International Procurement

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In past years, the International Procurement Committee has reported on events of interest within the context of the U.S. legal and regulatory framework that have an effect on procurement matters. Reports have included updates on the implementation of the Buy American Act and Trade Agreements Act (BAA/TAA), as well as Foreign Military Financing (FMF) programs. Although there has been some rationalization between civilian and military applications of the BAA/TAA and some proposed changes in FMF programs, the International Procurement Committee chose to focus its update on developments and reforms in international procurement regimes around the world. International Procurement Committee members have prepared summary updates on Canada, China, the Common Market for East and Southern Africa (COMESA), the European Union, Gambia, and Iraq.

I. Canada

Canadian Procurement law has changed significantly over the past twenty years, in response to pressure to provide value for taxpayer dollars and as a result of the implementation

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of various internal and international trade agreements. Based on these considerations, procurement law in Canada continues to evolve, in line with underlying policy considerations of openness and predictability in the procurement process. At its best, Canadian law promotes an efficient, flexible, and transparent procurement process. However, the ever-increasing demands and complexity of the procurement environment will continue to cause courts to struggle to find a balance between fairness and transparency on the one hand, and efficiency and flexibility for owners on the other.

Consistent with this evolution, Canadian courts have extensively redefined the relationship of the parties in the tendering process and have modified certain aspects of the use of performance bonds.

A. Tendering Law

Amertek Inc. v. Canadian Commercial Corp.,[1] provided a new development in the tendering law of Canada. Before discussing *Amertek*, however, it is important to understand *The Queen (Ontario) v. Ron Engineering & Construction (Eastern) Ltd.*,[2], which set forth a method of analyzing tenders from the perspective of the bidding contract (Contract A), and the project contract (Contract B). According to *Ron Engineering*, in Canada, every compliant bid submitted in response to a tender forms a Contract A between the tendering party and the solicitor based on the express and implied terms of the solicitation. Contract A tenders are irrevocable and the selected bidder is bound to enter into Contract B, the project contract. In recent years courts have held that Contract A imposes a duty on the owner to afford fair and equal treatment to all parties.[3] Components of this duty include an obligation to disclose all the material information regarding the contract[4] and the relevant selection criteria,[5] to warn bidders of known risks,[6] and to award Contract B, as anticipated in the tender documents (without material modification) to the successful bidder.[7] Courts also confirmed in the past year that they look to industry custom and practice to imply additional terms and conditions in Contract A where the tender is silent.[8] In 2003, however, courts reaffirmed the primacy of the express terms of the tender documents as obligations under Contract A.[9]

In the *Amertek* case referenced above, the court applied the American doctrine of "superior knowledge," which holds that government officials have enhanced obligations to inform potential bidders of all information required for the successful performance of the contract, even if such disclosure is detrimental to the government's position.[10] The *Amertek*

1. [2003] O.J. No. 3177.
2. [1981] 119 D.L.R. (3d) 267.
3. *See* Martel Building Ltd. v. Canada, [2000] 2 S.C.R. 860.
4. Banister Pipeline Constr. Co. v. TransCanada Pipelines Ltd., [2003] A.J. No. 1008. *See also* Cardinal Constr. Ltd. v. Brockville (City), [1984] 4 C.L.R. 149.
5. Elite Bailiff Servs. Ltd. v. British Columbia, [2003] 4 W.W.R. 228 (finding any undisclosed discretion in the selection process breaches Contract A).
6. Brown & Huston Ltd. v. York (Borough), [1985] 17 C.L.R. 192.
7. Best Cleaners and Contractors Ltd. v. The Queen, [1985] 2 B.C. (finding a breach of the Contract A obligations owed to the bidders where a four-year contract was awarded for a tender indicating a two-year duration).
8. Chinook Aggregates Ltd. v. Abbottsford (Municipal District), [1989] 40 B.C.L.R. (2d) 345.
9. *See* Derby Holding Ltd. v. Wright Construction Western Ltd., [2003] S.J. No. 588.
10. *Id.*

case shows that Canadian courts are willing to give meaningful expression to duties and obligations of the parties in the tendering process.

B. Performance Bonds

Performance bonds are used extensively in Canadian tendering, particularly in construction contracts, and may be required from the general contractor or by the general contractor from sub-contractors. Canadian courts recently affirmed that the bond must be read in the context of the underlying contract and does not stand alone,[11] but the terms and conditions of the bond establish the parties' obligations under the bond.[12]

Obtaining a performance bond is often a condition precedent to entering construction contracts and courts recently confirmed that failing to procure a bond when required may result in rescission of the contract.[13] Owners may waive the bonding requirement, however, and that waiver binds sub-contractors, even without notice.[14] Additionally, physical delivery of a properly executed bond is required to make a claim under the bond.[15]

II. China

The Government Procurement Law (GPL) enacted by the People's Republic of China (China) on June 29, 2002 became effective on January 1, 2003.[16] The GPL is China's first national regulation on government procurement, and applies to the purchase of goods, services, and construction projects by state organs, public institutions, and social organizations at all government levels, with some exceptions. Military, national security, and emergency procurement are exempt from the GPL, as are procurement activities by state-owned enterprises. The GPL will be implemented in stages: central government bodies implemented the government procurement system in 2003; lower level government bodies in 2004; and the system will be fully implemented by all remaining government entities by 2005.[17]

The GPL covers only those procurement activities whose value exceeds limits specified by the State Council and lower-level people's governments. Once such limit is exceeded, the GPL requires that the government entity use specific procurement processes: bid invitation, competitive negotiation, single-source procurement, quotation inquiry, and public tender. Public tender is to be used exclusively unless circumstances prevent its effectiveness.[18] The GPL, however, does not define public tender or bid-invitation as concepts or as processes, leading one to assume that China's bidding law will fill the GPL's gaps.

11. Whitby Landmark Devs. Inc. v. Mollenhauer Constr. Ltd., [2000] 4 C.L.R. (3d) 1.

12. *See* Howard M. Wise, Manual of Construction Law, §15.4 (Thomson Carswell, 1994). The Canadian Construction Documents Committee (CCDC) produces standard form bond documents which are widely used.

13. S.S. Contracting Inc. v. Edenwold, No. 158 (Rural Municipality), [2002] 19 C.L.R. (3d) 134.

14. Base Controls Ltd. v. Bennett & Wright Group Inc., [2002] 20 C.L.R. (3d) 258.

15. Paul D'Aoust Constr. Ltd. v. Markel Ins. Co. of Canada, [1996] 31 C.L.R. (2d) 180.

16. *See* Michael E. Burke, *China Law*, 37 Int'l Law 927, 941 (2003).

17. See Government Procurement Law of the People's Republic of China, available at http://www.lawlib.com/law/ (last visited June 9, 2004) [hereinafter PRC Government Procurement]. *See also* American Chamber of Commerce-China, 2003 White Paper: Government Procurement, *available at* http://www.amchamchina.org.cn/publications/white/2003/en-20.htm (last visited June 9, 2004).

18. PRC Government Procurement, *supra* note 17.

The GPL requires that government entities purchase domestic goods, construction engineering, and services except where supplies are unavailable or difficult to find. Although the GPL does not define "domestic goods"or "construction engineering and services," other regulations define "foreign goods" as imported goods and goods manufactured or processed in China with domestic value added below fifty percent.[19]

The GPL requires that each level of government establish an independent procurement agency to administer procurement of all items listed in the main points of the 2003 Government Procurement Work Plan and the Central Budgeting Unit 2003 Government Centralized Procurement Catalogue and Standards, as updated each year. Together, these regulations specify the goods and services that must be procured through the centralized procurement organs of the state council or the central government ministries. Items not specified therein may be procured through other means.

The GPL empowers the Ministry of Finance (MOF) and its local branches to supervise government procurement activities. The MOF may order corrective action where a procuring entity violates the GPL by, *inter alia,* failing to entrust a centralized procurement agency or failing to publicize procurement criteria and results. As local protectionism remains widespread in China, the MOF must engage in significant compliance monitoring. The GPL also outlines a three-step complaint process system for use by an aggrieved bidder: (1) an inquiry directed to the procuring entity; (2) a complaint directed to the MOF about the procuring entity's response; and (3) an administrative review or administrative lawsuit initiated by the MOF. The GPL provides that procuring entities may be subject to administrative, civil, or criminal punishment.

Potential government suppliers (including foreign invested enterprises) must meet certain conditions stated in the GPL, such as having a good professional reputation and an appropriate accounting system. On November 28, 2003, the Government Procurement Center for Party and State Agencies issued the Interim Measures for the Administration of the Registration and Qualification of Government Procurement Suppliers and the Announcement on Relevant Issues Concerning the Registration of Suppliers.[20] These regulations contain the requirements for a supplier to be designated as qualified, establish a database of registered suppliers for central government procurement, and describe how a qualified supplier may register with such database. Registered government procurement suppliers: (1) receive a registration number, username, and password to download bids, obtain information, and participate in centralized government procurement activities; (2) are candidates for bid invitations, competitive negotiations, and procurement inquiries; and (3) are exempt from subsequent qualification reviews required to participate in government procurement activities. Registered suppliers are required to deposit RMB¥10,000 as a refundable credit guarantee.

Further regulation, including regulation on the GPL's implementation guidelines and rules of origin are needed to ensure smooth implementation of the GPL. According to an October 15, 2003 report in the *Economic Information Daily,* the MOF is developing a new set of regulations on government procurement, including Measures on the Administration of Bidding of Services for Government Procurement of Goods, Measures on the Administration of Information on Government Procurement, Measures on the Examination of

19. *See id.*
20. *See id.*

Institutions for Centralized Procurement, Measures on the Administration of Claims from Suppliers, Measures on the Administration of Government Procurement Experts, and Measures on the Administration of Government Procurement of Software. According to the same report, the MOF formed a working group to research possible accession to the World Trade Organization's Agreement on Government Procurement.

III. COMESA

An important initiative in public procurement reform is underway in the East and Southern African regions under the auspices of the twenty-nation Common Market for East and Southern Africa (COMESA) headquartered in Lusaka, Zambia.[21] An organization that is only seven years old, COMESA is fulfilling the promise of its predecessors, the Preferential Trade Area (1983) and the United Nations Economic Commission for Africa (1965). While progress on some COMESA priorities is slow, the dedication of member states is apparent in the Elements of Cooperation agreed upon by the COMESA Authority of Heads of State and Government in Malawi in 1994. For example, elements require member states to "provide competitive goods as the basis for cross-border trade"[22] and develop "comprehensive, reliable and up to date information data bases covering all sectors of the economy."[23] Progress in these two areas will improve productivity through more efficient procurement.

Recognizing the importance of modern and harmonized public procurement procedures as a tool for trade expansion, as well as improved public administration, COMESA member countries, supported by the African Development Bank, engaged the Ugandan affiliate of the International Law Institute (ILI) to assist them in the development of a common procurement directive and to train public procurement officials in the best practices of modern procurement.[24] In 2003, the ILI carried out a thorough review of the current procurement laws and regulations in COMESA. After intensive discussion with a variety of stakeholders, the ILI developed the common procurement directive as a guideline for member states in the development and modernization of their public procurement regimes. Based on this review process, the ILI moved into the capacity building phase of the project, which is now in its final stages. Training of procurement officials, in French as well as English, has taken place in Zambia, Ethiopia, and Madagascar. The training program includes training-of-trainers activities designed to enable the continuation of procurement reform and capacity-building efforts by local and regional experts in years to come.

Despite some recognized progress, even the official COMESA website reports that progress has fallen behind the growing problems of the world's least developed countries. The self-assessment concludes by recommending a mix of ethically regulated, regionally open private markets. As the assessment puts it, "The role of the private sector in this process of economic growth and regional integration cannot be over-stressed and the economic future of the COMESA region is almost totally dependent on the performance

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21. *See generally* the COMESA website, *at* http://www.comesa.int.

22. Priorities of COMESA, *available at* http://www.sis.gov.eg/online/comesa/html/com02.htm (last visited May 25, 2004).

23. *See* Common Market of Eastern and Southern Africa, COMESA, *available at* http://www.itcilo.it/english/actrav/telearn/global/ilo/blokit/comesa.htm (last visited May 25, 2004).

24. *See generally* the COMESA Public Procurement System website, *at* http://www.comesa.cfi.co.ug (last visited May 25, 2004).

of this sector."[25] The emphasis on the private sector is inevitable in a region haunted by colonial exploitation and failed economic experiments. Still, the understanding that reliance on the private sector brings procurement to the forefront must come with this emphasis. COMESA's efforts at procurement reform must proceed alongside the growth and recognize the importance of free market supply of public needs.

IV. Gambia

While other West African nations, such as Sierra Leone and Cote d'Ivoire, suffered through the unfortunate violent spasms that impeded the progressive effects of external aid and local effort, Gambia avoided widespread violence and remained relatively stable since the mid-1990s. In this context of relative stability, a partnership among the World Bank, the government of Gambia, and the International Trade Centre WTO/UNCTAD (ITC) has modernized the public procurement system. Under the World Bank-sponsored Capacity Building for Economic Management Project (CBEMP), Gambia moved for reform in three broad areas: (1) statistical systems, macroeconomic analysis and poverty assessment; (2) public resource management; and (3) facilitation of private sector development.[26] This project established the new Gambia Public Procurement Authority (GPPA) as the focal point for improvement of Gambian public procurement.

ITC worked with the Task Force on Public Procurement Reform, headed by the Deputy Permanent Secretary of the Department of State for Finance and Economic Affairs, to review past reform efforts and to help develop a new legal framework for public procurement. The regulatory framework was reviewed to identify key problem areas for immediate and mid-term improvement. A draft regulatory and statutory framework for public procurement was devised using relevant international model laws (e.g., United Nations Conference on International Trade Law Model Procurement Law) in order to ensure that it will provide added value to budget resources that is compatible with international obligations (e.g., World Bank loan requirements). The Act on Public Procurement, known as Act Number 3 of 2001, passed the National Assembly, but it left the details and methods of procurement to implementing regulations. Although there was some concern that this would lessen the effectiveness of the law, this has not proved to be the case thus far. The Act also authorized a central public procurement policy office responsible for making and implementing regulations and procurement policies, as well as providing a final review of contract actions over a threshold set in the regulations, now 1 million Gambian Dalasis, or about U.S. $35,000. In this way, aspects of the former Central Tender Board have been melded into the policy function of the GPPA.

With the establishment of the GPPA, it assumed responsibility for implementation of the new legal framework, conducting the initial training, and developing and promulgating procedures. While the GPPA should have been in place soon after the Act was signed into law, resource constraints delayed the government in establishing the GPPA for more than a year. Nevertheless, regulations to implement the Act were drafted by ITC using the task force as a proxy for the GPPA. Standard bidding documents and forms to accompany the implementation regulations also were developed and set out for public and private sector

25. *See supra* notes 21, 23.

26. *See* Gambia Public Procurement Authority, GPPA, *at* http://www.investinginthegambia.gm/gppa/gppa.html (last visited May 25, 2004).

review. Feedback from this review was analyzed and held for action by the GPPA. Furthermore, ITC developed a one-week course to provide basic awareness in good public procurement techniques. ITC worked with the Management Development Institute (MDI), a Gambian parastatal institution, training a country team of trainers from the private and public sector to build new capacity to undertake public procurement under the new procedures. They completed this awareness training in 2003.

In June 2003, the ITC worked closely with the GPPA preparing for transition to the new procurement system, effective July 1, 2003. They made final edits to the ITC standard contracts and standard forms, which then were put on CD ROMs and distributed by the GPPA to approximately thirty procurement organizations for immediate use. Some believe these are good documents to set the process rolling, while others commented that the reporting procedures that enable the GPPA to control the process are too tedious and should be reviewed further.

In the third and final phase, training is a major responsibility of the GPPA. Using ITC Public Procurement Training System (PPTS) materials, the GPPA is working with the MDI and other institutions to train the new procurement cadre and the private sector. Under phase three, there was a five week mission to train the GPPA staff and trainers on the PPTS. The GPPA identified trainers to be educated for training the procurement cadre for both government and the parastatals. Additionally, the GPPA is looking into cooperation with the West African College and Gambia University to help develop training partners. A workshop for procuring organizations, which will review the new procedures, is the final task under the project.

Local capacity has been developed to support transparent public procurement systems, which when integrated with national anti-corruption initiatives will harmonize public procurement policies and tools with donor requirements. Positive and objective changes lie in the new legal, regulatory, and organizational framework that sets out competitive and transparent procedures, with clear responsibilities for procuring organizations concerning how they must safeguard government resources through the procurement process. Coupled with this, the GPPA is a dedicated professional system manager that can report on system results, implement policies, guide individual procuring organizations, oversee large contract actions, establish a bid protest procedure, and provide a trained professional procurement workforce. Nevertheless, greater involvement of the local private sector is needed in order to understand the new procedures and to increase the share of business awarded to competitive local suppliers needed to sustain political support for the reforms. In addition, more automation than initially requested by the government is necessary to efficiently oversee the system. Likewise, building professional capacity requires more attention and resources from the government to identify and train a professional procurement workforce in all procuring organizations while achieving optimum savings and operational efficiency.

V. European Union

The European Union (EU) is the largest public procurement market in the world. Thousands of contracting authorities and utilities award contracts for roughly $1.4 trillion annually. This is an average of approximately fourteen percent of the GDP of Europe. U.S. businesses are heavily involved, both directly and through U.S.-owned companies in Europe. Moreover, above the thresholds of the Government Procurement Agreement of the World Trade Organization, bidders based on this side of the Atlantic may access European government contracts. Public procurement law and the general legal framework of the EU

are currently undergoing considerable reform. These reforms triggered changes in the European CommunityTreaty (EC Treaty) and the European Community (EC) Public Procurement Directives.

A. The EC Treaty

The EC Treaty is the basic framework for public procurement regulation in Europe. Among the Treaty's provisions, the regimes on the free movement of goods and services are the most relevant to public procurement. They prohibit member states from hindering intra-community trade. The EC Treaty presents the main objective of European public procurement law: to open the public procurement markets of each state to bidders from other member states. If this goal was not realized and public procurements were not opened to bidders from other member states, the free movement of goods and services would not be allowed to play their important role in the European economy.

In May 2004, ten more states, primarily from Central and Eastern Europe—Cyprus, the Czech Republic, Estonia, Hungary, Malta, Latvia, Lithuania, Poland, the Slovak Republic, and Slovenia—joined the EU. This will create a market of more than 450 million people. Bulgaria and Romania will join in 2007. These accessions, called "enlargement" in eurospeak, are probably the most important development of the decade, with obvious implications for the size of the European procurement market.

In 2003, the Convention on the Future of Europe, initiated by the member states, prepared a Draft Constitutional Treaty as the next step in European integration. This fundamental document was designed to prepare the Union for increased membership. The substance of the single market, which forms the foundations of the EC public procurement regime, remained largely unaltered. A summit of European heads of state and government that was to pass the Draft Constitutional Treaty, however, failed to agree in December 2003. At the earliest, the constitution will be discussed in late 2004.

B. The EC Public Procurement Directives

The member states could not, of course, determine every detail of economic law in the EC Treaty. Legal bases for more specialized regulation are, therefore, stipulated in the Treaty. These legal bases allow the institutions of the EU to enact the legal instruments necessary for economic reform. The type of legal instrument chosen for public procurement was the directive, which stipulates the results to be achieved but leaves the choice of method to each member state. In other words, a directive is a compulsory model law that must be implemented, into the national law of the member states. Currently there are six public procurement directives; four regulate the public sector: Supplies (goods, products), Works (construction), Services, and Public Sector Remedies. Two directives regulate the procurement of the formerly publicly-owned, now privatized utilities. The directives contain detailed provisions on the type of contracting authorities and utilities that apply the rules, thresholds, award procedures, award criteria, and remedies for aggrieved bidders. There are no provisions on the budgetary side of procurement or the management of the contract after the award is made.

The passage of a new Public Sector Procurement Directive in March 2004 replaced the three public sector directives on Supplies, Works, and Services. The new directive consolidates the existing instruments, simplifies the legislation, and modernizes the existing law by introducing new techniques. It should have been passed in 2003, but objections of the

European Parliament delayed the legislative process. After the directive passes, member states have two years to implement it into their national laws. The current directives, therefore, will remain relevant for the next twenty-six months.

The year 2003 saw a number of important changes to the basic framework of public procurement law in the EU. However, with regards to both the project of a Constitutional Treaty and the new Public Sector Procurement Directive, these changes will materialize in 2004 at the earliest. For private contractors and the lawyers advising them, it is essential to keep track of these changes, regardless of which side of the Atlantic they call home.

VI. Iraq

The U.S. Government Agency for International Development (USAID) was, largely speaking, the bureaucratic face of American reconstruction efforts in Iraq during the weeks and months that followed the American invasion of Iraq and overthrow of Saddam's regime in early April 2003. USAID's response to the Iraq situation in spring 2003 included the largest foreign assistance contracts since the Marshall Plan. The $680 million contract, awarded to Bechtel National, Inc. in April 2003, was the largest single direct contract awarded by USAID in its forty-two year history.[27] Collectively, the initial Iraq contracts and grants (awarded February-October 2003) comprised the largest single country foreign aid program since World War II. In early January 2004, USAID awarded a follow-on contract to Bechtel, pursuant to full and open competition, valued at just under $2 billion.

A great deal of controversy surrounded both USAID's and Department of Defense's (DOD) methodology of awarding the early Iraq contracts, which cover almost every sector of the U.S. foreign aid portfolio, including health, education, local governance, economic governance, infrastructure, and agriculture. Concerns over the management of these large procurement vehicles were expressed as well. Still, no protests of USAID awards were lodged at the General Accounting Office (GAO).

For the USAID Iraq contracts, an interagency committee began contingency planning in late fall 2002. In January 2003, USAID's central procurement process was set in motion. Since time was known to be short, USAID relied on a unique, agency-specific exception to full and open competition that limited the bidding to a manageable number of offerors.[28] The agency used this exception before in urgent circumstances, most notably when foreign aid objectives were threatened after the conflicts in Bosnia and Afghanistan. After this exception was invoked for the Iraq procurements on a blanket basis in January 2003, contracts were generally competed by placing multiple firms on "short lists" and inviting them to bid. Out of USAID's eleven initial contracts, only one was sole sourced: providing immediate personnel support to the agency. This contract was worth less than one-half of one percent of all USAID Iraqi contracts awarded in 2003. Meanwhile, the Iraqi agriculture contract, valued at $120 million and awarded in October 2003, was competed on the basis of full and open competition.

For all the other USAID Iraq contracts, short lists of potential bidders were drawn up based on past performance and an estimate of contractors' capacity to perform. In several

27. *See* Fact Sheet, *USAID Awards Iraq Infrastructure II Contract* (Jan. 6, 2004), *at* http://www.usaid.gov/press/factsheets/2004/fs040106.html.

28. "Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief and rehabilitation." USAID Acquisition Regulation, 48 C.F.R. §. 706.302-70(a)(2) (2003).

instances, the lists were derived from USAID Indefinite Quantity Contract holders for similar services previously awarded on the basis of full and open competition. All in all, more than thirty contractors with prior USAID experience were invited to compete for the Iraq contracts.[29]

The USAID contract that received perhaps the most attention in 2003, for Iraq's infrastructure services, was awarded to Bechtel. Seven companies were invited to compete, and four entities reportedly competed aggressively for the work. A competitive range was set, and the Agency conducted negotiations with the two finalists. An independent evaluation panel, consisting entirely of non-political, career development professionals, made all the decisions concerning evaluation and award of this contract, as was the case for all other USAID Iraq contracts.[30]

Finally, in 2003, much discussion and controversy surrounded USAID's sourcing and "buy national" policy with regard to its Iraq procurements. Unlike most other U.S. government agencies, USAID's purchase of goods and services for the U.S. foreign assistance program are strongly tied to American sources. The Foreign Assistance Act mandates that, as a rule, USAID not use contractors based in other advanced countries to carry out the U.S. foreign aid programs, and Congress has on many occasions announced its strong preference that only American sources be used when taxpayer dollars are at stake.[31] This policy contrasts sharply with the large effort by the Administration to free up trade barriers, including a concerted effort currently being undertaken by the U.S. Trade Representative to lessen national preferences when central governments, including ours, make their procurement purchases.[32]

Nevertheless, the USAID Administrator has the authority to waive these "buy American" requirements, especially when there is insufficient capacity or competition from American sources alone.[33] In the January 2003 waiver referenced above, the Administrator invoked this power and waived the U.S. source-only requirement, on a discretionary basis, allowing USAID's procurement office to compete the Iraq contracts more broadly. As it was determined that both ample capacity and competition existed in the American marketplace for the Iraq contract requirements, however, the decision was made to limit the initial awards to American firms. At the same time, the subcontracting process was opened up to worldwide sources.[34]

29. USAID: Assistance for Iraq, Contracts and Grants, *at* http://www.usaid.gov/iraq/activities.html (last visited May 25, 2004).

30. *See* Jeffrey Marburg-Goodman, *USAID's Iraq Procurement Contracts: Insider's View*, 39 PROCUREMENT LAW. 10, 11-12 (2003).

31. *See* Foreign Assistance Act of 1961, 22 U.S.C. § 2354(a)(1) (2003).

32. *See, e.g.*, FTAA-Free Trade Area of the Americas: Draft Agreement, ch. 3, art. III (Nov. 1, 2002), *available at* http://www.ustr.gov/regions/whemisphere/ftaa2002/tnc-w-133-05of12-eng.pdf.

33. 22 U.S.C. § 2354(a)(1)(B) (2003).

34. Marburg-Goodman, *supra* note 30, at 12.