

USAID CONTRACTING POLICIES

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC
POLICY, EXPORT AND TRADE PROMOTION

OF THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

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USAID CONTRACTING POLICIES

WEDNESDAY, FEBRUARY 25, 2004

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC
POLICY, EXPORT AND TRADE PROMOTION,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 3:38 p.m. in room SD-419, Dirksen Senate Office Building, Hon. Chuck Hagel (chairman of the subcommittee), presiding.

Present: Senator Hagel.

OPENING STATEMENT OF SENATOR CHUCK HAGEL

Senator HAGEL. Good afternoon. This hearing of the Senate Foreign Relations Subcommittee on International Economic Policy, Export and Trade Promotion will examine USAID contracting policies, focusing in particular on USAID contracting policies toward Afghanistan and Iraq.

American reconstruction efforts in Afghanistan and Iraq are critical to successful political transitions in both countries. Since 2001, USAID has been allocated approximately \$1 billion for reconstruction assistance in Afghanistan. Although the majority of the more than \$20 billion in reconstruction assistance appropriated for Iraq is under the control of the Department of Defense and the Coalition Provisional Authority, USAID has so far awarded 11 reconstruction contracts in Iraq worth \$3.3 billion.

The primary reconstruction project in Afghanistan has been the Kabul-Kandahar highway. In December 2003, the Louis Berger Group, a leading American engineering and construction firm and the USAID contractor for this project, completed phase I of the reconstruction of the highway. In the spring and summer of this year, additional layers of asphalt will be laid. The cost of phase I of this project was \$190 million; the total cost of the completed highway is projected to be \$270 million. According to the November 2003 report issued by USAID Inspector General Mosley's office regarding progress of the Kabul-Kandahar highway, and according to Mr. Mosley's written testimony today, who we will hear from later, the Louis Berger Group did not adequately update USAID on changes in its implementation plan and schedule during phase I of the project. I would welcome testimony from both USAID witnesses regarding the schedule and plan for implementation of phase II of the highway's construction.

Because of the urgency of the situation in Iraq, in the spring of 2003, USAID issued solicitations and awarded nine contracts for

reconstruction in Iraq, bypassing the full and open competition process which normally governs USAID contracting. While limited competition rules, as they are known, may have had certain benefits given the crisis in Iraq, the contracting process has also raised questions about oversight and accountability of our Iraq reconstruction programs.

USAID contracting policies in Iraq, Afghanistan, and throughout the world should reflect the best practices and values of American foreign policy and business. Our policies should encourage transparency and accountability, and empower the peoples of the recipient countries by developing and expanding their private sectors and providing local jobs.

Some of the problems and challenges in the USAID contracting and procurement process may be linked to management and staffing decisions over the past decade. An August 2003 GAO report noted that USAID has evolved from an Agency in which U.S. direct-hire staff directly implemented development projects to one in which U.S. direct-hire staff oversee the activities of contractors and grantees. Between 1992 and 2002, USAID direct-hire staff declined by 37 percent overall and 42 percent overseas, during a decade when USAID program funding increased by more than 50 percent. USAID staff deployed abroad to oversee these major foreign assistance and reconstruction projects may not have the contracting and procurement expertise required for proper oversight and accountability.

USAID's contracting policies do not exist in a vacuum. They cannot be separated from USAID's overall policies and procedures for foreign assistance. USAID contracting policies also cannot be considered in isolation of overall U.S. policy objectives in Iraq, Afghanistan, or elsewhere in the world.

I welcome and look forward to the testimony of today's witnesses. The first panel will include the Honorable Everett L. Mosley, USAID Inspector General and Mr. Timothy Beans, USAID's Director of Procurement. The second panel includes Mr. Frederick Barton, co-director of Post Conflict Reconstruction Programs at the Center for Strategic and International Studies; Dr. Allan Burman, president of Jefferson Solutions; and Mr. Marcus Stevenson, director of Grants and Contracts at the Urban Institute.

Gentlemen, we are all grateful for your testimony and your time today and your availability and we appreciate very much your coming forward with that testimony and look forward to an opportunity to exchange views during a question and answer period.

With that, Mr. Mosley, if you would begin, we would appreciate it.

STATEMENT OF HON. EVERETT L. MOSLEY, INSPECTOR GENERAL, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. MOSLEY. Mr. Chairman, other committee members, and committee staff, thank you for the opportunity to provide my testimony today on the USAID contracting practices. As you have requested, my testimony will focus on USAID's overall contracting procedures with emphasis on programs in Afghanistan and Iraq, and I will provide my full statement for the record.

Senator HAGEL. All statements will be included in the record, so if you feel more comfortable with summarizing your statement, that is perfectly fine.

Mr. MOSLEY. Mr. Chairman, my office has a continuing program to review USAID's procurement operations. These reviews consist of pre-award audits, incurred cost audits, and contract close-out audits that are performed by my staff, by contracted public accounting firms, and by the Defense Contract Audit Agency under a reimbursable agreement with my office. In addition, we conduct other audits and investigations as determined necessary. For example, we have conducted a series of audits to examine whether USAID cognizant technical officers [CTOs] are properly trained and accountable for performing their duties. Cognizant technical officers play a crucial role in helping ensure that contractors deliver the goods and services contracted for.

We have done work in Washington and several USAID missions overseas, and while we have not yet completed the work and reached an overall conclusion, audit work to date indicates that many cognizant technical officers are not adequately trained to perform their CTO duties. We are in the process of finalizing our summary audit report which includes recommendations to ensure that CTOs receive specific training on a timely basis, and CTO accountability is improved by including their responsibilities in their work objectives.

In response to a request from the Administrator, my office has provided advice on accountability and control issues for their Afghanistan assistance program from the beginning of the process. For example, OIG representatives serve as observers at meetings of the Central Asian Task Force established prior to the opening of the USAID mission in Afghanistan to plan Afghanistan activities. In addition, my staff visited Afghanistan to perform preliminary risk assessments of the USAID programs and developed an audit strategy.

The audit strategy included a concurrent financial audit program as well as performance audits. We are conducting current financial audits of costs incurred under USAID's Afghanistan program. These financial audits are being conducted by a public accounting firm in-country, and the Defense Contract Audit Agency here in the United States. The audits in Afghanistan are supervised closely by my staff to ensure audit quality. The first of these quarterly financial audits was issued on January 23, 2004, and it covered about \$1.2 million in local costs paid in Afghanistan, of which \$29,000 was questioned.

My office has also included a report on the progress of the Kabul-Kandahar highway rehabilitation. The report described both successes and challenges that have caused project delays. As of November 1, 2003, contractor reports showed that 222 kilometers of the 389 kilometer road project had been paved and USAID stated that they planned to have the entire 389 kilometers completed with an acceptable interim paved surface by the end of December 2003. USAID subsequently reported that that was achieved. Our next reviews will examine enhancements to the Kabul-Kandahar highway which you have referred to as phase II and we will expand our cov-

erage to implementation of other activities being undertaken in Afghanistan.

Our work on contracting in support of the Iraq program is being conducted in three phases: (1) by examining the decision to use less than full and open competition; (2) examining compliance with the Federal acquisition regulations in awarding the contracts; and (3) conducting concurrent financial audits and performance audits in Iraq. We found that the use of less than full and open competition in awarding contracts was allowed by the Federal Acquisition Regulations with a written determination that the use of full and open competition would be inconsistent with the fulfillment of the Foreign Assistance Program. The Office of the Administrator made this written decision on January 16, 2003.

To date, USAID has awarded 11 reconstruction contracts totaling \$3.3 billion. My office had reviewed 10 of these contracts with a value of \$1.5 billion, the latest contract being the majority of the dollars, which was just recently issued. These reviews indicate that USAID has done a good job of processing these contracts under a tight time frame to support reconstruction programs in Iraq. We concluded that USAID complied with Federal acquisition regulations applicable to these contracts with the following exceptions:

We noted weaknesses in USAID's documentation in market research efforts to identify prospective contractors. In one case USAID staff should have consulted with the Office of General Counsel on a potential conflict of interest issue. And USAID did not provide one offeror with timely notification that an award had been made, and did not provide timely debriefings to three unsuccessful offerors.

In addition to these instances of non-compliance with acquisition regulations, we identified some other areas where contracting practices might be improved: fully documenting what was discussed in pre-solicitation meetings; full documentation of actual or potential needs to support the level of effort set out in contracts; making appropriate decisions on the need for facility clearances before awarding of contracts; and, assuring that contractors meet all legal requirements before deciding to award contracts.

My office has also conducted concurrent financial and performance audits in Iraq. Specifically, we have initiated 33 financial audits covering costs incurred by contractors in implementing the USAID program to rebuild Iraq. These audits are being conducted by the Defense Contract Audit Agency. To date, we have issued 22 audit reports covering about \$35 million in USAID funds. The audits have reported \$339,646 in questioned costs, which includes about \$276,000 in ineligible costs and about \$64,000 in unsupported costs.

We have also conducted one performance audit that examined the accuracy of results data compiled and reported by USAID for its education activities in Iraq. We are also currently drafting that audit report.

We will be conducting additional reviews of performance in Iraq during the fiscal year of 2004 to examine the outcome of contracted rehabilitation work. We have also initiated proactive investigative work in Iraq that would include continual reviews and assessments of contracts and contract files to determine areas of potential vul-

nerability. In addition, contacts with key personnel involved in the efforts has been initiated. We are investigating any allegations of wrong-doings in Iraq programs.

That concludes my testimony, and I will be willing to answer any questions that you have.

[The prepared statement of Mr. Mosley follows:]

PREPARED STATEMENT OF HON. EVERETT L. MOSLEY

Mr. Chairman, other committee members, and committee staff, thank you for the opportunity to provide testimony on the U.S. Agency for International Development's (USAID's) contracting practices. As you have requested, my testimony will focus on USAID's contracting processes, with emphasis on programs in Afghanistan and Iraq.

My office has a continuing program to review USAID's procurement operations. These reviews consist of pre-award audits, incurred cost audits, and contract close-out audits that are performed by my staff, by contracted public accounting firms, and by the Defense Contract Audit Agency through a reimbursable agreement with my office. In addition, we have conducted a series of audits to examine whether USAID's Cognizant Technical Officers are properly trained and accountable for performing their duties. Cognizant Technical Officers play a crucial role in helping ensure that contractors deliver the goods and services contracted for.

COGNIZANT TECHNICAL OFFICERS

To date, we have completed work in three USAID bureaus in Washington and six USAID missions overseas. While we have not yet reached overall conclusions, audit work to date indicates that many Cognizant Technical Officers are not adequately trained to perform Cognizant Technical Officer duties. We are in the process of finalizing our summary audit report to USAID which includes recommendations to ensure that (1) CTOs receive specific training on a timely basis to become eligible for certification, and (2) CTO accountability is improved by including their responsibilities in their work objectives.

AFGHANISTAN

In response to a request for assistance from USAID's Administrator, my office has provided advice on accountability and audit issues for the Afghanistan assistance program. For example, OIG representatives served as observers at meetings of the Central Asian Task Force established prior to the opening of the USAID mission in Afghanistan to plan assistance activities. Additionally, prior to the awarding of the major contract for the rehabilitation of economic facilities and services program in Afghanistan, USAID's Bureau for Asia and the Near East requested the OIG's cooperation in identifying appropriate audit coverage of the contract. Shortly after the contract was awarded, my staff visited Kabul to perform a preliminary risk assessment of the USAID program and develop an audit strategy.

The audit strategy includes a concurrent financial audit program as well as performance audits. A series of concurrent financial audits are planned of costs incurred under the USAID/Afghanistan rehabilitation of economic facilities and services program. These concurrent financial audits are designed to disclose accountability issues at an early stage, before larger sums of money are put at risk. These audits are conducted by a public accounting firms and the defense contract audit agency. The audits in Afghanistan are supervised closely by my office to ensure audit quality. The first of these financial audits, issued on January 23, 2004, covered about \$1.2 million in local costs paid in Afghanistan of which about \$29,000 was questioned by the auditors.

My office has also issued a report on the progress of the Kabul-Kandahar highway rehabilitation. The report described both successes and challenges that had caused project delays. As of November 1, 2003, Louis Berger progress reports showed that 222 kilometers of the 389 kilometer road project had been paved and USAID officials stated that they planned to have the entire 389 kilometers of road completed with an acceptable interim paved surface by the end of December 2003. USAID subsequently reported that this was achieved. Our report also noted that Louis Berger had not updated its implementation plan required under the contract to reflect changes made to the road reconstruction schedule. Therefore, we recommended that USAID require Louis Berger to maintain an updated implementation plan for its activities under the contract.

IRAQ

Our work on contracting in support of the Iraq program is being conducted in three phases: (1) examining the decision to use less than full and open competition for nine contracts, (2) examining compliance with the Federal Acquisition Regulations in awarding contracts, and (3) conducting concurrent financial audits and performance audits of the program.

USAID has used less than full and open competition in awarding nine of eleven contracts awarded to date. Subpart 6.3 of the Federal Acquisition Regulations and section 706.302 of the USAID acquisition regulations allow use of less than full and open competition when the USAID Administrator makes a written determination that use of 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. The OIG advised the ranking member of the Senate Committee on Governmental Affairs of this determination in a letter dated April 14, 2003.

To date, USAID has awarded eleven reconstruction contracts totaling \$3.3 billion. These contracts relate to economic governance, education, infrastructure reconstruction, personnel support, seaport administration, local governance, monitoring and evaluation, health, airport administration and agriculture.

To date, my office has reviewed ten of these contracts with a value of \$1.5 billion. We have issued nine final memorandums on these reviews and a tenth memorandum is in draft at this time. We plan to review additional contracts as they are awarded during the remainder of FY 2004.

These reviews indicate that USAID has done a good job of processing these awards under tight timeframes to support the reconstruction program in Iraq. Based on the reviews completed to date, my office concluded that USAID complied with the acquisition regulations applicable to these contracts with the following exceptions:

- For three contracts, the auditors noted weaknesses in USAID's documentation of its market research efforts to identify prospective contractors.
- For one contract, USAID staff should have consulted with its office of general counsel on a potential conflict of interest issue.
- For one contract, USAID did not provide one offeror with timely notification that an award had been made and did not provide timely debriefings to three unsuccessful offerors.

In addition to these instances of non-compliance with acquisition regulations, my office identified some other areas where contracting practices might be improved:

- For two contracts, we concluded that USAID should fully document what is discussed in pre-solicitation meetings with potential offerors.
- For two contracts, the level of effort initially estimated by USAID varied significantly from actual needs.
- For two contracts, USAID initially determined that contractors would need a facilities clearance and accordingly included this requirement in the request for proposals. After it found that the selected contractors did not have the requisite facilities clearances, USAID deleted the requirement.
- For one contract, where a request for proposal did not require that offerors provide evidence of their legal status, the selected offeror's status as a corporation had lapsed. However, the offeror became aware of this problem and corrected it prior to signing the contract with USAID.

In addition to this work which focused on contracting processes associated with the Iraq program, my office has also conducted financial and performance audits in Iraq itself.

Specifically, we have initiated 33 financial audits covering costs incurred by contractors implementing the USAID program to rebuild Iraq. These audits are being performed by Defense Contract Audit Agency auditors located in Baghdad and Kuwait City and in DCAA regional offices in the U.S. the audits will examine the propriety of costs incurred under these contracts and the contractors' internal control systems. The OIG will review and issue final reports to USAID to ensure that USAID collects any questioned costs due to USAID and takes action on any identified management and financial system weaknesses. To date, we have issued 22 audit reports covering about \$35 million in USAID funds. The auditors questioned \$339,646, which included \$275,772 in ineligible costs and \$63,874 in unsupported costs.

In addition, we have conducted one performance audit that examined the accuracy of results data compiled by USAID for its education activities in Iraq. My staff is drafting a report on the results of that audit now. We will conduct additional performance audits in Iraq during fiscal year 2004.

Proactive investigative work will include continual review and assessment of contracts and contract files to determine areas of potential vulnerability. In addition, contacts with key personnel involved with the effort have been initiated. The OIG will investigate any allegations of wrongdoing in the Iraq program.

Again, thank you for the opportunity to testify today. I will be happy to respond to any questions you may have.

Senator HAGEL. Inspector General Mosley, thank you very much.
Mr. Beans.

STATEMENT OF TIMOTHY BEANS, DIRECTOR, OFFICE OF PROCUREMENT, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. BEANS. Thank you, Mr. Chairman and members of the committee. I want to thank you very much for the opportunity to provide testimony for USAID and our contracting policies in Iraq and Afghanistan. Your specific letter to me requested my testimony to focus on contracting procedures with emphasis on programs in Afghanistan and Iraq. I will address the specific challenges, the lessons learned, and the policies and procedures that assured transparency and accountability.

Now you have my written statement. Instead of just reading that, I would like to go to some other remarks that I have that may get to some of the issues that have been brought in the letter.

Certainly, in the area of lessons learned, one of the things that is obvious to us in contracting is that the sooner one begins to plan for acquisitions the better the end product is going to be that you eventually get. Again, as to current planning, it is imperative to successful contracting and maximizes competition. It allows the staff to appropriately document the files. And of course, it holds down audit findings.

It is very difficult and challenging to gear up for a large, determined initiative such as Iraq and Afghanistan given the aggressive time lines, the huge sums of money that were involved, and the intense scrutiny from Congress, the press, and from other sources.

The Agency can do a better job if adequate resources are provided along with the new financial requirements. The initial contract with Bechtel was \$680 million. We had an additional \$300 million during the course of the contract which was abridged until we could make an award of a full and open competition contract. That award was also won by Bechtel and subcontracted with the Parsons Corporation, totaling \$1.8 billion, and was the largest award in the 42-year history of the Agency. In fact, the Administrator of USAID, Mr. Andrew Natsios, said that the two contracts comprised the largest single country foreign aid program since the Marshall Plan.

Now, I have got to tell you that I am very proud of the Agency's efforts in supporting U.S. goals in Iraq and Afghanistan. However, these efforts have not been accomplished without some difficulties.

As you alluded to in your testimony, Mr. Chairman, during the 1990s the Agency witnessed a rather large downsizing of personnel. My office was affected very much by this downsizing. In 1995, the

Office of Procurement consisted of approximately 170 individuals to handle about \$4.5 billion worth of obligations a year. Today, the same office consists of 123 people. During that time, the amount of money we had been asked to obligate has more than doubled to just over \$12 billion a year.

While we have been very successful in making the original awards, we are also doing everything we can to assure that taxpayers of this country are receiving value for these expenditures. This includes moving U.S. direct-hire staff to Iraq and Afghanistan to provide contractual oversight of these contracts. We are also hiring personal service senior contracting talent from around the world that has worked with us in other countries on direct construction contracts to help administer these awards.

We have also developed a special program that will allow us to bring in foreign service nationals from around the world from the various missions that we have that can serve in either of these countries at much higher rates than they would receive if they stayed and worked in their own country.

We are presently also planning back office contract support for Iraq from our mission in Jordan. We're going to hire two contracting officers and FSN staff which will support the Iraq efforts and help them with TDYs and overseeing the work there. We're also adding two contracting officers and an additional FSN staff in Bangkok, Thailand, to help with the Afghanistan contracts. We are making sincere efforts to make sure that we have adequate staff to oversee these contracts from a contractual point of view.

It is important to me that we provide this oversight because procurement involves the expenditure of taxpayers dollars. This is the concern that is constantly with me. I must assure that the public trust is maintained, which is why I am very, very concerned about the oversight of these contracts in these two countries.

We are doing everything possible to ensure that we have adequate people to protect taxpayers money. We are also pleased that the IG has made a commitment of people to make sure that things are being done properly. And the IG presently has staff in both Afghanistan and Iraq. We are also working with the Defense Contract Audit Agency to perform concurrent audits on all of our contracts so that we can identify any problems early on.

Let me go away from my notes and let me go to something that Everett spoke to earlier. He identified three weaknesses within the contracting procedure, and I just want you to know that there can be honest difference of opinion between the contracts office and the IG on how we see certain things.

Now you might say, how can an IG and a contracts person differ over reading the same set of regulations? And I thought about that, and I very quickly thought about the Supreme Court of the United States, and how we can have nine of the greatest justices in the world, and how can we get a five-to-four decision. They're reading the same Constitution and yet they interpret it differently.

I have had a very good working relationship with Everett's office and much of the work he has done has helped improve my office. We have made changes which have made this office better as a result of IG audits. But, some of the differences of opinion are, for example, he said that we forgot to document market research. I

read the contract and from my point of view as a procurement executive, we documented market research. We said where we went to, how we did this. Did we document it as well as we could have? No, sir, we did not. I mean, obviously, we could have gone into detail and listed the name of the person contacted and telephone numbers. However, we did document it and given the incredible time constraints that we were under, I felt that we did a very good job.

There was one instance where they said that we should have consulted with GC on an organizational conflict of interest. In fact, we did discuss with GC at length on the organizational conflict of interest and would not have made the decision we did without that input. Unfortunately, when they went to the file they could not find written documentation from GC prior to our decision on that thing. We went back to GC who gave us a detailed, lengthy discussion, and we now have documentation which says this was done prior to the decision.

Other differences of opinion concerning timely notification of awards and timely debriefings had to do with the initial award of the Bechtel contract. That was a situation where, after we made the award to Bechtel, the front page of the Washington Post, New York Times and every other major newspaper in the country, the next day announced the award.

Now, we're supposed to within 3 days notify the losing contractors. We had talked to them on the phone, and they knew that they had lost. However, we did not officially send a letter out until after the 3-day period. But we gave them written debriefings on what took place. We gave them oral debriefings. We flew in the technical officers from around the world that served on the panel and provided that briefing.

So, these are areas that we could have done a better job, and I absolutely agree. I just think that they need to be put in context. I think with that, I will end the testimony and respond to questions from the panel. Thank you.

[The prepared statement of Mr. Beans follows:]

PREPARED STATEMENT OF TIMOTHY BEANS

Mr. Chairman and Members of the Committee, thank you for the opportunity to provide testimony on the U.S. Agency for International Development's (USAID) contracting policies. As you have requested, my testimony will focus on USAID's contracting processes, with emphasis on programs in Afghanistan and Iraq. I will address the specific challenges, the lessons learned, and the policies and procedures that assure transparency and accountability.

USAID's purchase of goods and services are done under the authority of the Foreign Assistance Act. The Foreign Assistance Act mandates, as a rule, a preference for American firms to carry out U.S. foreign aid programs.

Under the initial Emergency War-time Supplemental in FY 2003, I am very proud to note that my office obligated approximately \$2.1 billion of the \$2.5 billion appropriated for the Iraq Relief and Reconstruction Fund in support of U.S. efforts to rebuild Iraq after the war.

During this initial period, we awarded contracts for personnel support, airports, seaports, reconstruction, education, health, local governance, economic growth and agriculture. Based on the need to act quickly following the end of active hostilities, we chose to do a limited competition for most of the initial awards. Although the vast majority of USAID's procurements are conducted using fully competitive procedures, the Federal Acquisition Regulations grant the Administrator the authority to waive normal contracting procedures by making a written determination "that compliance with full and open competitive procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of foreign assistance programs."

Under the second Iraq supplemental, USAID was the first agency to make an award in support of the continuing efforts in Iraq, with a \$1.8 billion contract to Bechtel for infrastructure support utilizing full and open competition. The award was made under ideal contracting circumstances in that the highest technical scored proposal also was the lowest cost proposal submitted.

While we are very proud of our efforts in supporting U.S. goals in Iraq and Afghanistan, these efforts have not been accomplished without some difficulties. The urgency of these actions made for difficult and challenging circumstances. We have been very creative in trying to meet the shortage of personnel that would normally be needed for this large an undertaking. However, a review of the numerous audits performed by our Inspector General's (IG) Office will show that we followed federal procurement rules and regulations in the award of these contracts, with minor exceptions. The IG audit report also pointed out things we could have done better to strengthen our procurements, particularly in the area of additional documentation. Many of the suggestions have already been implemented. We have a good working relationship with the Office of Inspector General and will continue to work closely with this office to ensure compliance with all relevant regulations.

As Director of the Office of Procurement, one of my major goals is to make sure we are as open and transparent as possible in our procurement process. We have made very serious efforts to be as transparent as possible by making available virtually everything we legally can on our Web site. Steven I. Schooner, Associate Professor of Law at George Washington University Law School, recently wrote at a Government Contracts Year in Review conference that USAID ". . . has endeavored (for the most part successfully) to provide information relating to its contracting activities on its Web page." He goes on to say that, ". . . I believe that USAID has set a new standard for transparency in public procurement."

This is exactly the kind of open and transparent agency we are striving to be. We will continue to expand our efforts to meet the very high standard we have set for ourselves.

Given the large increases in our budget with Iraq and Afghanistan and beginning in FY 2004, we have gone from an annual obligation of just over \$6 billion in 2001 to approximately \$12 billion in 2003. While we have been very successful in making the critical awards, we are also doing everything we can to assure that the taxpayers of this country are receiving value for their expenditures. This includes moving U.S. direct-hire staff to Iraq to oversee the contracts as well as hiring senior contracting talent to help administer these awards. We are also requesting support from the IG's office and audit support from the Defense Contract Audit Agency to make sure that funds are being spent appropriately and accounted for properly. As such, this is an area that we will want to monitor very closely over the coming months and years.

You will note I spoke more to the Iraq contracts than I did the Afghanistan contracts. The reason for this is that we negotiated the Iraq contracts here in Washington, and then sent them over to Iraq for administration. Afghanistan is a stand-alone mission and has its own contracting staff, so the awards in support of Afghanistan have been run from the USAID mission in Kabul. As a result, we here in Washington are much more familiar with the Iraq actions than we are the Afghanistan procurements.

Mr. Chairman, I would be pleased to answer any questions you and the Committee members may have.

Senator HAGEL. Mr. Beans, thank you very much.

Mr. BEANS. You're very welcome.

Senator HAGEL. And, your written statement will be included.

Mr. BEANS. Thank you.

Senator HAGEL. As I noted before in the record. Thanks to both of you for taking the time to prepare your statements and prepare yourself for the hearing. We appreciate it very much. Mr. Mosley, let me begin with you. How do you assure follow-up and oversight, you mentioned this in your statement, of the recommendations made in your reports, particularly on contracting in Iraq and Afghanistan? And I have a follow-up question to that.

As I noted in my statement, and was noted by Mr. Beans, the manpower of your Agency has diminished significantly as the dollars and responsibilities have increased. So, in addition to the first

part of the question, how many IG officials do you have now in Iraq? I know that you mentioned moving from Jordan, from the Jordan mission a couple of people. I don't know if those are IG people or if they're your people. Also, how many are in Afghanistan? And then, Mr. Mosley, do you believe that manpower is enough?

Mr. MOSLEY. Well, first of all, the way that we follow up, Senator, on any recommendations that we make, we have a policy that all recommendations have to be answered within 6 months from the time that we make the recommendation. So we periodically get together with management to try to determine what action has been taken.

Then we have to report in our semi-annual report, and there is a reconciliation with management at that time, at March 31 and at September 30, of all recommendations that we made from the Office of Inspector General to ensure that action has been taken.

Where there has not been adequate action, in which we have agreed upon between management and the IG's office, we report that in our semi-annual report to you here in Congress and then we continue to work on those. Once there is an agreed-upon management decision, final action on all recommendations has to be taken within one year from that date of agreement. So there is a process and regulation that we use to follow up on all recommendations.

In reference to your question regarding the number of people we have in Iraq, currently we have four people in Iraq. They are on a temporary duty, and that duty ends March 31. We then plan to expand and go to six people in Iraq starting April through June. And then in July, we hope to open an office in Iraq because of the large amount of money that is going into Iraq. And for the period of time that these projects will take, we hope to open an office there with about seven auditors and one investigator beginning July 1, and those will be one-year assignments.

In terms of whether we have enough staff to do the work that we have been assigned, I would never want to tell you that we have too many people for the work that we have been assigned. Our staffing has not increased.

As you know, as a result of the Consolidated Appropriation Act of 2004, we have now been assigned IG responsibilities for the Millennium Challenge Corporation. That provides additional funds so that we can expand and maybe hire more people either through contracting or through direct-hired staff to accomplish that work, as well as the work that we have in USAID, African Development Foundations and the Inter-American Foundation.

In terms of Afghanistan, we do not have any people assigned to Afghanistan. We are doing the work in terms of the concurrent financial audits through a CPA firm that is out of Pakistan with affiliations with one of the big four here in the United States and we monitor their work.

In terms of the performance audit work, we are sending people in from our Manila office. They go in about once every other month and stay for a period of 2 or 3 weeks to accomplish their work.

Senator HAGEL. You have no people in Afghanistan?

Mr. MOSLEY. No people permanently assigned to Afghanistan, but they are in and out on a rotating basis.

Senator HAGEL. According to my information for Afghanistan, USAID obligations are \$976 million, USAID disbursements, \$442 million. Do you think having no people on your staff in Afghanistan is the right way to do this?

Mr. MOSLEY. We think it is.

Senator HAGEL. With those kinds of volumes and those kinds of numbers?

Mr. MOSLEY. We think it is at this point.

Senator HAGEL. Yes.

Mr. MOSLEY. Because I don't want to lead you to believe that there is no coverage. As I said, we have a CPA firm that has been there on an almost constant basis doing their work in terms of the concurrent financial's and then we go in to review their work and we issue their reports. And then we have people going in on a periodic basis not less than every other month from our Manila office to do work and they are in for 2 and 3 weeks at a time.

We also send people out from Washington. My assistant Inspector General for Audits has been to Afghanistan. He was there in November, and one of the gentlemen here with me today, a Deputy Assistant Inspector General for Audits, will be going there next week. So we are giving it, what we believe, is adequate coverage at this time.

Senator HAGEL. So essentially, USAID obligations of about a billion dollars in Afghanistan and you feel comfortable having no one from your office there for the oversight responsibilities that you have?

Mr. MOSLEY. I feel comfortable that we are giving adequate coverage. If I had more people to assign and could open an office I would consider that. But I think we are giving it the coverage that we can at this point. And I don't want to lead anybody to believe that because no one is assigned there we are not giving adequate coverage. I think we are giving, certainly, a lot of coverage.

Senator HAGEL. So is your point, the main reason that you do not have anyone there is that you do not have the people?

Mr. MOSLEY. I do not have the people or the money to assign people there.

Senator HAGEL. How would you say that billion dollars stacks up with other missions around the world? Is that not unusual to not have anyone from your office in a country that has that much volume?

Mr. MOSLEY. That's quite possible because we don't have offices in every location that the Agency has missions. We have six regional offices around the world. Our offices cover a number of countries by traveling, just like the people from Manila are doing in Afghanistan. When we have coverage in an office like Iraq, that's a lot of money and we will have an office in Iraq that will be dealing only with Iraq, whereas the other offices will be regional in nature.

Senator HAGEL. Let me ask both of you, and you mentioned this, Mr. Mosley, in your testimony, I believe at the beginning, the cognizant technician officer issue. And for the shorthand, I think this is the way that you refer to them, CTOs. How many CTOs do you have on the ground in Iraq?

This would probably be for you, Mr. Beans.

Mr. BEANS. Mr. Chairman, we presently have two or three CTOs on the ground, actual U.S. direct-hire CTOs. The way that the Agency has tried to handle this was the initial contract that we awarded for Iraq was with a firm called IRG Corporation. They have acted as back-door support for our mission director and deputy mission director, doing a lot of the day-to-day work that normal government contracting people would do. That's from a CTO point of view.

We actually have had more contracting officers in country. At one time we had five contracting officers in-country. We now have four, with someone slated to go over shortly to make it five people in country.

Because of my concern with the oversight of the Bechtel contract, the big contract, we asked the Army Corps of Engineers to take over administrative contracting authority for us and oversee the contract as a quasi-extension of our staff. They are experts in this particular area, they know construction, and so that alleviated a lot of the concerns that I had over oversight of Bechtel.

Your initial question was, am I happy with the oversight that we have got? I believe that we're OK at this point in time. But, when you're a career Foreign Service officer and you reserving under a warrant—I don't know if you understand what a warrant is, but contracting officers that receive a warrant are able to bind the Federal Government and can be held personally liable for anything that they do. They can go to jail as a matter of fact if they violate rules and regulations.

So, when you have that kind of authority and responsibility with this kind of money, I don't know if I can have enough people over there to oversee this kind of contract. It is a constant concern regardless whether it is Iraq, Afghanistan or if it is Bangladesh or India. I am always concerned about making sure taxpayers dollars are used correctly.

Right now, I am very comfortable with where we are. However, we are constantly looking, and when we get these two CTOs in Jordan that will be supporting Iraq, I will be a lot more comfortable that we have real good contractual oversight, and support for what we need.

Senator HAGEL. What about Afghanistan?

Mr. BEANS. Afghanistan. Surprisingly enough, we have been finding a lot of people willing to go to Afghanistan. And we have recently offered the mission director, the contracting officer and the support staff that is out there additional bodies to go out and help them with the contracting.

The problem in Afghanistan, of course, is the security situation which exists is very dangerous. We're on a compound, which is sealed off, and the actual space is limited by the State Department as to what USAID can have. We offered additional bodies and they actually turned them down and said, we do not have adequate space on the compound to take them. So we're offering support from Washington to make sure that they have adequate support to do the contracts. But we have people ready to go. We just do not have space to put them into the country at this point in time.

Senator HAGEL. When you say they turned them down, who is they?

Mr. BEANS. They being the USAID mission. The mission said that they do not have adequate space. So the mission director and the contracting officers said, you all have done everything possible, but we can't take additional bodies even though it would be nice to have.

Senator HAGEL. Have you taken this up with the Administrator and Secretary Powell?

Mr. BEANS. I have talked to the Administrator about it, and I am sure that the Administrator has talked about it to Secretary Powell. It is an ongoing problem in Afghanistan because of the limited footprint we are allowed to have within this certain confined spaces.

Even this morning we were talking about Afghanistan and they wanted to move in additional bodies. They are talking about taking an individual bedroom and cutting it up into two or three bedrooms, so that it is so small, but just to get the bodies into the spaces we have.

So there is a sincere effort on the part of USAID to get as many bodies in to oversee these contracts as possible. The security situation is dominating everything at this point in time.

Senator HAGEL. Which I assume that was anticipated?

Mr. BEANS. Yes.

Senator HAGEL. At some point both in Iraq and Afghanistan?

Mr. BEANS. I am sure that it was anticipated in both places. I think that we realized in Afghanistan just how serious that it was going to be. But yes, it has been anticipated that that was going to be a problem.

Senator HAGEL. OK. Thank you. You mentioned in your written statement, which we had a chance to go through, and I looked at it this afternoon, that I think, in your words, Afghanistan is a stand-alone mission and has its own contracting staff?

Mr. BEANS. Correct.

Senator HAGEL. So the awards in support of Afghanistan have been run from the USAID mission in Kabul-Kandahar. As a result, we here in Washington are much more familiar with the Iraq actions than we are the Afghanistan procurements.

I am a little puzzled by that statement, especially in light of what you just said. Maybe you could explain to me what you mean by that?

Mr. BEANS. I certainly can. When I say that the initial contracts for the award in Iraq, all of those actions, all of the actions that you originally referred to as limited competition which brought some heat from the press and from the—

Senator HAGEL. By the way, I will give you an opportunity to respond to some specifics that I am going to talk about here today.

Mr. BEANS. I hope so. Yes, sir. All of those contracts were done in Washington, DC. We made all of the awards in Washington. So, we were very, very familiar with the contracts. We dealt with the contractors. We made these selection. We made the award. After award, we transferred all of the files out to Iraq. They are now being administered by the staff I talked about earlier in Iraq.

Afghanistan is different in that Afghanistan is a typical mission that we have overseas, total autonomy and control within the mission, a mission director and a deputy mission director and he has

the appropriate staff to run a mission. There we have a resident contracting officer with supporting staff.

I would not be as familiar with what they are doing on a day-to-day basis in Afghanistan as it would with the initial awards that we personally made in Washington, just like I wouldn't know exactly what is going on a day-to-day basis in India, or Thailand, or any other mission around the world.

The CTO makes the awards. We go out and do evaluations of the missions periodically during the year to make sure that things are being done in accordance with Federal procurement rules and regulations. But when I say that we had more knowledge of Iraq, it is because we actually did the work, whereas the work that is being done in Afghanistan is by a tenured Foreign Service officer.

Senator HAGEL. Yes.

Mr. BEANS. That's what I meant by that.

Senator HAGEL. Thank you.

Mr. BEANS. You're welcome.

Senator HAGEL. Well let me get to a couple of specifics on the contracts, and then we will move into some more general areas. I will get Mr. Mosley involved. I understand a contract was awarded to International Resources Group, IRG, and I think that was referred to?

Mr. BEANS. That's correct.

Senator HAGEL. You said earlier, for the initial amount of \$7.1 million with an extension options to total \$27.1 million, the OIG report on this contract shows that the RFP was issued on January 24, last year, and the response due back to USAID by January 27, only 3 days later. And the contract awarded on February 7. I am not expecting you to know all of those exact dates. We were able to get our hands on these dates from your files, and I think that they are correct.

Here is my question, was this a sole source contract done under expedited conditions? Is this an example of what was referred to in an earlier testimony?

Mr. BEANS. Mr. Chairman, that is the only sole source contract award that we did under the initial Iraq award. It was the first award and it was a personal support award for the mission. It was to stand up the mission. This is literally, while I am going home in the evening and turning on TV and CNN showing the troops moving up the road, we had to get ready to go. So it was the only sole source contract that I am aware of.

All of the other contracts that we did were done under the limited competition which you originally questioned, which I would be more than happy to address, because the Agency did take some heat on limited competition. And I think it is because of a lack of understanding of what it is.

Everett testified earlier, it is a legal way that you can make an award. And it is a special authority that is contained under the Foreign Assistance Act which is special to USAID, which is impairment of foreign assistance, which is not a normal exception that would be found in Part 6 of the Federal Acquisition Regulations.

So, it is something that can be done by the Administrator if there is fear that foreign assistance—I can tell you the exact quote here—“compliance with full and open competitive procedures would

impair foreign assistance objectives, and would be inconsistent with the fulfillment of foreign assistance programs.” The Administrator made that determination early in the Iraq war that a delay in procurement—normally, our procurement cycle for a full and open competition, I think we list it at about 210 days.

Obviously, Mr. Chairman, you realize the beginning of the Iraq war, I believed that every night that I went to bed that if we didn’t get these contracts in place, that certainly the potential existed that harm could come to American servicemen and women serving overseas.

I was told that if we didn’t get these things up and standing, and if we won, and eventually went into Baghdad, and we had no programs up to take care of economic growth and development, health, food security, that was going to be a problem. If we couldn’t get into the ports, if the airport wasn’t opened, then the troops would be subject to potential harm. We’re seeing what is happening right now. It could have been worse.

We were working under those assumptions, and as a result we did everything humanly possible to move it along. We took advantage of exceptions to get these contract awarded. But let me give you an example of why I think the criticism is unjust in some cases.

The original Bechtel contract, of course, got some attention. It was limited competition for \$670 million. But what USAID did, was we selected seven major U.S. firms to bid on that contract. We did the exact same thing that we would have done under full and open competition if we had gone out for bids except we limited the competition to seven known firms that we felt could participate.

We went out on the street. We got proposals. All seven of them came in one form or another and bid in different arrangements. We received four competitive proposals on that particular contract. We negotiated and we made the award to the highest technical, low-cost proposal, which happened to be Bechtel. There was extensive competition, if you talk to the non-selected contractors, they felt that they were certainly in very big competition.

The second procurement that we let was open to full and open competition, which is what the Congress prefers and what USAID prefers. It was for a much larger sum of money. For that contract we received three proposals which came in under full and open competition and we made the award.

So limited competition is not the way we prefer to go, but we did everything humanly possible to maximize competition under all of these contracts that were so-called limited. We can forego announcing it in the Federal Business Opportunities and leaving it 15 days before you’re allowed to release the RFP. We cut out all of those steps.

However, before we made any award, we would go back, for example, in the area of health, and we would say, have we made an award recently under our competition, that we could go back and say who was competing under that, and limit it to those firms. That’s how we kind of made decisions. We said, let’s not just arbitrarily pick people we liked. Have they competed before? Have they won a competition?

Most of the contracts that we awarded with the exception of the airport and seaport which are things that we don't normally do, we had experience in those areas. And we picked what we would call indefinite quantity contracts, which are competitive contracts won by a group of people under technical and cost considerations.

We limited the competition to someone that had recently won an IQC because we knew that they had the technical wherewithal to do the work, they had financial systems that were in place, and that we could move quickly. We tried to maximize competition. It's called limited competition, but it was totally legal and appropriate.

Senator HAGEL. I am going to ask you a little more about Bechtel in a moment.

Mr. BEANS. OK.

Senator HAGEL. But let's stay on the IRG program for a minute. As you know, and I think you said it, 210 days is the normal processing time.

Mr. BEANS. For full and open competition, that's correct.

Senator HAGEL. That's right. And this was done, as I understand, in about two weeks. And I think that you have given a sufficient explanation as to why you were under great pressure. American troops cannot go to Baghdad empty-handed and one, two, three, four. Let me ask you this about the IRG contract. Was there contact with IRG prior to the issuing of the RFP?

Mr. BEANS. Senator, I cannot answer that question. I was not personally involved with the IRG contract, so I don't know whether we issued a solicitation. I suspect in a sole source procurement that if you have 2 weeks to do something and someone has selected a firm, yes, you would contact that firm as quickly as possible to try to get a proposal. But I will get back to you on that when I talk to the people that actually did the work.

Senator HAGEL. Thank you. While the Inspector General is here, I would like also to get his take on this. Inspector General Mosley, this gives you time to confer and you probably never thought that anyone would think that your words were this important to stop a proceeding, but they are. So, tell us what you know about that question that I asked Mr. Beans.

Mr. MOSLEY. Are we speaking relative to the IRG contract?

Senator HAGEL. Yes.

Mr. BEANS. Yes.

Mr. MOSLEY. That was a—

Senator HAGEL. That was a specific question that I asked Mr. Beans about. Was there contact before the RFP?

Mr. MOSLEY. Well that was a sole source contract, so it really would not have mattered about the conversations before or after.

Senator HAGEL. Is that normal?

Mr. MOSLEY. That particular one?

Senator HAGEL. Is that normal that you would go out that way if it is a sole source? I know that you said that there are many sole source contracts. So you got out and identified an organization that you feel is uniquely capable, qualified on the timely basis to fulfill the contract. Then that's why you do it, which I am going to let you answer that, but which leads me to the next question. Where do you find new people? How do you reach out and find new peo-

ple? And I am going to get into a little more of that in a minute after I deal with Bechtel in a minute.

How many recurring contracts does USAID give to the same people over and over and over? And then, how do you make sure that that doesn't happen? That you're not in pattern of just giving it to the same old crowd whenever it comes up? But I suspect that there must be more than one organization qualified to do something like this. Maybe there are not.

Mr. BEANS. You know, I am sure that there is another organization that could do this kind of work. It is consulting work. So the answer is, yes, there probably is. And how the decision was made to go with IRG, I am going to get back to you because I am not sure.

[The following information was subsequently supplied.]

There are indeed other entities in the United States that are capable of providing technical assistance similar to the work undertaken by International Resources Group (IRG). However, given the urgency at the time and the need to provide expertise to the USAID mission, IRG was identified by the technical office as the most feasible choice, given positive past performance history and previously established links with USAID under competed indefinite quantity contracts (IQCs). As had already been mentioned, IRG was the only sole source award in the initial round of Iraq procurements and their services were absolutely critical to the success of establishing a functioning USAID mission in Baghdad

Senator HAGEL. Well, it's a bigger picture, you understand, Mr. Beans.

Mr. BEANS. Yes, I do understand where you're going.

Senator HAGEL. Yes.

Mr. BEANS. The bigger picture question, remember the IRG, I just want to re-emphasize. The IRG was the only sole source that's in this particular arena that we're talking about right now. Your other question is a criticism that you hear about around the government, not just with USAID, but also when I was with DOD and the FAA, which is that the agencies tend to award to the usual suspects. Certain organizations do tend to win more contracts with certain companies.

And my experience has led me to believe that it has to do with companies that will specialize in a particular agency. They will get to know it very well. They will know how to speak the language. They will know what the objectives are. They will know how to respond to certain solicitations.

Senator HAGEL. Develop personal relationships.

Mr. BEANS. Develop personal relationships. Yes, I would say that that's probably true too. However, you have to remember, in a procurement process, when I issue a solicitation, I am only going to make that award in strict accordance with what we call the evaluation criteria. We set out in Section M a contract, in specific detail, the winner will meet the following requirements. And that's how we do it.

Now, when I say that they do well, they really understand how to respond to Section M of the contract. Andrew Natsios has been very concerned about this, as has Secretary of State Powell, and has pushed USAID to expand the number of people that we have doing work with. We are being challenged as to why we are giving these contracts to the same people.

As I explained to Andrew Natsios, they tend to turn to procurement, and they say, why are these people winning the contract? I explain that we are not the selecting officials. We are the people who make sure that the rules and regulations are followed. However, whenever a proposal is received, and most selections are made on the merit of the technical proposal, even though it is a best value decision to the government, those technical proposals are evaluated by the technical people in the Agency. They score the proposals. They send it back. And if I tend to get the same contractors over and over, it is because they are finding their proposals to be better. So I have been challenged to come up and take a serious look at the evaluation criteria.

Andrew Natsios recently said that we're to take out any reference to past experience with USAID as being an evaluation criteria. He doesn't want companies that have done business with us. He has asked why companies that are in a country for a number of years have not won a contract. They certainly know the country, and why aren't they winning? So as an Agency, we're going through a change right now as to how we can expand the number of people that are winning contracts.

It is something that we are taking very seriously. We're doing it now with taking a look at the faith-based organizations for the new HIV-AIDS infectious disease. We're trying to make sure that they get a fair shot at getting their fair share of work. So this is a very timely question, because it is something very important to us at this point in time.

Senator HAGEL. Well, I am glad to hear that. I know that Administrator Natsios has noted that when he has been before this committee, as well as Secretary Powell. And I don't think it is much of an argument to say that those who are selected for contracts comply with all the rules and laws and the regulations. Of course they do, or we hope that they do. The IG makes sure that they do.

If the universe still stays the same, of course, did they comply with the contract? Yes. But it never gets any bigger, the universe. I would hope that you are all serious about this because we are very serious about this in the Congress. There have been too many examples that have come back to us all on this, and we're going to be very closely focused on this and monitoring this. And I think that Administrator Natsios understands this as well.

Let me go back to the Bechtel contract which you started to develop a little bit, and let's see if I can restate this. This contract, as you know, was awarded in April 2003, and as you noted valued at about \$680 million. Now, my information is, and we have looked at this, that the OIG reported several problems with how this contract was awarded. Under the Federal guidelines on contract procurement regarding notifications, the OIG found that the USAID did not comply with those guidelines. Would you like to respond to the OIG report?

Mr. BEANS. Mr. Chairman, I certainly would.

Senator HAGEL. OK.

Mr. BEANS. The OIG's report is absolutely correct. We did not meet the required time lines within the Federal acquisitions regulations that say that a non-selected contractor shall be notified within 3 days if they did not win a contract.

The regulation makes complete sense when a firm puts in a bid, they have a complete right to know that they were not selected. They are trying to hold a team together, and it is not fair if they sit there without being notified. So the rule makes complete sense.

In this particular case, this was a rather unique contract. Bechtel got a considerable amount of attention, as you were well aware. Once the award was made, we sent it to the Hill for notification. It was announced, as I was on my way home in the car, I heard it on the radio that Bechtel had won. You had just received the notification. The word was out very quickly on the street, and it was the headlines in the papers the next day. Everybody in the country knew that Bechtel had won the contract. It was on CNN and it was on the morning news.

We did not call the two non-selected contractors within 3 days and tell them that they were not selected. We should have done that, the assumption being that we were trying to do a lot of things. They were probably pretty well aware that they did not win the contract. However, we did go out of our way to make sure that they received an adequate debriefing so that they understood the reasons that they did not win the contract, both technical and written debriefings.

We spent a considerable amount of time to make sure that they felt satisfied because we missed the 3-day time limit as set forth in the regulations.

Senator HAGEL. Inspector General Mosley, would you like to respond to any of this since it was your report?

Mr. MOSLEY. Well, no. We understand the difficulties that they had in terms of timing and some of the other pressures. We simply have to audit in accordance with what the regulations said and that was what we were reporting.

In most of these cases we're talking about documentation and timely follow-up and making notifications, and we audited them in accordance with the procedures. We're very sympathetic to the situation that they had to deal with, but we have to report the facts as they appear.

Senator HAGEL. Would this fall under the area—with all of the other extenuating circumstances that you have not brought out here, of a violation of Federal procurement law?

Mr. BEANS. I would say no, it does not.

Senator HAGEL. What about the Inspector General?

Mr. MOSLEY. Well, they are required to make those notifications, so it is a violation, technically.

Senator HAGEL. Well, I understand that there was a documentation issue involved as well of documenting all of this.

Mr. MOSLEY. In this particular case, the notifications did fall in the category of a violation. Now, we can talk about technical violations, but it was a violation.

Senator HAGEL. Well, Mr. Beans, I think you have explained it and I appreciate it very much.

Mr. BEANS. You're welcome.

Senator HAGEL. Let me go back to a more general question that we were talking about, and maybe drill in a little bit more precisely. And that is, as you enlarge your universe of interested companies to bid on USAID contracts, explain to me what are the pros-

pects for contractors who do not have a previous relationship with USAID? Where are you going to, in fact, do what the Secretary and Administrator have asked you to do? Noble intention, but what are you doing in effect to get it done and to reach out for new people?

Mr. BEANS. Thank you, and it is a very good question, Senator. We have decided that one of the complaints that we were hearing from the Professional Services Council and from other people that had not had opportunities to win contracts, is that these things tend to be decided early on, because by the time they hear about a procurement, we have to give them at least 30 days to submit a proposal, and we announce it in the Fed Biz Ops, the Federal Business Opportunity, they say, somebody has already known about it, or found out about it, and they get an advantage of going out early.

So we said, what we're going to do from now on, and its published on our Web site right now, is that we put together an advance procurement plan at the beginning of the year, and we publish that plan so that people can see everything that is planned from the beginning all the way through the end of the year.

If there is interest in a particular area, they can contact the technical officer, learn as much as they can about it, and be prepared and on equal footing with firms that in the past had that type of advantage.

I have done a number of speaking engagements and I have been going around trying to talk to agencies on how to get into USAID, particularly small business organizations and how they can get a leg up. We have set up our contracting procedures now to set aside contracts strictly for small businesses to compete. Small disadvantaged businesses, women-owned businesses, disabled veterans, we're making a sincere effort to do that.

In fact, in the full and open competition Bechtel contract, we set aside 10 percent of all subcontracted dollars for U.S. small disadvantaged and women-owned firms. We also, for the first time, came up with language where we offered a \$1 million incentive to any contractor that could come in with a proposal that met the 10 percent set aside. In other words, they came in and said that we're going to exceed the 10 percent. We were going to hold that money in abeyance, and track how well they had done, and if they did actually subcontract, we were going to hand them \$1 million to encourage them to go with U.S. small businesses.

We're doing a number of things to try and increase the number of companies that we get, to expand the base of people that are working with us. And if the Senator knows of any other suggestions, I am more than willing to listen.

Senator HAGEL. Thank you. I saw this late last year and the committee took a look at it, and our staff people just reminded me of it, this is an April 12, 2003 conference report where Mr. Young, Chairman of the House Appropriations Committee——

Mr. BEANS. Yes.

Senator HAGEL [continuing]. Chaired that conference and I note language in here that, in fact, I will read from it. "Request the Administrator of the U.S. Agency for International Development to actively seek to include significant participation by small, minority, and disadvantaged American-owned business enterprises."

So, not only has the Secretary and the Administrator thought that it was a good idea to do it, there is some official focus on this up here as well. And I want to go into another question about this. What are opportunities for rules governing faith-based organizations to participate? Are they handled the same way as any other organization would be handled if they are interested in participating in a contract award?

Mr. BEANS. Senator, one of the things that I have been very proud of about working for USAID is that we have always maintained a separation between the political side of the house and the civil servants and Foreign Service officials that have made the decisions on the selection. We have always been able to look you all in the eye, and the press in the eye, and say that there is a firewall between the political side and the civil service side, and we have made decisions accordingly.

For the first time the faith-based organizations came in and they were asking if they could participate as voting members on the selection committees. I advised Administrator Natsios that I felt that was a dangerous precedent to be setting, to have a political person being a selecting official. However, we have had meetings and said it is absolutely imperative that we find people that are technically knowledgeable of this subject matter, but that are sympathetic to faith-based organizations and we will give them a fair shake during the evaluation.

That's how we have been trying to handle it, so that we can still maintain that the decisions are made by civil servants as opposed by political influence coming into the procurement process which I will fight to the end.

But we want to see a fair share and increases in this area. We're starting to see, and in fact, if you check the USAID numbers, we are very, very, very strong in our support of faith-based organizations. We do a good job now. We think we can do a better job and increase to more organizations. That's what we're trying to do right now on a daily basis.

Senator HAGEL. OK.

Mr. BEANS. Your other question on small, disadvantaged businesses, just very quickly, the personnel support contract that we talked about, the sole source contract. The initial contract that we did, the only one we did sole source, we required a 14 percent subcontracting plan from them. The primary and secondary education contract was a 100 percent women-owned contract that we awarded in Iraq. The local governance contract had a 30 percent subcontracting plan. Health had a 58.5 percent subcontracting plan. Economic governance and agriculture both had 20 percent subcontracting plans.

This is something that we take very serious, and in fact, we actually changed the evaluation language that we put out in solicitations that actually help small, disadvantaged businesses get considered, companies that use them. I would be glad to present a copy to you to show you that we are changing the way that we do business to encourage this.

Senator HAGEL. Thank you. And if you have that there, you can submit it for the record later.

Mr. BEANS. Yes.

Senator HAGEL. We will include it in the record.

Mr. BEANS. OK.

[The following information was subsequently supplied.]

Please find wording in USAID’s Iraq II Infrastructure solicitation, where USAID provided an added incentive for subcontracting to small disadvantaged firms.

“INCENTIVE FEE FOR USE OF SMALL DISADVANTAGED BUSINESS CONCERNS

In order to encourage the use of small disadvantaged businesses in the reconstruction of Iraq, USAID will offer additional fee in those cases where the contractor has utilized small disadvantaged businesses provided that the contractor has achieved the percentage already required by the contract for small business. At the completion of the basic contract period, if the contractor has subcontracted to small businesses the amount of work required by Section L.XX of the contract, the contractor will be eligible for an additional incentive fee for any subcontracting to small disadvantaged businesses beyond the contract’s requirement.

USAID will provide incentive fee in accordance with the following formula:

<i>Percent of Usage of Small Disadvantaged Businesses Beyond the Required XX%</i>	<i>Amount of Incentive Fee Earned</i>
Up to 2% more	.02% of the Fixed Fee
Greater than 2% and up to 4%	.04%
Greater than 4% and up to 6%	.06%
Greater than 6% and up to 8%	.08%
Greater than 8% and up to 10%	.10%
Greater than 10%	.12%

(Example 1. The contract required that at least 10% of the total estimated cost be awarded to small businesses and the contractor subcontracted 15% to small businesses. Out of this 15%, 7% went to small disadvantaged business concerns. In this case, the contractor would be eligible for an additional .06% as incentive fee. Example 2. In the event that the contractor only subcontracted 9% to small businesses of which 3% were small disadvantaged businesses, the contractor would not receive any incentive fee since the target percentage of 10% was not achieved).

In the event that the fixed fee owed to the contractor during the contract period is less than the amount stated in Section B for that contract period, the calculation of incentive fee earned will be based upon the fixed fee amount that the contractor will actually be paid for that period. For example, since this is a CPFF (LOE) contract, in the event that the contractor only expends half of the LOE, the contractor is only eligible for half of the fixed fee in accordance with Section B of the contract. In this case, the incentive fee earned will be calculated on the amount of reduced fixed fee owed to the contractor for that period.

Pursuant to FAR 15.404-4(c)(4)(i)(C), the fixed fee for the basic contract period and the incentive fee earned for that period may not exceed the statutory limit of 10% of total estimated cost (excluding fee) set forth in Section B for the basic contract period. In the example posed in the paragraph above, the fixed fee for that period and the incentive fee earned for that period may not exceed 10% of the prorated total estimated cost for that period.

The same procedure will be used for each of the option periods and the same restrictions will apply. The calculation of incentive fee earned in each contract period will not be affected by the achievement or lack of achievement of extra incentive fee earned in the previous contract period(s).

Incentive fee will be given for subcontracting to the following socioeconomic groups as certified and defined in FAR 52.219-1: Small Disadvantaged Business, Women-owned Small Business, and Veteran-Owned Small Business.

WHAT HAPPENS IN THE CASE WHERE THE CONTRACT IS AWARDED TO A SMALL DISADVANTAGED BUSINESS? My suggestion would be that their status would qualify them as meeting the contract requirement of 10% but they would only receive incentive fee if they subcontract to other SDBs. If so, then the clause would go into effect for what they subcontract.”

Senator HAGEL. Thank you. On the point of subcontracting, how do you assure the quality of a subcontractor? When you let a big

contract, Bechtel or whoever it is, how do you assure the quality of the subcontract? And then are there any rules of governing subcontractors in that you can only have so many per contract, or dollar figure, or other rules, or does it matter on subcontractors?

Mr. BEANS. Generally.

Senator HAGEL. Since my understanding is that having looked at some of these, and I have actually seen some in Afghanistan and Iraq and other areas where you have missions, the subcontractors in many cases are the ones who actually do the work and actually carry out the day-to-day functions of the grant award.

Mr. BEANS. Yes.

Senator HAGEL. So they are pretty important.

Mr. BEANS. They're very important. I think Iraq and Afghanistan kind of skew how you should really look at this, and a lot of that has to do with the particular situation which we find ourselves in Iraq and Afghanistan. They are very difficult places to work and require high security.

The Bechtel contract, for example, has an objective to get economic growth and development going for the citizens of Iraq. We're trying to get in, get a government up and standing, and get our troops out as quickly as possible. With that in mind, one of the things that Ambassador Bremer is trying to do is to increase participation of Iraqi firms. We have hired 55,000 Iraqis which we have working under the Bechtel contract alone in Iraq.

Generally, concerning your question about how do we ensure subcontractors, the contracting officers before making an award will take a look at a subcontractor to make sure that they have adequate financial resources and accounting systems, and can report back under government reporting requirements for financial reporting or whatever the case may be.

Senator HAGEL. A USAID official?

Mr. BEANS. Yes, they will look at it.

Senator HAGEL. Look at the subcontractor?

Mr. BEANS. Yes. But we do not approve subcontractors. We have privity of contract with the prime. So we hold the prime contractor responsible for delivering the work. Whatever it is that the subcontractor—

Senator HAGEL. But you review the subcontractor?

Mr. BEANS. We review the subcontractor and we consent to the subcontract. We don't approve it. Because approving it would mean, for example, that we take responsibility while we're holding the prime responsible for the performance.

Now, you asked about the number of subcontracts. Generally, a contractor will decide, based upon profit margins and ability to perform, what the right mix is of contractors with their own personnel so that they can still be responsible. They're going to be held accountable for the performance, both by myself, by the auditors that come in, and the IG that sees them during the performance. So they will usually make the call versus the government.

So it would depend on the nature of what you're buying, the particular procurement, and the environment in which they are working would determine the right mix of subcontractors.

Senator HAGEL. You just noted something that is obviously important, and that is the dynamic of assuring as best we can that

we are in fact helping develop the economy of these countries. That means putting Iraqis to work, Afghanis to work, and at the same time, pursuing the policy of the current administration, whether it is the Bush administration or the Clinton administration. In your oversight of the contracts, of the prime subcontractor, I assume there are standards for that as well?

Mr. BEANS. Yes.

Senator HAGEL. You just mentioned employment.

Mr. BEANS. Yes, there are.

Senator HAGEL. And I assume that the IG looks at that as well, when the IG goes in and looks at mission and fulfillment of the compliance standards and so on. Is that correct? That it is built into the review process, both from the contracting side and the IG side?

Mr. MOSLEY. Yes, Mr. Chairman. In fact, that part of the work is just starting in both Afghanistan and in Iraq. We went in initially, and our emphasis was on the Kabul-Kandahar road, and in Iraq because of the security, we were limited in the amount of visits that we could take in performing our performance audits.

We are now using the Agency's contracted security firm and we are out doing visits. And as a part of those visits, we look at what the subcontractors are doing. We look at the actual performance that they are making on those jobs as part of our tests and our visits. So we do those kinds of reviews.

Senator HAGEL. Thank you. Is there anything that you would like to add, Mr. Beans?

Mr. BEANS. No, sir.

Senator HAGEL. OK. Inspector General Mosley, you note in your testimony, and we have covered some of this from Mr. Beans' side, but this is I think a quote from your testimony, "that many cognizant technical officers," CTOs, "are not adequately trained to perform their duties." And in your Standards for Success Accomplishments Report, Fiscal Year 2003, you note that USAID did not hold most CTOs accountable for performing their responsibilities and that USAID does not adequately evaluate their performance.

Do these limitations then regarding CTOs represent, in your opinion, a major hurdle for USAID's objective of no skill gap deficiencies in mission critical positions?

Mr. MOSLEY. Well, Mr. Chairman, as I stated, it is a crucial role that the CTOs perform. And when they don't have the adequate training it does provide a problem in making sure that all of the contractors are performing in the way that they should.

In terms of their performance, this is a collateral duty with most of them, so they have work objectives and CTO duties are not necessarily included in those work objectives. If it is not in the work objectives, some of them may not pay as much attention to it as they should. So we're working with Agency management now to try to get it included in the employee work objectives and to make sure that their evaluations are covering those areas.

In addition to that, we have talked with the Office of Procurement and they are working to get the training to each of these individuals. And there are plans in place to get this training provided to those contracted technical officials.

Senator HAGEL. Mr. Beans, do you want to respond to that? I know that you had mentioned this earlier in your comments.

Mr. BEANS. I could not agree with Everett's assessment more strongly. I think the Agency would be improved tremendously if they're better—the technical officers are able to do their job. I don't believe that there is adequate understanding on the technical side of the house that they are in fact procurement officials earlier on in the process than they believed they are. So I think Everett is completely correct in this area.

Now, when I came on, I identified it to Administrator Natsios as one of the weakest areas that the Agency had was the lack of training of technical officers that were overseeing these contracts. To his credit, he has instituted a program where we now have a 2-week mandatory training program to receive certification. And I have, in fact, assigned—600 people are certified CTOs in the Agency.

Now, they can take the training and they can pass the course. But I believe Everett is correct that until we get it into their work objectives, they will not take it as seriously as I would like to see it taken. So this is something that I hope bears fruit for the Agency in the future.

Senator HAGEL. Well, Mr. Beans, I would say that it must go beyond just hoping. It is a pretty critical part of this.

Mr. BEANS. Yes. It is, it is.

Senator HAGEL. So, we're going to have to do more than hope. And the Congress will hold USAID accountable for that, and especially since it was brought out very clearly in the IG's report. As you note, you were dealing with it and you're going to have to deal with it, which gets me into a couple of other areas.

In subcontracting, do you have any numbers on subcontractors that have been dismissed over the last 6 years, 12 years, 10 years, 2 years, for non-performance or for whatever reason?

Mr. BEANS. I do not, Mr. Chairman.

Senator HAGEL. Would you provide that for the record?

Mr. BEANS. I certainly will.

Senator HAGEL. OK, let's go back for the last 12, 14 years. Let's go back to 1990.

Mr. BEANS. How many subcontractors?

Senator HAGEL. Subcontractors.

Mr. BEANS. That have been dismissed?

Senator HAGEL. Dismissed for whatever reason. Are they ever fired? I guess you can start with that question. Do you ever fire a subcontractor? I mean, I have been in business and I have started companies and I have had to fire subcontractors for a lot of reasons and I can't imagine that you haven't had to fire some.

Mr. BEANS. Yes. I have been in business also, and I have fired subcontractors.

Senator HAGEL. Yes.

Mr. BEANS. But it has normally been my responsibility and yours is that as a owner of a company or running a business, to fire the people that were not performing for us. I have got to go back and check whether the government has actually fired subcontractors. We have probably fired the prime if the subcontractor had a—

Senator HAGEL. Yes. But I just wanted you to provide for the record how that worked.

Mr. BEANS. OK. I will.

[At the time of publication a response had not been received.]

Senator HAGEL. Thank you. Mr. Mosley, going back to some of your documents that we were looking at before the hearing, in the Inspector General Standards for Success Accomplishment Report, that document notes that USAID has not yet achieved—these are your words, the report's words—not yet achieved a performance measurement process that verifies and validates the reliability of data in the annual reports of individual operating units. Would you care to explain what you mean by that?

Mr. MOSLEY. I can't remember all of the specifics with that, Mr. Chairman, but I think we're talking about the problem of timeliness. Most of the performance reports—because of the systems that the Agency has—are reporting on data that is old. And in any fiscal year when you're making a report, you're making a report on the prior fiscal year, so the information is not necessarily up-to-date, and adequate so that corrective action can be taken. And I can provide additional information for the record.

Senator HAGEL. If you could do that, I would appreciate it.

Mr. MOSLEY. Yes.

[At the time of publication a response had not been received.]

Senator HAGEL. Mr. Beans, would you care to respond to that?

Mr. BEANS. No, comment at this point and time, Mr. Chairman.

Senator HAGEL. OK.

Mr. Beans, would you describe the interagency process among USAID, DOD, CPA, for example, on Iraqi contracting and procurement? Is there an interagency relationship? Is there any kind of cross-fertilization CPA thinks that they need this? How does that work? Or does it work? Or does it matter?

Mr. BEANS. Well, there is an interagency agreement and, for example, tomorrow I will attend a meeting with the CPA, State Department and all other agencies that are in what is called the CPA. We have been told by the Coalition for Provisional Authority that we are working for the Coalition for Provisional Authority, which is working for Ambassador Bremer, to achieve the goals and objectives we have set for Iraq.

We are in support of the CPA, and in fact, there is work going on now to standardize clauses and standardize language as much as we can, because we are working under two different sets of authorities, so that we reflect and all look like we are all working for one government. That's a good thing to do.

There are some differences of opinion, particularly among State Department and USAID and DOD. However, there have not been anything that we have not been able to overcome at this point and time. It is unique in anything that I have seen since I have been in the Federal Government, agencies reporting to the CPA. The CPA has, of course, announced that it is going out of business in July of this year, but yet we have heard that there may be extensions. Yet they are working on branding for the CPA and other things.

So we're still trying to figure it out. I think time is moving along and we are wondering if it will still be in existence once the embassy is stood up in that time frame, so there are questions in my mind. I think there are a lot of questions in other agencies' minds

as to where we are going with this thing. But there is cooperation going on. We are trying to work together to make our instruments look as close as possible and cooperate where it makes sense.

Senator HAGEL. Is there any kind of formal relationship or informal relationship where representatives, say from CPA, DOD, State, USAID meet once a week, or once a month?

Mr. BEANS. Yes, there is a formal relationship and actually they call it the back-door CPA, because the Coalition Provisional Authority, of course, is run by Ambassador Bremer in Baghdad. This is a back office. It's headed by the Department of the Army. It is the lead organization that is in charge of it. So, yes, there is cooperation and an ongoing weekly meeting that we have, certainly with the procurement people, as to how we're going to do the contracting.

CPA is now trying to put out a large number of these construction contracts. They've said that they will award soon, I think, 14 separate contracts for different areas of construction. They're working on that and the other agencies are working on the pieces that the CPA have said that is their cognizance, so there is some cooperation in work.

Senator HAGEL. Alright. Inspector General, would you have any comment on any of that?

Mr. MOSLEY. Well, Mr. Chairman, as you know, there is a CPA Inspector General as well and we have had a number of meetings with him since he was appointed at the end of January. We have been able to coordinate with him as we do with GAO, so that he does not have to duplicate our work. Because we have been heavily involved in it and have performed a lot of heavy work of the USAID contracts, he is simply going to use our work in reporting for the overall government.

Senator HAGEL. All right.

Mr. MOSLEY. We're helping him put those reports together. We're doing whatever he needs. We have also explained to him our commitment for opening an office there, simply because that IG office is supposed to go away six months after the CPA is disbanded, and USAID will still have contracts there and have work there, and we still plan to put an office there, and we have coordinated with him and there is no difficulty with that.

Senator HAGEL. Thank you. If you could both respond to this question, how exactly did USAID determine or estimate the value of the prime contracts awarded in Iraq? For example, the contract awarded to Creative Associates International, I understand for \$157.1 million. What analysis, field work measure, were these cost estimates based upon? And then could you give me some sense of that, some examples or details?

And then I want to take that a little further with you, Mr. Mosley, and then get into something you had said, and you know where I am going with this. In your review of Iraq contracts, you note that for two contracts, the level of effort initially estimated by USAID varied significantly from the actual needs, so the two are connected. And Mr. Beans, we will start with you.

Mr. BEANS. I found the contracting in Iraq and Afghanistan to be different than anything that I have ever dealt with in procurement. And generally what I expect is if I were to write a statement

of objectives or scope of work, I would put it out, and industry would tell me how much it would cost them to do that particular piece of work.

Iraq and Afghanistan was different. We had a situation there where not one agency was putting out a scope of work, but a number of agencies were involved in the decisionmaking process as to what was to be done. If you remember, we had an original person that was in there. I am embarrassed I have forgotten his name, General—

Mr. MOSLEY. Jay Garner.

Mr. BEANS. Yes. Jay Garner.

Senator HAGEL. Garner.

Mr. BEANS. Jay Garner came in with a certain set of objectives and he wanted certain things done. We were working along those assumptions when all of a sudden Ambassador Bremer came in, and said, cease and desist, I would like to take a look before I do things. So that normal ways of doing business where you put out a scope of work and ask for a certain proposal, that is what usually determines whether something is fair. There's competition among the private sector for a piece of work as to how much they can do it for, and that usually is the driving thing as to the fairness of costs.

In this particular case, we were getting plugged figure numbers in some cases. They would say you have \$170 million—I'm using this as an example, please—to do a certain action, whatever that may be. So we would tell the contractor that we were going out with very broad scopes of work, because the actual work was being determined by task orders with the approval of the CPA and Ambassador Bremer in-country. So, we knew we wanted them to work let's say on economic growth and development. They wanted them to do micro- and macroeconomics, and do a whole bunch of things. But we did not know from Washington what they were going to do until Bremer decided, and he could change his mind on a daily basis. If a bomb blew up somewhere and hit a power station, that was his highest priority and he would move resources in that direction.

So what we did is we basically set up a guesstimate amount of money of what we thought would be needed. And we knew that we may have to subtract money, if they didn't achieve that. Or, what we found in most cases was that they were able to spend the money and they needed more money than we originally had.

So it didn't work the way I am used to. Some of the Inspector General's findings were absolutely true. We would normally have a government estimate broken down in detail as to how much we thought something would cost and we would compare that with industries' when they came in. When you are told that you have \$600 million to do a job and you based something on that very broad scope of work and the next day you're told you have \$900 million, it doesn't work the way you would normally expect.

I understand the IG writing what they did. I think that they are absolutely correct. However, in this situation and I am not sure that there wasn't anything wrong with this, nobody knew exactly what was needed in Iraq when the bombs were still going off. We didn't know what would be destroyed, what would need to be fixed,

or what infrastructure that would be destroyed. So, it was really a guesstimate at first.

I think now we're getting much more realistic estimates on the second round, and that is why we're going full and open competition as to what really is needed. But at first, I understand the people not knowing and not being able to tie it down as much as we would like.

Senator HAGEL. Thank you.

Mr. Mosley.

Mr. MOSLEY. Mr. Chairman, I don't know how much I can say about this, though. As I was growing up as a kid in Mississippi, my Mom always told me, when you come in and fess up that you did it wrong, and you're going to do it better next time, she wasn't going to punish me.

Senator HAGEL. And you always did exactly what your Mother told you.

Mr. MOSLEY. And I did what she told me.

So, I don't know what I need to say about this other than what we were looking for with the documentation. When we come in and the documentation justifies a certain amount and the contract is issued at such an exorbitant amount above that, we are looking for how do you get to that amount, and we were not able to find that, so that was what we were reporting.

Senator HAGEL. So what is the follow-up? What are we doing now actually to fix this? You mentioned a couple of things on contracting process and so on, but from the Inspector General point of view, what's the follow-up?

Mr. MOSLEY. Well, from my perspective, we made a recommendation that they go back and take a look at the contract, and look at what the actual need is versus what was out there as a level of work that was going to be performed, and they are in a process of doing that review now. We have actually sent a couple of follow-ups and we're trying to get together right now with Mr. Beans to see what is going to happen. They have made a commitment that this will be done before any extensions of that contract are given. And I think those are to be done within 1 year after the contract was issued and that is April or May, as I recall.

Senator HAGEL. OK. Thank you.

Mr. BEANS. Mr. Chairman?

Senator HAGEL. Yes.

Mr. BEANS. Just one more comment.

Senator HAGEL. Sure.

Mr. BEANS. When we were talking about these sums of money, and they were large sums of money, multimillion dollar contracts, these were basically ceilings that were set up for the CPA. Like I said, I don't know that anybody could have predicted out of the blocks how much it would cost to do education, or primary and secondary education in Iraq, before we went in and saw what was going on. So we set up mechanisms with ceilings not to be exceeded, where based on the CPA's needs they would make the determination. They were almost vehicles that they could use on an as-needed basis. Now, as it turned out, all of those vehicles are being used, and all of the areas that we selected, are areas that needed to be addressed.

So I am not sure anybody would have done differently under the circumstances that this took place, and I have never had to go in and try to do procurement in a war zone quite like this. I did work in the West Bank and Gaza during the Intifada, where it was very difficult to do work. I thought that was the most difficult thing that I had ever seen. Iraq and Afghanistan just upped it a little more.

Senator HAGEL. Yes.

Mr. BEANS. I never seen anything quite like this.

Mr. MOSLEY. Mr. Chairman, one of the other things that we will be doing, I might add, as we do our performance work, we will actually take a look at what money was spent as a part of these contracts, and assure that it was spent on resources and other things that needed to be done in that contract and no excess funds were expended.

Senator HAGEL. Thank you.

Gentlemen, I greatly appreciate once again your coming up here and the time that you have taken with the panel. You have been very helpful.

We will leave the record open for a couple of days. I may have colleagues who have questions. If you could address those and get those back to us in writing, and I may have some follow up questions as well. Mr. Mosley, Mr. Beans, is there anything else that you would like to get on the record before you escape?

Mr. BEANS. No, I like the latter recommendation. I would just like to thank you very much for the opportunity to come up and talk to you. I really appreciated it.

Senator HAGEL. Well, we appreciated all of the good work you and your Agency does. Give your colleagues our thanks as well. Mr. Mosley, always good to see a Meridian, Mississippi man. And to the audience, Mr. Mosley and my wife are from the same hometown, so she sends her regards.

Mr. MOSLEY. Thank you, Mr. Chairman.

Senator HAGEL. Thank you.

Mr. BEANS. I wondered why you got such an easy ride here.

Mr. MOSLEY. No. Actually his wife and I are——

Senator HAGEL. Do you want to stay for another hour, Mr. Beans?

If we could get the second panel up and again, thank you gentlemen.

Gentlemen, welcome, again. As you recall, I noted the three of you and your positions, and I once again thank you for taking your time in presenting testimony today in an area that is complicated and uncertain and, as we all know, dangerous, so thank you.

Mr. Barton, you were probably just a baby when your father used to bring you up and put you on the chairman's knee, I would imagine, so we're glad that you're back. And to the other two panelists, thank you for your expertise and for your willingness to come up and share some of your thoughts.

In the order of the agenda, I will ask each of you to present a statement. If you care to summarize that statement that's fine. As I noted before, each of your statements in their completion will be included for the record. So let me begin with, well let me start with you, Mr. Barton.

**STATEMENT OF FREDERICK D. BARTON, CO-DIRECTOR OF
POST-CONFLICT RECONSTRUCTION PROGRAMS, CENTER
FOR STRATEGIC AND INTERNATIONAL STUDIES**

Mr. BARTON. Thank you, Senator Hagel. It is a pleasure and thank you to your staff and to Senator Sarbanes and staff for this invitation today.

This is a subject that really matters to me because when I was working at USAID, I recognized how important these procedures were to doing our job; to the kind of creativity that we wanted to bring to the programs, to the relationships that we had with our partners; to our performance in the field; and to the image of the Agency in the United States Government and to its taxpayers. I have recognized the importance of this issue and value that you and your staff have taken it on as being worthy of your attention. It certainly is.

My remarks focus on three broad recommendations that you have touched on.

In the past 10 years I have had a chance to work in over 20 of these post-conflict or conflict-prone zones. I find them to be a place which is a fair test, but a place where you have to be pretty entrepreneurial if you're going to be at all successful. And clearly our overall efforts in most of these places have not been successful to this time, which is one reason that many of us are so pleased that the full committee is taking on the broader structural issues in hearings next week.

The three broad recommendations are: first, that we expand the range of choices in partners. The second, that we open up the process. And third, that we make the system easy to use.

First, we need more partners because the jobs in Afghanistan and Iraq are just too big. They are by virtually every measure, 10 times larger than anything we have done in any of the other post-conflict places in the last decade, so it is clearly going to require an all hands on deck approach. There is no way that we're going to achieve the kinds of ambitions that have been put forth, whether you take the more modest ambitions of some members of the administration, or the more euphoric of others, without having extra help.

It is important to applaud the efforts of Tim Beans and to encourage them to move to the next level.

This can be done by pre-competing and pre-qualifying a large pool of organizations, both private and non-profits, with a special emphasis on difficult subject areas such as public safety and justice teams, demobilization and reintegration of combatants, and mass communications. These are issues that come up every time and we don't have any preparation.

We found when I was at USAID that we were able to set up a mechanism which was derived from indefinite quantity contracts. We developed something called the SWIFT mechanism that allowed us to pre-compete contracts, so when the moment of truth came we could be in the field in 4 to 5 weeks. That needs to be done on a much broader basis throughout the organization. Otherwise, we're going to continue to get stuck with some of the weaknesses that you have seen.

And I also believe that a hybrid experiment needs to be taking place where we don't just pre-compete contracts, but we do the same for grants so that we gain the benefits of the PVO, the non-profit community. When you go to a place like Afghanistan, the NGOs are all over, yet they have been pretty well shut-out of the non-humanitarian activity. Why would you want to shut anybody out in this kind of case? It's just too big and too tough.

I would also suggest that we should beware of large contracts. They are not necessarily quicker in the field, they do lead to greater cost overruns, and they do reduce competition. It's clear when you have a contract that is larger than a company's entire annual revenues that they are going to take second and third thoughts about whether they should go after that piece of work. That creates a self-selecting process which is going to reduce the number of players. And again, I think we want to break these things up into bite-sized pieces.

But our contracting procedures are so complicated in many cases that when you have a program officer considering 10 contracts or one, they will always say, I think that I'll go in once.

You asked the question about large projects. When we were in Iraq last summer, we happened to visit the Basra water project, and I noticed in one of the budget proposals, in the supplemental, that it had been priced at \$250 million.

Now, when I was visiting there, you could have said \$3 million or you could have said \$500 million. I am not an expert, but it was really hard to figure out how anybody was going to settle on a number. And you could see the kind of drive-by assessment, that was likely to take place. So, that kind of thing happens.

But the other problem with big contracts is they often times don't fit the context. These places are fragile, there is going to be sabotage, there are a lot of problems. One big target makes you more vulnerable. Does not reach as many people, and has less potential.

What you are trying to do in these places is to get an overladen plane headed in the right direction and then hope that it hits just the right bump at the right point in the runway so that it eventually takes off. Building a pyramid one-third of the way down the runway will cause an accident. That is what is happening in these cases.

The second large recommendation is open up the process. The people that I have talked to inside the agencies felt that the secrecy, closed meetings, and security procedures were excessive. Many of those appeared to have been inflicted upon the Agency from without, but nonetheless it did cut into its credibility. Secrecy isn't consistent with the values of USAID's programs and cause embarrassment.

Gaining the public's confidence, as Everett and Tim were describing before, would benefit from expanding the use of concurrent audits, spot checks and peer reviews of ongoing work. We used these in Bosnia and Haiti, everywhere there was a fast developing and expensive program with political sensitivity. Concurrent audits helped managers to know what was wrong right away rather than having to slap their hands 2 years after the program, which has little value.

More could be done but we should be careful about expanding the IG and management, because already these are large and growing parts of the Agency. In Washington by far the largest part of the Agency is the management bureau. In the long run we want an USAID that is defined by its programming not its procedures.

Finally, the third general area is to make the system easier to use. There are a number of suggestions that have already been made, and I won't repeat those. We do need to decentralize the work and place the contract officers in each bureau and office.

We have heard, and I think Mark will talk about this as well, that there are significant vacancies in the procurement office. That has pretty much been the case, at least for the past 10 years. There were huge vacancies, around 35 percent, but they were all in the part of the office that was actually doing the contract review work.

Having contract officers in the offices they are working in increases the esprit de corps. There is always a question of whether you need an arm's-length relationship. I think that the professionalism provides that and there are a lot of other checks as well. But I believe that being inside these offices and how the people are delegated is critical to their buying into the procedure.

You want to empower. I believe we should empower more people with decisionmaking authority. Mission directors used to be able to have the warrants and sign off on purchases up to, I think it was a million dollars at that time. One mission director made the mistake of getting into a conflict of interest situation, and from that experience, the system was changed. I believe that if you're getting paid \$125,000 in the U.S. Government, you should be able to handle the responsibility of spending up to a million dollars, and we can find you if you don't. There are lots of ways of inflicting punishment in that case.

Decentralizing authority frees up decisionmaking. If it is easy to make smaller contracting decisions the outlook creative programming improves.

We also need to expand the stand-by talent pool. It is possible to identify people beforehand, to have security clearances in place and to negotiate contracts.

Part of that is to simplify the existing contracts. A personal services contract was a 40-page document. I used to say to our contracting official, how long do you think that Michael Jordan's contract is with the Bulls, and how much more complicated could this be? Training has been raised and I think we can do a lot more with that.

I believe in making these changes because I believe that if we streamline and enact innovative changes in the procurement process, that the relevance and the impact of USAID's work would increase and give the Agency a chance to be a true global leader.

Thank you very much.

[The prepared statement of Mr. Barton follows:]

PREPARED STATEMENT OF FREDERICK D. BARTON

Senator Hagel and Senator Sarbanes, thank you for the invitation to address this important issue. The acquisition and assistance policies of USAID have a direct impact on trust in government, the effectiveness of the Agency's work, decisions of its employees and its private and non-profit partners, and on its future ability to provide global leadership.

Over the past few decades there have been dozens of internal reform studies, most of which were disregarded. It is my understanding that Andrew Natsios, Tim Beans and their team are making real progress. Certainly USAID's speed and responsiveness in the Iraq and Afghanistan crises are commendable. Other significant steps include the use of the Internet and greater transparency, training of people throughout the Agency, and most importantly an open and responsive way of dealing with others.

My intent is to point out three policy suggestions with specific steps that should be considered, and where possible, cite examples from Iraq and Afghanistan. Post conflict reconstruction work requires a clear sense of direction, sensitivity to scale and context, catalytic and tangible progress, speed and agility, and the full engagement of local people. It is a good, tough testing ground for innovative approaches and practices.

The three policy recommendations for USAID are:

(1) *Expand the range of choices and partners.* The challenges are already too great to be handled by a few. As we approach ever-larger transitions, it is imperative that we find ways to improve the preparation for this sensitive work, the number of organizations to partner with, and the speed to the market. This could be done in the following ways:

- *Pre-compete and pre-qualify a large pool of organizations (private and non-profit) with a special emphasis on difficult subject areas* such as: public safety and justice teams, demobilization and reintegration of combatants, and mass communications. The SWIFT mechanism in OTI is a good example and allowed for 4-5 week conceptualization to implementation in Iraq.
- *Develop a hybrid experiment, somewhere between a contract, a cooperative agreement and a grant.* This new instrument should define a job, challenge the market to respond and allow a range of private and PVO competitors. The debate between control and collaboration needs to be redefined. Some of the natural advantages that NGOs offered in Afghanistan, including existing knowledge, field staffs, and the ability to leverage other funds, were lost because of the absence of this kind of choice.
- *Consider the direct use of foreign firms in order to broaden the pool of talent and skills.* Foreign subcontractors did most of the work on the Kabul to Kandahar road project in Afghanistan. In both Iraq and Afghanistan, it has been difficult to staff operations or keep people, witness the 58% fulfillment rate at CPA headquarters in Baghdad.
- *Beware the use of large contracts.* While they seem to offer the convenience of one-stop-shopping, single, large contracts are not necessarily quicker in the field, lead to greater cost overruns, and reduce competition. Some of the Iraq RFPs were larger than the annual gross revenues of many would-be bidders. That produced a consolidation for bidding that eliminated any competition. If the contracting was less arduous, the work could have more easily been broken into geographic zones or other more digestible pieces, and enlarged the market place. In Afghanistan there are only a handful of contractors.

(2) *Open up the process.* USAID and the work it is trying to do is ill served by secrecy, closed meetings, and excessive security. As the U.S. prepared for the war in Iraq and tens of thousands of soldiers were visibly sent to the region, most post combat planning was kept secret—as if it might tip off war plans. Administration policy delayed preparations, such as contracts and grants, and information was not shared. The results harmed the eventual programs and projects and built distrust. Several steps would help in the future:

- *Resist the temptation to classify.* Bringing assistance to a nation should always be seen as an act of public friendship. If the program does not pass that test, it is in the wrong place. I have not heard of any USAID initiative in Iraq or Afghanistan that benefited from this approach.
- *Expand the use of concurrent audits, spot checks and peer reviews of ongoing work.* These audits, that take place during the operation of a program, are helpful to program managers and USAID partners by reporting on performance, management problems, and the appropriateness of a contract. As such, they allow midcourse corrections. Their use on mega projects, such as the Afghan road building, has been positive.
- *Encourage the development of an entrepreneurial class of people at USAID and reward wise risk taking.* The skill sets that are needed in Afghanistan and Iraq are creativity, flexibility, and proximity to the people. As the U.S. military has shown with their civil affairs and “hearts and minds” work, it is necessary to

be able to make small things happen on a regular basis. Congress should encourage the use of waivers and special authorities within USAID, streamline reporting, and avoid excessive criticism to advance this difficult cultural change. Mission Directors in emergency places should be able to invoke the same rules as the Office of Foreign Disaster Assistance for those parts of the USAID program that could have a direct benefit on the situation. For its part, USAID should be less defensive about its shortcomings.

- *Put together a simple study of harmful earmarks and restrictions.* There is a chronic complaint within USAID about this issue. A five-page memo detailing 10-25 earmarks, with a paragraph explaining their effect on operations should be prepared for this Subcommittee.
- *Make clear the difficulty of working in the new security environment.* In Iraq, we visited with dedicated USAID employees and partners who were operating in dangerous settings. Many who work in Afghanistan feel that conditions have grown more dangerous, with work in the South slowing down into a shrinking area. While others have the responsibility for public safety, it is the central challenge of both places and has a huge impact on costs, meeting deadlines, and the ability to recruit the necessary talent.

(3) *Make the system easier to use.* Tim Beans and his team are making real progress, yet there are more opportunities to address this chronic problem. USAID is not the Department of Defense and would benefit from an assistance and acquisition approach that has its own identity. Program people need to be freed up to do the work, as opposed to managing paperwork or making decisions based on the difficulty of contractual implementation. The following improvements would help:

- *Decentralize most work and place contract officers in each bureau and office.* Where these people have been co-located, they are part of a team and enjoy greater job satisfaction. This is how Missions and some offices with a need to be responsive work—it should be replicated.
- *Encourage the Beans initiative to develop a cadre of Foreign Service contracting officers.* Connecting contracting officials to the Agency's work, where they can enjoy the same rewards and incentives of their USAID colleagues, is an excellent way to address high turnover rates.
- *Empower more people with decision-making authority and responsibility by increasing the use of purchasing warrants to Office and Mission directors.* There was a time when the authority to approve up to \$1 million existed—that should be returned and increased, once a brief training module is completed. Recent delegations of Personal Services Contractor (PSC) authorities, small grants and purchase orders are an important step in the right direction.
- *Expand the standby pool of talent.* Offices that have developed “bullpens” of people who are ready to go in an emergency are among the most responsive in the Agency. That needs to be expanded by building rosters of capable people who have received security clearances and have pre-negotiated contracts and encouraging partners to do the same.
- *Simplify existing contracts.* While much of the language is boilerplate, there is still a tendency to make things more complex than necessary. PSCs should receive lump sum payments for their non-work expenses saving all parties time and complications. In light of the great value that they bring to the organization, health insurance coverage should be arranged.
- *Increase the number of well-trained program managers.* For most of the first two years in Afghanistan, a single, talented officer oversaw the entire USAID portfolio. The organization is lacking a sufficient core of people who know programming.

It is my feeling that USAID needs to be seen as a trusted organization that is making wise programming choices. The procurement process has a great influence on the fulfillment of its mission.

If USAID streamlines and enacts innovative changes to its procurement process, the relevance and impact of its work will increase, and will further highlight its position as a global leader.

Your larger Committee is addressing other larger issues of structural weaknesses in the way the U.S. government prepares for post conflict reconstruction next week. CSIS' president, John Hamre, will be one of your witnesses and will bring forward some of the major recommendations we have been working on for the past few years. We hope that you will make real progress on the toughest issues: who is in charge of the overall reconstruction effort, if there is any standby funding, and how we shall achieve public safety in the aftermath of war.

Thank you.

Senator HAGEL. Mr. Barton, thank you as always.
Dr. Burman.

STATEMENT OF DR. ALLAN V. BURMAN, PRESIDENT, JEFFERSON SOLUTIONS, DIVISION OF THE JEFFERSON CONSULTING GROUP, LLC

Dr. BURMAN. Thank you very much, Mr. Chairman. I am pleased to be here this afternoon as well. I am president of Jefferson Solutions, which is the government division of the Jefferson Consulting Group, and we provide acquisition and change management consulting services to a lot of Federal agencies, mainly trying to get agencies to focus on business outcomes and performance. I do have a formal statement that I would like to submit for the record and just summarize my remarks.

In addition to providing those kinds of consulting services, we have done reviews of Agency contracting operations. We have done this at HUD, we have done this at Education, VA, Energy, and in 2002 we did the same kind of study for USAID. At that time, Mark Ward was the Procurement Executive, Tim Beans was his Deputy, and we talked to this gentleman over here as well as part of the interview process in that effort. I am a former Procurement Administrator for the Federal Government. I have spent many years at OMB. I was Acting under President Reagan, and I was confirmed by this body under President Bush, and then held on by President Clinton. So I spent a lot of time dealing with government-wide acquisition issues and policies.

Now the committee has asked me to look at USAID's procurement process; address lessons learned from Afghanistan and Iraq; discuss some of the oversight practices regarding subcontracting; and then provide some recommendations as Rick has done on what improvements might be in order.

I think basically though, to preface those remarks, there are a few elements that are absolutely essential in any kind of procurement or acquisition environment. Operations ought to be transparent, and the bidding process understandable and regularized. The selection process should be fair and free from bias, or conflicts of interest. Competition should be the norm and a firm should be able to find out if they didn't win, why, and be able to redress grievances where they have them.

There are thousands of pages of Federal acquisition regulations, but when you come right down to it, that is really the essence of what you're looking for to have these systems work properly. So I say you could apply that test to Iraq, or you could apply it to Commerce, or SBA or anybody else.

There are some other important elements for an effective procurement process as well. Have the agencies really figured out and defined what it is that they want and have a plan to see that they have gotten it? And do they have enough experienced and knowledgeable staff to do that work? And, today I think that is even more critical when you look at how the Federal Government does its business. I mean, so many agencies are relying upon contractors to get its mission done, and I think that applies to USAID as well.

So, questions that would be asked: Is the staff trained in that oversight role? Do they even see it as their responsibility? And I think that there is some questions in that regard. I think people still have the mentality about how we did these things, and now it is a different role, we are overseeing them, and that is a different set of skill sets. And probably most important is a program and procurement staff working closely together to see that contractors are focused on it and achieve performance goals.

As I mentioned to you, we did a review in 2002 on the headquarters procurement and assistance operations. Craig Durkin, who used to head procurement at HUD, was part of that process with us. Steve Kelman, who succeeded me as the Procurement Administrator for the Federal Government was also part of that team.

We looked at a lot of documents, interviewed quite a few people, talked about interactions, talked with professional services counsel folks, and came up with a number of recommendations to streamline and improve the process. But I think the key finding that we had was that there really needs to be a full partnership between the procurement folks and the program staff throughout this acquisition process.

Frequently when things go wrong you look at the procurement side, but in many cases it is the program people who are deciding what the Agency is going to get, what it needs. They write the statements of work, and they monitor the contractor's performance. And so, it's absolutely critical that they understand themselves to be part of this acquisition team, and acquisition process. And we talked about CTOs. These are the cognizant technical officers that you were talking about with Mr. Mosley and Mr. Beans.

Frequently, people tend to criticize the front end of the process, the awarding business, have we done it right? All too infrequently, they pay attention to the back end of the process, are we really getting what we're supposed to be getting? And have we figured out a way up front to know that we're going to be getting that? So I would say that questions for both Afghanistan and Iraq are, who is monitoring contractor performance? Are they trained to perform this role, and what performance measures are in place to see that this work is being done effectively?

You raised some of those questions earlier today and I think those are very good questions to be asking folks. And Tim talked a bit about how many people they have as cognizant technical officers in Iraq. There are not very many people to be doing that kind of role. And I think that as the funding goes up these issues can only get worse, so I say it is a critical issue for the committee to pay attention to.

There is another kind of oversight issue that I think also makes some sense to pay attention to, and that is what system is in place to keep track of what is being bought and brought into the country, and is there an accountability, property accountability system there and do we have logisticians and people to see what is being done.

Regarding lessons learned, you have talked a little bit about that, and I won't spend a lot of time talking about the award process. There are rules in both the Federal Acquisition Regulations and in USAID's own rules that allow them to do limited competition. Obviously, it would be better to go full and open if you can

do it. I think the circumstances required them to move more quickly.

Obviously, if you do have one of these, what Tim referred to as IQCs or indefinite quantity contracts in place where you have already gone through a competition, and you have people there and you have selected them already, it makes a lot of sense to say, OK, we just compete it among that group to be able to get somebody on board quickly.

In fact, I was working with the Energy Department last year because we were trying to deal with a question of getting fossil fuel plants built in the former Soviet Union so that some plutonium reactors, three plutonium reactors could be closed down. And we used a defense threat reduction agency vehicle for Energy in order to get that capability and get it done, quick, and Energy decided to do that.

You also use a best-value process because different firms bring different things to the table, and so you can't say, well, let's go tell everybody to do the same thing and go low price. USAID uses civil servants to do those evaluations and I think that is done reasonably well as well.

And I think that as you go into the process, as people have a better sense of what the requirements are going to be over time, that you're probably going to be getting more competition and a better ability to use that competition.

The other problem that I see here is, who is writing the statements of work and do they know how to write them? And do they get them to contracting officers who can use them or do they get sent back? And so is there some effective help there to see that the process is working well so that you can put performance matrices in place and be able to monitor how things are going? Recognizing that there are lots of security and other issues here that you have to deal with, even in spite of that, I think acquisition planning, risk mitigation strategies, all of these things still make sense for someone to do.

Another area that you asked us to talk about was subcontractor management. I know that USAID has really relied on the prime to do most of that work, particularly with the big Bechtel contract. Clearly there are clauses that flow down to subcontractors and they have to follow them, like can USAID can go in and inspect subcontractor work, review their costs, that kind of thing.

But as Tim mentioned, you try to maintain privity of contract with the prime so that you don't get in the system of telling the prime how to have the subcontractor do something and then later on be held responsible for their failure to perform as supposed to holding the prime responsible. That is the kind of issue that you run into in that process.

That doesn't mean that you couldn't put very good incentives or targets in those contract awards that say how much subcontracting that you want to be done, and including a lot of incentives on how to go about that process. So I would say that's really the technique on subcontracting as opposed to trying to micro-manage the prime or the subcontractor in doing the job.

So in summary then, Mr. Chairman, you had asked for a set of recommendations. I would say, ensure that the procurement and

program offices work closely together in developing statements of work and carrying out the monitoring of procurements. Use these IQCs, these indefinite quantity contracts, as appropriate, but try to make competition the case every time. Be as open as possible on the procedures to be followed on bidding. Make sure that well-trained cognizant technical officers are available. Establish a good property accounting system. Use performance-based methods as well as incentives to focus the contractor on both business outcomes and subcontractor management. And develop an effective reporting and documentation system.

That's kind of a long laundry list, but I think that all of those things would help to make this whole process work more effectively in the future. And again, I was very impressed with the USAID staff when we did our review. I thought that they were very dedicated folks, and in all trying to make this operation be as successful as possible.

That concludes my prepared remarks. I would be pleased to take any questions.

[The prepared statement of Dr. Burman follows:]

PREPARED STATEMENT OF DR. ALLAN V. BURMAN

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 sub-contracting, 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 non-military 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 U.S. 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 micro-managing 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.

Senator HAGEL. Mr. Stevenson.

**STATEMENT OF MARCUS L. STEVENSON, DIRECTOR OF
GRANTS AND CONTRACTS, THE URBAN INSTITUTE**

Mr. STEVENSON. Thank you, Senator Hagel, and thank you for the invitation to discuss these important issues. I likewise have a written statement for the record that I would like to be entered and I will try to just paraphrase from it rather than take a lot of time.

To some extent, listening to some of this, I have been gone from the Agency since July of 2001, and I was with USAID for 21 years. And I frankly feel like I know the procurement system as well as anyone, because I started as a GS-9 contract specialist, and at the end of my career, I was the Senior Procurement Executive. So I worked in Washington, DC for about 6 years in the 1980s and then I went into the Foreign Service, and I was in Asia and Latin America until I competed for the job as the Director of the Office of Procurement in 1994. And for 2 years I held that position, and then I was appointed to Senior Procurement Executive from 1994, 1996 through 2001.

And unfortunately, I have been following this and I obviously get a lot of calls from both colleagues inside the Agency and contractors with whom I worked with for many years in asking me my opinion on this stuff. And when I sit here and hear some of the recommendations and some of the problems, it reminds me a little bit of the movie, Groundhog Day, because I can tell you that USAID probably has one of the most studied procurement systems in the Federal Government, going back over 20 years ago.

And, unfortunately, the findings are redundant. It is always about the same four things. One is, not enough contracting people, a lack of procurement planning, a lack of training for cognizant technical officers, and a very slow-to-react budgeting system, and by that I mean, once they get their appropriation, getting the money to the operating units, and that inhibits implementation also.

So, it is very disconcerting. And then what happens is that when you find yourself in a situation, and when I was a procurement executive, we had Bosnia, we had Hurricane Mitch, we had Kosovo. But none of those were of the magnitude of what we're dealing with now, or what you're dealing with right now. And I think and I honestly believe in my mind that when the situation occurred in Iraq after the war, that had the senior management came to me and told me what they wanted to do, I honestly believe I would have told them that we don't have the resources to do that.

The Agency does not do construction contracting. They haven't done that kind of work in years on a magnitude—but never done it on a magnitude. We used to have fairly large construction projects overseas, but we used what we called host-country contracts, which is a methodology where the units of the host country do the contracting and we oversee it. That's very prevalent in Egypt and has been for many years. But to expect the Office of Procurement to take on construction or capital development projects of this magnitude, they simply don't have people who were hired with these skill sets. Our Agency is primarily a provider of technical assistance and that's what the basis on what the people were hired and the skill sets that they had to provide. As I say in my written

testimony, of course, they will do anything that they can, and the best job that they can to move forward. But, I would be very curious and I would ask you if you checked when the Coalition for Provisional Authority gears up to do their construction contracts, it would be interesting to see the manpower and types of people they use to award and administer those contracts versus the resources that USAID has. And I can tell you that it will dwarf what USAID has.

I mean, listening to Tim talk, and I know that he has a lot of concerns, and Tim is an excellent director and a good leader, but, if I was a procurement executive today, and I knew that in Afghanistan with a program of approximately \$1 million I had one contracting officer there, it would make me very nervous. And especially given the situation, as I understand it, from the security aspect, monitoring on these contracts is very difficult, because they can't get out to the places that they need to get out to do the type of monitoring, which is really key to what Allan said, because Allan, frankly, is a guru on performance-based contracting. He was a real leader on this when he was an OFPP.

And that is why it is even more important you have statements of work and they are defined by outputs that you judge success as opposed to inputs, because very, very many people in the Government and especially in USAID, like to manage inputs as opposed to outputs and the whole concept of performance-based contracts is to define the output that you're expecting. Compete those outputs, and you will have a variety of people who want to do things differently. The key is you evaluate those and then you evaluate them on what they deliver as opposed to what the inputs are. So really, I think that USAID finds itself in a situation where they are being and trying to do things that they are not equipped to do, as far as just the skill sets.

As far the staffing, the last time I checked, OP was down to about 120 people. It hit its peak in the 1990s when I was the Procurement Executive, and, we had what was called the OMB SWAT Team Report. And in the late 1980s, again things like this were happening at USAID to the point that the then-administration, the Bush administration, convened a SWAT team and it included people from OMB, and it included people from AIG, and included people from USAID itself, and it was a combined team. And they did a report that basically listed what they think needed to be done to improve USAID, and a large part of that had to do with the procurement process.

And again, it was you don't have enough contracting officers, your CTOs are not well-trained, you don't do procurement planning, and basically, your budget system is broken. It doesn't get money to the operating units and so it has been rather redundant.

To give you an idea of a workload, when I was there in the late 1990s, we were doing comparisons with other agencies to see how much work does an USAID contracting officer have versus one at the Department of Energy or something like that, and there were bases for getting that information, the Federal Procurement Database shows how much actions. And we discovered that the USAID contract specialists had a workload of two to four times his or her

colleague in other agencies. And you know, it has to be a lot worse now with Iraq and Afghanistan and things like the HIV Initiative.

So, basically, what happened was is that we took the OMB SWA Team Report when I came in, and it became like a piece to work from as to how do we improve it. We had very strong senior management backing. I was able to immediately, within a year when I came out, I was given permission to hire 45 new contract specialists. We ramped up and we did recruiting on college campuses and so forth, and other things and we were able to bring those people on in about a year. So we went from 130 people to 175 approximately. And we were able to stay there for about a year or two and the situation was very good then. The contracting officers felt like they had adequate staff to do the job. The senior management, and what I mean by that is the senior administrator and his senior managers, were backing us on getting training started, and the importance is that everybody played a role in the procurement process.

As Allan said, a lot of people think that it is just the contracts officer, but everybody plays a role in that. You know, USAID is a contracting Agency and they don't implement anything themselves. They depend upon contractors and grantees to do it. So, I would think that most people, at least in the Office of Procurement would agree, it was a good time and probably the best time to head. But what is happening now is that you have a sliding scale and essentially they are back down to, you know, a relatively very slow—

Senator HAGEL. Well, speaking of a sliding scale, I don't know what this means. Bertie are you tired? Do you want to go home or what?

I promise that you will be out by 6 p.m., Bertie if you will give us a little more light, if you can. If we don't pay our bills, you know, we're dead around here. Go ahead. I am sorry about that.

[There was a slight power interruption.]

Mr. STEVENSON. And on a couple of other things, I very much agree with something that Rick mentioned. When I saw the amounts of these contracts, they're monstrous. And sometimes they were awarding contract value to equal the annual revenues of a company. I mean, I find that a little bit, and I don't want to use the word insane, but smaller is better, especially if USAID was going to do it. And the magnitude of these, and I don't see how in the world there can be, I know that everybody is trying their hardest, but the oversight has to be extremely difficult. And the money being spent.

And what is also unusual about these, and I understand to a certain extent, because of the situation, that these large construction contracts which are known as cost plus fixed fee. That's pretty unusual in construction contracting. It is usually some type of fixed price. Again, focusing on outputs, a cost plus fixed fee means that they basically get all of their costs reimbursed and so they have zero to very little cost risk and they get a profit on all of that.

And when you consider the value of these contracts when these people are getting danger pay of like 50 percent, for insurance, the war risk insurance costs sometimes up to 100 percent of salaries. And then the firms get all of their overheads and fees on this, there is basically no cost risk to them.

Again, I understand that they are—probably didn't want to undertake any cost risks as they didn't know the situation, but that begs the problem again about what did we know versus what we didn't know as far as how we were going to do things. There is a process in the Federal Government I am sure that Allan is familiar with and there are a couple of Executive orders. One was issued in 1982 by President Reagan and there was a subsequent one issued in 1994 by President Clinton, and that the Agency Procurement Executive, there was criteria established by OMB as to what an agency has to have in an acceptable procurement system, and each agency is required to develop a subset of that and manage by that.

And every year, and I checked before I came up here, the Executive order is still applicable, the Procurement Executive is to do an assessment of the system, and he is to advise the Administrator or the head of the agency, how the system stacks up against the criteria. And it hits a lot of things that we are talking about here, you know, staffing, training and so forth.

The year that I retired, in 2000, and I did one of these each year, as a Procurement Executive, and I was sending up some warning signals that things were, what were in my mind, deteriorating. And in the year of 2000, my report for the first time in the history of USAID, going back in USAID, I told the Administrator that I was unable to attest to the system and I wrote a very detailed memo as to why, and a lot of the things, the problems that they are having right now, existed then.

So, in many ways it comes down to a brave decision, if you will, by senior management, because it really comes down to money. USAID has an operating budget, an OE budget. I don't know what it is exactly now, but it is between \$500 and \$600 million, I would imagine. And you have to make choices. And in those days, then the Administrator made a choice that he was willing to put that kind of money towards additional people and resources and training, at the expense of something else, because you have to.

But, given what is going on and given the fact of the—looks like this is going to go on for sometime, we are always going to have the surges. Like we said, Hurricane Mitch, Bosnia, Kosovo, it is always going to be there. It has been, you know, going back for years, earthquakes and so forth. But at that modest to actually vulnerable staffing level, they barely can take care of the work that they have day-to-day, and they have no surge capacity.

And so I would read the last part of my thing. I am looking at the future and I think that a decision should be made to staff up the Agency's procurement function across the Agency, but most immediately within the Office of Procurement, at a level that allows sufficiency and accuracy. By staff up, I mean recruit and employ bonafide and qualified GS and FS contract specialists for the long term, and not utilize a patchwork of personnel service contractors and temporary use of overseas Foreign Service nationals on a continual ad hoc basis.

The procurement system and the function is vital to USAID, perhaps more so than many in the Agency realize. If you say to the chiefs that they are reasonably staffed and trained in procurement functions, and sustains it, they will be in a better position to deal

with the surges like The Hague, like they currently face, and they will have professionals who are better trained for the type of contracts that they are being asked to put in place. Also, support functions like policy, evaluation and audit will be in a position to better support the operation staff.

Thank you.

[The prepared statement of Mr. Stevenson follows:]

PREPARED STATEMENT OF MARCUS L. STEVENSON

Good afternoon and thank you for inviting me to discuss issues related to USAID contracting policies and operations. As a former Senior Procurement Executive for USAID I believe, I have some relevant knowledge of the Agency's inter-workings and I hope I can contribute input that will help generate improvements.

First and foremost I would like to state that I fully support the procurement professional staff both in Washington, DC and in the overseas missions. I worked with them for 21 years up until July of 2001. These people are unsung heroes in USAID accomplishments. They are often overworked and under-staffed, yet they do their best to deliver. It was my experience that their ethics are beyond reproach. I believe when it concerns USAID that any rumors about contracts being "steered" are just that, with no substance. In my entire career with USAID spanning both Republican and Democratic administrations I was never once directed nor was it suggested that I sign a contract I was not comfortable with in terms of that the award would otherwise have been improper.

The preceding being stated, I do have concerns about the present state of affairs and about USAID's ability to effectively award, administer and monitor contracts of the magnitude associated with Iraq and Afghanistan, in addition to the "normal" annual workload. What concerns me is again, the lack of adequate staff as well as the lack of expertise in construction type contracting. Capital development/construction type contracts have not been the forte of USAID contracting professionals for a number of years and the staff hired from the 1990's to present, to the best of my knowledge, do not have those skill sets. When one combines a staff shortage with that of lacking skills, it points towards vulnerability. Again, the procurement professionals will do their best to deliver but when one is overworked and lacking the necessary skills, it sets the groundwork for potential mistakes. Had I been the Procurement Executive at the time the Office of Procurement was tasked with negotiating and entering these contracts, I seriously believe I may very well have advised the Agency senior management that perhaps DOD would have been a better alternative given their staffing and infrastructure in this area. I remain in contact with many USAID staff members as well as with the contractor community and the aforementioned comments are reflective of some of the feedback I have received.

The USAID procurement system has been studied and reviewed numerous times for the last 20 years and the findings are redundant. The agency is understaffed in terms of contracting officers and specialists, there is a serious lack of procurement planning, training for cognizant technical officers is not sufficient and budget allocation and distribution is extremely slow in channeling funds to operating units.

In the 1990s we did a comparison of the average workload of a USAID contract specialist versus their peers at agencies like DOE, Department of Agriculture, HHS and others and we discovered that the USAID specialist had 2 to 4 times the workload of those at the other agencies. I would expect the situation is worse now than it was then.

In the late 1980's, there as a comprehensive review of USAID led by OMB and the resultant report was known as the "OMB Swat Team Report". During the 1990's that report was used as a guide in addressing a number of enhancements and reforms. This included a decision to hire approximately 45 additional contract specialists that brought the Office of Procurement to its highest strength ever, of approximately 175 personnel. Additionally, during this same period, actions, statements and attitudes of the Agency senior management made it clear agency-wide that: (1) the procurement life cycle encompasses all offices of the agency; (2) that successful procurement requires highly qualified and well trained Contracting Officers (COs), Cognizant Technical Officers (CTOs), and Heads of Contract Activities (HCAs); and (3) that successful procurement systems and practices are critical to achieving the results of the Agency. This powerful combination of relatively simple fixes caused morale in the Office of Procurement to reach a peak. Supervisors had sufficient staff to get the job done and support functions such as evaluations of operating units overseas and the audit function were operating efficiently and had the support of

Agency senior management and buy-in from the technical offices on the importance of understanding their role in the procurement function.

Unfortunately, in my opinion, the situation since then has seriously eroded. The current permanent staffing level in the Office of Procurement is only approximately 120 personnel yet with the addition of contracting for Iraq and Afghanistan along with special programs like the AIDS Initiative, the workload has increased dramatically. Again, these type situations create the potential for vulnerabilities, not to mention stress and overworked procurement professionals. I do not believe it to be sustainable.

In looking at the future I think a decision should be made to “staff up” the Agency’s procurement function across the Agency—but most immediately within the Office of Procurement—at a level that allows efficiency and accuracy. By “staff up” I mean recruit and employ bonafide and qualified GS and FS contract specialists for the long term and not utilize a patchwork of personal service contractors and temporary use of overseas foreign service nationals on a continual ad-hoc basis. The procurement function is vital to USAID, perhaps more so than many within the Agency realize. If USAID achieves a reasonably staffed and trained procurement function and sustains it, they will be in a better position to deal with “surges” like those they currently face and they will have professionals who are better trained for the type contracts they are being asked to put in place. Also, support functions like policy, evaluation and audit would be in a position to better support the operations staff.

Senator HAGEL. Mr. Stevenson, thank you. Gentlemen, all three of your statements are really excellent and I appreciate you each summarizing the statements. And I will see that your statements get wide distribution, especially within USAID. And we may even give them a quiz on it.

But I am particularly struck by the three statements for a number of reasons, but mainly because you focused in on the areas that need the most significant attention for the long term and they are responsible recommendations that are very important. And, you each recognize what a big job USAID has to do and you have noted that, and some of you have been part of it, as Mr. Stevenson for 20 years. So you all understand what we’re dealing with here, so your statements are very helpful. Very helpful to this committee, and I would think very helpful to USAID, because they know that the spirit in which they were given was the right spirit.

Since I have promised Bertie to be out of here by 6:00, we have 15 minutes and what I would like to do is maybe get some questions in here. And in what we cannot finish, if it would be acceptable, I would like to submit to the three of you, and in your spare time, maybe you could give a little attention to them, because we do value what you think, and your expertise and experiences are very important at an important time.

Dr. Burman, let me begin with you. Would you care to describe in greater detail the recommendations that are in your statement as well as you touched upon some of these in your summary, recommendations as to how we can strengthen the partnership between procurement and originating office staff?

Now, I got into a little bit of that, as you know, in the question and answer, and I am not only internally within USAID, but the multi-office department areas of responsibilities, specifically I mentioned DOD, and CPA, Department of State. But if you could round out a little bit, Dr. Burman, what you were talking about here?

Dr. BURMAN. I think, frequently, you see in the civilian agencies, so it is not unique to USAID, a kind of over-the-transom mentality. It is the technical folks, program folks deciding what they want and then throwing something over to the procurement shop and

saying, hey can you get this for us? When really what ought to be happening is they ought to be working together right up front in the process.

Now, Rick mentioned co-location as a possibility where you have procurement people in offices with the program staff and developing relationships. And frankly that's what happens frequently out in field for U.S. civilian agencies, or overseas for USAID, where people are sitting next to one another, they're talking to one another all the time, and they are working with one another all the time. So that is a kind of informal process to make that work better.

Some of the more formal measures are the ones that the Inspector General mentioned, saying that if you are a contract technical officer, people are going to be concerned about whether you know what your role really is, and they are going to evaluate you on that as something other than just a collateral duty or a minor role. I mean, we see that, from our perspective, as a very major function for the Agency because they aren't doing the work. They are looking at somebody else who is doing it and they have to make an assessment if they are doing it right, are they getting the right thing.

So it is absolutely, in our view, critical to the Agency that folks who are doing that job ought to be perceived by the Agency as performing a very strategic function. And they ought to have performance measurement skills to do that. But I think those would be some of the suggestions to make that work more effectively and bring folks together in a shared mission environment.

Senator HAGEL. Thank you. Mr. Stevenson, you got into your summary, and it is noted in your written testimony here, the procurement contracting process, lack of adequate staff, all three of you have actually touched upon this to some extent, lack of expertise in the construction-type contracting. You note, and again I think that all three of you have made similar statements to vulnerability that resides in that lack of expertise, especially for the long term, as you, again all three have mentioned.

What in your opinion has been the negative repercussions so far of this deficiency in our contracting policies, specifically in Iraq and in Afghanistan?

Mr. STEVENSON. Well, I can't speak first-hand since I wasn't a part of the process, but the fact is that if you have someone who is reviewing statements of work and negotiating costs for large construction projects, and they don't have a background in that area, that's a speciality area in contracting, and just like technical assistance. And I would be concerned of how much we're paying for something versus how much we should be paying for something.

And especially when you're talking about a cost plus fixed fee, you know, the contractor is under zero to little costs. They certainly have physical risks in these places. But when you talk about cost risks, they really don't have any. Basically, they are allowed to work until they use up all the money, and if the job is not done, essentially they either have to stop work or they get more money, putting it very flatly.

And when you asked your question earlier as to how many subs have been fired, or even how many primes will be fired, that's going to be a very difficult number for Tim to come up with. But

I can tell you that there are not many cases in USAID of what we call a termination for default. Essentially what that means is it is a provision under regulations.

And it's a little biting, but there used to be an old saying in USAID years ago, that a project officer never met a project that he didn't like, or that a few million dollars couldn't make better.

So USAID does not have a good history of cutting things off when they are not working. And that's just, again, the nature, you know. But from the standpoint again of the construction contracting, my concern would be that people were looking at costs.

I can give you almost a quote that one of the very large companies officials told me. They called me up and said, their scope of work was meaningless, and the budget had no cost reality. Now this is a good firm and they are probably doing good things and doing their best, but having a statement of work that is meaningless kind of means that we are just feeling our way along. But as a taxpayer we are feeling our way along spending tens of millions of dollars, and are we spending tens of millions to do something that we have got to turn here and go back and do something else if that didn't work.

I am not criticizing the people that are trying to do it, but it just shows that I have my personal opinion about Iraq, and that is maybe we went too big, too quick. And I think Rick has a good point about these large monstrous contracts. How do you manage those as opposed to smaller-scale operations that you can judge results much better, and you can manage much tighter, and that you can much better oversight on?

Senator HAGEL. Thank you. Mr. Barton, how many CTOs, IGs do you believe, a general ballpark, that should be in Iraq, in Afghanistan. I mean, I know that you listened to the Inspector General and what Tim said, particularly the Inspector General saying, in Afghanistan, for example, I don't need anybody there as I work out of the other missions.

What are your thoughts about those individual officers, in those two particular countries, Iraq and Afghanistan?

Mr. BARTON. I am not sure that I can really answer your question very skillfully because I don't really have a clear sense. I found that the Inspector General's visits to our programs were adequate, that we did not have to have somebody in-country to get the benefit of their concurrent audits. They could come in and they could spend 4 week, 6 weeks, 8 weeks looking at our program and it was perfectly satisfactory. They weren't going to get that much smarter being there everyday.

There is a very real problem in Afghanistan because of the number of slots, in terms of security provided, and beds at the residence, and what not. So all of those issues really get in the way. But what I heard as I prepared for this meeting today and in talking to people is that we probably have about half the skilled people that we need in terms of the programming people who really understand this stuff, and are available. And then we have about half as many people out there as we should have. So we're probably at the 25 percent level. That's, obviously a gross generalization but—

Senator HAGEL. You're talking specifically about the CTOs?

Mr. BARTON. Yes, CTOs.

Senator HAGEL. Yes.

Mr. BARTON. And I think the Inspector General comes through and kind of looks for things, is generally either called in by the programming people, or called in by somebody who has a complaint. So, I am not sure that the presence there; though you do pick something up by kicking around.

Senator HAGEL. As all three of you have been around a long time in this business, but, Mr. Barton, explain if you will, maybe your experiences in interagency coordination. It rolls back a little bit to the previous question that I asked. And I asked the USAID people especially, how do you deal with these kinds of interagency issues? Any recommendations specifically in that area?

Mr. BARTON. Well.

Senator HAGEL. If you could hang on for just a moment.

[Pause.]

Senator HAGEL. All right.

Mr. BARTON. The one that I would make on the interagency is that we got off to a bad start. The whole process of preparing for the post-conflict period was kept so secret and people who went to meetings were told that they couldn't even go back to their agency and tell people what was going on. So the only way the people in the Agency knew what was going on is if they had a leak from one of their own people telling them what had happened at the meeting in preparation.

And the argument was always put forward was, well, we don't want to make it too clear that we are going to war, and this was at a time every day in the newspapers tens of thousand of soldiers were being sent to, essentially, the region. So, it was just a complete disconnect between the reality of what was happening and some kind of national security mode that people got into.

And I think that when you start that way, then you are constantly, constantly playing catch up. You're always behind. And yesterday's good decision is not necessarily today's good decision. And so, we have seen that pretty much for the whole year. And I think it held up on this area as well.

These folks need to be prepared. There are things that can be done and the Agency hasn't typically done it. The Agency has generally been in the 6 month to 14 month time-frame for turning around a contract. For Iraq, they moved things much more quickly and I think they deserve credit for that. They could create the capacity to do it, but that hasn't been the traditional mode.

The Agency really has to think where we're going to be doing these kinds of things, we have been for the last decade, these are not aberrant experiences. This is the way that life is going to be, and really readjust to it.

Senator HAGEL. Yes.

Mr. BARTON. DOD doesn't look a lot better here.

Senator HAGEL. Yes, I understand. Gentlemen, thank you. I wish we had another 2 hours and we may well ask you to come back, because we intend to do a follow up hearing, and we would like to get you back and engage.

Again, I thank you for your statements. I will ask if it is OK, with the three of you, if I could submit some additional questions

to all of you. I had some other areas that I wanted to get into, but because the time is late, we will adjourn.

We're always grateful for your service, gentlemen. Thank you very much.

[Whereupon, at 5:58 p.m. the subcommittee adjourned, to reconvene subject to the call of the Chair.]

ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

RESPONSES OF HON. EVERETT L. MOSLEY, INSPECTOR GENERAL, USAID, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR RICHARD G. LUGAR

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT,
OFFICE OF INSPECTOR GENERAL,
Washington, DC, March 22, 2004.

Hon. RICHARD G. LUGAR,
*United States Senate,
SH-306 Hart Senate Office Building,
Washington, DC.*

Re: February 25, 2004, Senate Foreign Relations Committee, Subcommittee on International Economic Policy, Export, and Trade Promotion Hearing on USAID Contracting Practices

DEAR SENATOR LUGAR:

Attached are answers to your questions for the record following the February 25, 2004 hearing on USAID Contracting Practices held by the Senate Foreign Relations Committee, Subcommittee on International Economic Policy, Export and Trade Promotion. Please note that we are answering only those questions that apply to the OIG. USAID management will provide a separate response to the other questions.

Please do not hesitate to contact me if you would like any additional information.

Sincerely,

EVERETT L. MOSLEY,
Inspector General.

Question 4. As Halliburton, an experienced international contractor, continues to find problems with respect to its Iraq contracts, how can we be sure that these are not going on with Bechtel or Louis Berger? What detection or prevention mechanisms are there to assure us of this? If they are internal to the company, are they visible to the CTO or to the IG?

Answer. The problems experienced with Halliburton were disclosed by the Defense Contract Audit Agency (DCAA) during audits that it was conducting at the request of the Department of Defense. Since the beginning of the Iraq program and long before the problems with Halliburton were discovered, USAID/OIG has used DCAA to audit the incurred costs charged by the 10 prime contractors implementing the USAID/Iraq program.

Because of the size of the Bechtel contracts, we also engaged DCAA to perform three additional audits to examine Bechtel's accounting system that is being used in Iraq, the subcontracting processes employed by Bechtel in Iraq, and the billing system used by Bechtel in Iraq. Since the first series of audits of Bechtel by DCAA, Bechtel has received an additional contract worth \$1.8 billion. Once arrangements have been completed with DCAA, USAID/OIG plans another series of audits of the new Bechtel contract.

Shortly after USAID awarded the major contract to Louis Berger for rehabilitating the Kabul-Kandahar highway in Afghanistan (under the Rehabilitation of Economic Facilities and Services Program), the OIG sent its Regional Inspector General located in Manila to Kabul to perform a preliminary risk assessment of the USAID program and develop an audit strategy.

Following this initial work, the OIG developed a strategy involving a concurrent financial audit program and performance audit activities. A series of concurrent financial audits performed by contracted accounting firms are underway. The first of the financial audits on Louis Berger, issued January 23, 2004, covered about \$1.2 million in costs of which about \$29,000 was questioned.

As regards performance audit activities, the OIG issued an information report on the progress of the Kabul-Kandahar highway (Review of the Road Project Financed by USAID/Afghanistan's Rehabilitation of Economic Facilities and Services (REFS) Program, RIG/Manila Memorandum 04-002, dated November 13, 2003). While mentioning both project management successes and problems that had caused and might continue to delay the project, the report noted that, as of November 1, 2003, contractor reports showed that 222 of the 389 kilometers of the Kabul-Kandahar highway had been paved and that USAID expected that the entire 389 kilometers would be paved with one layer of asphalt by December 31, 2003. USAID subsequently reported that this was accomplished. The report also noted that Louis Berger had not updated its implementation plan to reflect planned actions to December 2003 or beyond. The report recommended that USAID/Afghanistan require Louis Berger to maintain a detailed, updated implementation plan for its activities under the REFS contract.

The OIG started a second review of the REFS program in January 2004 to determine if the road reconstruction activities are on schedule to meet planned outputs.

Question 5. How do you audit grants?

Answer. The OIG is responsible for overseeing the financial audits of grantees in accordance with the Single Audit Act and Office of Management and Budget (OMB) Circular A-133.

The OIG provides oversight of these audit activities, ensuring that audits are conducted in accordance with appropriate quality standards, thereby enhancing accountability over USAID contractors and grantees. In addition, in accordance with provisions in USAID grant agreements, the OIG reviews audit reports of foreign organizations that receive USAID funds. The OIG further enhances accountability over grantees by providing training in U.S. government cost principles and periodically conducting quality control reviews of audits performed by non-Federal auditors.

U.S.-Based Grantees

U.S.-based nonprofit organizations (grantees) receive significant USAID funds to implement development programs overseas. As required by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," non-Federal auditors perform annual financial audits of USAID grantees that spend over \$500,000 of Federal funds annually. These auditors are required to identify (1) reportable conditions involving major programs, (2) material noncompliance with laws and regulations, (3) known fraud and abuse affecting a Federal award, (4) known questioned costs above \$10,000, (5) misrepresentations of the status of prior audit findings, and (6) the reasons why the auditor's report on compliance for major programs is other than unqualified.

The OIG provides oversight for the non-Federal auditors performing these audits and reviews non-Federal audits to determine whether auditors prepared audit reports in accordance with Circular A-133 reporting requirements and generally accepted government-auditing standards issued by the Comptroller of the United States. The OIG also conducts quality control reviews to determine whether the underlying audits complied with Circular A-133 audit requirements. In some instances, the OIG contracts with the Defense Contract Audit Agency (DCAA) to perform specialized financial audits of U.S.-based grantees.

Foreign-Based Grantees

OMB Circular A-133 does not apply to foreign-based grantees. However, given the high-risk environment in which USAID operates overseas, USAID has extended similar audit requirements to its foreign-based grantees through standard provisions included in grants, cooperative agreements, and contracts and through the Guidelines for Financial Audits Contracted by Foreign Recipients issued by the OIG.

Audits are required for all foreign nonprofit organizations that spend \$300,000 or more in USAID funding during their fiscal year. USAID may also require financial audits of nonprofit organizations that fall below the \$300,000 threshold; The OIG performs desk reviews on all audit reports for compliance with the Guidelines for Financial Audits Contracted by Foreign Recipients. The OIG also conducts quality control reviews for a sample of completed audits to determine whether the non-Federal audit firm complied with auditing standards.

In addition to financial audit coverage of grants, the OIG routinely conducts performance audits of selected programs implemented by grantees to determine if the programs are accomplishing their intended objectives.

RESPONSES OF TIMOTHY BEANS, DIRECTOR, OFFICE OF PROCUREMENT, USAID, TO
ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR RICHARD G.
LUGAR

Question 1. Is the contract mechanism under which you operate flexible enough to respond to emergent needs in an environment such as Iraq and Afghanistan.

Answer. USAID contractually operates under the Federal Acquisition Regulations (FAR) and Agency for International Development Acquisition Regulations (AIDAR). The federal procurement regulations are based on the principle of full and open competition and receiving the best value for taxpayer dollars. It is a policy which is principled, logical, and works in most situations.

The war in Iraq and Afghanistan presented unique challenges to our acquisition approach. The planning usually associated with a government acquisition did not exist for most of these actions. Once the war started, contracts were needed almost immediately in order to begin restoring order to the various countries and to rebuild the damaged infrastructure. With the troops advancing on Baghdad so rapidly, we were told that, if contracts were not in place shortly after they take the country, American lives would be in danger. Procurements that generally take six or more months to complete were being requested in less than half that time. We did not have the luxury of being able to do a full and open competition and were forced to do a "limited competition." The USAID Administrator had the authority to approve this approach and appropriately used it to protect American lives. "Limited competition" is run like a full and open competition except you do not have time to announce the procurement publicly.

Question 2. In Iraq, the CPA has set up a Program Management Office structure, which serves as a pass through for USAID contracts. What purpose does this serve practically speaking and in terms of efficiencies and overall effect on programs? Will this change when sovereignty is transferred and a more conventional USAID mission is established?

Answer. I believe the establishment of the Program Management Office (PMO) by the Coalition Provisional Authority (CPA) is an attempt to make sure that there are efficiencies in the way each Agency is undertaking the rebuilding effort. It remains to be seen if this organizational structure will be able to fully achieve its goal, but certainly the idea of having one body coordinate agency efforts so as to avoid duplication is a good concept.

I would envision that the CPA will eventually disappear as we move toward Iraqi independence and we establish an Embassy in Iraq. At that point, the State Department will probably assume the lead, and USAID will establish a separate mission. Once that is accomplished, USAID would be free to pursue its established strategic objectives for the country based on approved funding from Congress and with concurrence from the Ambassador.

Question 3. In Iraq, the PMO has yet to sign a single contract, which makes USAID's 12 contracts, and primarily Bechtel, Ambassador Bremer's prime tool. As we wait to fill the rest of the contracts, do we not have more priority projects waiting in the wings? Why not fill the \$1.8 billion contract with task orders?

Answer. USAID was the first Agency in the Federal Government to get a majority of contracts awarded to support the Iraq war effort under the initial supplemental. We also were the first Agency to award a \$1.8 billion reconstruction contract so Ambassador Bremer would be able to continue the important work of fixing the Iraqi infrastructure. DOD has been working hard to award a number of construction contracts covering specific sectors. I understand that they are making progress. However, the Bechtel contract is available to Ambassador Bremer, and he can write task orders against this vehicle so as not to slow down the reconstruction effort.

Question 4. As Halliburton, an experienced international contractor, continues to find problems with respect to its Iraq contracts, how can we be sure that these are not going on with Bechtel and Louis Berger? What detection or prevention mechanisms are there to assure us of this? If they are internal to the company, are they visible to the CTO or to the IG?

Answer. Bechtel and Louis Berger have, fortunately to date, not had the severity of problems we have seen with Halliburton. However, one of the most difficult tasks to undertake is doing construction in an area of continuing hostilities. Even though both contractors have had no major problems so far, it is an area we need to monitor closely to make sure our desired results are being achieved.

Under normal contracting procedures, construction similar to that being performed by both Bechtel and Louis Berger would be overseen by a USAID Con-

tracting Technical Officer (CTO) on a daily basis. We are attempting to get to the construction sites, but the continuing violence has made it impossible to be on site each day. That is why it is important that lines of communication be maintained and that we talk with the contractors daily about their progress.

Question 5. How do USAID's contracting procedures differ from grants? How do you oversee grants and do you audit them? How do you measure their effectiveness?

Answer. Basically, we follow similar procedures in awarding contracts and grants. We seek organizations interested in providing services in an area we need, we evaluate proposals against announced evaluation criteria, and we award accordingly. However, the purpose of the two instruments is very different. The government will use a contract when it wants something specifically. The government can "control" the contractor in that it can change requirements based on its needs and wants. A grant, on the other hand, is basically the government's support to an objective it considers worthy of funding. In a grant, we are choosing to support the grantee's program. A grant is often referred to as a gift to the organization. That being said, we do often specify what results we are seeking, and a grantee working in that area will submit a grant request to meet some specific need that we have articulated. The real difference between the two documents is the amount of control we need or want to have under the contractual arrangement.

Both a contract and a grant generally require an audit be performed upon completion of the work. A contractor is audited annually under generally accepted accounting procedures as set for in the FAR. Grantees are required to do an A-133 audit if they receive over \$500,000 in any one year.

The Inspector General (IG) is responsible for the quality of the audit and will review grantees for compliance.

RESPONSES OF FREDERICK D. BARTON, SENIOR ADVISER, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR RICHARD G. LUGAR

Question 1. What changes would you recommend to make better use of U.S. foreign assistance dollars implemented by USAID and OTI? Are the changes regulatory or legislative? If, as you stated in the hearing, these are not new recommendations, why have they not been enacted?

Answer. Brief: Both regulatory and legislative changes are needed. Many of the problems are driven by USAID habits, but there are legislative impediments also. Congress can help with both by recognizing the huge inherent risks and by encouraging USAID to be more agile. Change has been resisted by bureaucratic fiefdoms, an internal defensive mindset, and scapegoating of USAID.

In politically charged places, foreign assistance must be seen as "venture capital": catalytic and high risk. To be effective, the aid must be delivered with speed, flexibility and a high level of reliance on the judgment of field program people. Opportunities must be seized as they present themselves, which often requires day to day adjustments. Encouraging changes in local practices is more important than the actual projects in many cases (the new school may not be as important as the community group that comes together to plan the project, volunteers labor, and handles the decision making and funds in a transparent way).

Few of these practices are common in USAID, though OTI and OFDA are frequent exceptions.

Plodding budget and contracting processes combined with a culture that is worried about making mistakes and prefers to avoid politics, produces a timidity in programming.

Much of this is bolstered by internal USAID practices, habits, and regulations. The vast majority of USAID has preferred to pursue business as usual vs. taking on the venture capital role that is required in the conflict prone world. Some of this is reinforced by Congressional earmarks, mandates, and a seeming under appreciation of the risks involved in the work.

Changes could include: removing legislative obstacles that impede operations (ask USAID to provide a list of the top ten); creating larger pools of funds that have notwithstanding authorities; encouraging the use of these special authorities (program managers do not do this much now); two year funding with carryovers (no end of the year rushes and greater liquidity); more frequent informal and open exchanges with the Hill, including field program managers; new methods of measurement that are tied to political change; and the ability to supplement staff with international hires, strategic partnerships with the UN and others, and short term employment.

Much does not need legislation but clarifying legislative intent might spur progress and break through some of the resistance which is strong within USAID and most bureaucracies.

Congress could give USAID a clear signal that it wants the organization to be a center of innovation and risk, that it can be a leader in addressing conflict issues, and that it is looking for dramatic changes (and experiments) in the next five year period. I believe that conflict related work should be a significant part of USAID's portfolio (perhaps 50% with 1,000 people dedicated to this work), and that the practices of the conflict related work will have a salutary effect on the rest of USAID.

Question 2. To what extent are the lessons learned from Iraq and Afghanistan unique to these environments?

Answer. Brief: We are moving from a series of micro state collapses towards larger cases, such as Pakistan. Our U.S. and global institutions are barely capable of dealing with an East Timor. Iraq and Afghanistan have shown the systemic weaknesses, in defense, diplomacy, intelligence, justice and foreign assistance. These are not unique to the present circumstances.

Iraq and Afghanistan are larger in every sense, from territory, population, level of U.S. commitment and amounts of funding, and that enormity highlights many of the weaknesses mentioned above. USAID has broken through some of its traditional practices in order to be quicker and more agile, but at the end of the day it is handicapped by its lack of a deep-seated commitment to this kind of work and inhospitable ways.

What is most unique about Iraq and Afghanistan is the expectation that civilian work can be conducted when security is still so unsettled. USAID should be faster and more responsive and a "post-bullet" program. It is now being asked to take physical risks that go beyond the venture capital model.

RESPONSES OF MARCUS L. STEVENSON, THE URBAN INSTITUTE, TO ADDITIONAL
QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR RICHARD G. LUGAR

Question 1. What changes would you recommend to make better use of U.S. foreign assistance dollars implemented by USAID and OTI? Are the changes regulatory or legislative? If, as you stated in the hearing, these are not new recommendations, why have they not been enacted?

Answer. The chronic and redundant problems of 1) understaffing staffing of contracting professionals; 2) lack of training for cognizant technical officers (CTOs); 3) a budget allocation and distribution that does not provide timely funding to operating units and; 4) lack of procurement planning have been addressed individually at different points in time over the years, but except for a sustained 5 year period between 1994 and 1999 when procurement reform was supported and sustained by agency senior management, the aforementioned problems have continued to exist. In my opinion this results from the fact that many within the agency cannot come to grips with the fact that the agency is a procurer and grants maker as opposed to an implementer. By this I mean that the USG employees of USAID do not directly implement projects/programs. They oversee the use contractors and grantees. However, the agency is still structured in terms of staffing composition, more or less, like it was in the 1970s when it directly implemented projects/programs. The agency should accordingly reinvent itself and structure itself more as a business management entity. If this was accomplished it could probably operate with less staff, if they are the right kind and provide better oversight of its project/programs. I do not believe any regulatory or legislative changes are necessary as the authority to make necessary changes already exist.

Question 2. To what extent are the lessons learned from Iraq and Afghanistan unique to these environments?

Answer. The only uniqueness is the size of the various procurements and in the case of Bechtel, the type of contract. I believe the major problem was the lack of transparency and lack of competition in many cases. Frankly, I and a number of other procurement professionals believe the agency could have been much more transparent and inclusive and as a result, the procurements could have been more effective from a technical aspect and more cost effective as well. In my opinion the contracts were too much too soon. There should have initially been smaller short term contracts to ascertain the "on the ground" situation and then more comprehensive and longer term contracts could have been developed, competed and awarded. What we are seeing and hearing about with the DOD contracts must certainly also

be the case with the USAID contracts, to some extent. In USAID's case I do not believe there could have been accurate cost realism when the contracts were awarded and I subsequently believe that the award amounts and expenditures were excessive. Also, day to day monitoring is likely no where near what it should be due to the combination of lack of staff and dangerous conditions in the field. Add to this the fact that the prime contractors have awarded large numbers of subcontracts to third country firms and one has a recipe for potential abuse in terms of inflated payments for work/services possibly not received or of inferior quality.

RESPONSES OF HON. EVERETT MOSLEY AND TIMOTHY BEANS, USAID, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR CHUCK HAGEL

Question 1. Since 1990, how many primary contractors and sub-contractors have been terminated or fired from USAID contracts for non-performance? To clarify, we request that this number exclude any "changing of chief party" actions.

Answer. While it is difficult to get an exact number (we have identified seven contractors going back to 1997 so far), the Agency has terminated contractors for default. This is when the contractor, through its lack of technical progress in accordance with the term of the contract, or a situation where it has been found to be in violation of the law, is terminated for its own default. This would not be the case with a subcontractor since we hold the prime contractor totally responsible for performance. If a subcontractor was not performing well, the prime contractor would be held accountable. Prime contractors may let a subcontractor go for poor performance, but USAID would not be responsible for that decision. If the prime were to retain a subcontractor that was not performing, we would hold the prime responsible, and it could lead to the prime being terminated.

Question 2. Mr. Beans, in his testimony, described the process of estimating the value of contracts for the first phase Iraq reconstruction contracts. Describe in greater detail the specific methodology that was used to arrive at the contract value amounts for the reconstruction contracts.

Answer. USAID's phase I Iraq reconstruction contracts were prepared as part of a broader U.S. Government contingency planning effort. This process was undertaken before a decision had been made by the U.S. Government on the initiation of combat operations. As part of the U.S. interagency planning process, USAID determined what specific accomplishments and deliverables were to be achieved with possible reconstruction assistance. As with all preparation for solicitations, USAID utilized standard techniques to prepare the government estimates for each contract. USAID utilized lessons learned from other conflict environments, particularly Afghanistan, the Balkans, Colombia, El Salvador, and Angola, to assess the parameters for implementation and to determine likely levels of effort. For example, with respect to preparing the contract for strengthening local government institutions and processes, USAID anticipated that significant technical assistance would need to be provided to various local administrations and interim representative bodies within each of Iraq's 18 governorates; this fed into an estimate of the appropriate number of international and local personnel with specific technical skills that may be required for the contract. With respect to the economic governance program, USAID reviewed the implementation requirements for currency conversion within Afghanistan and the investments that were required in transforming the economic policies and processes within the former Soviet Union to help shape the government estimate for that contract. USAID recognized that the environment in any post-conflict situation can be highly fluid and, therefore, sought to maximize flexibility as well within its reconstruction contracts to respond to unanticipated requirements.

Question 3. Mr. Mosley testified that the OIG review of the first phase Bechtel contract in Iraq indicated that for this contract . . . "USAID did not provide one offeror with timely notification that an award had been made and did not provide timely debriefings to three unsuccessful offerors . . ." which resulted in USAID being in "non compliance with acquisition regulations." Mr. Beans testified that the Procurement Office did not see this as a violation of Federal Procurement Rules, but that it was a difference of interpretation with the OIG. How does USAID respond to what the OIG determines as a violation of Federal Procurement Rules as merely a difference of opinion?

Answer. After additional review of Section 15.503, Notifications to unsuccessful offerors, I do believe that we were technically in non-compliance with the acquisition regulations. We should have officially notified the non-selected offeror within three days that they were not selected. The intent of the regulation is to allow companies

to know who was selected for award, the number of offerors solicited, the number of proposals received, the name of the company receiving the award, and the contract price.

The reason I felt this was a rather insignificant finding was that virtually all of this information required to be provided was front page news throughout the country the day after the award. In fact, it was on most major news broadcasts, including CNN. The information is required to be provided so the government can be as open and transparent as possible and let companies that have spent money bidding on government contracts know in a timely manner that they are no longer in consideration for award. In this case, the only other contractor in the competitive range could not have known about the award, the dollar value of the procurement, and who else had submitted proposals. This information was being discussed in the paper and the press. We should have notified the non-selected contractor in writing within three days as required by the Federal Acquisition Regulations. Therefore, the finding is correct.

I would like to point out that we did provide both a written and oral debriefing to the non-selected contractor to make sure they were satisfied that we followed proper procedures and that the award was made in strict accordance to the evaluation criteria listed in the initial request for proposal. As I believe I stated in my testimony, the Agency has not received a single protest of any procurement awarded by USAID in support of our efforts in Iraq.

Question 4. Please provide specific plans, policies, and procedures for USAID to reach out to . . . “small, minority, and disadvantaged American companies” . . . as raised by the House of Representatives in the April 2003 Congressional Conference Report for the first Iraq supplemental, “Marketing Emergency Wartime Supplemental Appropriations for the Fiscal Year 2003, and for Other Purposes” (Report 108-76).

Answer. I have personally appeared as an advocate for small and small disadvantaged businesses at numerous gatherings throughout the Washington area. I have also spoken to a large group of woman-owned businesses on how best to secure contract work in Iraq. Along with our Office of Small and Disadvantaged Businesses, we sponsored a day-long meeting for small businesses at the Washington Grand Hyatt Hotel. We will be participating in a special conference for small business sponsored by the Bechtel Corporation in late March as well as a one day conference in Philadelphia on April 22, 2004 sponsored by the Small Business Administration.

During the awarding of contracts under the first supplemental, we required small and small disadvantaged contracting plans in six of the first nine contracts we awarded as set forth below:

- Personnel Support, 14%
- Primary and Secondary Education, 30% (note: a 100% woman-owned business)
- Local Governance, 30%
- Health, 58.5%
- Economic Governance, 21%
- Agriculture, 20%

We did not require subcontracting plans in the initial Bechtel contract for infrastructure because the push from the leadership in Iraq was to get Iraqi firms back to work for security considerations and to stimulate economic growth. The airport and seaport contracts were smaller and were dealing with specific, urgent tasks, and we did not feel there were appropriate opportunities to include plans in these contracts. However, we are very proud of our efforts in encouraging small business opportunities throughout our work in Iraq.

RESPONSE OF TIMOTHY BEANS, DIRECTOR, OFFICE OF PROCUREMENT, USAID, TO AN ADDITIONAL QUESTION FOR THE RECORD SUBMITTED BY SENATOR PAUL SARBANES

Question 1. I understand that NGOs have been almost completely shut out of USAID’s Afghanistan reconstruction effort. What was the reason for this decision? Who made the decision? Don’t NGOs offer valuable services and experiences that can benefit USAID’s mission in Afghanistan?

Answer. Because of their extensive network and experience in Afghanistan, non-governmental organizations (NGOs), both international and Afghan, have played and will continue to play a critical role in USAID’s programs in Afghanistan.

NGOs are, or will, receive nearly \$200 million in USAID assistance, including approximately \$114 million in current grants or contracts and an additional \$84.7 million in planned grants.

Because of the limited staffing in Afghanistan and the need for rapid, mass impact, the USAID mission has had to move away from grant mechanisms, the preferred contracting option of NGOs, to contracts.

Contracts enable USAID to manage more actively the reconstruction programs, both in specifying results to be achieved and demanding reporting on impact, and to ensure a significantly larger scale of impact than small-scale NGO grants allow.

NGOs active in Afghanistan were invited to bid on these contracts and were encouraged to form consortia with other groups that are willing to manage a contract.

To ensure that USAID's programs can continue to benefit from the NGOs' experience in Afghanistan, virtually all the contracts include NGO sub-grant programs. Below is a summary of NGO involvement in the major contracts:

- Health: The prime contractor is an NGO, Management Sciences for Health (MSH). Under this program, sub-grants totaling over \$37 million have been awarded to 24 NGOs (7 U.S., 10 Afghan, 7 international), and an additional \$37 million is planned.
- Education: Eight NGOs (1 U.S., 5 Afghan, 2 international) are part of a USAID-funded consortium led by Creative Associates, an 8(a), woman-owned firm.
- Agriculture: Twenty-four NGOs are receiving sub-grants (7 U.S., 10 Afghan, 7 international) from a U.S. contractor.
- Economic Governance: Three U.S. NGOs have received funding.
- Infrastructure: NGOs are being used to do both site assessments as well as construction monitoring for schools and clinics.
- Democracy and Governance: Four U.S. NGOs—the Asia Foundation, International Republican Institute, National Democratic Institute, and International Foundation for Electoral Systems—are the primary implementing partners of these programs, including the just concluded constitutional Loya Jirga and the upcoming elections.

