

Statement of

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**On
USAID Contracting Policies**

**Before the
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Export and Trade Promotion
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Mr. Chairman and Members of the Committee, my name is Allan Burman and I am President of Jefferson Solutions, the government division of Jefferson Consulting Group, LLC. Solutions provides acquisition and change management consulting services to many Federal departments and agencies, including the Departments of Defense, Commerce, Energy, and Education as well as the Small Business Administration, the General Services Administration and the Internal Revenue Service. Much of our support includes assisting agencies in defining the outcomes they are seeking from private sector contracts and in developing performance measures and quality assurance plans for them to monitor and assess contractor performance.

We have also conducted management reviews of agency contracting operations, including those at HUD, Education, the Department of Veterans Affairs, the Energy Efficiency and Renewable Energy Office of the Department of Energy and in 2002 the headquarters acquisition and financial assistance operations of the United States Agency for International Development (USAID).

Prior to joining the Jefferson Group in 1994, I served as Administrator for Federal Procurement Policy in the Office of Management and Budget. I was Acting Administrator under President Reagan, confirmed by the Senate under President Bush and held on in that post under President Clinton. As Administrator I initiated numerous procurement reforms, including policies that favored the use of performance-based contracting for acquiring services and assessing a firm's past performance in determining its acceptability for future awards. The Committee has asked me to do the following:

- ❑ Reflect on the USAID contracting and procurement process,
- ❑ Address lessons learned from Afghanistan and Iraq,
- ❑ Discuss what oversight and accountability practices are in place regarding subcontracting, and,
- ❑ Provide specific recommendations for improving USAID procurement and contracting practices.

Let me preface my review of these areas with the comment that there are some elements that are fundamental to any sound acquisition system.

- ❑ Operations should be sufficiently transparent, and the bidding process understandable and regularized,
- ❑ The selection process should be fair and free from bias and conflicts of interest,
- ❑ Competition should be the norm, and
- ❑ Firms should be able to find out if they didn't win, why, and have some means for redressing grievances.

These are not very complicated requirements, but they are the sort of things I recommended when we worked with the Organization for Economic Cooperation and Development to help the emerging democracies of central and eastern Europe move from "state orders" to a market system. And they are the essence of the multi-thousand page Federal Acquisition Regulations of our own government. In many ways these are the

tests that should be applied to any contracting operation, whether by USAID in Iraq or the Small Business Administration in Washington, DC.

Coupled with these factors is the need for agencies to effectively define the results they seek from contractor support and to develop a contract management plan to see those results are achieved. And who is involved in carrying out that process is equally important to the success of any contracting effort. It is in this area that many agencies face challenges.

Effective oversight is even more critical today, when we see how much of agencies' mission accomplishment is dependent on contractor support. This need is particularly true of those agencies created in the last 30 years or so, including Energy, Education, EPA and NASA. Well over half of their funding and for Energy around 90 percent goes to contractor support. If the agency has not done a good job of defining its needs and desired results, then how can it expect to accomplish its mission? Where once there was an expectation that agency program and technical staff would perform the work, today their responsibility is in overseeing what is done. The question here is, are they skilled and trained in carrying out that management and oversight role? Do they even see that as their role? Are the program, technical and acquisition staff working in partnership to ensure contractors are focused on and achieve performance goals? These questions can be asked of USAID as well.

The USAID Contracting and Procurement Process

In 2002 Solutions conducted a review of USAID headquarters procurement functions, including the award and administration of grants and cooperative agreements. Key participants with me in the review included Craig Durkin, a Vice President with Solutions who recently directed the contracting and procurement operations of HUD and Steve Kelman, a Professor at Harvard's Kennedy School who succeeded me as Procurement Administrator. As part of this process we reviewed an array of files and documents, interviewed some 50 individuals and developed a number of conclusions about USAID operations as well as suggestions for improvement. While this effort preceded the war, I believe that many of our findings remain relevant today.

We found a staff of very dedicated, hardworking people and leadership that was looking to improve how they did business. We made a number of suggestions to help streamline and improve their acquisition process. These involved developing customer service standards, delegating some workload out of the procurement offices, and getting better technology to help them get their work accomplished. However, the key findings of our review reflected the general comment I noted above. That is, effective contracting requires a full partnership between procurement and originating office or program staff.

We tend to focus on the procurement office when we see contracts being poorly designed or run, but in fact originating program offices, those that are responsible for the efforts being funded, have a very key role to play in this process. As such, they should clearly be perceived and see themselves as part of the acquisition workforce of the agency.

However, only the Department of Defense tends to have this more expansive view of their acquisition workforce. Defense recognizes that engineers who define requirements or logisticians who support the effort or project managers who oversee contractor performance are all critical to the success of any acquisition and as such need to be well trained in these responsibilities. The General Accounting Office in October 2003 drafted an evaluation framework for improving the procurement function. They list partnering between program and procurement offices and providing adequate acquisition training to program and field office staff as critical success factors.

For USAID the originating offices have the responsibility to determine what is to be acquired or supported, are responsible for writing sound, results-oriented statements of work and monitor the contractor or recipient's performance. In our review, we suggested that originating officer acquisition roles be redefined to focus on performance and results and that the jobs of program personnel working on contract management be reoriented to reflect this new management emphasis. We also recommended that the procurement function be elevated and its Director placed on a par with other key USAID managers.

All too frequently critics focus on the award process and ignore the contract management aspects of the effort. It is appropriate to assess for both Afghanistan and Iraq who is monitoring contractor performance, whether they are trained to perform this role and what set of performance parameters have been established to see that work is being properly and effectively carried out.

While USAID has a limited number of contracting officers on site for their Iraq projects, their contractor oversight capability is severely limited. And as AID funds expand with contracts such as the \$680 million awarded to Bechtel National, Inc. in April 2003, this concern can only increase. USAID's Chief Procurement Counsel cites this Bechtel award as "the largest single direct contract awarded by USAID in its 42-year history," pointing out that it "is thought to be the largest single nonmilitary foreign aid contract to be awarded since the Marshall Plan that rebuilt Europe after World War II." So a good question for the Committee is, who's minding the store?

There is another element to this monitoring process as well. Given the huge increase in funds to acquire goods and services, what type of system is in place to keep track of what is being purchased and being brought into the country? Is there an effective property accountability system in place to monitor these buys and logisticians there to track them?

Lessons Learned

Some have raised questions about USAID's use of limited competition in acquiring contracted support, suggesting that full and open competition as defined in 1984's Competition in Contracting Act should be used in every case. However, both the Federal Acquisition Regulation and USAID's own regulations allow limited competition or even no competition in certain cases. Frankly, many agencies use the General Services Administration schedules program or let tasks against contracts that have already been

competed and awarded as ways to meet agency needs much more quickly than through a full and open competition process.

USAID refers to these multiple award contracts as IQC's or Indefinite Quantity Contracts. For example, in April 2003 it used an IQC in awarding a task order for the monitoring and evaluation of USAID/Iraq's technical assistance portfolio. All contractors are originally given a full and open chance to bid on these IQC awards. However, tasks are ultimately competed only among those who essentially become pre-qualified through the award of the IQC contract. Firms on these lists have already demonstrated an ability to meet the general requirement the agency has established. Given the exigencies and uncertainties early on regarding Iraq it is not unreasonable to take advantage of these provisions. That is not to say where rules are in place on how these types of procurements are to be conducted, it is acceptable to ignore them.

Contracting today practically demands a "best value" evaluation scheme, since agencies are looking for solutions to their problems and different firms bring different approaches for meeting their needs. Under virtually all circumstances, then, agencies will need to make judgments on which firm offers the best answer to the agencies problem. In many cases, teams of civil servants perform this evaluation role. This is the practice followed by USAID. Having that kind of selection process goes a long way to making sure that the process is fair and impartial.

Last year, I served as a member of a small Team of Independent Professionals to assist the Department of Energy in developing an acquisition strategy for acquiring contractor support. This requirement was to build fossil fuel plants in the Russian Federation. The Team learned that the Defense Threat Reduction Agency had recently undergone a full and open competition and as a result awarded contracts to five prime contractors each with multiple subcontractors. Part of the basis for winning an award was that each had experience in contracting overseas. The Team recommended that Energy employ the Economy Act to use this existing Defense Department multiple award vehicle and compete the requirement among the five awardees as opposed to initiating a new full and open competition. The selection process was quick and effective, and getting these fossil fuel plants built will allow the Russians to shut down three Chernobyl style plutonium reactors in Siberia that much sooner.

Clearly as both the Department of Defense and USAID have gotten a better understanding of requirements and agency roles and missions, the options to broaden competition increase. It is easy in hindsight to say that all of these responsibilities should have been carefully laid out in advance but that is not a very practical suggestion.

Another question for the Committee is who is preparing the statements of work for these services. I can envisage many problems where work statements are poorly laid out and contracting staff will reject them. Is there someone helping to make this part of the process more effective? And is anyone developing performance metrics to be placed in these awards and ways to measure whether the contractor is accomplishing them? A major reason for moving toward performance-based contracts is to shift risk from the

government to the contractor and also to get both parties to focus on business outcomes, while offering the contractor an opportunity to innovate in accomplishing the mission. Of course, security concerns and other uncertainties in Afghanistan and Iraq make it much more difficult for companies to sign up to fixed price performance-based awards. But that does not mean that acquisition strategies, risk mitigation plans and business outcomes should not still be important elements in defining what the government is looking to acquire.

Subcontractor Management

In the case of the large Bechtel contract for all types of infrastructure projects cited above, USAID has made it clear that it is relying on the prime contractor for all aspects of subcontractor management. However there are clauses that flow down to the subcontractor that for example would allow USAID to inspect subcontractor work or to review their incurred costs. Other clauses that apply to the prime also frequently flow down, such as Organizational Conflict of Interest provisions or requirements to use US Flag Carriers.

Generally, however, the government seeks to maintain privity of contract with the prime contractor, since the prime bears ultimate responsibility for all the work performed on the contract. The more that the government interferes in that relationship between the prime and the subcontractor, the more it opens itself to charges that it and not the prime contractor should be held accountable for a subcontractor's failure to perform.

On the other hand, USAID can in its contract specify subcontracting targets as, for example, the proportion of work to be conducted by small or disadvantaged businesses. Moreover, it can place clear incentives and disincentives in the contract to align the contractor's efforts with the agency's goals. While agencies may require percentages of work to be done by small businesses, my experience is that they frequently fail to monitor the prime's performance in this regard. Rather than micromanaging the prime contractor, an alternative approach would be for USAID to develop performance-based requirements along these lines to see that its subcontracting goals are accomplished.

Recommendations for Improving USAID Contracting

In summary, I would propose the following as specific recommendations for improving USAID contracting operations:

- ❑ Ensure the procurement and originating offices work in close partnership in developing statements of work and in carrying out and monitoring procurements,
- ❑ Continue to use IQC's as appropriate for awarding Iraq contracts while using every effort to see that competition exists on every procurement,
- ❑ Be as open as possible on the procedures to be followed on bidding for USAID work and develop regularized procedures for all types of contracting actions,

- Ensure that an adequate number of Cognizant Technical Officers are available to oversee contractor performance and see that they are sufficiently trained to carry out these important contract oversight activities,
- Establish a property accounting system that focuses on all the goods being purchased and brought into the country,
- Use performance-based methods as well as incentives to focus the contractor on both business outcomes as well as on subcontractor management, and
- Develop an effective reporting and documentation system for monitoring contract performance.

As needs become clearer and the process for prioritizing those needs more established, then it is also critical to lay out a long range acquisition plan so that all parties can be thinking through in advance the best way to meet these needs and how to allocate the limited resources available for these purposes. Finally, seeing that USAID has adequate resources and trained staff to put in place these recommendations is essential to creating the effective acquisition process that the Committee and the Administration is seeking.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions you or other members of the Committee might have.