



July 23, 2003

MEMORANDUM

TO: AA/ANE, Wendy Chamberlin
M/OP, Timothy T. Beans

FROM: AIG/A, Bruce N. Crandlemire /s

SUBJECT: USAID's Compliance with Federal Regulations in
Awarding the Iraq Infrastructure Reconstruction
Contract (AIG/A Memorandum 03-003)

SUMMARY

The Office of Inspector General (OIG) has completed a review to determine compliance with federal regulations in awarding the contract for Iraq Infrastructure Reconstruction (IIR) sector activities to Bechtel National, Inc. (Bechtel). The OIG determined that the U.S. Agency for International Development (USAID) complied with the applicable federal regulations for authorizing other than full and open competition, assessing the contractor's ability to perform, conducting the pre-solicitation, selection and negotiation processes and in making the award.

While the OIG did note general compliance with procedures in making the award, USAID did not provide notification to the one offeror in the competitive range that was not selected. Also, USAID did not provide timely debriefings to all three offerors that were not selected. In addition, at the requests of two offerors, a USAID project official met with them during the pre-solicitation phase of the procurement, but did not document these meetings in writing.

BACKGROUND

USAID is in the process of awarding 10 or more contracts for Iraq activities. As of the date of this memorandum, USAID has awarded eight contracts estimated to cost a total of \$990 million for personnel support, seaport administration, local governance, education, infrastructure reconstruction, monitoring and evaluation, health, and airport administration. In addition to these eight contracts, USAID has also awarded grants, cooperative agreements, and interagency agreements.

On January 16, 2003, the Office of the USAID Administrator authorized expedited acquisition and assistance procedures for activities and programs in response to the crisis in the Near East. This approval allowed USAID to award these contracts using other than full and open competition requirements as is authorized under 40 USC 474. This statutory authority requires the awarded contracts to be supported by written justifications and approvals as described in the FAR. This statutory authority also requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

USAID exercised this authority on February 12, 2003, and issued a Request for Proposal (RFP) to seven proposed offerors to bid on the contract for Iraq infrastructure reconstruction activities. The firms were given until February 27, two weeks, to respond to the RFP. Three of the seven potential contractors declined to submit proposals in response to the RFP. Of the remaining four offerors, two were eliminated on March 18, 2003 as non-competitive, leaving two firms in a competitive category/range. On April 17, 2003, USAID awarded Bechtel a Cost-Plus-Fixed-Fee "letter contract" for a total not to exceed \$680 million. Subsequently, on May 16 USAID issued a definitized modification to the contract, which reduced the contract amount to \$679,833,259. The initial obligation was for \$34.6 million.

USAID awarded this contract under expedited acquisition and assistance procedures in order to meet urgent Iraq requirements. According to the Office of Procurement's fiscal year 2003 annual procurement planning guidance, the procurement time to award a contract under limited competition, on average, requires about seven

months once an acceptable statement of work or program description is received. In this case, the Office of Procurement awarded the Iraq infrastructure reconstruction contract, using limited competition, in approximately three months.

REVIEW RESULTS

The OIG reviewed USAID documentation and interviewed USAID and offerors' representatives to determine the events that took place and decisions made supporting: 1) the authorizing authority for using other than full and open competition, 2) the contracting officer's determination of contractor ability to perform the work under the contract, 3) the pre-solicitation process, 4) the selection and negotiation process and 5) the award process. For the above five processes, USAID complied with applicable federal regulations except for notification and the timely debriefing of offerors who were not selected.

Regarding the award process, USAID did not follow FAR requirements for notification and timely debriefings to offerors who were not awarded the contract. In addition, a USAID project officer did not document in writing pre-solicitation meetings held with two offerors (one who was eventually awarded the contract and the other who was initially a potential offeror that chose to participate as a subcontractor of a competing offeror).

USAID Did Not Comply with Federal Regulations in Providing Notification

USAID did not comply with the FAR requirements to notify the offeror who was not awarded the contract. According to FAR 15.503(b)(1),

"Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award..."

Regarding notification to the offeror whose proposal was in the competitive range, but was not selected for award, USAID did not provide notification. The offeror should have been notified by April 20, 2003 (three days after the contract was awarded) that the offeror did not

receive the award. However, this required written notification was not issued by USAID.

USAID Did Not Comply with Federal Regulations in Providing Timely Debriefings to All Requesting Offerors

USAID did not comply with the FAR time requirements in issuing debriefings to the offerors who were not awarded the contract. According to FAR 15.506,

(a) (1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

All of the offerors requested debriefings before the expiration of the three-day requirement following the award date. Because all offerors requested the debriefings according to the FAR requirement, all offerors should have received debriefings by April 22, 2003. The debriefings occurred as follows:

- Offeror 1, who was in the competitive range but not selected for the award, received a debriefing letter on April 30, 2003 and a revised letter on May 1, 2003¹—eight days after the debriefing should have occurred.
- Offeror 2, who was not in the competitive range, received a debriefing letter on May 5, 2003—

¹ According to the Contracting Officer, a revised debriefing letter was issued because the first two paragraphs of the original debriefing letter may have been unclear.

thirteen days after the debriefing should have occurred.

- Offeror 3, who was not in the competitive range, received a debriefing letter on May 7, 2003—fifteen days after the debriefing should have occurred.

In summary, all three offerors made timely requests for debriefings, as specified in the FAR. However, USAID did not provide debriefings within the time required. According to the Contracting Officer, these delays were due to higher priority contract administration functions, which focused on immediately placing Bechtel personnel in the field.

Therefore, the Office of Inspector General recommends that the Office of Procurement:

- Develop administrative procedures to ensure that timely award notification and debriefings are performed in accordance with FAR requirements.

Pre-solicitation Contacts
With Offerors Not Documented

According to FAR 15.201(a) "Exchanges with industry before receipt of proposals,"

"Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with procurement integrity requirements (see 3.104). Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition."

FAR 3.101-1 "Standards of conduct - General" states,

"The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct

must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions."

During this review, the OIG noted that USAID, in its preliminary market research efforts contacted all of the potential offerors to obtain information as part of the process for determining their current level of facilities clearance. However, in addition to these preliminary contacts, USAID project officials said that they were contacted by and met with numerous firms seeking information about business contracts relating to Iraq. One project official was contacted by and met individually with two of the contractors who were subsequently invited to bid on this contract.

One meeting, with the firm who won the award, was held on February 4, 2003, eight days before the RFP was issued. The meeting with the other firm (initially one of the seven offerors, but which subsequently chose to participate as a subcontractor of a competing offeror) was held prior to the issuance of the RFP, but the project official could not provide an exact date for the meeting. The project official and contractor representatives stated that these meetings provided an overview of the U.S. Government's strategy in Iraq and did not provide any specifics related to the RFP.

However, no written documentation of the meeting discussions is available. Although the FAR does not require written documentation of these meetings, the OIG believes that maintaining written documentation of the items discussed at these meetings would be a good business practice and would provide further evidence of USAID's compliance with FAR 3.101-1 ("Standards of conduct - General").

In a Memorandum issued by the OIG on June 6, 2003, "USAID's Compliance with Federal Regulations in Awarding the Iraq Education Sector Contract (AIG/A Memorandum 03-001)," the OIG recommended that USAID's Bureau for Asia and the Near East (ANE) "maintain sufficient records of meetings with outside organizations." In response, ANE management stated that it would issue a notice to advise technical staff to maintain sufficient records of meetings with outside organizations.

Although the ANE Bureau is already taking action to document meetings with outside organizations, the OIG noted that pre-solicitation meetings also occurred with offerors involved in this infrastructure reconstruction contract. Thus, the Office of Inspector General recommends that, in addition to the ANE Bureau's efforts, the Office of Procurement:

- Issue an Agency-wide notice that would ensure that items discussed in pre-solicitation meetings with potential offerors are documented.

USAID COMMENTS
ON OUR REVIEW

The USAID Director of Procurement provided comments on our review. Regarding debriefings, the USAID Director of Procurement said that the OIG was correct in stating that USAID was late in providing the non-selected contractors with a debriefing. The Director of Procurement explained that the urgency of getting the selected contractor working in Iraq led to the delay.

Regarding pre-solicitation meetings, the USAID Director of Procurement states that the FAR explicitly allows for this kind of one-on-one meeting and does not require documentation of these meetings. In addition, the Director of Procurement felt that documenting these meetings would place a burden on USAID personnel.

However, the OIG still considers it to be good business practice to maintain written documentation of such meetings, and that doing so would provide further evidence of USAID's compliance with FAR 3.101-1, "Standards of conduct - General." This written documentation would also provide additional information to officials in the Office of Procurement as the award process progresses.

The OIG is continuing to review the Iraq related contracts as they are awarded. We appreciate the courtesies extended to the OIG staff on this review.

cc: AA/LPA, E. Fox
AA/M, J. Marshall