

**Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#1**

**Implementation of Wartime Contracting Reforms
July 16, 2013**

Question:

Does USAID have a standardized process for screening all new contracts overseas to ensure our tax dollars are not flowing to our enemies or to those working against our interests?

Answer:

Consistent with Executive Order 13224, terrorist sanctions regulations administered by the Office of Foreign Assets Control (OFAC) within the U.S. Department of Treasury; the material support criminal statutes found at 18 U.S.C. 2339A, 2339B, and 2339C; and other related Executive Orders, statutes and Executive Branch policy directives, USAID has over the years taken a number of steps, when implementing the U.S. foreign assistance program, to minimize the risk that agency funds and other resources might inadvertently benefit individuals or entities that are terrorists, supporters of terrorists, or affiliated with terrorists.

Specifically, USAID requires inclusion of clauses in its solicitations, contracts, grants, cooperative agreements and other comparable documents which remind the Agency's contractor and grantee partners of U.S. Executive Orders and U.S. laws prohibiting transactions with, and the provision of support and resources to, individuals and organizations associated with terrorism.

USAID also requires terrorist financing certifications from all U.S. and non-U.S. non-governmental organizations seeking funding from USAID under grants and cooperative agreements. In addition, during contract award for all USAID contracts, contracting officers are required to check the OFAC and Specially Designated Nationals (SDN) lists and are prohibited from awarding to persons or organizations appearing on either.

However, given the range of activities carried out by USAID and the range of circumstances under which they are implemented, additional procedures may be warranted to ensure appropriate due diligence. In such instances, checking the names and other personal identifying information of key individuals of contractors and grantees, and sub-recipients, against public and non-public databases is an appropriate higher level safeguard. Accordingly, in certain high risk countries, such as Afghanistan, USAID has determined that such vetting is warranted to protect U.S. taxpayer dollars.

In May 2011, USAID/Afghanistan by Mission Order instituted partner vetting as part of the Accountable Assistance for Afghanistan (A3) initiative in an effort to prevent inadvertent support of malign actors in Afghanistan. All of USAID's current implementing partners in Afghanistan, for over 80 awards, are complying with the program as it is currently defined in the

applicable Mission Orders and must continue to do so to remain in compliance with their agreements with USAID.

Specifically, USAID/Afghanistan's Mission Orders 201.03 and 201.05 set out policies and procedures for screening (vetting) potential award recipients that include the following criteria:

- Third-country and local Afghan companies and key individuals
- Awards and sub-awards over \$25,000
- Awards and sub-awards for private security contracts (PSC) and risk management companies (RMC) regardless of the awards' dollar value and regardless of tier.
- U.S. persons and U.S. companies are not required to be vetted

Vetting must be conducted, when applicable, before signing of award or consent to sub-award is issued. The vetting process commences when the prime awardee certifies, signs and submits a completed USAID Information Form for itself and/or sub-awardee to the mission's Vetting Support Unit (VSU). Prime contractors and grantees are responsible for performing due diligence for sub-awardees. Vetting is then performed by USAID's Office of Security in Washington, D.C. (SEC) through searches of public and non-public databases for derogatory information. Based on the database review, SEC prepares an eligibility/ineligibility recommendation for the mission.

If an awardee is deemed eligible and receives an award, the approval generally will remain in effect for that particular award for one year. However, new vetting is required if there is any change in the awardee's "Key Individuals." Further, USAID reserves the right to vet or re-vet any organization or non-U.S. individual awarded or competing for award at any time, regardless of previous vetting date. Vetting approval may be rescinded if USAID obtains information indicating that the awardee or any of its "Key Individuals" is found to be a Prohibited Party as defined by Mission Order. Each awardee must be vetted for each new award that exceeds the Vetting Threshold (\$25,000), and at least annually for the duration of an Award. The mission also reserves the right to vet for new awards below the threshold. If USAID receives information or becomes aware of any practice or conduct of a sub-awardee that could be grounds for termination, that information is passed directly to the USAID prime awardee for action under relevant contract clauses. In addition, the VSU will notify appropriate officials in USAID/Washington when an entity is determined ineligible and will provide the Suspension and Debarment Official with any relevant information.

In Afghanistan to date, more than 2,000 vetting requests have been completed since May 2011 resulting in the prevention of over \$33 million worth of awards and sub-awards being made to organizations determined to be ineligible. The vetting process has worked effectively to safeguard U.S. taxpayer funds.

Separate from programs in certain high-threat areas for which vetting is currently conducted, USAID and the Department of State (State) are conducting a joint Partner Vetting System (PVS) pilot program pursuant to the Congressional mandate in relevant Appropriations Acts, including P.L. 112-74, Section 7034(i). State and USAID are conducting the pilot in the following countries: Lebanon, Kenya, Guatemala, Philippines and Ukraine. The countries selected for the

pilot represent a range of terrorist threat risks, reflect geographic diversity, and are located where both agencies have comparable programs.

Following the conclusion of the pilot program, the agencies are required to report to the Committees on Appropriations regarding the estimated timeline and criteria for evaluating the PVS for expansion.

**Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#2**

**Implementation of Wartime Contracting Reforms
July 16, 2013**

Question:

Does USAID have a standardized process for screening existing contracts overseas to ensure our tax dollars are not flowing to our enemies or to those working against our interests?

Answer:

In high-threat areas of the world where USAID conducts vetting, it reserves the right to vet or re-vet any organization or non-U.S. individual awarded or competing for award at any time regardless of previous vetting date.

For example, in Afghanistan, in accordance with USAID/Afghanistan's Mission Orders 201.03 and 201.05, each awardee must be vetted every year for the duration of awards. In addition, new vetting will be required if there is any change in the awardee's "Key Individuals." Vetting approval may be rescinded if USAID obtains information indicating that the awardee or any of its "Key Individuals" is found to be a Prohibited Party. Each awardee must be vetted for each new award that exceeds the Vetting Threshold (\$25,000 cumulative).

**Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#3, 4, & 5**

**Implementation of Wartime Contracting Reforms
July 16, 2013**

Question:

Does USAID require prime contractors to identify which sub-contractors they will work with or are working with? Does USAID make an attempt to confirm this information?

If not, how do you know our money is not flowing to our enemies?

If yes, do your acquisition officials compare the names of these sub-contractors with information from intelligence databases to ensure they have not engaged in past waste, fraud, and abuse and that they are not diverting money to our enemies?

Answer:

Contractors and other implementers of USAID programs routinely report instances of fraud or other misconduct by sub-contractors as required by Contractor Code of Business Ethics and Conduct pursuant to FAR 52.203-13(b) and implementers' internal organizational policies. USAID's Office of Inspector General (OIG), Contracting Officers (COs) and Compliance Division track these "sub-contractor disclosures" and coordinate the appropriate remedies given the circumstances of the case, including suspension and debarment.

Generally, COs must follow the evaluation for consent to subcontract responsibilities placed on them by FAR 44.202-2(13), which requires COs to review whether the proposed sub-contractor is in the System for Award Management (SAM) Exclusions. In addition to contractors that are debarred, suspended, and proposed for debarment, SAM Exclusions lists contractors declared ineligible from Government contracting pursuant to statutory, Executive Order, or regulatory authority. Additionally, proposed subcontractors in Afghanistan specifically with subcontracts exceeding \$25,000 are vetted through the mission's vetting system.

With regard to vetting, each of the Mission Orders which establish how vetting is to be conducted in each mission determine the level of sub-contracting or sub-assistance awards. In Afghanistan, for example, this determination is based on a monetary threshold. In the PVS pilot program, the recommendation is vetting at least to the second sub-contracting and sub-assistance award level. USAID currently relies on the prime contractor/ award recipient to identify the "subs" with whom they will be working. USAID makes every effort to ensure the validity of the information provided by the prime and subs, and requests that the prime validate the accuracy of the information they have provided. Implementing partners have requested the use of direct

vetting where USAID would communicate 'directly' with the subs. To date this request has been denied as vetting applies to Afghanistan, however it is being considered under limited circumstances in the PVS pilot program.

**Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#6**

**Implementation of Wartime Contracting Reforms
July 16, 2013**

Question:

What intelligence databases do USAID acquisition officials reference to make their determinations?

Answer:

During award determination for all USAID awards, contracting officers and agreement officers are required to check the Office of Foreign Assets Control (OFAC) and Specially Designated Nationals (SDN) lists and are prohibited from awarding to persons or organizations appearing on either. Additionally, USAID Office of Security has full access to and has staff detailed to the FBI's Terrorist Screening Center (TSC) who conduct searches of the database resources available at the TSC as part of USAID's vetting process. The TSC aggregates intelligence from the various USG intelligence agencies and USG agencies may access this information as it pertains to their mission requirements.

**Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#7**

**Implementation of Wartime Contracting Reforms
July 16, 2013**

Question:

Do your acquisition officials reference the Federal Awardee Performance and Integrity Information System (FAPIIS) before putting out a new contract?

Answer:

USAID's contracting officers (COs) follow Federal Acquisition Regulations (FAR) Subsection 9.104-6 which requires them to consider information in the Federal Awardee Performance and Integrity Information System (FAPIIS) and other past performance information when making responsibility determinations for prospective contractors for awards above the simplified acquisition threshold. COs are required to document the contract file to indicate how the information in FAPIIS was considered in any responsibility determination as well as the action that was taken as a result of the information. Requirements for using FAPIIS are reiterated in USAID's Agency policy (Chapter 302 of our Automated Directives System (ADS) on USAID Direct Contracting) and in the Agency's Contract Review Board Pre-Award Guidance/Best Practices.

**Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#8**

**Implementation of Wartime Contracting Reforms
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Question:

If USAID discovers that an existing contractor or sub-contractor has engaged in or is engaging in waste, fraud, and abuse or is diverting our tax dollars to our enemies (e.g. diverting money to an improvised explosive device manufacturer or facilitator), what authorities does USAID currently have to quickly terminate an existing contract without paying an equitable adjustment?

Answer:

USAID interprets the Federal Acquisition Regulation (FAR) clauses related to termination under FAR Part 49 as providing the Agency the ability to terminate in whole or in part work performed under contract inclusive of situations involving waste, fraud, and abuse. Similarly, if a contractor or sub-contractor was discovered to be providing taxpayer funds to "prohibited sources" as provided under FAR Subpart 25.7, USAID has the ability to terminate under the remedies provided in that regulation. The consideration of payment of termination-related costs would ultimately rely on the type of termination and the negotiation of the settlement agreement.

**Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#9**

**Implementation of Wartime Contracting Reforms
July 16, 2013**

Question:

What clause in the Federal Acquisition Regulation allows you to terminate the contract and not pay equitable adjustment?

Answer:

FAR 52.249-6 Termination (Cost-Reimbursement) is the applicable termination clause in most USAID contracts. In regard to allowability of termination-related costs, the rules of allowability for costs are generally similar for both terminations for default and terminations for convenience, except that in the default situation, settlement proposal preparation costs are not allowable and the contractor gets paid for fee or profit only for the services or supplies actually accepted by the Government (rather than as a percentage of the work performed under the contract).