



January 27, 2004

MEMORANDUM

TO: Acting AA/ANE, Gordon West
M/OP, Timothy T. Beans

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

SUBJECT: USAID's Compliance with Federal Regulations in Awarding
the Iraq Airport Administration Contract (AIG/A
Memorandum 04-003)

SUMMARY

The Office of Inspector General (OIG) has completed a review to determine compliance with federal laws and regulations in awarding the contract for Iraq airport administration activities to SkyLink Air and Logistic Support (USA), Inc. (SkyLink USA).

The OIG determined that the U.S. Agency for International Development (USAID) complied with applicable federal regulations, except for the need to document market research described in the negotiation memorandum.

In addition, at the request of the Administrator in an April 14, 2003 memorandum to the Inspector General, we were asked to identify areas for improvement. Accordingly, we noted the following: 1) SkyLink USA's incorporation status had lapsed before it was asked to participate in the bidding process; however, this lapse was corrected several days before the final contract was signed; 2) USAID had not reviewed SkyLink USA's newly implemented cost accounting system and provisional indirect cost

rates, and 3) USAID had not determined if SkyLink USA needed a facilities clearance¹. USAID has or is in process of taking corrective actions on the above.

BACKGROUND

USAID awarded ten contracts in an initial round of procurements for reconstruction activities in Iraq. These ten contracts, estimated to cost a total of \$1.5 billion, include awards for economic governance, personnel support, seaport administration, local governance, education, infrastructure reconstruction, monitoring and evaluation, health, airport administration, and agriculture. In addition to these ten 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 contracts using other than full and open competition requirements as authorized under 40 USC 474. This statutory authority requires the awarded contracts to be supported by written justifications and approvals as described in the Federal Acquisition Regulation (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 Proposals (RFP) to two prospective contractors to bid on the contract for administering five airports in Iraq. The firms were given until February 24, 2003 to respond to the RFP. Both firms submitted proposals in response to the RFP. USAID issued letter contracts on March 21, 2003 and April 15, 2003 before signing the final cost-plus-fixed-fee level of effort contract with SkyLink USA on May 5, 2003 for approximately \$10.2 million. The contract is for an initial 18-month period with two option years. The first option year is for \$10.4 million and the second year is for \$10.7 million, giving a potential total cost of \$31.3 million.

¹ Facilities clearance is the term used to illustrate that an investigation has been conducted of a company/organization, and that the entity and applicable employees have been granted a security clearance. Executive Order 12829 established a National Industrial Security Program to safeguard federal government classified information that is released to contractors. Classified contractors are contractors that USAID has determined may need to have access to classified information or classified areas, and, as a result, the contractor and their employees need to have security clearances.

REVIEW RESULTS

The OIG reviewed USAID documentation and interviewed USAID officials and representatives of both offerors to determine the events that took place and decisions made supporting the award of the contract. USAID complied with regulations in making the award, except for the need to document market research described in the negotiation memorandum. Additionally, we noted the following: 1) SkyLink USA's incorporation status had lapsed before it was asked to participate in the bidding process; however, this lapse was corrected several days before the final contract was signed; 2) USAID had not reviewed SkyLink USA's newly implemented cost accounting system and provisional indirect cost rates, and 3) USAID had not determined if SkyLink USA needed a facilities clearance.

Market Research Needs to Be Documented

FAR 10.002(e) states "Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition." In addition, FAR 6.301(d) requires that "when not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances." There was no documentation in the contract files of the market research performed to support the above, other than a brief summary in the negotiation memorandum written months after the market research was conducted.

The memorandum of negotiation describes research performed by the contract specialist to assess potential contractors, but notes that the contract specialist found no known companies in the United States that managed airports in many cities or overseas. Therefore, USAID decided to invite two firms that previously provided it with airline services in disaster areas. However, USAID representatives from the Office of Procurement were not able to provide documentation to support the market research described in the negotiation memorandum.

Considering the complex nature of the airport administration contract and the high risk environment in which the contract will be performed, the OIG believes this \$31.3 million acquisition merited at least some detailed supporting documentation. The OIG believes that, in addition to the negotiation memorandum summary, USAID's files should contain evidence of the detailed market research steps taken.

A similar finding and recommendation relating to lack of market research documentation was presented in our review of the awarding of the education sector contract in Iraq (AIG/A Memorandum 03-001 issued June 6, 2003). Because action is being taken by USAID to implement that recommendation, the OIG is not making an additional recommendation in this report.

Responding to our finding that market research needs to be documented, the Office of Procurement (M/OP) said that they listed, in the negotiation memorandum, the agencies and organizations that were contacted, but did not list the names and phone numbers of those contacted. We agree that this information was included in the negotiation memorandum. However, there was no other information or documentation in USAID's files regarding its market research. Given the size and complexity of this acquisition, we believe such documentation should have been included in the files.

SkyLink USA's Incorporation Status Had Lapsed

22 CFR 228.31 requires that contractors for USAID be legally incorporated or organized under law, and that they must certify to that effect. At the time SkyLink USA signed both letter contracts, its incorporation status with the District of Columbia government had lapsed because the company did not file required bi-annual reports for a period of four years. The RFP did not require bidders to demonstrate valid and current legal status or require certification to that specific effect. Furthermore, because the above were not required, USAID officials were not aware of the lapse in SkyLink USA's incorporation during the contract proposal, preaward survey, or negotiation processes. However, SkyLink USA became aware of this lapse and rectified the situation several days before the final contract was signed.

Regarding the lapse of SkyLink USA's incorporation status, M/OP explained the procedures they have in place to verify the organizational status of potential contractors, and did not believe that this was a systemic problem. In addition, the lapse in incorporating status was corrected by SkyLink USA before the contract was signed. Therefore, we are not making a recommendation.

Need to Ensure Contractor's Accounting System Is Reviewed

Based on its preaward survey, M/OP concluded that SkyLink USA did not have an adequate cost accounting system at the time the contract was signed. Therefore, in order to ensure that SkyLink USA implemented a satisfactory cost accounting system as agreed during contract negotiations, the Contract Audit Management Branch of M/OP planned to review the cost accounting system four months into the contract. Additionally, the Office of Procurement, Contract Cost and Close-Out Branch planned to establish a negotiated indirect cost rate for SkyLink USA within six months of the May 5, 2003 award date. As of the date of this memorandum, which is more than eight months into the contract, M/OP has not conducted either of these reviews.

As a result of the above, there is a risk that SkyLink USA's accounting system may not be able to provide USAID with complete and reliable accounting information. During the course of our review and discussions with USAID on this issue, the Contract Audit Management Branch of M/OP requested the OIG's assistance in arranging a review of SkyLink USA's cost accounting system. The OIG has subsequently made such arrangements. Therefore, we are not making a recommendation.

Facilities Clearance Determination Needed

At the time the RFP was issued, USAID determined that the airport administration contract would require a facilities clearance. After selecting SkyLink USA, USAID discovered that the firm did not have the requisite facilities clearance. M/OP consulted with Asia and Near East Bureau (ANE) officials in Washington and Iraq, as well as with the Office of Security. ANE then decided that, because hostilities had already commenced, the facilities clearance was no longer necessary. Therefore, the requirement was not included in the final contract. Although ANE is responsible for determining if a facilities clearance is needed, at the urging of SkyLink USA, M/OP was considering modifying the contract to include a requirement for a facilities clearance.

On April 25, 2003, the OIG issued an information memorandum on the deletion of the facilities clearance requirement from this contract. In that memorandum, the OIG reported that the RFP had a requirement for the contractor to have or obtain a facilities clearance prior to contract performance. However,

according to M/OP officials, the airport contractor was selected based on technical merit and cost factors without first determining whether the selected contractor had a facilities clearance.

According to M/OP officials, the facilities clearance requirement was deleted on April 2, 2003 after the first letter contract with SkyLink USA was signed on March 21, 2003. ANE representatives stated this deletion was made because the conditions requiring the clearance that existed during the planning process no longer existed with the outbreak of hostilities on March 19, 2003.

The OIG reported in the April 25, 2003 memorandum that USAID officials believed the procurement process was not impaired by this decision change.

In October 2003, SkyLink USA said that their employees in Iraq need to participate in classified briefings and function as part of the security apparatus in Iraq. As a result, M/OP, based on SkyLink USA's request, was considering a contract amendment to require a facilities clearance for SkyLink USA.

RECOMMENDATION No. 1:

The Office of Inspector General recommends that the Asia and Near East Bureau, before sponsoring SkyLink USA for a facilities clearance and modifying the airport administration contract to require one, should determine if there is a need for SkyLink USA to have a facilities clearance and take appropriate action when this decision is made.

In response to Recommendation No. 1, ANE and M/OP have determined that there is not a justifiable need for SkyLink USA to have a facilities clearance. As a result of this determination, final action has been taken on Recommendation No. 1.

We appreciate the courtesies extended to the OIG staff on this review, and we are continuing to examine other Iraq contracts.

cc: AA/LPA, E. Fox
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