appendices provide supplemental instructions on preparing and executing Contracts and Grants pursuant to this Memorandum. The Program Review Board is hereby authorized to modify existing Appendices to this Memorandum, and issue additional Appendices, as may be required to ensure the effective execution of funding for the benefit of the Iraqi people. Any such modification or issuance shall be deemed to satisfy the requirements of CPA Regulation No. 3, section 6 (5).

Section 12 Protection of Confidential Acquisition Information

Contracting officers, or other persons involved in the contracting process, are specifically prohibited from releasing information contained in a proposal to any person not involved with the contracting process. For purposes of this section, "proposal" means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal. Any other disclosure of confidential acquisition information, including information concerning a successful proposal that is incorporated by reference into a contract, shall be protected in a manner consistent with 5 U.S.C. Section 552 and Parts 3 and 24 of the U. S. Federal Acquisition Regulation.

Section 13 Entry into Force

This Memorandum shall enter into force on the date of signature.

 8/20/03
L. Paul Bremer, Administrator
Coalition Provisional Authority

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Contract File Requirements

APPENDIX A

Micro Purchases (\$5,000 or less)

Contract file must include:

- Notes or documentation reflecting competition efforts, if any, including a written summary of oral solicitations if award is based on an oral solicitation.
- The basis for the award decision if other than lowest price.
- Material Contract terms (Who is to do What, When, and for How much?)
- Information demonstrating the outcome (such as receipts, delivery notices, notes of the contracting officer regarding contractor performance for services).
- Micro Purchase files will be maintained for 1 year following final contract payment.

Small Purchases (\$5,000.01-\$500,000)

Contract file must include:

- Documentation of oral solicitations made for contracts less than \$25,000, written solicitations for contracts from \$25,000.01 to \$500,000.
- Evidence of competition, such as posted notices (including the location and length of time posted), direct solicitations, advertisements, posting on web pages.
- For solicitations in which only one source is solicited (i.e., sole-source contract awards), a written justification prepared in accordance with this Appendix.
- Evaluation Criteria, if applicable.
- Significant correspondence with vendors.
- Notification to successful vendor.
- Written contract containing required terms for agreements exceeding \$10,000 or a summary of material terms for agreements less than \$10,000.
- Invoices for progress payments and verification of performance including notes of inspections or monitoring where appropriate.
- Small Purchase Files will be maintained for 1 year following final contract payment.

Large Purchases (more than \$500,000)

Documentation will be sufficient to enable review by the Contract Award Committee prior to award and then by auditors during the period of contract performance and thereafter. Files will include:

- A statement of need for the requirement to be addressed. This may be a request for services from the agency requesting the contract.

- Evidence of Competition, such as posted notices (including the location and length of time posted), direct solicitations, advertisements, posting on web pages, or other means used to publicize the opportunity to bid.
- All fully eligible responses from vendors to allow the Contract Award Committee to review the contracting options to ensure the proposed contract award is based upon sound business judgment.
- For contracts in which only one source is solicited, a written justification prepared in accordance with this Appendix.
- Contract award Evaluation Criteria. Price must be one of the contract evaluation criteria. Other criteria may include experience, prior contract performance, technical expertise, and delivery terms.
- Memorandum for Record memorializing the action by the Contract Award Committee acting to select the successful vendor. The MFR should identify board members, the bids considered, the criteria used, and the selected vendor.
- Significant correspondence with vendors.
- Notification to successful vendor.
- Written contract containing required terms.
- Contract Modifications and Amendments
- Contract performance and outcome information including invoices for progress payments and verification of performance including notes of inspections or monitoring where appropriate.
- Large Purchase Contract files will be maintained for a period of 3 years following final contract payment.

Sole-Source Contracting Justification and Approval Requirements

- Contracting Officers must document compelling reasons justifying sole source contracting in all contracts. Compelling reasons that may be considered when justifying sole-source contracting:
 - There is only one responsible source and no other supplies or service will satisfy requirements. This may include unacceptable delays in delivery or other unique circumstances, such as intellectual property rights or compatibility with existing systems.
 - Unusual or compelling urgency to satisfy requirements. This justification will only be used in cases where competition would represent a serious risk to agency objectives. Failure to accurately forecast agency needs is not a sufficient justification.
- The justification must demonstrate the circumstances for foregoing adequate competition. If the circumstance is urgent and compelling, specifically explain the time constraints. Identify unique capabilities that are possessed by only one contractor.
- Justifications will include a description of efforts to obtain competition.
- Justifications will include facts supporting the Contracting Officer's determination that a fair and reasonable price was obtained.
- Justifications for sole-source awards in excess of \$500,000 must be approved by the Contracting Officer's Appointing Authority or the Head of Contracting Authority, CPA.

Grants

Files will contain a statement of the community need to be addressed and intended purposes of the grant. Generally, the grant application is sufficient. The file will also contain outcome information including an assessment of the community impact of the grant.

Special Requirements for Construction Projects

- Maintain engineering drawings and approvals of plans until contract performance is complete.
- Cost Estimates by independent engineers should be obtained for Large Purchase projects to assist in the assessment of fair and reasonable value.
- Fixed-priced arrangements are preferred for construction contracts.
- Certificates of Completion.
- Change Orders and Amendments will be fully documented.

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Standard Terms and Conditions for Solicitations and Contracts in Excess of \$5,000

APPENDIX B

Solicitation Terms and Conditions

1. **Submission of Offers.** The contractor will submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in the solicitation. Offers may be submitted on letterhead stationery or as otherwise specified in the solicitation. At a minimum, offers must show:

- a. The solicitation number.
- b. The time specified in the solicitation for receipt of offers.
- c. The name, address, and telephone number of the offeror.
- d. A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary.
- e. Terms of any express warranty.
- f. Price and any discount terms.
- g. Payment address (if different from mailing address)
- h. Acknowledgment of solicitation amendments (if any)
- i. Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers, and other relevant information)
- j. A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

2. **Period for Acceptance of Offers.** The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

3. **Product Samples.** When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense, and returned at the sender's request and expense, unless they are destroyed by preaward testing.

4. **Multiple Offers.** Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

5. **Late Submissions, Modifications, Revisions, and Withdrawals of Offers.**

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a. Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Contracting Officer designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 1630 hours, local time, for the designated contracting office on the date that offers or revisions are due.

b. Any offer, modification, revision, or withdrawal of an offer received at the contracting office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition, and

1) if it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the contracting office not later than 1700 hours one working day prior to the date specified for receipt of offers, or

2) there is acceptable evidence to establish it was received at the location designated for the receipt of offers and was under government control prior to the time set for receipt of offers, or

3) if the solicitation was a request for proposals, it was the only proposal received.

c. However, a late modification of an otherwise successful offer that makes the offer's terms more favorable to the contracting organization issuing the solicitation will be considered at any time it is received and may be accepted.

d. Acceptable evidence to establish the time of receipt at the contracting office includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of contracting office personnel.

e. If an emergency or unanticipated event interrupts normal processes so that offers cannot be received at the contracting office designated for receipt of offers by the exact time specified in the solicitation, and urgent requirements preclude amendment of the solicitation or other notice of the extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal processes resume.

f. Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

6. **Contract Award.** The Contracting Officer intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Contracting Officer reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Contracting Officer may reject any or all offers if such action is in the public interest; accept other than the lowest-priced offer; and waive informalities and minor irregularities in offers received.

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7. **Multiple Awards.** The Contracting Officer may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the schedule, offers may not be submitted for quantities less than those specified. The Contracting Officer reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

8. **Evaluation.** The Contracting Officer will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the contracting activity, price and other factors considered. The following factors shall be used to evaluate offers.

(Contracting Officer lists factors here, in order of importance)

9. **Options.** The Contracting Officer will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Contracting Officer may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Contracting Officer to exercise the option(s).

10. **Notice of Award.** A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance of the offer, shall result in a binding contract without further action by either party. Before the offer's scheduled expiration time, the Contracting Officer may accept an offer (or part of an offer) whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

11. **Protests.** A contractor wishing to object to the terms of a solicitation, the termination of a solicitation, the award of a contract, or the termination of the award of a contract, shall present the matter to the Contracting Officer for an initial decision. The contractor shall state to the Contracting Officer the basis for the protest. If the contractor does not agree with the Contracting Officer's initial decision, the Contractor may appeal the initial decision to the Head of Contracting Activity, CPA, for resolution. The decision of the Head of Contracting Activity, CPA, shall be the final decision in the matter.

12. **Evaluation of Foreign Currency Offers.** If the Contracting Officer receives offers in more than one currency, the Contracting Officer will evaluate offers by converting the foreign currency to United States currency using _____ rate in effect on the date specified for receipt of offers, if award is based on initial offers, or, if award is based on revised offers, on the date specified for receipt of proposal revisions.

Contract Terms and Conditions

13. **Inspection/Acceptance.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Contracting Officer reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Contracting Officer may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Contracting Officer must exercise the post-acceptance rights:

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a. Within a reasonable time after the defect was discovered or should have been discovered, and

b. Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

14. **Assignment.** The Contractor shall not assign, transfer, or make any other disposition of this Contract, or any part thereof, without the prior written consent of the Contracting Officer.

15. **Changes.** Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

16. **Disputes.** This contract is not subject to the Contract Disputes Act of 1978, as amended (41 U.S. Code, Sections 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the United States Federal Acquisition Regulation Clause 52.233-1, Disputes, which is incorporated herein by reference except that appeals from final decisions of a Contracting Officer may only be appealed to the U.S. Armed Services Board of Contract Appeals (ASBCA). The decision of the ASBCA shall be final. The contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

17. **Excusable Delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Governmental activity in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

18. **Invoice.** The Contractor shall submit an original invoice and three copies (or electronic invoice if authorized) to the address designated in the contract to receive invoices. The invoice must include:

- a. Name and address of the Contractor.
- b. Invoice date and number.
- c. Contract number, contract line item number, and, if applicable, the order number.
- d. Description, quantity, unit of measure, unit price, and extended price of the items delivered.
- e. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on a bill of lading.
- f. Terms of any discount for prompt payment offered.
- g. Name, title, and phone number of person to notify in event of defective notice.

19. **Patent Indemnity.** The Contractor shall indemnify the Government agency involved in this contract and its officers, employees, and agents against liability, including costs, for actual or alleged direct or indirect contributory infringement of, or inducement to infringe, any patent,

trademark, or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

20. **Payment.** Payment shall be made for items accepted by the Contracting Officer that have been delivered to the delivery destinations set forth in this contract. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronics fund transfer payment is made.

21. **Risk of Loss.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pay to the Contracting Officer upon:

- a. Delivery of the supplies to a carrier, if transportation is f.o.b. origin.
- b. Delivery of the supplies to the Contracting Officer or a representative at a destination specified in the contract, if transportation is f.o.b. destination.

22. **Taxes.** The contract price includes all applicable taxes and duties.

23. **Termination for Convenience.** The Contracting Officer reserves the right to terminate this contract, or any part hereof, for the sole convenience of the Government activity. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Contracting Officer using its standard record keeping system, have resulted from the termination. The Contracting Officer, upon reasonable advanced notice, may inspect the financial records relating to this Contract including the amounts paid to subcontractors and the locations where any portion of the Contractor's performance occurs. The Contracting Officer may review the Contractor's financial statements upon request.

24. **Termination for Cause.** The Contracting Officer may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Contracting Officer, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government agency shall not be liable to the Contractor for any amount of supplies or services not accepted, and the Contractor shall be liable for any and all rights and remedies provided by law. If it is determined that the Contracting Officer improperly terminated this contract for cause, such termination shall be deemed a termination for convenience.

25. **Title.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government agency upon acceptance, regardless of when or where the Government agency takes physical possession.

26. **Warranty.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

27. **Immunities.** Except as provided in this contract, the Government of Iraq or its agents, including the CPA or other governmental agencies, have not waived any of their privileges or immunities.

28. **Legal Status.** The Contractor is an independent contractor. The Contractor's employees will not be considered government employees for any purpose. The Contractor is solely responsible for compensation agreements with employees.

29. **Contractor's Responsibility for Employees.** The Contractor is responsible for the professional and technical competence of its employees and will select reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct. The Contracting Officer may require that the Contractor remove from the job employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

30. **Subcontracting.** Except as authorized in this contract, the Contractor may not subcontract any portion of the performance of this Contract to another without the prior written consent of the Contracting Officer. The terms of any subcontract will be subject to and conform with the provisions of this Contract.

31. **Indemnification.** The Contractor shall defend, indemnify, and hold harmless all government entities involved in this contract, together with the entities' officers, agents, and employees from and against all suits, claims, or liabilities of any kind arising out of acts or omissions of the Contractor, its employees, or the Contractor's subcontractors.

32. **Insurance.** The Contractor represents and warrants that it shall maintain appropriate insurance including general commercial liability and workers compensation coverage in an adequate amount to cover third parties claims arising from or in connection with this Contract. Upon request, the Contractor will provide satisfactory evidence of the insurance required under this article.

33. **Use of Names and Symbols.** Except as required by this Contract, the Contractor will not advertise or otherwise makes public the fact that it is a contractor to the governmental entity in this Contract, nor will the Contractor use the name or emblem of the governmental entity for commercial purposes.

34. **Limitation of Liability.** Except as otherwise provided by an express warranty, the Contractor will not be liable to the governmental entity for consequential damages resulting from any defect or deficiencies in accepted items.

35. **Inconsistency between English Version and Translation of Contract.** In the event of inconsistency between any terms of this contract and any transaction into another language, the English language meaning shall control.

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36. **Correspondence in English.** The Contractor shall ensure that all contract correspondence that is addressed to the governmental entity awarding this contract is submitted in English or with an English translation.

37. **Conflicts of Interest.** The Contractor warrants that no governmental official has received or will be offered by the Contractor any direct or indirect benefit in connection with or arising from the award of this contract. The Contractor agrees that any breach of this provision is a breach of an essential term of this Contract.

38. **Order of Precedence (except for Construction Contracts).** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- a. The schedule of supplies/services.
- b. The Assignments, Disputes, Payments, Invoice, Other Compliances clauses of this contract.
- c. Addenda to this solicitation or contract, including any license agreements for computer software.
- d. Solicitation provisions (if this is a solicitation)
- e. The other standard clauses in this contract.
- f. Other documents, exhibits, and attachments.
- g. The specification (the narrative description of the work)

39. **Other Compliances.** The Contractor shall comply with all applicable laws, rules, and regulations applicable to its performance under this contract.

40. **Source of Funds.** The obligation under this contract is made with CPA Funds, as defined in CPA Memorandum Number 04 , dated August 19, 2003. No funds, appropriated or other, of any Coalition country are or will be obligated under this contract.

41. **Option to Extend the Term of the Contract.**

a. The governmental entity awarding this contract may extend the term of this contract by written notice to the Contractor within _____ days (insert number of days) prior to the end of the term of the contract, or the end of any option period previously exercised under the contract; provided that the Government entity gives the Contractor a preliminary written notice of its intent to extend at least _____ (insert number of days) before the contract period (including option periods exercised) expires. The preliminary notice does not commit the governmental entity to an extension. If the Government exercises this option, the extended contract shall be considered to include this clause.

b. At the end of the contract period, or at the end of the final option period under this contract, whichever is later, if the governmental entity requires continued performance of services within the limits and at the rates specified in the contract, the governmental entity may extend the period of performance under this contract for an additional period not to exceed six months, by giving written notice to the Contractor at least _____ days before the end of the contract period or the end of the final option period exercised, whichever is later.

42. **Liquidated Damages.**

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- a. If the Contractor fails to perform within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the governmental entity liquidated damages of \$ _____ per calendar day of delay.
- b. If the governmental entity terminates this contract in whole or in part under the Termination for Cause clause, the Contractor is liable for liquidated damages accruing until the governmental entity reasonably obtains similar delivery or performance. These liquidated damages are in addition to excess costs of repurchase under the Termination for Cause clause.
- c. The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Excusable Delay clause.

Construction Contract Terms and Conditions
(For Construction Contracts Only)

43. **Performance of Work by the Contractor.** The Contractor shall perform on the site, and with its own organization, work equivalent to at least _____ percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

44. **Differing Site Conditions.**

- a. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of:
 - (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract, or
 - (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- b. The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.
- c. No request by the Contractor for an equitable adjustment to the contract shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.
- d. No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

45. **Site Investigation and Conditions Affecting the Work.**

- a. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the

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availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as the information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the governmental agency involved, as well as from the drawing and specifications made a part of this contract. Any failure of the Contractor to take the action described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the governmental agency involved.

b. The governmental agency involved in this contract assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government, nor does the governmental agency assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

46. Material and Workmanship.

a. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limited competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

b. The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

c. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

47. Superintendence by the Contractor. At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work

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or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

48. Permits and Responsibilities. The Contractor shall, without additional expense to the governmental entity awarding this contract, be responsible for obtaining any necessary licenses and permits, and for complying with any laws, codes, or regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occurs as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

49. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.

a. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and take such other action as the Contracting officer may direct.

b. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

50. Operations and Storage Areas.

a. The Contractor shall confine all operations (including storage of materials) to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the government entity awarding this contract, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

b. Temporary buildings (such as storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the governmental entity awarding this contract. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

c. The Contractor shall, under rules established by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of

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the vehicle or prescribed by law or regulation. When it is necessary to cross curbs and sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

51. Cleaning Up. The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

52. Accident Prevention.

a. The Contractor shall provide and maintain work environments and procedures which will:

(1) Safeguard the public and governmental entity personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities,

(2) Avoid interruptions of governmental entity operations and delays in project completion dates, and

(3) Control costs in the performance of this contract.

b. For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall:

(1) Provide appropriate safety barricades, signs, and signal lights.

(2) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

c. Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health and safety of the public or governmental entity personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

d. The Contractor shall insert this clause, including this paragraph (d), with appropriate changes in the designation of the parties, in subcontracts.

53. Schedules for Construction Contracts.

a. The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate approximately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule

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within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

b. The Contractor shall report progress under the schedule to the Contracting Officer as directed by the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the governmental entity awarding this contract. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and other efforts, and to submit for approval any supplementary schedule or schedules as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

c. Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of the contract.

54. Specifications and Drawings for Construction. The Contractor shall keep on the work site a copy of the drawings and specifications (the written description of the work) and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not in the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. If case of difference in the figures between the drawings or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

**CONTRACT AND GRANT PROCEDURES
APPLICABLE TO VESTED AND SEIZED IRAQI PROPERTY AND
DEVELOPMENT FUND FOR IRAQ**

**Guidance for Issuing Grants
APPENDIX C**

Considerations for Drafting Grant Agreements or Solicitations for Grant Proposals.

- Identify the objectives of the grant and need for assistance. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems to be addressed by the grant.
- Consider the anticipated results or benefits expected. Identify costs and benefits to be derived. For example, show how problem will be improved as a result of the grant. Explain how the project will benefit the public.
Examine the execution approach. List the activities in chronological order to show the schedule of accomplishments and expected completion dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.
- Develop assessment and control measures. Establish criteria for judging the effectiveness and value of the grant. For larger grants, progress payments or other control measures should be included to ensure the grant is used effectively.

Executing Grants

- Grants may be made to government entities or other organizations for purposes benefiting the public good. Small reconstruction and public works projects, as well as projects that positively impact education and health care, may be appropriate for grants.
- Grant agreements will be recorded on forms prescribed by the Head of Contracting Activity, CPA, in consultation with the Office of the General Counsel, CPA.
When executing grants ensure the grantee understands the purpose of the grant and the need to exercise fiscal responsibility including obtaining receipts for significant payments and for documenting the use of funds.

- Conduct periodic inspections of the grant activity to ensure the grant is being used appropriately.

**CONTRACT AND GRANT PROCEDURES
APPLICABLE TO VESTED AND SEIZED IRAQI PROPERTY AND
DEVELOPMENT FUND FOR IRAQ**

Frequently Asked Questions

APPENDIX D

What projects are appropriate for the expenditure of DFI Funds?

UN Security Council Resolution 1483 (2003) provides the following:

14. Underlines that the Development Fund for Iraq shall be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq;

This is the standard for use of DFI funds. If the contracting requirement does not fit squarely within these categories, other funding sources must be used. Requirements for the support of Coalition Forces may not be satisfied with DFI funds.

What special rules apply for contracts with Iraqi Funds?

Obligations under contracts with Iraqi Funds will be satisfied only with Iraqi Funds. A special clause is included in the contract to put all parties on notice of this important issue.

Military Units: Military units should not execute contracts in their names or in the name of their government for projects using Iraqi Funds. These contracts must contain the following language:

“This contract/grant is entered into under the authority of the Administrator as head of the Coalition Provisional Authority (CPA), which is temporarily exercising governmental authority in Iraq pursuant to the law and usages of war and relevant United Nations Security Council Resolutions, including Resolution 1483 (2003) (“Coalition”) and by _____ (“Contractor”)

Coalition Provisional Authority: In order to clearly state the authority upon which the contract is being entered into, the clause set forth above must be included in each contract.

The CPA's authority is of limited duration and will terminate upon the establishment of an internationally recognized, representative government of Iraq. Therefore, it is important to ensure there is a “termination for convenience” clause in each contract.

Ministries of the Iraqi Government: Ministries of the Iraqi government should use Iraqi government contracting procedures when using CPA Funds, if the Administrator determines that the contracting procedures are adequate. If those procedures are inadequate, these procedures will be used.

When should I use a grant and when should I use a contract?

When the primary purpose is to support or stimulate the efforts of the recipient rather than to acquire a product or service, grants may be made to community agencies in support of community development or outreach programs. Grants have more limited oversight and are intended to allow the applicant greater flexibility. While the effectiveness of the grant should be assessed, the requirement need not be filled by another source if the intended aims are not achieved. Grants are generally awarded to government entities and non-profit organizations.

Contracts are used to acquire goods or services.

What factors should be used when evaluating potential contractors?

The requirements for each contract should be tailored to the acquisition. However all decisions to award contracts should involve consideration of the following factors:

- Value. While price is very important in determining a contract award, it ensuring the performance of the contract in responsible manner is also important.
- Financial Stability of Contractor. The financial stability of the contractor must be evaluated in all Large Purchase contracts or contracts involving a substantial percentage payment of the full contract award in advance. This review should include an analysis of its financial statements; audits where possible; credit reports; and other data assessing the fitness of the company.
- Past Performance. Past performance should be considered if the entity has performed previous services.

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(U) FRAGO 89 [COMMANDER'S EMERGENCY RESPONSE PROGRAM (CERP) FORMERLY THE BRIGADE COMMANDERS' DISCRETIONARY FUND] TO CJTF-7 OPORD 03-036

(U) THIS FRAGO HAS BEEN REVIEWED AND APPROVED FOR RELEASE BY COL RADCLIFFE, CJTF-7 C3 CHOPS

SUBJ: COMMANDER'S EMERGENCY RESPONSE PROGRAM (CERP).

(U) REFERENCES:

- A. V CORPS FRAGO 104M TO OPORD FINAL VICTORY, COMMANDERS DISCRETIONARY RECOVERY PROGRAM, DTG 070220LMAY03
- B. V CORPS FRAGO 132M [CHANGE 1 TO FRAGO 104M - BDE CDR'S DISCRETIONARY FUNDS] TO V CORPS OPORD FINAL VICTORY, DTG 082130LMAY03
- C. CFLCC FRAGO 32 TO OPORD 03-033, DTD 080922LMAY03
- D. CFLCC FRAGO TO OPORD 03-033, DTD
- E. FRAGO 458M [CHANGE 2 TO FRAGO 104M - BDE CDR'S DISCRETIONARY FUNDS] TO V CORPS OPORD FINAL VICTORY

(U) MAPS: [NO CHANGE]

(U) TIME ZONE USED THROUGHOUT THIS ORDER: DELTA

(U) TASK ORGANIZATION: [NO CHANGE]

1. (U) SITUATION. [NO CHANGE]
2. (U) MISSION. [NO CHANGE]
3. (U) EXECUTION. [NO CHANGE]

(U) COMMANDER'S INTENT [NO CHANGE]

3.B. (U) CONCEPT OF THE OPERATION. COALITION PROVISIONAL AUTHORITY (CPA) HAS EXPANDED AND INCREASED THE FUNDS AVAILABLE TO BRIGADE AND DIVISION COMMANDERS. THIS PROGRAM HAS BEEN RENAMED THE COMMANDERS EMERGENCY RESPONSE PROGRAM (CERP). BRIGADE COMMANDERS' WILL BE GIVEN \$200,000 WITH AN INDIVIDUAL PROJECT LIMIT OF \$50,000.00. THIS AUTHORITY REMAINS LIMITED TO BRIGADE/O-6 AND GOVERNORATE LEVEL COMMANDERS. ADDITIONALLY, DIVISION COMMANDERS WILL BE GIVEN A FUND OF \$500,000 WITH AN INDIVIDUAL PROJECT LIMIT OF \$100,000.00. THE INTENT IS TO PROVIDE MSC WITH A GREATER CAPABILITY AND FLEXIBILITY TO TAKE IMMEDIATE ACTION TO MAKE POSITIVE IMPACTS IN THEIR AREA OF RESPONSIBILITY.

3.B.1 BRIGADE/O-6 AND GOVERNORATE LEVEL COMMANDERS, UTILIZING OPCON CIVIL AFFAIRS ASSETS, WILL AGGRESSIVELY EXECUTE THEIR SPENDING PLAN IN ORDER TO BENEFIT THE PEOPLE OF IRAQ. BRIGADE/O-6 AND GOVERNORATE LEVEL COMMANDERS WILL HAVE THE AUTHORITY TO USE INITIAL CASH FUNDING, AT THEIR OWN DISCRETION, TO PURCHASE GOODS AND SERVICES RELATED TO RECONSTRUCTION EFFORTS FOR THE IRAQI PEOPLE. AT THE BRIGADE/ GROUP LEVEL INDIVIDUAL PROJECTS ARE NOT TO EXCEED \$50,000.

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3.B.2. DIVISION COMMANDERS' HAVE THE AUTHORITY TO APPROVE PROJECTS UP TO \$100,000. PROJECTS EXCEEDING \$100,000 WILL BE SUBMITTED THROUGH C8/COMPTROLLER CHANNELS TO OCPA IAW PROCEDURES THAT WILL BE PUBLISHED BY SEPARATE FRAGO.

3.B.3. AS FUNDS ARE EXHAUSTED, BRIGADES/DIVISIONS WILL COORDINATE THROUGH THEIR ORGANIZATION G8 /COMPTROLLERS TO GAIN ADDITIONAL FUNDING AUTHORITY. THESE FUNDS ARE MONIES DERIVED FROM SEIZED IRAQI ASSETS.

3.B.4. THE COMMANDERS' EMERGENCY RESPONSE PROGRAM (CERP) IS A CPA FUNDED AUTHORITY PROVIDED FOR RECONSTRUCTION ASSISTANCE TO THE IRAQ PEOPLE. RECONSTRUCTION ASSISTANCE IS THE BUILDING, REPAIR, RECONSTITUTION, AND REESTABLISHMENT OF THE SOCIAL AND MATERIAL INFRASTRUCTURE IN IRAQ. THIS INCLUDES, BUT IS NOT LIMITED TO: WATER AND SANITATION INFRASTRUCTURE, FOOD PRODUCTION AND DISTRIBUTION, AGRICULTURE, ELECTRICAL POWER GENERATION AND DISTRIBUTION, HEALTHCARE, EDUCATION, TELECOMMUNICATIONS, PROJECTS IN FURTHERANCE OF ECONOMIC, FINANCIAL, MANAGEMENT IMPROVEMENTS, TRANSPORTATION, AND INITIATIVES WHICH FURTHER RESTORE OF THE RULE OF LAW AND EFFECTIVE GOVERNANCE, IRRIGATION SYSTEMS INSTALLATION OR RESTORATION, DAY LABORERS TO PERFORM CIVIC CLEANING, PURCHASE OR REPAIR OF CIVIC SUPPORT VEHICLES, AND REPAIRS TO CIVIC OR CULTURAL FACILITIES.

3.B.5. EXPENDITURES CAN INCLUDE GOODS AND SERVICES (I.E.CAN PURCHASE PARTS TO FIX SOMETHING OR PAY AN IRAQI CONTRACTOR TO FIX IT).

3.B.6. CJTF-7 WILL ISSUE RESOURCE DISTRIBUTION DOCUMENTS TO SUBORDINATE UNITS C8/COMPTROLLERS TO FUND BRIGADE/DIVISION COMMANDERS.

3.B.7. THE NEW LIMITS ARE EFFECTIVE IMMEDIATELY FOR FUNDS ALREADY DISTRIBUTED TO UNITS.

3.C TASKS TO SUBORDINATE UNITS

3.C.1 TASKS TO MSCs

3.C.1.B PROJECT PURCHASING OFFICERS (PPOS) MUST BE APPOINTED, IN WRITING BY THEIR COMMANDER, HAVE BEEN CERTIFIED AS A FIELD ORDERING OFFICER (FOO), AND MUST MAINTAIN A COPY OF THE FRAGO AUTHORIZING THE CERP PROGRAM.

3.C.1.C. COORDINATE FOR FINANCE SUPPORT WITH LOCAL FINANCE ELEMENTS TO PROVIDE CURRENCY SUPPORT AND PAY AGENT TRAINING.

3.C.1.D PROVIDE SECURITY FOR FUNDS AS NECESSARY

3.C.1.E PROVIDE TRANSPORTATION AND SECURITY TO PAY AGENTS AS REQUIRED

3.C.1.F. COORDINATE WITH ORGANIC FINANCE ELEMENTS FOR REQUIRED PAY AGENT DOCUMENTATION NECESSARY TO DRAW CASH.

3.D COORDINATING INSTRUCTIONS

3.D.1. COORDINATE ALL PROJECTS WITH REGIONAL OCPA OFFICES, GST AND CIVIL AFFAIRS ELEMENTS TO PREVENT DUPLICATION OF EFFORT AND TO ENSURE SYNCHRONIZATION.

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3.D.2. IRAQI SEIZED ASSETS USED FOR THIS PROGRAM ARE NOT UNLIMITED. WORK TO ENSURE REASONABLE PRICES ARE PAID FOR GOODS/SERVICES RECEIVED, AND PROJECTS ARE CONSTRUCTED TO A MODEST, FUNCTIONAL STANDARD.

3.D.3. LIMITATIONS ON FUND EXPENDITURES:

3.D.3.A. FUNDS WILL NOT BE USED FOR EITHER THE DIRECT OR INDIRECT BENEFIT OF CJTF-7 FORCES, TO INCLUDE COALITION FORCES.

3.D.3.B. FUNDS WILL NOT BE USED FOR ENTERTAINMENT OF LOCAL IRAQI POPULATION

3.D.3.C. FUNDS WILL NOT BE USED TO FUND ANY TYPE OF WEAPONS BUY BACK PROGRAMS OR REWARDS PROGRAMS.

3.D.3.D. FUNDS WILL NOT BE USED TO BUY FIREARMS, AMMUNITION, OR THE REMOVAL OF UNEXPLODED ORDNANCE (UXO) FOR ANY PURPOSE.

3.D.3.E FUNDS WILL NOT BE USED FOR DUPLICATING SERVICES AVAILABLE THROUGH MUNICIPAL GOVERNMENTS.

3.D.3.F. UNITS CANNOT MIX CERP FUNDS AND UNIT OPERATIONS AND MAINTENANCE (OMA) FUNDS. PPOS MUST USE SEPARATE SF44'S AND DOCUMENT REGISTER FOR THESE FUNDS.

3.D.3.G. FUNDS WILL NOT BE USED TO PROVIDE SUPPORT TO INDIVIDUALS OR PRIVATE BUSINESSES (EXCEPTIONS POSSIBLE, I.E. REPAIR DAMAGE CAUSED BY COALITION FORCES.)

3.D.3.H. UNITS WILL NOT PAY SALARIES TO THE CIVIL WORK FORCE, PENSIONS, OR FUND EMERGENCY CIVIL SERVICE WORKER PAYMENTS. SALARIES AND EMERGENCY PAYMENTS ARE HANDLED DIRECTLY BY OCPA VIA IRAQI MINISTRIES AND LOCAL GST. SEE COMCFLCC FRAGO 366/416 FOR THESE PROCEDURES.

3.D.3.I. VIOLATIONS OF THESE RESTRICTIONS WILL RESULT IN TERMINATION OF CERP FUNDS FOR THAT UNIT.

3.D.4. ALL PROJECT PURCHASING OFFICERS WILL RECONCILE THEIR ACCOUNTS WITH FINANCE, RESOURCE MANAGEMENT, AND THEIR BRIGADE/DIVISION COMMANDER. COMMANDERS MUST CLEAR PPO WITH MEMO VALIDATING ALL PROJECTS AND SUBMIT PRB-1 (PROVIDED SEPERATELY TO COMPTROLLERS) THROUGH COMPTROLLER CHANNELS TO CJTF-7 C8.

3.D.5. PAY AGENTS ARE ENCOURAGED TO DRAW FUNDS AS NEEDED RATHER THAN LARGE BULK SUMS.

3.D.6. RECORD ALL PAYMENTS ON SF44 TO DOCUMENT PURCHASES MADE UNDER THIS PROGRAM. PROJECT PURCHASING OFFICERS ARE AUTHORIZED TO MAKE PURCHASES AND TO PAY FOR PROJECTS UP TO \$50,000 AND \$100,000 WITH THE SF 44 FOR THIS PROGRAM ONLY.

3.D.7. COMMANDERS ARE NOT AUTHORIZED TO DELIBERATELY OVER PAY. EXTRA PRECAUTION SHOULD BE TAKEN FOR EXPENSES OVER \$10,000.00. FOR PROJECTS OVER \$10,000, BRIGADE COMMANDERS MUST INFORM DIVISION COMMANDERS' IN ADVANCE, OBTAIN THREE BIDS FOR THE PROJECT, AND IDENTIFY AN INDIVIDUAL TO MANAGE THE PROJECT. DOCUMENT YOUR EFFORTS TO VERIFY COSTS ARE REASONABLE. FOR LARGER PROJECTS (OVER \$10,000) PROGRESS PAYMENTS SHOULD BE MADE AS OPPOSED TO A LUMP SUM PAYMENT UP FRONT.

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3.D.8. COMMANDERS WILL CONSULT WITH THEIR SERVICING STAFF JUDGE ADVOCATES AND FINANCE OFFICERS/RESOURCE MANAGERS FOR GUIDANCE ON THE IMPLEMENTATION OF THIS PROGRAM WITHIN THEIR COMMAND.

3.D.9. UNITS ARE ENCOURAGED TO ONLY REQUEST THE FUNDS THEY REASONABLY EXPECT TO EXECUTE.

3.D.10. REPORTS

3.D.10.A. UNITS MUST PROVIDE WEEKLY COMMANDERS DISCRETIONARY FUND FEEDER REPORTS ON SATURDAY OF EACH WEEK THROUGH UNIT COMPTROLLERS TO V CORPS/CJTF-7 G8/COMPTROLLER. INCLUDE UNIT, DATE OF PROJECT, LOCATION, AMOUNT SPENT, AND PROJECT DESCRIPTION. THIS REPORT SHOULD BE PREPARED REFLECTING ALL PROJECTS PERFORMED UNDER THE BULK FUND. UNIT COMPTROLLERS WILL CONSOLIDATE AND FORWARD THESE REPORTS NLT 1200 ON SATURDAY.

UNIT	DATE OF PROJECT	LOCATION	AMOUNT SPENT	BRIEF DESCRIPTION OF PROJECT
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3.D.10.B. PRIOR TO RECEIVING AN ADDITIONAL INCREMENT OF FUNDS, UNITS WILL SUBMIT AN OCPA PRB-1 FORMS FOR ALL PROJECTS.

3.D.10.C. SUBMIT BOTH REPORTS ABOVE TO THE CJTF-7 DEPUTY C8, LTC DAVE GODDARD.

3.D.11. PROJECT PURCHASING OFFICER / PAY AGENT TEAMS WILL CLEAR OUTSTANDING SF44S PRIOR TO OBTAINING ADDITIONAL FUNDING APPROVAL.

3.D.12. DFAS ANNEX E AND OSD DIRECTIVES AUTHORIZE PROJECT PURCHASING OFFICERS TO CONTINUE THEIR DUTIES UNDER THEIR CURRENT CERTIFICATION AND TRAINING BY CONTRACTING OFFICERS.

3.D.13. POC FOR THIS FRAGO IS CJTF-7 C8, LTC DAVE GODDARD DNV 302-550-2650, SIPRNET GODDARD@C5MAIN.HQ.C5.ARMY.SMIL.MIL, NIPRNET ACSRMXO@HQ.C5.ARMY.MIL

4. (U) SERVICE SUPPORT. [NO CHANGE]

5 (U) COMMAND AND SIGNAL. [NO CHANGE]

ACKNOWLEDGE

SANCHEZ
LTG

OFFICIAL:

WILLIAMS
C3

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