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COMMENTARY

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The Special Inspector General for Iraq Reconstruction: A Watchdog That Barks And Bites

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According to its official Web site, the Office of the Special Inspector General for Iraq Reconstruction is "a temporary federal agency serving the American public as a watchdog for fraud, waste and abuse of funds intended for Iraq reconstruction programs."¹

In the three years since it came into existence this relatively small agency has repeatedly demonstrated its potential to both expose and punish impropriety in Iraq reconstruction contracting. Accordingly, any company involved in the ongoing Iraq reconstruction effort is well advised to know and understand this potentially dangerous watchdog.

Releasing the Hound

The agency now known as SIGIR came into existence Nov. 6, 2003, when President Bush signed into law a bill establishing the Coalition Provisional Authority Office of Inspector General.² The primary purpose of the statute was "[t]o provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations of the Coalition Provisional Authority."³ The act also provided \$75 million in initial funding for the CPA-IG, and required the CPA-IG to terminate six months after the dissolution of the CPA.⁴

Congress has since repeatedly extended and expanded the mandate of the agency. After the CPA dissolved in June 2004, Congress rejected efforts by the State Department to fold the CPA-IG into its own inspector general system⁵ and instead adopted a bill in October 2004 renaming the agency SIGIR and extending its lifespan until 10 months

after 80 percent of the multibillion-dollar Iraq Relief and Reconstruction Fund had been contractually obligated.⁶

As that 80 percent obligation date approached, Congress granted the SIGIR another lease on life in a November 2005 bill that extended the agency's termination date until 10 months after 80 percent of the IRRF had been expended, rather than just obligated.⁷

SIGIR's responsibilities were subsequently expanded in an October 2006 bill that gave the agency jurisdiction over all funds appropriated for the fiscal year 2006 Iraq reconstruction, regardless of whether they were technically part of the IRRF.⁸ That same bill also extended SIGIR's lifespan until Oct. 1, 2007.⁹

But in December last year, Congress repealed the Oct. 1 termination provision.¹⁰ This effectively means SIGIR should continue to operate until late 2008, depending on the rate of remaining expenditures.¹¹ Although SIGIR has no authority over funds appropriated for fiscal year 2007 Iraq reconstruction,¹² Congress may yet grant it that authority and further extend its termination date.

A Long Leash

Stuart W. Bowen Jr. is the special inspector general for Iraq reconstruction. He has served in this position since October 2004. He has also served as the inspector general of the Coalition Provisional Authority from January to October 2004. Bowen is a Texas lawyer who worked for President Bush when he was governor of Texas and followed him to Washington in 2000. After coming to

Washington, Bowen worked on the White House staff and was a partner in the Washington office of Patton Boggs LLP before being appointed CPA-IG in early 2004.¹³

Early in his tenure, some critics expressed concern that Bowen would not exercise effective independence, given to his close ties to the Bush administration.¹⁴ However, this criticism does not appear to have been borne out by events.

Indeed, the authorizing statute expressly requires significant independence for the SIGIR. According to the statute, no officer of "the Department of Defense, the Department of State or the United States Agency for International Development shall prevent or prohibit the inspector general from initiating, carrying out or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation."¹⁵

Another provision requires that "[w]henver information or assistance requested by the inspector general is, in the judgment of the inspector general, unreasonably refused or not provided, the inspector general shall report the circumstances ... to the appropriate committees of Congress, without delay."¹⁶

Indeed, although Bowen technically reports to both the secretary of state and the secretary of defense,¹⁷ SIGIR has routinely provided all its quarterly and other reports to Congress and made them available to the public on its Web site. This transparency has further enhanced the credibility of the agency. Bowen recently characterized his office as "an independent government watchdog to oversee Iraq reconstruction."¹⁸

Picking Up the Scent

SIGIR has a number of tools at its disposal to carry out its oversight mission, including audits, inspections and investigations. The agency also maintains a hotline, from which it collects and investigates allegations of contractual malfeasance.

SIGIR routinely conducts audits "to determine whether programs and operations funded by the Iraq Relief and Reconstruction Fund are being managed efficiently, effectively, economically and achieving the desired outcomes."¹⁹ At the end of first-quarter 2007, SIGIR had completed 86 audits, continued to work on 16 open audits and planned to initiate eight additional audits during the second quarter.²⁰ SIGIR selects audit subjects according to a detailed "strategic audit plan." A copy can be obtained from the agency's Web site, along with each issued audit report.²¹

SIGIR also routinely conducts inspections of both ongo-

ing construction projects and completed facilities inside Iraq. The inspections take place on three separate levels: project assessment, limited on-site inspections and aerial assessments.

Project assessments involve detailed in-person inspections of "project sites to inspect actual on-site efforts and accomplishments" and usually result in a detailed written report.²²

Limited on-site inspections involve "conducting more general reviews of project construction sites, noting deficiencies, assessing overall progress, and taking photographs" and sharing such information with interested agencies.²³

Aerial assessments involve utilizing commercial satellite imagery "to provide visual assessments of progress at construction and project sites" that would be otherwise inaccessible.²⁴ Since the summer of 2005, SIGIR has completed 94 project assessments, 96 limited on-site inspections and 304 aerial assessments.²⁵

SIGIR also operates a hotline designed to facilitate the "reporting of fraud, waste, abuse, mismanagement and reprisal in all programs associated with Iraq reconstruction efforts funded by the American taxpayer."²⁶ Since its inception, the SIGIR hotline has led to the initiation of 567 cases, 52 of which remained open as of March 31. Those 567 hotline cases ultimately resulted in 17 audits, 79 inspections and 113 investigations.²⁷

SIGIR also investigates suspected criminal activity associated with Iraq reconstruction. The agency "concentrates its law enforcement efforts on American targets." Over the last three years, SIGIR has maintained a larger contingent of fraud investigators in Iraq than any other American agency.²⁸ Since its inception, SIGIR has opened more than 300 investigations and currently has more than 70 ongoing investigations.²⁹ SIGIR also works with a number of other federal law enforcement agencies and is a member of several interagency task forces, including the Special Investigative Task Force for Iraq Reconstruction, the International Contract Corruption Task Force and the Department of Justice National Procurement Fraud Task Force.³⁰ SIGIR also "work[s] closely with the DOJ Commercial Litigation Section, Civil Division," which is the DOJ division responsible for proceedings brought under the federal False Claims Act.³¹

This Watchdog Barks ...

SIGIR regularly issues a variety of reports on its activities. These include SIGIR's "quarterly reports to Congress outlining key findings on the progress and management of Iraq reconstruction efforts, including recommendations for corrective action."³² Thirteen have been issued so far.³³

Each report consists of hundreds of pages summarizing "SIGIR findings, including audits, inspections, investigations, and analysis of data and developments related to Iraq reconstruction progress."³⁴ These quarterly reports are published 30 days after the end of each fiscal-year quarter,³⁵ and frequently engender national news coverage. SIGIR plans to release five more quarterly reports before the end of 2008, and its next report covering second-quarter 2007 is due for release July 31, 2007.

SIGIR has also released three "lessons learned" reports covering "lessons in human capital management," "lessons in contracting and procurement" and "lessons in program and project management."³⁶ These reports represent the consolidation of "information culled from over 300 audits and inspections by" SIGIR and other oversight bodies, as well as interviews with "key government and non-government officials."³⁷ SIGIR plans to release a final "lessons-learned capping report" by the end of this year.³⁸

SIGIR also frequently provides testimony on Capitol Hill regarding its oversight of the U.S. reconstruction effort in Iraq.³⁹ SIGIR officials have testified before Congress on 19 separate occasions.⁴⁰

... And Bites

Thirty two cases opened by SIGIR are currently under criminal prosecution by the Justice Department.⁴¹ According to its most recent quarterly report, SIGIR's work has already "resulted in 10 arrests, one 25-count indictment of five people, five convictions, three imprisonments, \$3.6 million in restitution orders and \$9.5 million in recovered and seized assets."⁴²

Recent SIGIR-initiated criminal cases include the indictment of several Army officers, CPA officials and civilians for their involvement in a \$10 million kickback and bribery scheme in Hillah, Iraq.⁴³ Another recent criminal case involved an employee of Titan Corp., who pleaded guilty to violating the Foreign Corrupt Practices Act by offering a bribe to an Iraqi police official.⁴⁴

SIGIR's investigations have also led to a number of suspension and debarment proceedings. To date, the Army has suspended 19 individuals or companies based on allegations uncovered by SIGIR, the agency has suggested to the Army that 16 other individuals or companies be debarred, and nine have been debarred as a result of these efforts.⁴⁵ In one notable case earlier this year, the Army asked Parsons Corp. to show cause why it should not be debarred in light of allegations made by SIGIR.⁴⁶

Whether the SIGIR's enforcement efforts will also bear fruit in the civil area is largely unknown. While it has been rumored for some time that dozens of civil False Claims Act suits pertaining to Iraq reconstruction are pending under seal, to date only two such cases have been officially disclosed.⁴⁷

Given SIGIR's claimed "close" relationship with the DOJ office responsible for False Claims Act cases, it seems likely that SIGIR will figure prominently in these civil cases once they ultimately are made public.

Beware of Dog

In his most recent congressional testimony June 19, Bowen provided some hints about where SIGIR's pending investigations are likely to go in the coming months. He began by noting that while "corruption within the Iraqi government" was "a serious problem that inhibits progress on many fronts in Iraq ... the incidence of corruption within the U.S. reconstruction program ... appears to constitute a relatively small component of the overall American financial contribution to Iraq's reconstruction."⁴⁸

He also testified that he believed "that losses to American taxpayers from fraud within reconstruction programs will likely amount to a relatively small component of the overall investment in Iraq, totaling in the tens of millions (rather than hundreds of millions or billions, as is sometimes imagined)."⁴⁹

However, Bowen also testified that "the fact that the fraud we have detected is relatively small (to date) does not diminish the aggressiveness with which SIGIR pursues allegations of fraud in Iraq."⁵⁰ He also noted that "enforcement will be an increasingly important part of SIGIR's mission over the next 18 months" and that "in the course of this year, we expect to produce concrete investigative results as current cases come to fruition."⁵¹

Bowen concluded his remarks by stating that "SIGIR will continue to aggressively pursue investigations, provide robust oversight through audits and inspections and will press for more efforts to improve contract administration, quality assurance and quality control."⁵²

Thus, even though SIGIR is officially on its last legs, it clearly intends to finish strong and may well figure into as yet undisclosed civil, criminal, suspension or debarment proceedings over the next 18 months. Accordingly, contractors doing business in Iraq are well advised to continue to respect this temporary but still potentially dangerous government watchdog.

Notes

¹ <http://www.sigir.mil/>.

² Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, Pub. L. No. 108-106, § 3001, 117 Stat. 1209, 1234-38 (2003).

³ *Id.* § 3001(a)(1).

⁴ *Id.* § 3001(n)-(o).

⁵ Yochi J. Dreazen, *Former Bush Aide Turns Critic as Iraq Inspector*, WALL ST. J., July 26, 2005.

⁶ Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, § 1203(a), (o), 118 Stat. 1811, 2078, 2081 (2004).

⁷ Foreign Operations, Export Financing and Related Programs Appropriations Act, 2006, Pub. L. No. 109-102, § 599, 119 Stat. 2172, 2240 (2005).

⁸ John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, § 1054(a), 120 Stat. 2083, 2397 (2006).

⁹ *Id.* § 1054(b).

¹⁰ Iraq Reconstruction Accountability Act of 2006, Pub. L. No. 109-440, § 2, 120 Stat. 3286 (2006).

¹¹ <http://www.sigir.mil/about/law.aspx>.

¹² *Review of Iraq Reconstruction: Hearing Before the U.S. House Armed Services Committee* (Jan. 18, 2007) (statement of Stuart W. Bowen Jr., Special Inspector General for Iraq Reconstruction).

¹³ <http://www.sigir.mil/about/leadership.aspx>.

¹⁴ Dreazen, *supra* note 5.

¹⁵ Emergency Supplemental Appropriations Act at § 3001(e)(2), 117 Stat. at 1235.

¹⁶ *Id.* at § 3001(h)(4)(B).

¹⁷ Ronald W. Reagan National Defense Authorization Act at § 1203(c)(3), 118 Stat. at 2079.

¹⁸ *Reconstruction Contracting in Iraq: Oversight Hearing Before the United States House Committee on Governmental Reform* (Sept. 28, 2006) (statement of Stuart W. Bowen Jr., Special Inspector General for Iraq Reconstruction), at 2.

¹⁹ <http://www.sigir.mil/reports/Default.aspx>

²⁰ Special Inspector General for Iraq Reconstruction, Report to Congress at 8 (Apr. 30, 2007), available at <http://www.sigir.mil/reports/>.

²¹ See <http://www.sigir.mil/audits/auditPlan.aspx>; <http://www.sigir.mil/audits/Reports.aspx>.

²² <http://www.sigir.mil/reports/Default.aspx>.

²³ <http://www.sigir.mil/inspection/ProjectAssessments/limited.aspx>.

²⁴ <http://www.sigir.mil/inspection/ProjectAssessments/aerial.aspx>.

²⁵ Special Inspector General for Iraq Reconstruction Report at 8.

²⁶ *Id.* at 194.

²⁷ *Id.*

²⁸ *War Profiteering and Other Contractor Crimes Committed Overseas: Hearing Before the U.S. House Committee on the Judiciary Subcommittee on Crime, Terrorism & Homeland Security* (June 19, 2007) (statement of Stuart W. Bowen Jr., Special Inspector General for Iraq Reconstruction) at 2, 3.

²⁹ *Id.* at 3.

³⁰ *Id.* at 3-4.

³¹ 31 U.S. § 3729-3733.

³² <http://www.sigir.mil/>.

³³ War Profiteering at 4.

³⁴ <http://www.sigir.mil/reports/Default.aspx>.

³⁵ *Id.*

³⁶ *Contracting in Iraq Reconstruction: Hearing Before the U.S. House of Representatives Appropriations Committee, Subcommittee on Defense* (May 10, 2007) (statement of Joseph McDermott, Assistant Inspector General - Audit, Special Inspector General for Iraq Reconstruction) at 2-3.

³⁷ *Id.* at 2.

³⁸ War Profiteering at 4.

³⁹ <http://www.sigir.mil/reports/Default.aspx>.

⁴⁰ <http://www.sigir.mil/reports/testimony.aspx>.

⁴¹ War Profiteering at 3.

⁴² Special Inspector General for Iraq Reconstruction Report at 191.

⁴³ *Id.* at 191-92; War Profiteering at 3-4.

⁴⁴ Special Inspector General for Iraq Reconstruction Report at 192.

⁴⁵ *Id.*

⁴⁶ *Id.* at 192-93.

⁴⁷ See *United States ex rel. DRC Inc. v. Custer Battles LLC*, 444 F. Supp. 2d 678 (E.D. Va. 2006); *Iraq Contractor Settles FCA Case for \$4 Million*, ANDREWS GOV'T CONTRACT LITIG. REP., Aug. 14, 2006, at 9.

⁴⁸ War Profiteering at 1, 2 (emphasis omitted).

⁴⁹ *Id.* at 3.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 5.

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