INFORMATION MEMORANDUM

TO: M/OP, Timothy T. Beans

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

SUBJECT: Iraq Seaport Administration and Airports Administration Contracts

SUMMARY

As part of the U.S. Agency for International Development's (USAID) program for the reconstruction of Iraq, USAID has awarded a seaport contract for $4 million and is in the process of awarding an airport administration contract.[1] USAID had a requirement for the contractor to have or obtain a facilities clearance[2] prior to contract performance. However, according to USAID officials, a contractor was selected based on technical merit and cost factors without in fact determining that the selected contractor had an official facilities clearance.

Information about the selected contractor was provided to USAID's Office of Security on March 25, 2003. The USAID Office of Security notified the Office of Procurement on March 26, 2003 that the selected firm did not have the required facilities clearance. According to USAID procurement officials, the facilities clearance requirement was deleted on April 2, 2003 prior to the contract award. They said that the conditions requiring the clearance that existed during the planning process no longer existed with the

[1] The airport contracts have yet to be awarded, and thus the procurement negotiation details cannot yet be disclosed.

[2] Facilities clearance is the term used to illustrate that an investigation has been conducted of a company/organization by the Defense Security Service, Central Intelligence Agency, or Department of Energy, and that the entity has been awarded a security clearance.

outbreak of hostilities on March 19, 2003. The contract was awarded on April 8, 2003.

USAID officials believe that the procurement process was not impaired by this decision change.

BACKGROUND

In January 2003, USAID began the process of awarding contracts for several activities for rebuilding in a post-war Iraq. Although the exact numbers continue to fluctuate, USAID is currently awarding ten reconstruction contracts with a total estimated value of about $1.1 billion. Among these ten reconstruction contracts, USAID has awarded a seaport contract for $4 million and is in the process of awarding an airport administration contract.

USAID officials told us they used less than full and open competition in awarding the two contracts for airport and seaport administration. 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.

USAID officials considered the seaport and airport contracts as highest priority. While both contracts are relatively small within the scale of the entire Iraq relief and reconstruction program of over $1 billion, their priority was due to the need to have a functioning seaport and airports in Iraq. This capability was prerequisite to the effective delivery of relief and reconstruction commodities.

REVIEW RESULTS

USAID Initially Required Contractor Facilities clearances

During our review of the contracting process we found that in the planning stages, program and procurement staff developed scopes of work for the administration of the seaport and airports in post-war Iraq. In reviewing the scope of work and discussing the situation, program and security staff determined that the contractors could potentially have a need to access classified images and other documents. Procurement officials stated that

during the procurement planning stages, hostilities had not begun and prospective contractors may have had a need to review classified documents as part of its contract implementation planning efforts. For this reason, the solicitations for both the seaport and airports contracts included the requirement that the contractors have a facilities clearance before the execution of the contract.

After the scopes of work were completed, the Office of Procurement developed a list of three potential bidders for the seaport contract. According to the Office of Procurement, this list was developed based on three criteria: (1) previously demonstrating technical capability, (2) having the ability to deploy on short notice, and (3) and having experience working overseas in developing countries. According to Office of Procurement officials, the criteria for inviting potential contractors to bid on the contract did not include the need to have facilities clearances to handle classified national security material.

The formal Request for Proposal (RFP) was issued on February 12, 2003 to three companies who met the above criteria; and, thus, were invited to bid by the deadline of February 24, 2003, at noon. The RFP, however, did specify that having a facilities clearance would be a requirement of the contract. Two of the three invited companies submitted proposals by the deadline. One firm did not submit a proposal and was removed from consideration.

The Office of Procurement evaluated the two proposals that were received by the deadline. One of the proposals was judged technically superior and lower in cost than the other. The other proposal was considered not to be in the competitive range. This determination was made on or about March 5, 2003 and the contractor was authorized pre-contract cost on March 7, 2003.

Information about the company judged to be superior was then provided to the USAID Office of Security in regard to facilities clearances on March 25, 2003. USAID Office of Security personnel told us that they informed the Office of Procurement on March 26, 2003 that the selected firm did not have the required facilities clearance.

According to USAID Office of Procurement officials, the staff did not initially detect that the contractor lacked a facilities clearance.

USAID Deleted the Requirement for Contractor Facilities clearances When Events Changed

Procurement and program officials stated that while the procurement process was proceeding and before the clearance process was initiated for the selected firm, the original conditions necessitating contractor facilities clearances had changed with the commencement of hostilities on March 19, 2003. As noted above, USAID officials originally expected that the contractors could potentially have a need to access classified images and other documents prior to deploying to Iraq.

Procurement and program officials stated that with the actual commencement of hostilities, such access to classified images and documents was no longer necessary because the company selected would be able to assess conditions on the ground first hand as soon a permissive environment existed in Iraq. Because of the changed conditions, the director of the USAID reconstruction team in the field asserted to Office of Procurement officials via email on March 29, 2003 that facilities clearances were no longer necessary for the seaport, and possibly the airport contracts.

Given the circumstances, after consultation with the Office of Security, Office of Procurement officials stated that they determined there were two options available: (1) sponsor the selected contractor for the requisite facilities clearance, or (2) delete the facilities clearance requirement since there was no longer a need for one. On April 2, 2003, USAID elected option (2): to delete the requirement for facilities clearances for the seaport and airport contractors because a contractor facilities clearance was no longer required for them to implement their activities.

Acknowledging that staff did not initially detect that the contractor did not have a facilities clearance, Office of Procurement officials stated that they needed to further familiarize their staff with the requirements of the National Industrial Security Program. Consequently, the Office of Procurement has arranged for the Office of Security to provide briefings to procurement staff. In addition, the Office of Procurement is considering formalizing, via a checklist, security considerations into the award process.

CONCLUSION

According to USAID officials, it was originally intended to incorporate contractor facilities clearances as part of the

contractor selection process. However, they said that at the time the Office of Procurement detected that the selected contractor did not have a facilities clearance, hostilities had commenced in Iraq and clearances were no longer necessary. Based on these facts, the requirement was deleted.

USAID officials believe that the procurement process was not impaired by this decision change.

The OIG believes the Office of Procurement's internal controls and process for considering the security requirements of the request for proposal are in need of improvement. Therefore, the Office of Inspector General recommends that the Office of Procurement:

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.

We are continuing to review this and other contracts as they are awarded. Please provide us within 15 days information related to actions planned or taken to implement these recommendations.

cc: AA/ANE, W. Chamberlin,
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