

would not have agreed. I wish to publicly commend the two leaders, and the chairman of the committee and the ranking member of the Judiciary Committee, Senators HATCH and LEAHY, for some excellent work. This is not anything that will ever be written in the history books but in my mind I have some knowledge of what is good for the Senate and I am convinced that what we have done today is some of the best work we have done all year.

Mr. FRIST. Mr. President, I thank my colleague for his comments and agree wholeheartedly in terms of the efforts that have been made in good faith on both sides of the aisle. It has been difficult in terms of negotiations but everybody has been involved at the leadership level, as well as working with the respective leaders of the committee. We have come to a satisfactory conclusion. By the end of next week we will have accomplished the goals we all have, and that is to keep the process working—it is not always pretty—in a way that will deliver what the American people deserve.

We will have more to say later today, but we will expect to have two votes on Monday, the first at 4:45 and then a vote later, which we will set up the time agreement probably an hour or so after that vote, with consideration to Miguel Estrada. Again, we will make specific announcements but we will have two votes on Monday. I point out the first one is at 4:45, which we have tried to announce a few days ago to make sure people are back for that particular vote.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent the distinguished Senator from New York, Mrs. CLINTON, and I control the next half hour as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SUNSHINE IN IRAQI RECONSTRUCTION CONTRACTING ACT

Mr. WYDEN. Mr. President, we rise today to discuss the call of a bipartisan coalition for some badly needed sunshine in the process of awarding Iraqi reconstruction contracts. I particularly commend several of my colleagues for joining me in the bipartisan legislation, the Sunshine in Iraqi Reconstruction Contracting Act introduced April 10.

First, Senator CLINTON and I are especially grateful to the chair of the Governmental Affairs Committee, Senator COLLINS of Maine. Not only is she an excellent chair of the committee that will take up this legislation, she is also an expert on procurement law, a real authority on the very issue we have addressed in our legislation. We are very proud to have her as our lead bipartisan coalition builder on this legislation because her leadership qualities on the committee and special proficiency on this topic give me great

confidence this bill is the right move for America, the right move for the Senate, particularly the right move for our taxpayers, and we are very grateful for Senator COLLINS' support and participation in this effort.

Our legislation has a simple aim. It says if a Federal agency awards an Iraqi reconstruction contract without the benefit of open and competitive bidding, that agency must publicly justify their decision to do so. I will tell the Senate and my colleagues the events and news reports of the 21 days since our bill's introduction have only strengthened our bipartisan conviction that Iraqi reconstruction contracts must be awarded in the sunshine and not behind a smokescreen.

There are two primary reasons we believe it is so important American taxpayers deserve additional details about this closed and secretive process. First, there is a huge amount of money on the line, a projected \$100 billion in taxpayer funds. Second, the General Accounting Office has already reported sole-source or limited-source contracts almost always are not the best buy for the taxpayer.

In my view, the need for explanation increases a hundredfold if Federal agencies are going to employ a process that may expose taxpayers to additional cost. When we introduced this legislation, we were concerned that the U.S. Agency on International Development had already awarded four of eight major Iraqi contracts through a closed bid or no-bid process. Even at that time, sole-source and limited-source contracts already seemed to be the rule and not the exception for rebuilding Iraq. USAID announced it would limit competition to companies they felt had the technical ability and accounting ability to handle these matters.

But since our legislation was introduced, not only have a number of Federal agencies continued to award no-bid or closed-bid contracts, but once the bids have been solicited, they even started to ignore or circumvent their own publicly stated criteria for limiting the pool of applicants. More than ever, our bipartisan coalition believes if the Federal Government chooses not to use free market competition to get the most reasonable price from the most qualified contractor, then at a minimum they should tell the American people why that is necessary. Sunshine is the best disinfectant and the news reports of recent days simply beg for a clearing of the air.

On April 11, the day after we introduced our bill, one firm secured a \$2 million Iraq school contract through an invitation-only process. On April 18, USAID awarded the biggest contract yet through an invitation-only bid process. A \$680 million contract to rebuild Iraq's infrastructure was awarded to Bechtel. On April 19, a \$50 million policing contract was awarded through a closed bidding process. On the same day, the Washington Post reported that a renewable \$7.9 billion contract

for personnel services in Iraqi reconstruction was awarded February 25, nearly a month before the war began, with a single company invited to bid for the job. According to the press reports, that invitation came a full 55 days before the start of the hostilities.

As each of the contracts was awarded, Federal agencies justified the no-bid or closed-bid process only by saying that they simply had to move quickly. That is basically one of the only arguments the agencies have left. Originally, USAID said the only companies with security clearances could be invited to apply. But that argument fell apart just a couple of days ago. USAID's own inspector general revealed that USAID waived the security clearance requirement when one bid was awarded. It turned out that the winner of a \$4 million ports contract, in fact, did not have the security clearance that was supposedly essential when the limited bid process started. In effect, USAID eliminated the very criteria it used to limit bidders on the project. USAID suddenly said the outbreak of war in Iraq simply made the security clearance process unnecessary.

The only reason the United States would be awarding contracting to rebuild Iraq would be if the United States went to war. So if the requirement for security clearance was needed before the war broke out, it is hard to see what would have changed once the war started. As a Member of the Senate Intelligence Committee, I thought the argument was a bit shaky at the outset. I was not certain why you would need all of the security clearances to fix the sewer system. Weeks ago, it was clear that most of the Iraqi work would be subcontracted out to companies who did not meet the security requirements in the first place. But the report from the inspector general this week has significantly increased my concern. It turned the agency's argument about security clearances from suspect to essentially ludicrous.

This incident makes the case better than any other that agencies should have to clearly and publicly state how they are choosing companies for these invitation-only bids. Perhaps if they know they have to face the public on these issues they will have better explanations or a more open process.

We want to be clear, in the presence of actual security concerns, our legislation assures the protection of classified information. But at the same time, it does give the Congress oversight over the billions in taxpayer money that Americans are being asked to commit in Iraq and that is desperately needed. Historically, open and competitive bidding by Federal agencies has been the tool to get the best value for the taxpayers of our Nation.

Again, independent reports from the General Accounting Office show that in the past, the sole-source or limited-source contracts have not been before the buy. According to the General Accounting Office, military leaders have

often simply accepted the level of services given by a contractor without ever asking if it could be done more efficiently or at a lower cost. In the case of Iraq, again, with estimates being low-balled at \$25 billion and some exceeding \$100 billion, taxpayers in our country have a great interest in making sure this money is spent efficiently.

I also note in wrapping up that many of these contracts are so-called cost-plus contracts. They pay a company's expenses, plus a guaranteed profit of 1 to 8 percent. There are no limits on total costs, so the more a firm charges in expenses, the more profit it is going to make. If the Federal Government is going to spend the money of the people of Oregon in this fashion without asking for competitive bids, I think the people of Oregon and the people of this country deserve to know why. There simply should not be a place for waste when you are talking about at least \$100 billion of taxpayers' cash.

I understand the argument that these contracts need to be awarded quickly. I understand in many cases the companies receiving them have a long history of international work. I simply believe if the need for speed can adequately justify these closed-bid processes that may expose the taxpayers to additional expenditures, then those agencies need to make public why they would take these extraordinary measures that could very well waste significant amounts of taxpayer money.

I want to yield my time to Senator CLINTON. I thank her. She is on the Senate Armed Services Committee. She and I and Senator COLLINS have been a bipartisan coalition.

I would also like to note a number of other Senators—Senator BYRD in particular, who serves on the Appropriations Committee and the Armed Services Committee—have been very helpful as well. But I yield to Senator CLINTON and particularly express my support to her. With Senator COLLINS, we have tried to make the focus that there is a bipartisan need for protecting taxpayers, to make sure this money is spent wisely at a time when there is so much economic hurt across the Nation.

I yield to the distinguished Senator from New York.

Mrs. CLINTON. Mr. President, will my distinguished colleague yield for a question?

Mr. WYDEN. I will.

Mrs. CLINTON. Mr. President, it is a great privilege to be working in this bipartisan coalition with the chairman of the Governmental Affairs Committee, Senator COLLINS, and with a long-time champion of taxpayers and consumers like Senator WYDEN.

Is it the understanding of the Senator from Oregon that the buck really stops with Congress? It is the Congress's responsibility to ensure the funds we appropriate for reconstruction in Iraq are spent in a fair and open manner?

Mr. WYDEN. The Senator from New York has summed it up. This is

Congress's call. The buck in fact does stop with the Congress.

What we are talking about here is making sure Congress keeps in place vigorous oversight about the process. The process is what has, in our view, put taxpayers' dollars in some peril. People have focused on one company or another. There are inquiries underway. What we are going to do is protect the process that ensures, as the Senator from New York suggests, that the taxpayers are protected and Congress in fact has the last word in making sure this money is spent responsibly.

Mrs. CLINTON. Mr. President, that is an eloquent summation as to why I have joined with my colleagues in introducing the Sunshine In Iraqi Reconstruction Contracting Bill.

Tonight President Bush will address our Nation and will tell the world that Operation Iraqi Freedom's military action is over, at least insofar as major military engagements may be required. We know we will have continuing problems, like those we have seen in the last few days. But it is true we are now moving toward the second phase, which is the rebuilding of Iraq. So this colloquy we are having today is especially timely because of the President's announcement this evening.

With respect to our going forward, I think the important points the Senator from Oregon has made need to be underscored because, for many of us, we want to see the plans that have been explained in the last several weeks about the rebuilding effort move forward as expeditiously and cost-effectively as possible.

We know, as we just heard from the distinguished Senator, that a number of contracts have already been let. They have been no-bid or closed-bid contracts. As one follows the information about these contracts in the press, it has become clearer and clearer this has been in the planning for quite some time and it has been largely the province of a rather small group of insiders.

I think it is imperative, not only for the integrity of our procurement process, for the integrity of the congressional appropriation and oversight process, but for the integrity of the entire operation that has been undertaken in Iraq, to be transparent and open before the world.

If I may ask the Senator from Oregon another question, is it correct the legislation we have introduced would require when contracts are awarded without a full and open competition, behind closed doors, that the awarding agency—whether it is the Department of Defense or USAID—would have to publicly explain why they could not have had an open process?

Mr. WYDEN. The Senator is correct. Again, that is what the legislation is about. There is a certain irony in that that information is in fact already available. The bipartisan legislation we have put together with the Chair of the Governmental Affairs Committee, Senator COLLINS, says what is already

completed work, in terms of the analysis and justification, simply would be made public so as to reinforce the proposition that there be the maximum amount of transparency, the maximum amount of accountability, and so the public can see why, if necessary, a special process that doesn't involve open bids would be necessary.

Mrs. CLINTON. You know, our bill also requires as part of that transparency, letting the sunshine come in, that the agencies would make public the amount of the contract, the scope of the contract, would provide information about how contractors were identified, as well as the justification and determination of the documents that led to the decision not to use full and open competition.

I find that very reassuring. I do not understand why this would not be legislation we could literally pass by unanimous consent this afternoon. I don't think it is in our Government's interest nor is it in America's interest that there be any doubt at all, any shadow cast over this process so people in our own country or elsewhere can say there is something funny going on, this is not being done straight.

Would the Senator agree, in addition to fulfilling what we know to be the appropriate procurement procedures, the fact that no-bid or closed-bid contracts time and time again lead to overruns, to excessive costs, that we are also, through this legislation, trying to send a warning, in a sense holding out a helping hand to the Government, to say let's do this in the open so nobody can ever go back and question motive or process with respect to what we are attempting to do with the reconstruction of Iraq?

Mr. WYDEN. The point of the Senator about the credibility of the Government I think is fundamental. I think we all know if people see something taking place behind closed doors, in secret, without the open and full process of competitive bidding, it just engenders suspicion, it just engenders a sense of skepticism and cynicism about government that just does not have to be.

It is particularly troubling here because the General Accounting Office, the nonpartisan organization of auditors, has already documented there is a problem. So we have a combination of taxpayer skepticism about work done in secret coupled with the long history of the General Accounting Office's skepticism about these reports, and here is an area that just cries out for sunshine.

I talked about sunshine being the best disinfectant, but certainly since we introduced this bill with Senator COLLINS over the last 21 days, the fact we have seen all these contracts—in fact, one of them where the agency just waives their own process, without an explanation—I think highlights the Senator's point that the Government's credibility is at stake.

Mrs. CLINTON. Mr. President, I hope we will have an even larger bipartisan

coalition supporting this legislation, working with us, perhaps even convincing the Government agencies responsible for letting these contracts to think very hard about the process they are now following.

Again, I thank my colleague from Oregon and my colleague from Maine for providing such leadership. It is a pleasure to work with them. But it is also a duty. I think all of us feel a heavy responsibility to make sure the billions and billions of dollars—maybe as much as \$100 billion that will be spent on reconstructing Iraq—is spent in the most effective way. Because, while we are looking at the extraordinary costs of this kind of task awaiting us in Iraq, we are also in this body hearing from our constituents, as many of us did over the previous 2 weeks, about what is happening to their schools, what is happening to their hospitals.

So we have to be especially conscious that this money can be justified; that we can look our constituents in the eyes when they say, I don't understand, Senator. I thought we were going to get more help for our poor schools. Senator, I don't understand. Our hospital has just closed down because we can't get enough reimbursements from the Federal Government.

This is not only about all of the good government principles. It is not even only about the integrity and credibility of our government. It is about the choices that are being made. These choices are not only important with respect to contracting, but they are important with respect to our values.

I hope our colleagues will join us in moving this piece of important legislation through so that we can begin to practice what many of us preach about transparency and openness and also making sure we get the very best deal. Our dollars are limited. If there is any excess on justified dollars going to Iraq that could go to my kids and schools in New York City, or to Ron's hospital in Oregon, that is our responsibility.

Let me again thank my colleagues. I look forward to being successful with this bipartisan coalition and getting this legislation passed at the earliest possible time.

Mr. WYDEN. Mr. President, to wrap up, I would like to reaffirm a point that the distinguished Senator from New York mentioned with respect to the feeling of our citizens at a time when there are so many schools that are underfunded and seniors can't afford their medicine and other services. When I was home over the break—perhaps the Senator from New York heard this as well—many constituents came up to me and said: We are really glad that you are pushing this bill at more competitive bidding and reconstruction contracts. But, to tell you the truth, why don't you just have Iraqi oil pay for all of the reconstruction? We don't need the taxpayer money.

There already is a sense about the Nation that we have to be careful about how these funds are being used. I

think there is a role for the United States to play. I think it is clear that is a part of an important contribution that our country can make with the conflict winding down. But it just reaffirms in my mind how critical it is to use this money wisely. With the American people hurting now with what one might say is the highest unemployment rate of our country, you can't explain to the taxpayers of this Nation frittering away dollars on contracts that are let without competitive bids.

We look forward to colleagues of both political parties joining us in this effort. It seems to me a bill such as this should be passed unanimously with all 100 Senators onboard. We look forward to seeing the resolution of this legislation to protect the taxpayers.

Again, I want to close by expressing my thanks to the chairman of the committee where this legislation was sent. Senator COLLINS has been a critical partner in this effort to direct procurement law. Senator BYRD, who holds, of course, a longstanding interest in this matter and serves on both the Appropriations and the Armed Services Committees, has been invaluable to me in particular in providing counsel with respect to how to move this legislation forward. Together we look forward to passing this bill and protecting the taxpayers' interests as perhaps \$100 billion of taxpayer money is spent in the rebuilding of Iraq.

I yield the floor.

#### EXECUTIVE SESSION

##### NOMINATION OF EDWARD C. PRADO, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDING OFFICER (Mr. BUNNING). Under the previous order, the Senate will now proceed to the consideration of Executive Calendar No. 105, which the clerk will report.

The assistant legislative clerk read the nomination of Edward C. Prado, of Texas, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I ask unanimous consent to proceed for the next 15 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. DEWINE are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. Who yields time?

The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, on behalf of the majority leader FRIST, I ask unanimous consent that the vote on Executive Calendar No. 105, the nomination of Edward C. Prado, occur at 2:05 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I am pleased we are going to move to the nomination of Judge Edward Prado. While my friend, the distinguished senior Senator from Ohio, is on the floor, I want to extend early congratulations because it appears that on Monday we are going to approve a judge on which he has worked so hard. Because of his advocacy and a number of others, we have been able to move through this circuit court process a little more quickly. The Senator from Ohio told me how much he thought of Judge Cook, and being the fine lawyer the Senator is, I am certain we are going to get a good addition to the court. His recommendation goes a long way with me. I congratulate the Senator from Ohio for his advocacy on the part of someone he knows and speaks so well of.

Mr. President, I am pleased we now are on the nomination of Judge Edward Prado, a well-qualified nominee for the Fifth Circuit Court of Appeals. Judge Prado is being considered for the same court as Justice Priscilla Owen, a nominee we on this side find to be a divisive choice for the circuit court. The swift consideration of Judge Prado's nomination illustrates again how the nomination process can work when the President sends up fairminded and mainstream choices for lifetime seats on our Federal bench. It happens quickly.

This came about as a result of our being involved in another judicial nomination that was not going anywhere, and on this side we moved to the nomination of Judge Prado. I think that and other reasons moved us along the path very quickly.

While some have decried the confirmation process is broken, certainly the numbers belie that charge. With the two district court judges confirmed before we recessed and Mr. Sutton on Tuesday, the number of confirmations has already risen to 120. This afternoon it will be 121. These numbers dwarf the confirmations achieved by my Republican colleagues under President Clinton.

Last year alone, in an election year, the Democratic-led Senate confirmed 72 judicial nominees, more than in any of the prior 6 years of Republican control. Overall, in the 17 months of Senate Democratic control, we were able to confirm 100 judges and vastly reduce judicial vacancies. We were able to do so despite the refusal of the administration to consult with Democrats on circuit court vacancies and many district court vacancies.

As I have indicated, if we confirm Judge Prado, which I am confident we will do, he will be the 121st judge. He will also be the 11th Latino judge serving in our circuit courts. Judge Prado is supported by the Congressional Hispanic Caucus, the Mexican American Legal Defense Fund, and many others.

I ask unanimous consent that a letter from the Congressional Hispanic Caucus expressing their unanimous support be printed in the RECORD.