



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

February 28, 2019

Mr. Ron Swinko
Chief Executive Officer
Jet Inc.
750 Alpha Drive
Cleveland, OH 44143

Dear Mr. Swinko:

Thank you for your letter on behalf of the Environmental Technologies Trade Advisory Committee (ETTAC) regarding Buy American provisions for environmental services in U.S. Government-led official development assistance (ODA) procurements.

The Administration recognizes that U.S. companies face unfair competition in many foreign markets. We are seeking to level the playing field for U.S. firms abroad by engaging foreign governments on their unfair trade practices in a variety of fora. The Department of Commerce also wants to ensure that we promote the mechanisms that the Federal Government has in place to support U.S. exporters of goods and services.

Regarding ODA specifically, the Department has relayed your letter to the U.S. Agency for International Development (USAID) and the Millennium Challenge Corporation (MCC), which are the primary U.S. agencies providing environmental infrastructure funding. USAID and MCC have prepared the enclosed information outlining how they actively reach out to U.S. firms to improve their competitive opportunities on U.S.-funded procurements. Department staff will be happy to facilitate a follow-up meeting with these agencies and 2018-2020 ETTAC charter members to discuss the ETTAC's recommendations further.

I appreciate the ETTAC's feedback on the interagency Trade Promotion Coordinating Committee Environmental Trade Working Group's work. If you have any questions, please contact Amy Kreps, the Designated Federal Officer for the ETTAC, at (202) 482-3835.

Sincerely,


Wilbur Ross

Enclosures

Enclosure 1:

Source: U.S. Agency for International Development (USAID)

U.S. Agency for International Development (USAID) Key Points

- Sixty-three percent of all USAID's service-contract obligations in Fiscal Year (FY) 2017 went to U.S. firms.
- USAID rarely procures stand-alone environmental services, as they are typically part of larger projects. For that reason, environmental services represent only three percent of USAID's overall service-contract obligations (three percent, based on relevant industry classification codes); of this amount, two-thirds went to U.S. firms.
- There are multiple avenues available to ETTAC members other than tied aid to enhance their likelihood of winning USAID contracts (e.g., partnering with prime recipients as part of a consortium).
- USAID is subject to multiple, related acquisition regulations that conflict with the ETTAC's proposed policy.
- Building local capacity is a key component of USAID's Journey to Self-Reliance development approach and the use of host-country systems (both public and private) is an important way for USAID to advance this objective.

Additional Background

U.S. Firms and USAID Contracts

USAID rarely procures stand-alone environmental services; rather, they are typically part of larger development projects. USAID works with a diverse group of partners worldwide; U.S. organizations, however, implement the vast majority of our work. For example, in FY 2017, U.S. firms represented 94 percent of USAID's total contract obligations and 63 percent of all USAID service-contract obligations. Given that environmental-services are at best a secondary or tertiary objective in most procurements, it is not possible to consistently and reliably parse out contract statistics for such services. However, in FY 2017, based on relevant industry classification codes, environmental-service contracts represented around three percent of the Agency's total contract obligations and, of this amount, two-thirds went to U.S. firms.

Ways to increase engagement of U.S. environmental firms with USAID

There are multiple ways U.S. environmental firms can secure USAID contracts or sub-contracts. USAID identifies all planned/anticipated contract and grant opportunities on the publicly available USAID Business Forecast, and all USAID solicitations are available to the public on www.fbo.gov or www.grants.gov. USAID hosts industry days and small-business partner days so the business community can meet USAID staff and one another. Moreover, USAID and a number of professional membership associations engage regularly to facilitate greater understanding of the market potential in the places where the Agency invests its foreign-assistance resources. On the contractor/business side, USAID engages regularly with the Professional Services Council and the Small Business Association for International Companies, which include a number of USAID's key, for-profit implementing partners. U.S. environmental companies have the potential to provide services directly to USAID and, perhaps to a greater extent, to work with prime recipients as part of a consortium to gain entry to new markets through the implementation of foreign-assistance programming.

Existing Statutory and Regulatory Authorities on Acquisition and Challenges to the Proposed ETTAC Policy

Section 604(a) of the Foreign Assistance Act (FAA) of 1961 provides that firms from the United States, the recipient/cooperating country, and other developing countries are eligible to receive program funds made available under the Foreign Assistance Act.

USAID's regulation for Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID, found at Part 228 of Title 22 of the Code of Federal Regulations (CFR) (and USAID operational policy Automated Directive System (ADS) Chapter 310), establishes a presumption that USAID will procure all Federally financed commodities and services from the United States, the recipient country, and developing countries other than advanced developing countries, but excluding any country that is a prohibited source. A "developing country" means any country categorized by the World Bank as a low- or lower-middle-income country according to its Gross National Income per capita. Further, any change to these policies may result in a possible departure from two international agreements to which the U.S. is a party that govern the use of tied and untied aid: (1) Development Assistance Committee's "Recommendation to Untie Aid to the Least Developed Countries"; and (2) Organization for Economic Cooperation and Development's "Arrangement on Guidelines for Officially Supported Export Credits" ("Helsinki Agreement").

In addition, USAID has an established statutory authority, the Local Competition Authority Pilot Program (ADS Mandatory Reference): "Section 7077 of Public Law (P.L.) 112-74, the Consolidated Appropriations Act, as amended by Section 7028 of Consolidated Appropriations Act 2014 (PL 113-76)," which allows the Agency to limit competition to local entities when doing so will result in cost savings, develop local capacity, or enable USAID to initiate an activity in appreciably less time than if competition were not limited, and local organizations have the technical capacity and accountability systems adequate to perform the resulting contract successfully.

The Journey to Self-Reliance

As USAID Administrator Mark Green notes, "Each country must lead its own development journey by financing and implementing solutions to its own development challenges." USAID is reorienting its policies, strategies, and program practices to support countries to plan, finance, and implement solutions to their own development challenges. Programming of our foreign-assistance dollars through grants, cooperative agreements, and contracts reflects this focus on building local capacity. Broad support exists for the increased use of country systems (both public and private) to achieve USAID's development objectives. Even so, USAID still relies on U.S. firms to help build local capacity. For example, the main mechanism USAID headquarters uses to provide environmental-management support to its multi-sectoral development-assistance programs is the \$39 million ECOS task order, awarded to U.S. firm ICF Incorporated, LLC, a follow-on award to the GEMS II Task Order previously managed by another U.S. firm, the Cadmus Group, LLC.

With regard to environmental services specifically, limiting competition to U.S. firms would be at odds with the goal of self-reliance. In addition, in many cases local expertise is a critical factor to a successful outcome for a program, or the host country might actually mandate the use of local firms. For example, Sections 118 and 119 of the Foreign Assistance Act require an analysis to integrate actions to conserve tropical forest and biodiversity into Country

Development Cooperation Strategies. These analyses typically rely heavily on local technical experts who have good working relationships with local biodiversity stakeholders (from universities, non-governmental organizations, government, and private sector). Additionally, some host countries require local firms to perform Environmental Impact Assessments (e.g., Mozambique, Liberia, Uganda, and Pakistan).

Enclosure 2:

Source: Millennium Challenge Corporation (MCC)

MCC Engagement with U.S. Businesses

MCC actively promotes participation by U.S. firms in MCC-funded overseas procurements. MCC is engaging prospective U.S. bidders through enhanced collaboration with the Department of Commerce, the U.S. Trade and Development Agency (USTDA), World Bank, U.S. Chamber of Commerce, and others. MCC meets with U.S. firms that are either doing business in MCC partner countries or are interested in exploring these opportunities. MCC is actively working with the Department of Commerce's Advocacy Center to reach its network of U.S. firms.

MCC is implementing a detailed market outreach plan to inform, attract, and further encourage U.S. firms to work with MCC. The market outreach plan includes the promotion of MCC and MCC partner-country procurements to targeted U.S. businesses, highlighting the advantages of working on MCC-funded projects while addressing any barriers to participation, showcasing post-compact investment opportunities for U.S. businesses, and building additional avenues for partnership with MCC through co-investment, joint research, knowledge sharing, and program co-design.

MCC has improved its public-facing website to ensure an easy one-stop-shop for U.S. firms looking to work with the agency. On www.mcc.gov/work-with-us, MCC provides a regularly updated business forecast, links to live procurement opportunities, videos about how to work with MCC, and notifications of webinars, facts sheets, and more.