

**Testimony of Drew W. Luten
Senior Deputy Assistant Administrator
Bureau for Management**

Subcontracting: Who's Minding the Store?

**Before the Commission on Wartime Contracting in Iraq and Afghanistan
July 26, 2010**

Co-Chair Shays, Co-Chair Thibault, and Commissioners, I thank you for the invitation to join you and my fellow colleagues on this panel today. I am pleased to represent the U.S. Agency for International Development as we explore the question posed by this commission regarding oversight of subcontracts in Iraq and Afghanistan.

As Senior Deputy Assistant Administrator for the Management Bureau, I supervise the central support functions such as financial management services, acquisition and assistance, information technology, and general administration. My bureau serves to help manage some of the challenges inherent in conducting U.S. development programs in more than 80 countries.

To address your question of who is "minding the store" with regards to subcontractors, I will briefly address USAID's overall responsibilities for our programs and then focus on how we manage subcontract issues.

Program Oversight in Iraq and Afghanistan

It is standard USAID business practice to have on-the-ground Mission presence where we implement our activities. This approach allows us the in-country coordination, on-site management, and oversight support necessary to effectively maintain and account for our development portfolios.

The USAID/Afghanistan Mission funds more than 120 awards, ranging in size and scope throughout the provinces. The USAID/Iraq Mission manages 14 programs currently. In large part we implement these programs through contracts, grants and cooperative agreements. The programs are designed to support the people of Iraq and Afghanistan by strengthening institutions and local capacity, for instance:

- expanding economic opportunity through micro-finance projects;
- extending critical services, such as electricity or clean water;
- building government capacity to administer their own development programs through training and technical assistance; and
- providing cash-for-work and other short-term stabilization activities.

Our activities in Iraq and Afghanistan are monitored by teams of USAID experts. We have contracting and financial management officers in country, supported by local and third country nationals who serve as procurement and financial specialists. Our technical experts serve as contracting officer's technical representatives (COTRs) or activity managers. Our program management and oversight teams work under the leadership of senior managers who ensure that we align our programs to broader USG priorities.

In Afghanistan, we have 270 staff on the ground and in country as of July 22, 2010. Currently, we have approximately 10 contracting officers and more than 60 active COTRs. (Additional personnel in country also have been trained and certified as COTRs but are not currently designated on an award). By 2011, we expect to have 387 U.S. personnel on the ground.

In Iraq, we have approximately 120 staff, including 3 contracting officers and 21 COTRs. This total number also includes our permanent staff of foreign service nationals who add great expertise and local knowledge to our ranks.

On our programs, USAID conducts its own independent financial audits to ensure that resources have been utilized in accordance with program objectives, rules, and regulations. In addition to our own oversight mechanisms and in-house scrutiny of costs and performance, we actively welcome concurrent audits from in-country investigation and audit teams representing USAID's Inspector General, the Special Inspector General for Iraq Reconstruction, the Special Inspector General for Afghanistan Reconstruction, or even the General Accountability Office teams.

Of these audits, we have more than 20 ongoing audits and investigations underway in Afghanistan. In addition to these, the USAID/Afghanistan Mission is managing a number of concurrent financial audits, recipient contracted financial audits, and Mission contracted financial audits. For some of these, USAID does utilize the services of the Defense Contract Audit Agency (DCAA).

In Iraq, we had approximately 135 financial audits through DCAA (hired by our Inspector General) between 2003 to 2009, for example, or about \$4 billion in total audited costs. We also completed more than 40 performance audits since 2004. Currently, the USAID/Iraq Mission has approximately 8 performance audits and 16 financial audits underway. USAID/Iraq is now moving forward to contract more with audit firms who are pre-approved by our Inspector General.

USAID is not a stranger to working within environments that may have weak structures or compromised financial systems. Often times, it is the reason our expertise and our programs are called into action. We understand how to mitigate risks inherent to less-than-stable environments while working to protect U.S. interests.

Whether we award funds through a contract or grant, USAID oversees the program's performance. While contracts and grants are subject to different federal regulations, we monitor performance under each type of instrument closely to be sure that:

1. we are moving toward our intended program results,
2. known program challenges are resolved, and
3. financial reports are carefully reviewed and costs verified as reasonable.

Regular reporting on program performance, including activities under subawards, updates on financial status, daily to weekly interactions with contractors and grantees, site visits when possible in light of security conditions, and other oversight activities including mid-year and annual assessments, are considered regular business in Iraq and Afghanistan.

If we become aware of a delay or a new challenge to a program, we work to address it directly with the contractor or grantee. In cases of waste, fraud, or abuse, USAID immediately informs our IGs in country. We demand answers while pursuing the best corrective actions, and as appropriate, move forward to recover U.S. funds.

In one recent case under the Community Stabilization Program (CSP), USAID/Iraq became aware of the potential misuse of funds under subawards associated with this counterinsurgency program. We immediately suspended activities under the award and requested an investigation by the Inspector General. With the possibility of wrongdoing, USAID took steps to reduce the impact and increased our oversight across our portfolio.

USAID and Subcontractors: Working within the System

In regards to subawards, we understand this Commission's concerns. The risks we face working within contingency environments can permeate any level of an award. Like our fellow agencies at this table, USAID

follows applicable rules and USG-wide regulations for awarding U.S. federal contracts, grants, or cooperative agreements and granting consent for subawards.

We do not shy away from our responsibilities to manage our programs. Rather we focus on the tried and true approaches for federal award making to ensure that we: 1) oversee our direct awards effectively, with the expectation the prime awardees have the responsibility of managing their subawards; and 2) we protect the interests of the U.S. government.

Generally, under contracts we require the prime contractor to obtain the contracting officer's written consent to subcontract, prior to the award of the subcontract. We require our consent be obtained whether the request is contained within an original award proposal or whether the request comes later when the need is identified.

More than a dozen criteria and considerations govern how a contracting officer reviews a subcontract proposal, including:

- If the prime performed adequate cost/price analysis or price comparisons
- If the prime has a sound basis for selecting and determining the responsibility of the subcontractor
- Whether adequate price competition was obtained

The contracting officer will then work closely with the prime contractor to clarify any concerns or questions and confirm that the necessary due diligence has been adequately performed. During this period, the contracting officer may also work with a contractor to ensure that "flow down" clauses appear clearly in a subaward.

Because USAID does not maintain a legal relationship with a subcontractor and cannot demand direct deliverables from a sub (per federal regulations), we hold our prime contractor or grantee responsible for all program performance issues and costs incurred under that designated program, including those arising from the subcontractors.

What does this mean? With USAID's rigorous reporting requirements in Iraq and Afghanistan, through the regular monitoring of our programs, and with the ongoing audits on our overall programs (which include reviews of subcontract level efforts as well), we maintain knowledge and information on prime and subcontract performance.

Although we do not have the same direct relationship with subs, USAID does actively work with our primes to be sure that relevant issues determining the success or failures of our programs are effectively managed.

As well, we are working to make information on our subawards more transparent for the U.S. public. We are certainly working on this issue within the interagency to ensure close coordination occurs in theater.

In Conclusion

At the end of the day, USAID aggressively addresses its oversight role across our program portfolio. We work in Iraq and Afghanistan to be sure that the programs we fund are worth it to the American taxpayer. It can be a difficult job. We experience set backs. Given the conditions in which our development programs are carried out, we have challenges in regards to oversight, but we continue to strengthen these systems and manage for solutions under each program.

In both countries, we are proud to work alongside our military and civilian colleagues to carefully safeguard U.S. interests as we move forward in transitioning to more Afghan- and Iraqi-led development efforts.

Again I thank you for the opportunity to be here today. I hope I may address the concerns you have related to USAID subawards.

Thank you.