



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 Seaport Assessment and Operation Contract
(AIG/A Memorandum 04-004)

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 seaport assessment and operation activities to SSA Marine, formerly known as Stevedoring Services of America.

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. Therefore, we are reporting that, although not an issue of non-compliance with procurement regulations, USAID changed the facilities clearance¹ requirements of the Request for Proposals (RFP) during the procurement process.

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.

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 an RFP to three prospective contractors to bid on the contract for assessing the needs of and operating a seaport in Iraq. The firms were given until February 24, 2003 to respond to the RFP. Two firms submitted proposals in response to the RFP. USAID issued a letter contract to SSA Marine on March 7, 2003 before signing the final cost-plus-fixed-fee level of effort contract on April 8, 2003 for approximately \$4.8 million. The contract performance period is for one year with no option years.

REVIEW RESULTS

The OIG reviewed USAID documentation and interviewed USAID officials and representatives of SSA Marine 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. Also, although not an issue of non-compliance with procurement regulations, the OIG noted that USAID changed the facilities clearance requirements of the RFP during the procurement process.

Market Research Support 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. Considering the complex nature of the seaport assessment and operation contract and the high risk environment in which the contract will be performed, the OIG believes this acquisition merited at least some detailed documentation of steps taken during market research in addition to the summary included in the negotiation memorandum.

The memorandum of negotiation describes research performed by the contract specialist to assess potential contractors. According to the negotiation memo and Office of Procurement (M/OP) officials, the source list of potential contractors was reviewed with the Maritime Administration and was based upon industry information regarding companies performing similar contracts in the United States and overseas. The only discussion of market research in the negotiation memorandum states,

"The proposed action is only offered to those contractors deemed capable and responsible by the contracting officer to assess, manage and operate a port for this agency. The source list of potential contractors was reviewed with the Maritime Administration, and is based upon industry information regarding companies performing similar contracts in the United States and overseas."

However, USAID representatives from M/OP were not able to provide documentation to support the market research described in the negotiation memorandum.

A similar finding and recommendation relating to the lack of market research documentation was presented in our reviews of the education sector contract award (AIG/A Memorandum 03-001 issued June 6, 2003) and the airport administration contract award (AIG/A Memorandum 04-003). Because action is being taken

to implement the recommendation, the OIG is not making an additional recommendation in this report.

Responding to our finding that market research needs to be documented, M/OP said that they listed, in the negotiation memorandum, the agency that was contacted, but did not list the name and phone number of the person 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.

Guidance Needed on Facilities Clearance Requirements

At the time the RFP was issued, USAID determined that the seaport assessment and operation contract would require a facilities clearance. After selecting SSA Marine, 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. USAID officials stated that the procurement process was not impaired by this change.

On April 25, 2003 the OIG issued a memorandum on the deletion of the facilities clearance requirement from this contract. That memorandum contained two recommendations for M/OP to: 1) issue a policy directive to provide guidance to procurement officials on the requirements for documenting contractor facilities clearances during the procurement process, and 2) ensure that when facilities clearance requirements are part of an RFP, the decision to go forward or delete the requirement is made prior to selection. USAID has conducted staff training to address the above recommendations. The training was provided at an M/OP biweekly seminar for all Washington staff in May 2003 and at the worldwide procurement conference for all contracting officers in January 2004. However, M/OP has not yet developed specific procedures requiring contracting officers to verify, in the early stages of the procurement process, the facilities clearance level of the bidding contractor. USAID is still in the process of taking action on these recommendations, and as a result, we are not making an additional recommendation in this report.

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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