



June 6, 2003

INFORMATION 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 Education Sector Contract  
(AIG/A Memorandum 03-001)

SUMMARY

The Office of Inspector General (OIG) has completed a review to determine compliance with federal regulations in awarding the contract for Iraq education sector activities to Creative Associates International, Inc (CAI). We determined that the U. S. Agency for International Development (USAID) complied with the applicable federal regulations for authorizing other than full and open competition as well as in its assessment and review of the contractor's ability to perform under the contract. However, we noted that during the pre-solicitation process USAID did not have a clear methodology and did not adequately document the decisions made for market research in identifying the prospective contractors. Also, USAID could not adequately demonstrate that certain events that occurred during the pre-solicitation phase were in compliance with regulations and procedures addressing exchanges of information with prospective contractors.

BACKGROUND

USAID is in the process of awarding 10 or more contracts for Iraq reconstruction activities. As of the date of this memorandum, USAID has awarded seven contracts estimated to cost a total of \$985 million for personnel support, seaport administration, local governance,

education, capital construction, health, and airport administration. In addition to these seven 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 authority allowed USAID to award these contracts using other than full and open competition requirements in accordance with 40 USC 474. This statutory authority requires the awarded contracts to be supported by written justifications and approvals as described in the Federal Acquisition Regulations. 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 March 4, 2003, and issued a Request for Proposal (RFP) to five contractors to bid on the contract for Iraq education activities. The contractors were given until March 17, two weeks, to respond to the RFP. One of the five potential contractors declined to submit a proposal in response to the RFP. Of the remaining four contractors, only one contractor submitted a proposal, which included as its subcontractors the other three potential contractors invited to bid as prime contractors. On April 11, 2003, USAID awarded CAI (the only bidder) a 12-month Cost Plus Fixed Fee, Level of Effort term contract for a total of \$62.6 million. The contract includes two option years with estimated costs of \$52.0 million and \$42.5 million for years 2 and 3 respectively. The total contract cost including the base and the option years is \$157.1 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 contrast, the Office of Procurement awarded the Iraq education contract in less than three months.

## REVIEW RESULTS

We reviewed documentation and interviewed USAID 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, and 3) the pre-solicitation process. USAID complied with the applicable federal regulations for authorizing other than full and open competition and with the applicable federal regulations in its assessment and review of the contractor's ability to perform under the contract. USAID did not have a clear methodology and did not adequately document the decisions made for market research in identifying the prospective contractors. Furthermore, USAID could not adequately demonstrate that certain events that occurred during the pre-solicitation phase were in compliance with regulations and procedures addressing compliance on exchanges of information with prospective contractors. These two issues are further described below.

### USAID Did Not Comply with Federal Regulations for Conducting Market Research to Identify Prospective Contractors

USAID did not have a clear methodology and did not adequately document the decisions made for market research in identifying the prospective contractors. FAR Part 10 prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring services. This regulation states that agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

USAID representatives from the Office of Procurement and the Asia and Near East Bureau did not maintain documentation to support the decision making process that led to the final list of prospective contractors. According to Asia and Near East Bureau officials, documentation was not maintained or produced because they believed that it was not required. USAID representatives also stated the time frame imposed for the technical team to develop a list of prospective contractors and the scope of work was significantly less than what is customary for similar awards. As a result, decisions were made quickly

in order to meet deadlines, and documentation was not maintained.

Interviews with seven different USAID representatives (one from the Office of Procurement and six from the Asia and Near East Bureau) who participated in the market research process revealed varying and often conflicting accounts of the market research methodology. For example, two of the representatives stated that they did not materially participate in the process, whereas, other representatives indicated otherwise. One representative stated that the initial number of prospective contractors was three and subsequently increased to five. Another representative stated that initially ten prospective contractors were identified and subsequently reduced to five. The selection methodology used to arrive at the final list of five prospective contractors was not documented in the contract file.

The Office of Procurement officials did not agree with the OIG position that USAID did not have a clear methodology for identifying prospective firms and documenting its market research. USAID procurement officials stated that it did not have a need to conduct market research because it had been working in the education field for a long period of time and had a number of contracts and grants from which to choose prospective contractors based on its institutional knowledge. USAID procurement officials further stated that it had a methodology for determining who to invite to bid which involved several discussions on the subject but did not have a written document explaining this selection process.

The OIG does not agree. USAID's Acquisition Regulation 706.302-70(c)(2) states that the contract file must include appropriate explanation and support justifying the award without full and open competition, as provided in FAR 6.303. FAR 6.303-2(a)(8) states that as a minimum, the file should include a description of the market research conducted and the results or a statement of the reason market research was not conducted. The U.S. General Accounting Office's Standards for Internal Control states that "all transactions and significant events need to be clearly documented." In this case, a procurement action with estimated costs of \$63 million (up to \$157 million (if option years exercised) clearly qualifies as a significant event. We believe that a more disciplined process

documenting the analysis performed and decisions made would result in a clearer understanding and explanation of the market research process.

Requiring that market research analysis and decisions made be documented is not burdensome. FAR Part 10 provides practical guidance on conducting market research noting that documentation should be appropriate to the size and complexity of the acquisition. In this case, USAID awarded a contract for \$63 million limiting prospective contractors to five. Expecting that this process be documented and clearly explained is reasonable.

The OIG believes the Office of Procurement's internal controls and processes for market research for identifying prospective contractors to receive the request for proposal need improvement. Therefore, the OIG recommends that the Office of Procurement:

- Maintain documentation within the contract award file demonstrating the analysis performed (or why one was not performed) and decisions made when conducting market research to identify prospective contractors when using other than full and open competition.

Insufficient Documentation to  
Determine Compliance on Exchanges  
of Information with Prospective Contractors

USAID could not adequately demonstrate that certain events that occurred during the pre-solicitation phase were in compliance with regulations and procedures addressing exchanges of information with prospective contractors.

FAR 15.201 states that general information about agency mission needs and future requirements may be disclosed at any time. However when specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information must be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. In addition, FAR 3.101-1 states that the general rule is to strictly avoid any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.

USAID's supplementary reference, "Legal and Policy Considerations When Involving Partners and Customers on Strategic Objective Teams and Other Consultations", provides three practical steps to avoid bias and mitigate unfair competitive advantage:

1. Maintain records of communications involving outside organizations, such as meeting minutes.
2. Document the reasoning for inclusion or exclusion of competitors when organizational conflict of interest is an issue.
3. Coordinate with the attorney advisor and contracting officer.

In November 2002, USAID representatives from the Asia and Near East Bureau, involved in the initial Iraq education contingency planning invited knowledgeable personnel from the government, universities, and private sector to participate in a roundtable discussion. This meeting was conducted to share information and discuss the current state of the educational system, particularly primary and secondary education in Iraq. According to the invitation, the participation and contribution of the invited experts would be helpful as USAID formulated its strategy and approaches. The Office of Procurement was not aware of this meeting until the OIG brought it to their attention.

Based on a list of participants attending the November 2002 roundtable discussion, one of the participants was an employee of CAI. This firm was one of the five prospective contractors subsequently invited by USAID to bid on the contract.

Summary minutes and supplemental information on Iraq education were maintained by the technical office and provided to each of the invitees subsequent to the roundtable discussion. While the minutes from the meeting only provide limited details of the discussions, topics listed disclose that discussions focused on the challenges and problems facing the Iraq education sector along with questions and recommendations to address these challenges. These topics grouped below, were addressed within the RFP:

- The content and availability of teaching curriculum.
- The difficulty of retaining teachers due to inadequate salaries.
- The low enrollment levels for primary and secondary school age children.
- The concerns with the current teaching methods in Iraq.
- The poor economic conditions within rural school areas.

Following the November 2002 roundtable discussion, USAID further developed and finalized the scope of work and issued the RFP on March 4, 2003. CAI submitted a proposal that included as its subcontractors three of the other four contractors invited by USAID to bid as prime contractors.

USAID procurement officials do not believe that there was a competitive advantage provided to CAI. They noted that FAR 9.505-2 requires that to be considered as a conflict that needs to be mitigated, the information supplied by the contractor must lead directly, predictably, and without delay to the scope of work of the contract. USAID officials further stated that, while ideas and information were exchanged at the November 2002 roundtable discussion, participation by CAI did not result in a competitive advantage or conflict of interest that needed to be mitigated.

The OIG does not agree with USAID procurement officials' position that a competitive advantage did not exist. Based on the limited documentation of the November 2002 meeting, we cannot determine whether the discussions did or did not have a direct correlation to USAID's subsequent development of a scope of work for the Iraq education contract. Because of this uncertainty, we cannot conclude whether or not CAI gained a resulting competitive advantage.

The contractor through involvement in the roundtable discussion and receipt of information provided by the technical office was made aware of USAID's interest in a

potential education program in Iraq in a post-conflict environment nearly four months before the request for proposal was made available to the public. The documentation is clear that only one of the five contractors that were subsequently invited by USAID to bid on the contract participated in an initial roundtable discussion. In addition, we conclude that USAID Bureau officials did not adhere to the guidance on practical steps to avoid organizational conflicts of interest.

Given the magnitude of the contract and the need for confidence in USAID's procurement process, we believe that additional review is in order. Accordingly, the OIG recommends:

- The Director, Office of Procurement conduct a full and detailed review of the contract award process to determine whether an unfair competitive advantage exists that impacts the contract award for the Iraq education sector.

In addition, the OIG believes that technical staffs in the Asia and Near East Bureau need to improve their awareness of USAID's policy on pre-solicitation meetings with outside organizations. The OIG recommends that the Assistant Administrator for Asia and Near East Bureau require that technical staff:

- Coordinate with the contracting officer and attorney advisor when entering into discussions with partners during the initial stages of a procurement process.
- Maintain sufficient records of meetings with outside organizations.

We are continuing to review the contracts as they are awarded. Please provide the OIG within 10 days with information related to actions planned or taken to implement the recommendations. We appreciate the courtesies extended to the OIG staff on this review.

cc: AA/PPC, P. Cronin  
AA/LPA, E. Fox  
GC, J. Gardner  
AA/M, J. Marshall