

OFFICE OF INSPECTOR GENERAL



April 14, 2003

The Honorable Nita Lowey
Ranking Minority Member
Subcommittee on Foreign Operations, Export
Financing and Related Agencies
House of Representatives
Washington, DC 20515

Dear Representative Lowey:

The Office of Inspector General has recently received congressional inquiries regarding the process used by the United States Agency for International Development (USAID) for awarding contracts (in particular, construction contracts) for rebuilding in a postwar Iraq. Because of widespread interest in this matter, we wanted to share our observations to date of the USAID contracting process for post-war Iraq.

To answer the questions that have been raised, we interviewed USAID officials, including senior procurement officials, and reviewed records regarding this process. Although the exact numbers continue to fluctuate, USAID is currently in the process of awarding ten reconstruction contracts with an estimated total value of approximately \$1.1 billion. USAID is using less than full and open competition in awarding these contracts. Federal Acquisition Regulations Subpart 6.3 and USAID Acquisition Regulation 706.302 allow for other than full and open competition when the USAID Administrator makes a written determination that compliance with full and open competition would be inconsistent with the fulfillment of the foreign assistance program. The Office of the USAID Administrator made this determination in writing on January 16, 2003.

The following are the specific questions received with the responses:

- *What was the process that USAID used to develop "request for proposals" for any and all contracts related to the rebuilding efforts in Iraq? How did USAID select the companies eligible to bid on these contracts? What criteria did it use in the selection process? Was this process consistent with the agency's procurement rules and practices, and all other applicable laws and regulations?*

USAID procurement and program officials outlined the process as follows. USAID technical staff developed scopes of work for each type of contract. Concurrently, USAID program and procurement staff developed a potential list of bidders who could meet a set of distinct criteria. These criteria included previously demonstrated technical capability, having approved accounting systems, having the ability to deploy on short notice, having experience in developing countries, and having security clearances to handle classified national security material.

Specifically in regard to the large construction contract, the contracting officer described the process as follows. Program staff developed the scope of work, while a technical working group, composed of both contracting and engineering specialists, developed a list of potential bidders. This list was narrowed down to seven potential bidders based on the technical working group's collective institutional knowledge of companies meeting the criteria previously noted. The one slight difference for the construction contract is that having an approved accounting system was not one of the criteria for developing the list of bidders. However, having an approved accounting system is one of the criteria for final selection of the contract award. The contracting officer noted that this is an on-going procurement process and stressed that there was no outside pressure in the selection of potential bidders or in the final selection of the contract award.

USAID officials stated that there were several practical constraints to the normal competitive process. For example, USAID officials stated that full and open competition would have required approximately 6 months or more given the expected number of bidders and the required technical reviews on each of these proposals. USAID officials stated that this time lag would have impaired USAID's capability of having the resources mobilized to meet Iraq's post-war reconstruction needs.

For example, USAID developed a list of seven eligible bidders for the very large infrastructure improvement contract

cited in the Wall Street Journal article you referred to in your letter. In the case of this very large contract, USAID senior officials noted that the list of seven potential bidders provided a strong basis for competition while recognizing the need for speed in the process for providing post-war reconstruction.

- *Was the process used by USAID to select the companies bidding on the Iraqi contracts the best method available for achieving the goals of the contract while protecting the interest of taxpayer funds?*

USAID procurement officials told us that while full and open competition is always best, time constraints and the urgent need for these contracts dictated that a faster process be employed. It is their belief that the methods chosen were the best available to protect the interest of taxpayer funds while achieving the contract reconstruction goals of having contractors mobilized and ready to begin work immediately when a secure environment is in place. As noted earlier, federal contracting authorities allow for other than full and open competition in such circumstances.

- *Did any USAID employee have contact with any of the companies that were selected before they were asked by the agency to submit a bid? If so, who were the employees, which companies had contact, and what was the nature of their contact?*

USAID procurement and program officials stated that no USAID employee had contact with any of the companies before they were asked by the agency to submit a bid with the following exceptions. The contracting officer noted that in one case a company delivered an unsolicited corporate prospectus to USAID headquarters. The contracting officer told us they used the prospectus as background information. In addition, technical working group members contacted each of the potential bidders to obtain information as part of the process for determining their current level of facilities clearance. USAID officials also stated that there may have been some unsolicited contacts from firms asking questions such as when or if USAID was going to be advertising contracts for a specific area. USAID officials stated that this type of information is available to the general public and is considered a proper inquiry to answer.

To date, we have no information available to question these assertions.

- *Did any USAID employee have contact with any official or employee of the United States government, outside of USAID, regarding the companies selected to bid on any of the contracts related to the rebuilding efforts in Iraq? If so, who were the employees, who did they have contact with, and what was the nature of their contact?*

USAID procurement and program officials told us that no USAID employee had contact with any official or employee of the United States government, outside of USAID, regarding the companies selected to bid on any of the contracts related to the rebuilding efforts in Iraq. Furthermore, senior procurement officials stated that there has been no pressure from governmental sources for the awarding of the contract to any particular bidder.

To date, nothing has come to our attention to indicate otherwise.

In addition, we are continuing to research bidders for the major reconstruction contracts to identify if there have been any past problems with USAID or other federal government contracts.

If I can be of further assistance, please let me know.

Sincerely,

/s/

Everett L. Mosley
Inspector General

CLEARANCE PAGE FOR LETTER TO CONGRESSMAN NITA LOWEY APRIL 14,
2003 informational letter regarding USAID procurement for Iraq.

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