



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

October 3, 2016

The Honorable Gayle E. Smith
Administrator, U.S. Agency for International Development

Mr. Herbert B. Smith
USAID Mission Director for Afghanistan

On August 1, 2016, I wrote to request information concerning cooperative agreement no. 306-A-00-09-00522 (hereafter, the “agreement”) between the USAID Mission for Afghanistan (USAID/Afghanistan) and Democracy International.¹ The agreement was originally intended to support Afghanistan’s 2009 presidential and provincial council elections. Signed on July 13, 2009, it was valued at \$5 million and had an estimated completion date of November 30, 2009. However, USAID/Afghanistan went on to modify the agreement over 30 times, extending the period of performance by over 7 years and increasing the agreement’s value to over \$51 million. The numerous modifications to the agreement and the resulting increase in its scope, duration, and cost to U.S. taxpayers raise questions concerning whether USAID should have used a competitive process, rather than extending the existing agreement without inviting offers from other interested and qualified organizations.

As indicated above, USAID/Afghanistan’s cooperative agreement with Democracy International was initially intended to support the International Election Observation Mission for the 2009 Presidential and Provincial Council Elections in Afghanistan program. The purpose of that program was to conduct preliminary assessments, observation, and post-election monitoring of the 2009 presidential election. As USAID/Afghanistan continued to modify the agreement, the type of work it tasked Democracy International with performing grew in scope to include:

- contingency planning in the case of a runoff election for the 2009 presidential election;
- support for a permanent Democracy International office in Kabul;
- support for policy development and advocacy, international observation, and domestic observation;
- organizing an election observation mission for the 2010 Wolesi Jirga elections;²
- fostering electoral outreach and governance by conducting applied research projects and building Afghan research capacity;
- strengthening Afghan democracy by increasing public awareness and promoting equitable participation for the 2014 elections and implementing civic education and public outreach initiatives for the 2015 parliamentary elections; and

¹ SIGAR’s contracted auditor, Crowe Horwath LLP, audited the costs incurred by Democracy International under this cooperative agreement from July 1, 2014, through December 31, 2015. The results of that audit are documented in SIGAR Financial Audit 16-44-FA, issued on July 14, 2016.

² The Wolesi Jirga is the lower house of the Afghan Parliament.

- supporting anti-corruption activities by providing watchdog grants, developing accountability tools, supporting civic participation, conducting a rapid political economy assessment, and managing a rapid response fund.

Approximately two and a half years after the initial award, USAID/Afghanistan changed the name of the program to “Afghanistan Electoral Reform and Civic Advocacy” (AERCA), to reflect the additional work Democracy International would conduct under the expanded agreement.³ As the scope of the agreement expanded, its budget grew by over \$46 million.

According to USAID’s Automated Directives System (ADS) Chapter 303, *Grants and Cooperative Agreements to Non-Governmental Organizations*, “USAID encourages competition in the award of grants and cooperative agreements to identify and fund the programs that best achieve Agency objectives.”⁴ ADS 303 also states, “Eligibility may be restricted by an AO [Agreement Officer] only when an exception to restrict eligibility applies and is documented in accordance with [ADS 303.3.6.5].”⁵ Although a follow-on cooperative agreement or extension to an existing award is a recognized exception to competition, USAID is nonetheless required to provide specific justification as to why continuing the award exceeds “the benefits of a competitive process encouraged by law and required by Agency policy.”⁶

In a draft of this inquiry letter, I asked USAID to provide the following information in order to better understand how the apparently noncompetitive expansion of the cooperative agreement between USAID/Afghanistan and Democracy International exceeded the benefits of a competitive process:

1. Copies of all Justifications to Restrict Eligibility (JRE) related to cooperative agreement no. 306-A-00-09-00522 for AERCA. If no JRE was prepared, please explain why.
2. Copies of all action memoranda and clearances prepared under ADS 303.3.6.5.

USAID’s Response to the Inquiry Letter

USAID responded to our inquiry letter on August 16, 2016. In its response, USAID provided copies of the justification documents for the 10 follow-on awards and extensions that either increased the cost or extended the duration of the original award.

The documents USAID submitted were responsive to SIGAR’s request. To justify the approximately \$46 million in noncompetitive follow-on awards and extensions to Democracy International, USAID relied on ADS 303.3.6.5a(2)(h) and its predecessor provisions, which permit noncompetitive follow-on awards and extensions.⁷ However, in some instances, the justifications provided by USAID do not seem to contain specific explanation as to why the benefits of continuing the assistance activity with Democracy International exceeded the benefits of a competitive process.⁸

Instead, some of the justifications appear to be premised on Democracy International’s “unique capability...in that they have an established presence in Afghanistan since 2009....”⁹ One justification explains that “A direct

³ USAID, Modification of Assistance No. 14 (January 10, 2012).

⁴ ADS 303.3.6.

⁵ ADS 303.3.6.5.

⁶ ADS 303.3.6.5a(2)(h).

⁷ See, e.g., ADS 303.3.6.5a (effective date 06/01/2006); ADS 303.3.6.6a(2)(h) (effective date 01/09/2012).

⁸ ADS 303.3.6.5a(2)(h).

⁹ USAID, Action Memorandum for the Mission Director (June 21, 2010).

award to a local organization was not considered for these activities, as [Democracy International], through years of work in the field, has developed the necessary relationships to implement these programmatic activities.”¹⁰ The justification then goes on to note that Democracy International had been working on such activities since 2009,¹¹ the year it received the original noncompetitive award.¹²

The original noncompetitive award to Democracy International in 2009 appears to have been approved in conjunction with noncompetitive awards to three other civil society organizations to perform election observation activities in Afghanistan: (1) the Asia Foundation, (2) the International Republican Institute, and (3) the National Democratic Institute.¹³ Therefore, while there may not have been local organizations capable of implementing some of the program activities, it appears that three other organizations with election observation experience in Afghanistan might have been able to make competitive offers to perform some of the follow-on work awarded to Democracy International.

Moreover, USAID’s reference to the “unique capability” Democracy International developed in Afghanistan since 2009 suggests that the agency may have justified the continuation of its on-going relationship with Democracy International on the basis of the predominant capability Democracy International developed while implementing the original award. However, such a justification appears to conflict with ADS 303.3.6.5a(2)(a), which states that an exception to competition based on an award recipient’s exclusive or predominant capability “many not be used to continue an on-going relationship when the applicant developed the exclusive or predominant capability during performance of any USAID award.” The documents provided by USAID did not explain why approving officials apparently concluded that the prohibition contained in ADS 303.3.6.5a(2)(a) did not apply in this context.

To ensure that exceptions to competition are used prudently, we encourage USAID to ensure that all future justifications for noncompetitive follow-on awards and extensions include language that directly and clearly explains why the benefits of continuing assistance with the same recipient exceed the benefits of a competitive process. Additionally, we encourage USAID to consider revising ADS 303 to state expressly whether noncompetitive follow-on awards or extensions may be justified based on a recipient’s predominant capability developed during the performance of any USAID award.

I am submitting this letter under the authority of Public Law No. 110-181, and the Inspector General Act of 1978, as amended.

Sincerely,



John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

¹⁰ USAID, Action Memorandum (January 4, 2014).

¹¹ *Id.*

¹² USAID, Action Memorandum for the Mission Director (June 9, 2009).

¹³ *Id.*