

CONTROL NUMBER: _____ SUSPENSE: 19 Dec 2003

STAFF ACTION SUMMARY
 (HOUSE USE ONLY)

DATE: 19 Dec 2003

SUBJECT: Request For Waiver for Submission of Cost and Pricing Data

OFFICE SYMBOL: CEPR-ZB ACTION OFFICER: LTC A.J. CASTALDO TELEPHONE NUMBER: 761-8645 E-MAIL: albert.j.castaldo.LTC@hg02.usace.army.mil

ROUTING: CS CSM DCG CG

FOR: INFORMATION DECISION READ-AHEAD APPROVAL SIGNATURE

1. PURPOSE: To obtain the Commanding General's approval of and signature on the enclosed waiver for submission of cost and pricing data pursuant to 10 U.S.C §2306a and 41 U.S.C §254b for contract DACA63-03-D-0005, Task Orders 0005, 0007, and subsequent task orders involving the purchase of fuels.

2: BOTTOM LINE: FAR-Part 15 allows the Head of the Contracting Agency to waive the requirement for submission of const and pricing data in exceptional cases when the price of the product or service can be determined to be fair and reasonable without the submission of cost and pricing data. This waiver addresses such a circumstance.

3. DISCUSSION: Prior to the issuance of the first delivery Kellogg Brown and Root Services (KBRS) obtained adequate price competition for the delivery of gasoline to Iraq - and made an award to the lowest price offeror. DOS as well as other defense agencies have verified to USACE that it is a violation of Kuwaiti law for contractors to submit cost and pricing data for fuel products. Additionally, the Kuwaiti Petroleum Company (KPC) has refused to grant permission to any subcontractor other than the lowest price offeror. Despite the fact that KBRS has been prevented from competing (the purchase of fuel, transport and delivery) outside of Kuwait, KBRS has been able to provide data that otherwise indicate the fair and reasonable price of these services.

Blue Tab: Cover Letter for CG Signature

Yellow Tab: NA - Coordination below

Exhibit 3

Pink Tab: Background and CG signature block for Waiver.

RELEASER: ALBERT A.J. CASTALDO, LTC, Deputy PARC for USACE

RECOMMENDATION: RECOMMEND that the CG approve and sign the enclosed waiver for submission of cost and pricing data pursuant to 10 U.S.C §2306a and 41 U.S.C §254b for contract DACA63-03-D-0005.

ACTION: APPROVED SEE ME OTHER

COORDINATION

ORGANIZATION	NAME	CONCUR/NONCONCUR	DATE
CESWD-CT	Mr. GORDON SUMNER 214-767-2470	CONCUR	19 Dec 2003
CEPR-ZB	LTC A.J. CASTALDO 202-761-8645	<i>Albert Castaldo</i>	19 DEC 2003
CECC-C	Mr. MIKE ADAMS 202-761-8537	<i>M. Adams</i>	19 DEC 2003
CESWD-ZA	BG ROBERT CREAR 214-767-2500	<i>Robert Crear</i>	19 Dec 2003