

# SIGAR

**Special Inspector General for  
Afghanistan Reconstruction**

**SIGAR 17-27 Audit Report**

## Land Reform in Afghanistan: Full Impact and Sustainability of \$41.2 Million USAID Program Is Unknown



**FEBRUARY  
2017**

# SIGAR

## Special Inspector General for Afghanistan Reconstruction

### WHAT SIGAR REVIEWED

According to land reform experts, in Afghanistan, as in other developing countries, land administration is critical to economic growth and security. Since 2004, the U.S. Agency for International Development (USAID) has supported efforts to address land reform and land tenure in Afghanistan because of their effects on the economy and the lives of the Afghan people. According to a U.S. Institute of Peace land expert, the majority of Afghans do not have proper legal documentation for their land ownership, due in part to poor paper records and land titles. To address these problems and to help the Afghan government develop a sound land administration system, USAID spent a total of \$96.7 million from 2004 through 2014 to reform the existing system.

The agency initiated its most recent effort—the Land Reform in Afghanistan (LARA) program—when it awarded the contract to implement the program to Tetra Tech ARD in January 2011. The contract ended in November 2014 and cost \$41.2 million. LARA's three main components were to (1) formalize and upgrade informal settlements (i.e., supporting the Afghan government on mapping plots of land to show the value and ownership of land); (2) establish a legal framework to include supporting the Afghan government establishing laws to identify, manage, and obtain revenue from Afghan government lands; and (3) build the capacity of Afghan land-related ministries.

The objectives of this audit were to assess the extent to which: (1) USAID and Tetra Tech ARD measured the LARA program's performance and whether it achieved its goals and objectives; (2) USAID conducted its required oversight of the contract; (3) USAID and Tetra Tech ARD designed and assessed LARA's sustainability; and (4) the challenges USAID, Tetra Tech ARD, and the Afghan government faced threaten the sustainment of U.S. land reform efforts.

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February 2017

## Land Reform in Afghanistan: Full Impact and Sustainability of \$41.2 Million USAID Program Is Unknown

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### SIGAR 17-27 AUDIT REPORT

#### WHAT SIGAR FOUND

SIGAR found that USAID and Tetra Tech ARD did not fully measure the LARA program's performance. Without such information, the agency cannot demonstrate the full extent to which LARA achieved its goals and objectives, or the impact the \$41.2 million program had on improving land administration in Afghanistan. Delays by Tetra Tech ARD in submitting and USAID in approving key performance monitoring and evaluation documentation limited the contractor's and the agency's ability to track program performance. Tetra Tech ARD did not submit an approved performance monitoring plan until February 2012, more than a year after the contract was awarded and 11 months after it was due according to the contract. Therefore, USAID and Tetra Tech ARD did not have a detailed plan for how Tetra Tech ARD would accomplish the program's requirements, objectives, and goals, or collect detailed information on LARA's performance and progress during its first year. In addition, Tetra Tech ARD never reported on six key performance indicators that measured the impact of LARA. Finally, Tetra Tech ARD did not monitor and report on LARA's performance consistently, as recommended by USAID guidance and required by the contract. USAID officials told SIGAR that they relied on Tetra Tech ARD and evaluations performed by Ernst & Young and Checchi and Company Consulting Inc. However, the evaluations show that Tetra Tech ARD's monitoring was inconsistent, and SIGAR independently confirmed that finding.

Moreover, the extent to which USAID conducted contract oversight required by the Federal Acquisition Regulation and USAID is unknown because the agency did not maintain complete records of Tetra Tech ARD's performance or its own oversight of the LARA contract. Although SIGAR found that Tetra Tech ARD completed eight of nine contract deliverables, it was unable to rely on the agency's contract files due to the agency's poor record keeping and had to seek additional information from Tetra Tech ARD. When asked, USAID did not have an explanation for why documents were missing from its contract files. Therefore, SIGAR questions how the agency was able to determine that the three LARA deliverables were completed when it closed out the contract. In addition, although USAID provided SIGAR with records and evidence of its oversight of LARA from August 2011 through September 2013, it did not provide documentation for oversight it should have performed from September 2013 through November 2014, when the program ended, accounting for more than a year—or one-fourth—of the contract. Without complete records for the LARA contract, the agency cannot demonstrate that it fully performed its required contract oversight of Tetra Tech ARD or confirm that the contractor met all of the terms of the \$41.2 million LARA contract.

In addition, USAID did not, as required by its own internal guidance, fully assess the sustainability of LARA. USAID designed LARA to consider some elements of sustainability and addressed some sustainment objectives, as required by the 2011 *Administrator's Sustainability Guidance for USAID in Afghanistan* and other agency directives. However, the agency did not comply with other requirements of the 2011 sustainability guidance that sustainability assessments include an "examination, both immediate and ongoing, of all USAID Mission for Afghanistan projects against the principles of 1) Afghan ownership and capacity, 2) their contribution to transition

and confidence, and 3) cost effectiveness and program effectiveness.” USAID completed an initial sustainability assessment in June 2012 to report on all of its programs in Afghanistan, in which it stated that LARA “most closely emulate[s] the standards that USAID seeks to promote in all of its programming’ about sustainability. However, this analysis primarily addressed whether LARA’s overall program design met agency sustainability standards and did not discuss whether the Afghan government could sustain ongoing program efforts. USAID did not conduct subsequent sustainability assessments that address all the requirements in the 2011 sustainability guidance for LARA between June 2012 to the close of the program in November 2014, which amounted to a majority of the program’s implementation period. In its January 2017 response to SIGAR’s draft report, the USAID Mission for Afghanistan stated that Checchi’s November 2014 final performance evaluation of LARA, completed upon the program’s conclusion, also represented a sustainability assessment, in accordance with the June 2011 *Administrator’s Sustainability Guidance for USAID in Afghanistan*. However, SIGAR maintains that USAID did not fully address all of the requirements in the 2011 sustainability guidance. For example, the 2014 final performance evaluation does not provide an “examination, both immediate and ongoing” of the LARA program’s “cost effectiveness and program effectiveness” and does not “estimate all recurrent costs [for LARA] required to maintain the services, infrastructure, and institutions, as well as ongoing capacity building investments...[and/or] Develop plans in partnership with GIRoA [Government of the Islamic Republic of Afghanistan], and other donors to ensure such costs are priorities and are within budgets in a scarce resource environment,” all of which the guidance requires. Without such assessments, the U.S. government has less insight into whether the reported achievements associated with its \$41.2 million investment in land reform can be maintained.

According to USAID, Tetra Tech ARD, and Afghan government officials, known systemic challenges in land reform pose a threat to sustaining the program’s achievements. The challenges include (1) political and judicial corruption; (2) an underdeveloped legal system and lack of enforcement mechanisms to support land laws and property rights; and (3) a lack of Afghan government technical capacity, including the ability to use land administration information technology systems. The U.S. government currently does not have any planned programs that are specifically intended to support land reform in Afghanistan. Nevertheless, by not performing a sustainability assessment of LARA, USAID missed an opportunity to inform the Afghan government about how it could address these systematic challenges in the future.

## WHAT SIGAR RECOMMENDS

This report contains one recommendation. To better understand the impact of the LARA program on land reform efforts in Afghanistan, SIGAR recommends that the USAID Administrator:

- 1. In accordance with all of the requirements of the June 2011 *Administrator’s Sustainability Guidance for USAID in Afghanistan*, conduct a final sustainability assessment of the LARA program to fully determine whether sufficient capacity exists for the Afghan government to sustain the program’s achievements, and provide the results to the Afghan government.**

SIGAR received comments from the USAID Mission for Afghanistan. USAID did not concur with the recommendation. The agency asserted that the contractor’s 2014 final performance evaluation of the LARA program is evidence that it conducted a sustainability assessment, in accordance with its 2011 sustainability guidance. We reassessed the 2014 evaluation and maintain that USAID did not fully address the requirements of its 2011 sustainability guidance. We modified the recommendation to better reflect the need for the agency to meet all of the guidance’s requirements.



**SIGAR**

Office of the Special Inspector General  
for Afghanistan Reconstruction

February 6, 2017

The Honorable Wade Warren  
Acting Administrator, U.S. Agency for International Development

The Honorable Hugo Llorens  
Special Chargé d'Affaires for Afghanistan

Mr. Herbert B. Smith  
USAID Mission Director for Afghanistan

This report discusses the results of SIGAR's audit of the U.S. Agency for International Development's (USAID) Land Reform in Afghanistan (LARA) program. In January 2011, USAID awarded Tetra Tech ARD a contract, which ultimately cost \$41.2 million, to implement the program. This report focuses on the LARA program's performance and sustainability, USAID's oversight, and challenges to sustaining U.S. land reform efforts.

We are making one recommendation. To better understand the impact of the LARA program on land reform efforts in Afghanistan, we recommend that the USAID Administrator in accordance with all of the requirements of the June 2011 *Administrator's Sustainability Guidance for USAID in Afghanistan*, conduct a final sustainability assessment of the LARA program to fully determine whether sufficient capacity exists for the Afghan government to sustain the program's achievements, and provide the results to the Afghan government.

We received written comments on a draft of this report from the USAID Mission for Afghanistan, which are reproduced in appendix IV. USAID did not concur with our recommendation. The agency asserted that the contractor's 2014 final performance evaluation of the LARA program is evidence that it conducted a sustainability assessment, in accordance with its 2011 sustainability guidance. After reassessing the 2014 evaluation, we maintain that USAID did not fully address the requirements of its 2011 sustainability guidance. We modified the recommendation to better reflect the need for the agency to meet all of the guidance's requirements.

SIGAR conducted this audit under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended; and in accordance with generally accepted government auditing standards.

John F. Sopko  
Special Inspector General  
for Afghanistan Reconstruction

# TABLE OF CONTENTS

Background .....	2
USAID Did Not Fully Measure the LARA Program’s Performance .....	6
USAID is Missing Records on Contractor Performance and Oversight .....	8
USAID Did Not Fully Assess the Sustainability of LARA .....	10
Challenges Threaten the Sustainability of USAID’s Land Reform Efforts, Including Activities Completed Under LARA .....	12
Conclusion .....	14
Recommendations .....	14
Agency Comments .....	15
Appendix I - Scope and Methodology .....	16
Appendix II - List of All LARA Performance Indicators and Their Status .....	18
Appendix III - Defining Terms Used in Land Administration and Land Reform .....	21
Appendix IV - Comments from the U.S. Agency for International Development .....	22
Appendix V - Acknowledgments.....	26

## TABLES

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Table 1 - LARA Contract Deliverables .....	9
Table 2 - Description of LARA Performance Indicators Reported on in the LARA Final Report and Their Status	18
Table 3 - Description of LARA Performance Indicators Not Reported on in the LARA Final Report and Their Status.....	20

## FIGURE

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Figure 1 - United Nations Definitions of Commonly Used Terms in Land Administration and Reform .....	21
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## ABBREVIATIONS

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ADS	Automated Directives System
ALRMIS	Arazi Land Records Management Information System
COR	contracting officer's representative
FAR	Federal Acquisition Regulation
IT	information technology
LARA	Land Reform in Afghanistan
MEC	Independent Joint Anti-Corruption Monitoring and Evaluation Committee
USAID	U.S. Agency for International Development
USAID/Afghanistan	USAID Mission for Afghanistan

In Afghanistan, as in other developing countries, land is critical to economic growth, and the ability of Afghans to protect and use this resource is central to survival and economic development.<sup>1</sup> Decades of war, foreign involvement, and the mass displacement and return of Afghan citizens affected by conflict upended traditional approaches to local communal land management.<sup>2</sup> <sup>3</sup> A U.S. Institute of Peace expert states that land is also increasingly a major source of conflict, involved in approximately half of personal and communal disputes in Afghanistan.<sup>4</sup>

According to land reform experts, land reform is generally understood to be efforts to correct problems with land distribution and rights to its use.<sup>5</sup> Since 2004, the U.S. Agency for International Development (USAID) has worked to address land reform in Afghanistan because of its effect on the economy and the lives of the Afghan people.<sup>6</sup> The majority of Afghans do not have proper legal documentation of their land ownership due in part to poor paper records and land titles. Other factors affecting land reform include the influx of Afghan refugees returning from other countries, past governments and agencies issuing multiple titles for the same parcel of land, corrupt courts, and a lack of legal protection for land owners. To address these problems and help the Afghan government develop a sound land administration system, USAID spent a total of \$96.7 million from 2004 through 2014 to reform the existing system. The agency initiated its most recent effort—the Land Reform in Afghanistan (LARA) program—when it awarded the contract to implement the program to Tetra Tech ARD in January 2011. The contract ended in November 2014 and cost \$41.2 million.

In September 2015, we completed a financial audit of the costs Tetra Tech ARD incurred under the LARA contract. We did not identify any material weaknesses or significant deficiencies in Tetra Tech ARD’s internal controls, or instances of noncompliance with the terms and conditions of the contract. As a result, we did not question any costs or make any recommendations to USAID.<sup>7</sup>

The objectives of this audit were to assess the extent to which (1) USAID and Tetra Tech ARD measured the LARA program’s performance and whether it achieved its goals and objectives; (2) USAID conducted its required oversight of the contract; (3) USAID and Tetra Tech ARD designed and assessed LARA’s sustainability; and (4) the challenges USAID, Tetra Tech ARD, and the Afghan government faced threaten the sustainment of U.S. land reform efforts.

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<sup>1</sup> John W. Bruce, et al., *Land Law Reform – Achieving Development Policy Objectives*, page ix, World Bank, 2006.

<sup>2</sup> We have previously reported on U.S. assistance to support Afghan refugees and internally displaced people (see SIGAR, *Afghan Refugees: Corruption and Lack of Afghan Ministerial Capacity Have Prevented Implementation of a Long-term Refugee Strategy*, SIGAR 15-83-AR, August 27, 2015; and SIGAR, *Efforts to Support Afghan IDPs*, SIGAR 16-47-AL, July 25, 2016).

<sup>3</sup> Liz Alden Wily, *Land Governance at the Crossroads*, Afghanistan Research and Evaluation Unit, October 2012.

<sup>4</sup> Liz Alden Wily, *Land, People, and the State in Afghanistan: 2002-2012*, U.S. Institute of Peace/Afghanistan Research and Evaluation Unit, February 2013.

<sup>5</sup> E.g., Ben White, Saturnino M. Borrás Jr., and Ruth Hall, “Land Reform,” in *International Development: Ideas, Experience, and Prospects*, ed. Bruce Currie-Alder, Ravi Kanbur, David M. Malone, and Rohinton Medhora (Oxford: Oxford University Press, 2014). October 2013. We identified several subject matter experts on the topic of land reform, including these authors.

<sup>6</sup> The United Nations defines land tenure as “an institution, i.e., rules invented by societies to regulate behavior. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.” See Food and Agriculture Organization of the United Nations, *Land Tenure and Rural Development*, Chapter 3, “What Is Land Tenure,” Rome, 2002. We have included the United Nations’ definitions of other common terms in land administration and reform in appendix III.

<sup>7</sup> See SIGAR, *USAID’s Land Reform in Afghanistan Program: Audit of Costs Incurred by Tetra Tech ARD*, SIGAR 15-88-FA, September 28, 2015.

To accomplish these objectives, we reviewed the LARA contract, modifications, deliverables, and work plans. We analyzed LARA program objectives, the LARA performance monitoring plan,<sup>8</sup> and periodic performance reports, such as Tetra Tech ARD's final report.<sup>9</sup> We compared the performance indicators established in the performance monitoring plan to those reported in the contractor's final report. Additionally, we reviewed U.S. government requirements and USAID policies for contract management, reporting, monitoring and evaluation, and sustaining programs. We also interviewed and requested information from current and former USAID officials responsible for overseeing the LARA contract in the Office of Afghanistan and Pakistan Affairs and USAID Mission for Afghanistan's (USAID/Afghanistan) Office of Economic Growth and Infrastructure, and Office of Acquisition and Assistance; the Department of State's Office of the Special Representative for Afghanistan and Pakistan; Tetra Tech ARD and Thomson Reuters, one of its subcontractors; Afghan government agencies, such as the Afghan Land Authority, now known as Arazi, and the Independent Directorate of Local Governance; nongovernment organizations, such as the Afghan Land Consulting Organization and the Afghan Women's Network; and experts and international organizations involved with land reform, such as the U.S. Institute of Peace and the United Nations Human Settlements Programme.

We conducted our work in Kabul, Afghanistan; Burlington, VT; and Washington, D.C., from May 2015 through February 2017 in accordance with generally accepted government auditing standards. A more detailed discussion of our scope and methodology is in appendix I.

## BACKGROUND

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### Historical Challenges to Land Reform in Afghanistan

Under the current Afghan government, millions of displaced Afghans have returned home, often seeking to reclaim the land they previously owned.<sup>10</sup> The hundreds of thousands who have not been able to reclaim their land have resorted to squatting on the outskirts of urban areas in informal settlements unrecognized by the government. The U.S. Institute of Peace has previously reported that around 70 percent of urban residents in Afghanistan live in these types of informal settlement,<sup>11</sup> and as a result, "Rights to and control over lands are frequently and violently contested...this is more common in 2012 than in 2002."<sup>12</sup> The United States' and other donors' land reform efforts in Afghanistan have sought to address multiple legal, technical, and capacity-building challenges the Afghan government faces in land administration, land tenure, and land rights, as well as with building Afghan land markets.

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<sup>8</sup> According to Automated Directives System Chapter 200, a performance monitoring plan outlines USAID's monitoring and evaluating requirements at the activity or project level. Performance monitoring is the ongoing and routine collection of performance indicator data to determine whether desired results are being achieved and whether implementation is on track. Performance monitoring continues throughout an activity or project. Performance indicators are the basis for observing progress and measuring the actual results of the activity or project as compared to the expected results, and help determine the extent to which the agency is meeting its objectives.

<sup>9</sup> The LARA contract required Tetra Tech ARD to issue a final report on the program's performance that includes the performance indicators it and USAID established in the performance monitoring plan.

<sup>10</sup> Liz Alden Wily, *Land Governance at the Crossroads*, Afghanistan Research and Evaluation Unit, October 2012.

<sup>11</sup> According to the Organization for Economic Cooperation and Development, informal settlements are areas where groups of housing units have been constructed on land that the occupants have no legal claim to or are unplanned settlements not in compliance with planning and building regulations (see *OECD Glossary of Statistical Terms*, <https://stats.oecd.org/glossary/search.asp>, accessed February 22, 2016).

<sup>12</sup> Liz Alden Wily, *Land, People, and the State in Afghanistan: 2002-2012*, U.S. Institute of Peace/Afghanistan Research and Evaluation Unit, February 2013.

Land experts characterize Afghanistan's land administration as an ad hoc system of overlapping formal and informal approaches to land titling and transfer, with the formal approach mainly based on paper documents that may be registered by multiple institutions. Moreover, only a third of the land in Afghanistan has ever been surveyed, and the last partial survey was carried out with U.S. assistance in the 1960s and 1970s, before the 1978 revolution, which marked the beginning of the Soviet occupation. The Afghan government continues to lack a comprehensive cadastral system—a set of records showing the extent, value, and ownership of plots of land—or a modern titling system that maintains adequate documentation and uses digital records. The current titling system relies on multiple Afghan government institutions maintaining paper records. Experts at the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) and the U.S. Institute of Peace note that the locally maintained paper records are poorly archived, incomplete, more susceptible to damage, and at risk of forgery or replacement, all of which make it easier for land to be taken illegally.

Additionally, corruption is endemic in land administration in Afghanistan, in part due to the judiciary, which Afghans perceive as one of the country's most corrupt institutions, as we reported in our 2015 audit of U.S. rule of law efforts.<sup>13</sup> Courts are involved in land administration, including titling and records management, and resolving disputes, both of which are susceptible to corruption. For example, because of this perceived corruption, in Kunduz province, the majority of disputes are handled through informal approaches, including councils of elders, or *shuras*. However, according to a U.S. Institute of Peace report, Afghans in Kunduz would prefer to have formal titles rather than informal land deeds to help prevent disputes.<sup>14</sup>

As the MEC reported, proper land registration is critical to development because it provides financial security and opportunity to land owners who can, for example, more easily sell the land or use it as collateral on a loan.<sup>15</sup> However, ongoing problems, such as the lack of proper registration of land, and corruption in Afghan land administration have a significant economic impact. By some estimates, land values have increased by 1,000 percent in urban areas since 2001, creating increased economic incentives for theft and fraud.<sup>16</sup> Afghan land reform experts say the scramble for land will accelerate over the next decade as economic development increases. Furthermore, as SIGAR has noted previously, despite the hundreds of millions of dollars the United States has spent to encourage foreign business to invest in Afghanistan, large corporations have not done so in part because of the lack of strong land rights and other legal protections, which put any long-term investment at risk.<sup>17</sup>

Experts say changes to the land administration system are also needed to help promote the rights of women in Afghanistan to inherit and own land. As discussed in a 2014 U.S. Institute of Peace report on land issues in Kunduz province, women are particularly vulnerable to corruption and land usurpation under the current system because their rights to inheritance are frequently ignored.<sup>18</sup> Despite guidance under both Islamic jurisprudence and current Afghan laws, men often do not let female family members own or inherit land, and such cases are difficult or impossible to resolve through the courts or informal paths.

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<sup>13</sup> SIGAR, *Rule of Law in Afghanistan: U.S. Agencies Lack a Strategy and Cannot Fully Determine the Effectiveness of Programs Costing More Than \$1 Billion*, SIGAR 15-68-AR, July 1, 2015.

<sup>14</sup> Fareeda Miah, U.S. Institute of Peace, *Land Titling in Kunduz, Afghanistan*, July 2014.

<sup>15</sup> Independent Joint Anti-Corruption Monitoring and Evaluation Committee, *Report of the Public Inquiry Into Land Usurpation*, November 2014.

<sup>16</sup> Liz Alden Wily, *Land, People, and the State in Afghanistan: 2002-2012*, U.S. Institute of Peace/Afghanistan Research and Evaluation Unit, February 2013.

<sup>17</sup> SIGAR, *Afghanistan's Oil, Gas, and Minerals Industries: \$488 Million in U.S. Efforts Show Limited Progress Overall, and Challenges Prevent Further Investment and Growth*, SIGAR 16-11-AR, January 11, 2016.

<sup>18</sup> Fareeda Miah, U.S. Institute of Peace, *Land Titling in Kunduz, Afghanistan*, July 2014.

## USAID's Land Reform Efforts in Afghanistan

Between 2004 and 2014, the U.S. government, through two USAID programs, conducted efforts to reform Afghanistan's land administration system. These efforts aimed to:

- Improve the documentation and recording of land records and ownership;
- Update and promote laws supporting land management, land dispute resolution, and property rights to reduce usurpation;
- Build the capacity of Afghans to perform land administration; and
- Strengthen land markets for improved economic growth and increased investment.

USAID/Afghanistan's Office of Economic Growth and Infrastructure managed both the 2004 to 2009 Land Titling and Economic Restructuring in Afghanistan program and the 2011 to 2014 LARA program, and both programs aligned with the *U.S. Economic Growth Strategy for Afghanistan Fiscal Year 2009-2011* and the *U.S. Foreign Assistance for Afghanistan Post Performance Management Plan 2011-2015*.

The "ultimate goal" of the Land Titling and Economic Restructuring in Afghanistan program "was to introduce a consolidated land administration system and to support the [Afghan] Ministry of Finance with the production of maps of land and buildings of state-owned enterprises that are earmarked for divestment."<sup>19</sup> As part of this effort, existing informal settlements in Kabul, Kunduz, Mazar-e Sharif, and Taloqan were to be formally established, and paper records within the local archives of the appeals court's registries (known as the Makhzans) were to be converted to digital records. Following the completion of the program in 2009, USAID sought to continue land reform efforts it deemed successful, such as digitizing records and formalizing informal settlements, through the follow-on LARA program.

Tetra Tech ARD and its subcontractors implemented LARA between January 2011 and November 2014. According to USAID's fifth modification of the LARA contract, the three main components of the program were:

1. Formalizing and upgrading informal settlements—to include upgrading informal infrastructure, surveying and documenting land parcels, supporting land rights through the courts and informal dispute resolution mechanisms, and supporting the Afghan government on mapping plots of land to show the value and ownership of land.
2. Establish a legal framework—to include supporting the Afghan government's establishment of laws to identify, manage, lease, and obtain revenue from Afghan government lands.
3. Capacity building—to include providing Afghan land-related ministries and other Afghan agencies with training, information technology (IT) equipment and software, and technical support.<sup>20</sup>

Ultimately, USAID modified the LARA contract 12 times, which extended the program twice for a total of approximately 3 years and 11 months, through November 2014. The contract's final cost was \$41.2 million.<sup>21</sup>

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<sup>19</sup> USAID, *Land Titling and Economic Reconstruction in Afghanistan Project Completion Report*, November 2009.

<sup>20</sup> Under LARA, Tetra Tech ARD and its subcontractors worked primarily with Afghan land-related ministries and organizations such as Arazi; the Ministry of Agriculture, Irrigation, and Livestock; the Ministry of Urban Development Affairs; the Afghan Geodesy and Cartography Head Office; the Independent Directorate of Local Governance; the Afghan Land Consulting Organization; the Afghan Land and Capacity Building Organization; and the Cooperation for Reconstruction of Afghanistan.

<sup>21</sup> In 2010, USAID planned for the program to cost \$140 million over 5 years. However, on January 30, 2011, under a competitive bid, USAID awarded the LARA contract and estimated that the program would last 36 months and cost approximately \$69.2 million. In December 2012, USAID reduced LARA's budget and scope as a result of a cut to USAID/Afghanistan's budget. In response to the budget cut, USAID/Afghanistan reduced the program's scope. For example, activities in the first component were to be implemented in one province instead of the five initially planned. Training

## USAID Requirements and Guidance for Managing Contracts, Measuring Program Performance, and Conducting Sustainability Assessments of Program Activities

The Federal Acquisition Regulation (FAR) requires U.S. government agencies, including USAID, to clearly define their requirements when contracting for services,<sup>22</sup> safeguard the interests of the United States in their contractual relationships,<sup>23</sup> and perform contract quality assurance “as may be necessary to determine that the supplies or services conform to contract requirements.”<sup>24</sup> The FAR also requires contracting officers to designate contracting officer’s representatives (COR)<sup>25</sup> to “assist in the technical monitoring or administration of a contract,” including maintaining contract files documenting “actions taken in accordance with the delegation of authority” from the contracting officer.<sup>26</sup>

USAID also has agency guidance for measuring the performance of its programs and contractors. For example, USAID’s Automated Directives System (ADS) Chapter 200, “Introduction to Programming Policy,” recommends that the agency’s missions plan how they will systematically monitor and evaluate programs’ progress toward meeting their intended results, regularly monitor their achievements, and collect and analyze performance information to track progress toward the planned results, through the use of, for example, performance monitoring plans and quarterly and annual performance reports.<sup>27</sup>

USAID also has guidance to conduct assessments on certain programs throughout their implementation to help ensure they are sustainable. The Consolidated Appropriations Act, 2012, states that fiscal year 2012 funds appropriated for the Economic Support Fund, which USAID used to fund the LARA program, could not be obligated for assistance for the Afghan government “until the Secretary of State, in consultation with the [USAID] Administrator, certifies to the Committees on Appropriations that – (A) The funds will be used to design and support programs in accordance with the June 2011 *Administrator’s Sustainability Guidance for USAID in Afghanistan*.”<sup>28</sup> This sustainability guidance applies to LARA and states that “if our [USAID’s] work establishes recurrent costs, then we [USAID] must determine with our Afghan partners and other donors whether they will have the interest and resources, amongst many competing demands and decreasing resources, to maintain the investment over time, so that it is sustainable.”<sup>29</sup>

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activities in the capacity-building component were decreased from being implemented in multiple private organizations and government agencies to a smaller group of government agencies, focusing mainly on Arazi. When we asked USAID officials for an explanation of the budget cut, the agency in technical comments to our report stated that in December 2012, “most Governmental agencies were asked to make voluntary budget cuts. USAID honored this request and made across the board cuts in Afghanistan, to include the budgets of multiple Economic Growth activities including LARA, in order to fund many of the important infrastructure projects in Afghanistan.”

<sup>22</sup> FAR 37.503.

<sup>23</sup> FAR 1.602-2.

<sup>24</sup> FAR 46.401.

<sup>25</sup> This is done unless the contracting officer retains and executes the COR duties.

<sup>26</sup> FAR Subpart 1.6.

<sup>27</sup> USAID, ADS Chapter 200.3.5.5, “Evaluation and Monitoring,” effective January 17, 2012. Prior to the 2012 update to ADS Chapter 200, the agency’s *USAID 2011 Evaluation Policy* highlights the importance of measuring and documenting project achievements, using performance monitoring of indicators, collecting and analyzing performance information to track progress toward planned results, and using performance information to influence decision making and resource allocation.

<sup>28</sup> Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, § 7046(a)(1)(A), 125 Stat. 786, 1234 (2011). This limitation applies to planned and ongoing programs, such as LARA, that were supported by appropriations made to the Economic Support Fund for fiscal year 2012.

<sup>29</sup> USAID, *Administrator’s Sustainability Guidance for USAID in Afghanistan*, June 2011.

## USAID DID NOT FULLY MEASURE THE LARA PROGRAM'S PERFORMANCE

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USAID was unable to fully measure the program's performance because of (1) delays by Tetra Tech ARD in submitting and in USAID approving key performance monitoring and evaluation documentation; (2) neither USAID nor Tetra Tech ARD reported on some key performance indicators established in LARA's performance monitoring plan; and (3) Tetra Tech ARD did not consistently monitor or report on program performance. Because USAID did not fully measure LARA's performance during or after implementation, the agency cannot fully establish whether LARA achieved its goals and objectives, or what impact the \$41.2 million program had on improving land administration in Afghanistan.

USAID guidance and the LARA contract required USAID and Tetra Tech ARD to measure program performance during the program's implementation. ADS 200.3.5.5, "Evaluation and Monitoring," recommends that USAID missions "plan how they will systematically monitor and evaluate the progress of programs toward meeting their intended results," "monitor the achievements of the programs regularly," and "collect and analyze performance information to track progress toward the planned results," through, for example, periodic quarterly and annual performance reports.<sup>30</sup> In addition, ADS 203.3.2, "Performance Monitoring," stated that performance indicators, such as those in a performance monitoring or measurement plan, "are the basis for observing progress and measuring actual results compared to expected results."<sup>31</sup> It further stated, "data for performance indicators are collected periodically and analyzed in order to inform judgments about the characteristics and outcomes of programs and projects as a basis to improve effectiveness, and/or inform decisions about current and future programming."<sup>32</sup>

Delays in Tetra Tech ARD submitting and USAID approving key performance monitoring and evaluation documentation limited USAID's ability to assess the program's performance. Specifically, Tetra Tech ARD submitted an approved performance monitoring plan in February 2012, more than a year after the contract was awarded and 11 months after it was due. As a result, USAID and Tetra Tech ARD did not collect detailed information on LARA's performance and progress during its first year. In addition, USAID did not approve Tetra Tech ARD's first annual work plan until November 8, 2011, more than 11 months after the contract was awarded and 9 months after it was due to the agency.<sup>33</sup> As a result of these delays, USAID and Tetra Tech ARD did not have a detailed plan for how the contractor would accomplish the program's requirements or achieve its goals and objectives for almost the entire first year of implementation. Previous Checchi and Company Consulting Inc. evaluations of LARA confirm these delays. Tetra Tech ARD staff and USAID officials both acknowledged the delays, but they could not explain why they occurred.

USAID and Tetra Tech ARD did not report on 6 of the 35 performance indicators established in LARA's performance monitoring plan.<sup>34</sup> USAID Mission Order 203.02, "Mission Order on Monitoring and Evaluation," states that USAID should "ensure that a project's Final Report includes an internal assessment of project performance and details final results of the indicators in the project's PMP [performance monitoring plan] in order to inform program management and decision making, as well as provide feedback and lessons learned

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<sup>30</sup> USAID, ADS Chapter 200.3.5.5, "Evaluation and Monitoring," effective January 17, 2012.

<sup>31</sup> USAID, ADS Chapter 203.3.2, "Assessing and Learning, Performance Monitoring," effective November 2, 2012.

<sup>32</sup> In October 2016, we briefed USAID on the results of our audit. During that meeting, agency officials stated that "the new ADS 201, and previously ADS 203, both represent the definitive policy reference for Agency monitoring and evaluation requirements." At the time the LARA program was being implemented, ADS 203.3.2, dated November 2, 2012, still applied as referenced.

<sup>33</sup> USAID uses the terms annual work plan and project work plan interchangeably in the original contract description. LARA's work plans were divided into two periods: (1) the original 18-month contract and (2) the 18-month contract option period.

<sup>34</sup> Appendix II has a description of the 35 indicators and their status.

to improve performance and learning.”<sup>35</sup> The six unreported indicators included the “percentage of surveyed Afghan community members that report satisfaction with land tenure security in targeted informal settlement communities” and the “percentage increase of surveyed Afghans that report satisfactory land service delivery by the Makhzan [local Afghan repository of deeds].” The six indicators were important because they helped measure the extent to which LARA increased the sense of satisfaction that Afghan citizens had when working with the Afghan government on land rights. By not measuring and reporting on all of the performance monitoring plan’s performance indicators, USAID did not have the information it needed to make decisions, properly allocate resources, gather lessons learned, and adapt LARA to achieve its goals and objectives. Because the program ended in November 2014 and USAID closed the contract without fully measuring the contractor’s performance in meeting program goals and objectives, the opportunity to measure and understand any gains for those indicators has passed.

Tetra Tech ARD and USAID measured the remaining 29 indicators in the final report and reported mixed results in LARA’s three main components, stating that they met targets for 23 indicators, missed targets for 4, and modified 2. For example, they reported program achievements in meeting indicators such as “number of policy and procedural reforms improving tenure security for informal settlers,” “enhancing revenue collection capabilities,” and “Land Management Law improvements agreed and drafted by the government,” while missing indicator targets such as “number of community upgrade development plans approved” and “number of private sector firms bidding on donor-funded requests for application.” The four missed indicators’ targets measured progress in LARA’s components to improve the legal environment for land reform efforts and to build capacity within the Afghan government.

ADS Chapter 203.3.10, “Changing Performance Indicators,” advises USAID to be “cautious about changing performance indicators because it compromises the comparability of performance data over time.”<sup>36</sup> Despite this, USAID and Tetra Tech ARD modified 2 of the 29 LARA indicators in December 2012; and therefore, potentially compromised the comparability of the performance data.<sup>37</sup> We could not determine whether these 2 modified indicators were fully measured or met. We determined that Tetra Tech ARD partially met the target for one of the modified indicators because the contractor created an IT system, but it was not operational. We could not determine whether Tetra Tech ARD met the target for the second modified indicator because the unit of measurement changed from “number of people” to “percentage increase.”

Finally, Tetra Tech ARD did not consistently report on program performance. USAID did not produce its own reports evaluating LARA’s performance and instead relied on Tetra Tech ARD and evaluations performed by Ernst & Young and Checchi and Company Consulting Inc.<sup>38</sup> Ernst & Young and Checchi previously reported, and we also found, that Tetra Tech ARD did not monitor or report on LARA’s progress consistently, as ADS 200 guidance recommends.<sup>39</sup> For example, in its November 2014 evaluation, Checchi reported that it could not fully assess the LARA program because of limited or no access to contractor records, which, according to Tetra Tech ARD, were in transit to the company’s headquarters in Burlington, VT. We reviewed the records at that office in September 2015 and found that some records, such as contractor training manuals, training records,

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<sup>35</sup> USAID, Mission Order 203.02, “Mission Order on Monitoring and Evaluation,” October 24, 2012.

<sup>36</sup> USAID, ADS Chapter 203.3.10, “Changing Performance Indicators,” effective November 2, 2012.

<sup>37</sup> The two performance indicators that were modified are (1) “Service delivery management and monitoring systems established and operational” and (2) “Number of people employed by private sector partners as a result of project activities.”

<sup>38</sup> Ernst & Young, *Regulatory Compliance (Vetting and Procurement) Review of USAID Afghanistan Awards – Land Reform in Afghanistan (LARA)*, July 2012; Checchi and Company Consulting Inc., *Land Reform in Afghanistan Mid-term Evaluation*, March 2013; and Checchi and Company Consulting Inc., *Land Reform in Afghanistan Final Performance Evaluation*, November 2014.

<sup>39</sup> USAID, ADS Chapter 200.3.5.5, “Evaluation and Monitoring,” effective January 17, 2012.

and trainee test results that could help measure training impact were still missing, thus reinforcing Checchi's conclusion that the program could not be fully assessed.

## USAID IS MISSING RECORDS ON CONTRACTOR PERFORMANCE AND OVERSIGHT

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USAID was missing some records on Tetra Tech ARD's performance and USAID's contractor oversight. While we were able to obtain some of these records on our own, the fact that USAID did not have the information raises questions as to whether or not the agency appropriately monitored the contractor's performance during implementation.

To facilitate the monitoring and evaluation of the program, the LARA contract contained nine "deliverables" including the performance monitoring plan, periodic status reports, and a final contractor report. USAID did not have complete LARA contract records for three deliverables requiring Tetra Tech to produce periodic performance reports to USAID. Specifically, it did not have weekly reports for 84 of the 195 weeks LARA was active, quarterly reports for 3 of the 16 quarters, or 26 of the 39 required short-term consultant reports.<sup>40</sup> USAID contracting officials could not explain to us why the records were missing. Without these reports, USAID was missing the equivalent of nearly a year's worth of quarterly reports and more than a year and a half's worth of weekly reports that would have provided updates and information on how LARA was performing. We were able to determine that Tetra Tech ARD completed most of the periodic performance reports USAID was missing—the quarterly reports and the short-term consultant reports—after following up with Tetra Tech ARD staff. After this additional work, we were able to determine that the contractor completed 8 of 9 deliverables. USAID's lack of records raises questions as to whether or not USAID had this information during LARA's implementation or used it to measure and adjust the program's activities to ensure goals and objectives were being met. Table 1 lists the LARA contract deliverables and whether Tetra Tech ARD completed them.

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<sup>40</sup> As part of the LARA contract, Tetra Tech ARD hired subject matter expert consultants to conduct various trainings for Arazi and Afghan government officials throughout the program, and documented the "consultancy" through short-term consultant reports. According to the contract, short-term consultant reports are brief written reports that describe the purpose of the consultancy, progress made, and any observations to be shared; identify issues and problems encountered; and detail expected follow-on activities by resident contractor staff, as well as actions to be performed by participating counterparts.

**Table 1 - LARA Contract Deliverables**

Contract Deliverable	Deliverable Description	Completed
1. Performance Monitoring Plan <sup>a</sup>	This will establish a plan to monitor and report on progress the LARA program made with respect to established indicators, baselines, and targets, and will be submitted with the first annual work plan for USAID's approval within the first 60 days after award, or by March 28, 2011.	Yes, but after the required completion date.
2. Revised Performance Monitoring Plan - Modification 5	The revised plan will establish a plan to monitor and report on progress the program made for the option period of the contract and the revised work plan. <sup>b</sup>	Yes
3. Annual Work Plan	The contractor will prepare this plan to direct the activities that will contribute toward the program goal, and the contractor will provide the plan no later than 4 weeks after the start of the program, or by February 25, 2011.	Yes, but after the required completion date.
4. Weekly Status Reports	These provide weekly updates on program performance.	Not completed. Tetra Tech ARD did not submit 28 reports and could not provide evidence of USAID's approval to not submit them. <sup>c</sup>
5. Quarterly Performance Reports	The contractor must provide information that demonstrates the impact the program has had during each quarter.	Yes
6. Annual Reports	The contractor must provide a report for each year of the program, capturing results and measuring against the performance monitoring plan.	Yes
7. Short-Term Consultant Reports	The contractor will submit a brief written report that summarizes the purpose and results of its consulting services.	Yes
8. Closeout Plan	The contractor must provide a plan for closing out the program's property, operations, and reports.	Yes
9. Final Report	The contractor will submit a detailed final report that summarizes the program's accomplishments and impacts in relation to the expected results and the performance monitoring plan, and recommendations regarding future and unfinished work.	Yes

Source: SIGAR analysis of USAID and Tetra Tech ARD data

<sup>a</sup> USAID's approved performance monitoring plan states, "The term 'performance management' is considered to be synonymous with 'performance monitoring,' but reflects terminology used in the USAID Performance Management Toolkit and in USAID ADS 200."

<sup>b</sup> The option period consisted of an additional 18-month period of performance, which USAID exercised based on Tetra Tech ARD's performance during the initial 18 months.

<sup>c</sup> According to Tetra Tech ARD, it did not complete the missing 28 weekly reports with USAID's approval because of holidays, reduced work weeks, or staff being out of the office. In some cases, the weekly reporting was discussed through e-mail or telephone with USAID staff but was not documented.

While USAID provided records and evidence of oversight it performed of LARA from August 2011 through September 2013, it did not provide documentation for oversight it should have performed from September 2013 through November 2014. This apparent gap in oversight accounted for more than a year—or over a quarter of the contract. The FAR requires contracting officers to designate CORs to assist in the contract activities, unless the contracting officer retains and executes the COR duties.<sup>41</sup> The FAR also requires agencies to directly manage and oversee the administration of their contracts,<sup>42</sup> and follow an effective quality assurance and monitoring process.<sup>43</sup> ADS 202 further instructs USAID missions to conduct oversight of contract implementation, by, for example, reviewing contractor reports and conducting site visits, to determine

<sup>41</sup> FAR 42.3.

<sup>42</sup> FAR 37.504.

<sup>43</sup> FAR 46.401.

that the contractor has completed work in accordance with the terms of the contract, and maintain a work file documenting performance reports and program variations and problems.<sup>44</sup> Additionally, the FAR requires that CORs maintain complete records in their files that document their activities and any significant decisions made during contract execution.<sup>45</sup> For example, in accordance with the FAR, contracting officers should formally designate CORs in writing with appointment letters and document that they received training to oversee the LARA contract. According to the COR's appointment letter, the COR files should have (1) a copy of all correspondence between the COR and the contractor, including property reports; (2) a copy of records of COR inspections and receiving/acceptance documents, invoices, and other administrative paperwork and correspondence; and (3) documentation of any other actions the COR takes in accordance with this delegation of authority.<sup>46</sup> All of these contractor oversight records help provide USAID reasonable assurance that the contractor has implemented the contract appropriately. However, inadequate files affect the CORs, and successive CORs', ability to manage and oversee the contract.

From September 2013 through the end of the contract in November 2014, USAID did not have any documentary evidence of these types of oversight records, such as USAID site visit reports for training conducted or records of meetings with Tetra Tech ARD staff. Furthermore, USAID did not have an explanation for this lack of documentation, and the CORs in charge of the oversight during this time were no longer employed by the agency.<sup>47</sup> Without complete records for the LARA contract, USAID cannot demonstrate that it fully performed its required oversight of Tetra Tech ARD or, just as importantly, cannot confirm that the contractor met the terms of the \$41.2 million LARA contract.

## USAID DID NOT FULLY ASSESS THE SUSTAINABILITY OF LARA

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While USAID did not have complete records on Tetra Tech ARD's performance, the agency did have some information on the LARA program's achievements. However, these achievements are at risk because USAID did not assess the sustainability of key elements of the LARA program in areas key to transitioning ownership to the Afghan government.

USAID's own guidance, which it is legislatively mandated to follow, requires the agency to conduct sustainability assessments on programs throughout their implementation in order to help ensure they are sustainable once they are transferred to a host nation government.<sup>48</sup> The 2011 *Administrator's Sustainability Guidance for USAID in Afghanistan*, which applies to LARA, states that "if our [USAID's] work establishes recurrent costs, then we [USAID] must determine with our Afghan partners and other donors whether they will have the interest and resources, amongst many competing demands and decreasing resources, to maintain the investment over time, so that it is sustainable."<sup>49</sup> According to USAID's 2011 guidance, sustainability

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<sup>44</sup> USAID, ADS Chapter 202, "Achieving," effective January 25, 2012.

<sup>45</sup> FAR 1.604.

<sup>46</sup> USAID, ADS Chapter 203, "Assessing and Learning," effective September 1, 2008.

<sup>47</sup> Although we were unable to interview the CORs for this period of the program, we interviewed the alternate COR, and he had no explanation for why the COR records were missing.

<sup>48</sup> As previously stated, the Consolidated Appropriations Act, 2012, states that fiscal year 2012 funds appropriated for the Economic Support Fund, which USAID used to fund the LARA program, could not be obligated for assistance for the Afghan government "until the Secretary of State, in consultation with the [USAID] Administrator, certifies to the Committees on Appropriations that — (A) The funds will be used to design and support programs in accordance with the June 2011 Administrator's Sustainability Guidance for USAID in Afghanistan." (See Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, § 7046(a)(1)(A), 125 Stat. 786, 1234 (2011). This limitation applies to planned and ongoing programs, such as LARA, that were supported by appropriations made to the Economic Support Fund for fiscal year 2012.)

<sup>49</sup> USAID, *Administrator's Sustainability Guidance for USAID in Afghanistan*, June 2011.

assessments are important to ensure that its development efforts focus on critical priorities to achieve the goals of stability, economic growth, and increased Afghan confidence in the government.

USAID and Tetra Tech ARD reported some achievements in addressing LARA's three major components—formalization, legal reform, and capacity building. According to Tetra Tech ARD's periodic reports, its effort to formalize and upgrade informal settlements in Jalalabad, Nangarhar province, was a readily adaptable model that could be used in the majority of the informal settlements in every large city of Afghanistan. For legal reform, Tetra Tech ARD reported that its efforts to revise the drafts of the Land Management Law and Land Acquisition Law resulted in proposed laws being submitted by Arazi to the Afghan Parliament for adoption. For capacity building, Tetra Tech ARD reported training more than 4,700 Afghan government officials and private-sector staff in technical and organizational development, land law procedures, land rights, and using land survey equipment.

We found that USAID and Tetra Tech ARD designed LARA to consider some elements of sustainability and to address some sustainment objectives. For example, the contract had detailed sustainment plans for formalizing and upgrading informal settlements; contract language that stated legal reforms will be embedded within institutions, especially training institutions to ensure sustainability; and a capacity-building objective that included management training, IT systems installation and related training, and “train the trainer” efforts that were intended to enable Arazi and other Afghan ministries to sustain program activities after LARA ended.<sup>50</sup>

However, USAID did not fully address other requirements in the 2011 sustainability guidance, such as that sustainability assessments include an “examination, both immediate and ongoing, of all USAID Mission for Afghanistan projects against the principles of 1) Afghan ownership and capacity; 2) their contribution to transition and confidence; and 3) cost effectiveness and program effectiveness.” USAID completed an initial sustainability assessment in June 2012 of all of its programs in Afghanistan, in which it stated that LARA “most closely emulate[s] the standards that USAID seeks to promote in all of its programming” about sustainability.<sup>51</sup> However, this analysis primarily addressed whether LARA's overall program design met agency sustainability standards and did not discuss whether the Afghan government could sustain ongoing program efforts, as required by the 2011 guidance. Moreover, USAID did not conduct subsequent, sustainability assessments that address all the requirements in the 2011 sustainability guidance for LARA between June 2012 to the close of the program in November 2014, which amounted to a majority of the program's implementation period. In its January 2017 response to our draft report, USAID/Afghanistan stated that Checchi's November 2014 final performance evaluation of LARA, completed upon the program's conclusion, represented the agency's sustainability assessment, in accordance with the June 2011 *Administrator's Sustainability Guidance for USAID in Afghanistan*.<sup>52</sup> However, we maintain that USAID did not fully address the requirements in the 2011 sustainability guidance. For example, the 2014 final performance evaluation does not provide an “examination, both immediate and ongoing” of the LARA program's “cost effectiveness and program effectiveness” and does not “estimate all recurrent costs [for LARA] required to maintain the services, infrastructure, and institutions, as well as ongoing capacity building investments...[and/or] Develop plans in partnership with GIRoA [Government of the Islamic Republic of Afghanistan], and other donors to ensure such costs are priorities and are within budgets in a scarce resource environment,” all of which the guidance

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<sup>50</sup> Based on our analysis and interviews, we found that Tetra Tech ARD produced several documents aimed at sustaining LARA efforts, such as an Arazi IT operations sustainability plan, a private sector needs assessment, an Arazi institutional core competencies framework, and an informal settlement upgrading handbook. In addition, LARA's initial 2011 work plan described upgrading Afghan government strategies and plans, improving legal frameworks for urban planning, increasing ministerial revenues, and reforming processes related to land rights and record keeping.

<sup>51</sup> USAID, *USAID/Afghanistan Sustainability Report, Part 1*, June 2012.

<sup>52</sup> Checchi and Company Consulting Inc., *Land Reform in Afghanistan Final Performance Evaluation*, November 2014.

requires.<sup>53</sup> Without such assessments, the U.S. government has less insight into whether the reported achievements associated with its \$41.2 million investment in land reform can be maintained.

## CHALLENGES THREATEN THE SUSTAINABILITY OF USAID'S LAND REFORM EFFORTS, INCLUDING ACTIVITIES COMPLETED UNDER LARA

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USAID officials, Tetra Tech ARD, and Afghan government officials told us that systemic challenges in land reform affected LARA during its implementation and pose a threat to sustaining the program's activities. The sustainability of the program's legal reform and capacity-building efforts, such as the establishment of land management IT systems, are particularly threatened. The challenges include (1) political and judicial corruption; (2) an underdeveloped legal system and lack of enforcement mechanisms to support land laws and property rights; and (3) a lack of Afghan government technical capacity, including the ability to use land administration IT systems. Currently, the U.S. government does not have any programs planned to continue to support land reform in Afghanistan, placing the onus solely on the Afghan government to address these problems.

### Political and Judicial Corruption Prevent Land Reform Efforts from Being Sustained

We found that endemic corruption remains a significant obstacle to land reform. Both the MEC report and a senior Arazi official told us that private citizens and many current and former members of the Afghan government, including judges, ministers, and parliamentarians, have stolen public and private land, or have been involved in facilitating corruption and fraud in the land titling process.<sup>54</sup> Land reform experts, senior Afghan officials with Arazi and the Independent Directorate of Local Governance, and a U.S. official in the Department of State's Office of the Special Representative for Afghanistan and Pakistan told us that because many powerful Afghans, such as warlords and government officials, have connections to the Afghan Parliament and the judiciary, the government has had little incentive to tackle corruption or enact new anti-land theft legislation developed with LARA support. A senior Arazi official said approximately 60 percent of all corruption in the Afghan judiciary involves land ownership.

The 2014 MEC report states that land grabbing remains rampant and the government has lacked the political will over the past decade to address corruption, land theft, and land reform.<sup>55</sup> In addition, Tetra Tech ARD officials told us that while a few Afghan officials they worked with on LARA were highly receptive to reform, many other officials, including some at the Supreme Court, lacked the will to implement and sustain the technical changes the contractor proposed to prevent corruption.

Senior Afghan officials with Arazi and the Independent Directorate of Local Governance told us the focus on land reform at various levels of the government is increasing. They pointed to support for land reform and fighting corruption from the Afghan President and some ministers, including frequent discussion of land reform issues in cabinet-level meetings with the President. However, none of the Afghan officials we met with provided specific examples of key actions taken to counter the challenges political and judicial corruption pose for land reform efforts.

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<sup>53</sup> USAID, *Administrator's Sustainability Guidance for USAID in Afghanistan*, June 2011.

<sup>54</sup> Independent Joint Anti-Corruption Monitoring and Evaluation Committee, *Report of the Public Inquiry into Land Usurpation*, November 2014.

<sup>55</sup> Independent Joint Anti-Corruption Monitoring and Evaluation Committee, *Report of the Public Inquiry into Land Usurpation*, November 2014.

## Afghan Legal System Is Underdeveloped and Has Weak Enforcement Mechanisms to Support Land Laws and Property Rights

The Department of State's June 2015 *Afghanistan Climate Statement* report lists obstacles to growth in Afghanistan, including "underdeveloped and irregularly implemented" legal and regulatory frameworks and enforcement mechanisms that are plagued by corruption, bureaucratic delays, anticompetitive behaviors aided by wealth and social connections, and weak property-rights protection; lack of capacity within commercial courts; and corruption.<sup>56</sup> Similarly, a 2014 U.S. Institute of Peace report on land titling in Kunduz province found that Afghan citizens viewed the institutions responsible for land titling and managing land conflicts as having performed poorly on land administration and records management. As a result of these systemic deficiencies, Afghan citizens—such as those not possessing formal proof of ownership to land from Afghan courts—have sought recourse from "informal" approaches to recording land ownership, such as acquiring customary documents provided by a shura, which are widely used yet not legally binding under constitutional law.

Afghanistan's underdeveloped legal system places past efforts by the LARA program to develop the Afghan government's land administration capacity and enact land rights legislation at risk of quickly being undone. For example, according to Tetra Tech ARD and Afghan officials, the program helped the Afghan government develop two draft laws on improving urban planning and regulating land use. However, to date, the Parliament has not enacted those laws. In addition, according to the 2015 *Afghanistan Climate Statement*, some enforcement mechanisms, such as "government officials [who] levy unofficial taxes and inflict bureaucratic delays in order to engage in corrupt practices," jeopardize land laws and continue to threaten LARA's efforts to improve the protection of current property rights, such as women's inheritance rights. According to an Afghan official in the Independent Directorate of Local Governance, the Afghan government is now discussing how to create revenue through tax and penalties for stolen land, in particular the land stolen by warlords who are not developing the land. However, it will be difficult for the Afghan government to collect from the warlords due to corruption and delays within enforcement mechanisms.

## Afghan Government Officials Working in Land-Related Ministries Lack Technical Capacity, Hampering Their Ability to Use IT Systems Established under LARA

As part of the LARA contract, Tetra Tech ARD and one of its subcontractors, Thomson Reuters, developed the \$2.8 million Arazi Land Records Management Information System (ALRMIS) to increase transparency and security of land records. However, an Arazi official and Tetra Tech ARD contractors working on LARA told us that Arazi officials lack the technical ability to use land registration IT systems established by the program.<sup>57</sup> Specifically, they told us that ALRMIS was no longer in use, and Arazi did not have plans to use it in the future. Arazi officials said ALRMIS was "too complicated" and not properly designed to meet the needs of the Afghan staff who have low technical capacity and knowledge of IT systems and software. For example, Arazi staff could not fix small errors they encountered in the software without technical assistance. Additionally, an Arazi official said the agency could not afford to maintain the system. Despite conducting training on how to use ALRMIS, Tetra Tech ARD and Thomson Reuters' management agreed that Afghan officials still lacked the technical capacity to use the system.

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<sup>56</sup> Department of State, *Afghanistan Investment Climate Statement*, June 2015.

<sup>57</sup> The purpose of IT systems, such as ALRMIS, is to provide a land administration IT platform that provides increased transparency and security of property records, reduces opportunities for administrative corruption, contributes to the streamlining of procedures and processes, and enables increased government revenue collection and management from the land sector.

Additionally, an Arazi official told us the agency would like an assessment to determine whether ALRMIS can be modified or another system should be created in the future to better meet the needs and capabilities of Arazi staff. Arazi also has plans to help address the challenge of low technical capacity in the land sector by creating an Institute for Land Administration, with a goal of establishing a 2-year program for land administration and reform in Kabul and other regions of the country. In addition, many employees who worked on LARA and its predecessor, the Land Titling and Economic Restructuring in Afghanistan program, have joined Arazi and other land-related ministries, boosting their technical capacity. However, an Arazi official said they have not yet identified funding to support future IT efforts.

Although USAID is funding projects related to and supporting land issues, such as the Strong Hubs for Afghan Hope and Resilience project, USAID and U.S. Embassy in Kabul officials told us they do not have any current or future programs that specifically focus on land reform.<sup>58</sup> Therefore, it remains to be seen whether the U.S. government will continue to assist the Afghan government with addressing land reform sustainment challenges in the future.

## CONCLUSION

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USAID has supported land reform in Afghanistan on the basis that it will help promote economic growth and help secure the rights of Afghans to inherit and own land. From January 2011 through November 2014, USAID implemented LARA to support land reform efforts, including helping the Afghan government map plots of land to show ownership and value, and establishing laws to identify, manage, and obtain revenue from government lands. However, USAID does not know the full extent to which LARA achieved its goals and objectives. USAID's incomplete effort in assessing LARA's performance leaves the agency without a sound basis to fully determine its return on a \$41.2 million investment.

Although the U.S. government does not have any plans to undertake future land reform programs in Afghanistan, its work under LARA remains unfinished and the funds spent on that program may end up being wasted, given that USAID did not follow all of its legislative and internal requirements for conducting sustainability assessments during the implementation and at the conclusion of the LARA program. Although we recognize the difficulties in conducting sustainability assessments in Afghanistan, the assessments would not only give USAID a better understanding of the outcomes, impact, and lessons learned from its efforts, but would also help determine whether the Afghan government will continue LARA's stated achievements in land reform.

## RECOMMENDATIONS

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To better understand the impact of the LARA program on land reform efforts in Afghanistan, SIGAR recommends that the USAID Administrator:

- 1. In accordance with all of the requirements of the June 2011 *Administrator's Sustainability Guidance for USAID in Afghanistan*, conduct a final sustainability assessment of the LARA program to fully determine whether sufficient capacity exists for the Afghan government to sustain the program's achievements, and provide the results to the Afghan government.**

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<sup>58</sup> The objective of the \$38 million Strong Hubs for Afghan Hope and Resilience project is to create well-governed, fiscally sustainable Afghan municipalities capable of meeting the needs of a growing urban population.

## AGENCY COMMENTS

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We provided a draft of this report to USAID for review and comment. USAID/Afghanistan provided written comments, which are reproduced in appendix IV.

USAID did not concur with our recommendation. USAID stated that it believes its contractor’s—Checchi and Company Consulting Inc.—November 2014 final performance evaluation of LARA “sufficiently provides recommendations for improving the Afghan institution’s capacity to sustain the LARA Project achievements.” USAID further stated that this final performance evaluation is evidence that USAID conducted “subsequent sustainability assessments of LARA between June 2012 to the close of the program in November 2014” and requested we remove a sentence in our draft audit report that states otherwise. USAID also broadly summarized Checchi’s recommendations for the Afghan government and stated that Arazi has increased its annual revenue stream, “provided support to the private sector and contributed to a decrease in land-grabbing.” USAID also noted that the “Cabinet” approved Afghanistan’s National Land Management Law, but it has not yet been enacted.

During the course of our audit, USAID did not provide additional sustainability assessments upon our multiple requests and did not characterize Checchi’s final performance evaluation as a sustainability assessment in response to these requests. Furthermore, during a discussion of our audit findings in October 2016, the agency did not challenge our finding that USAID did not conduct a sustainability assessment between June 2012 and November 2014. Despite this, based on the agency’s comments, provided in January 2017, we reassessed Checchi’s 2014 report to determine if the report meets the 2011 sustainability guidance. This assessment confirmed our finding that USAID did not fully address the requirements of its 2011 sustainability guidance. For example, Checchi’s 2014 final performance evaluation does not provide an “examination, both immediate and ongoing” of the LARA program’s “cost effectiveness and program effectiveness,” as required by the guidance. As we already stated, Checchi reported that it could not fully assess the LARA program’s performance—and therefore program effectiveness—because of limited or no access to contractor records. We also determined that the report does not “estimate all recurrent costs [for LARA] required to maintain the services, infrastructure, and institutions, as well as ongoing capacity building investments...[and/or] Develop plans in partnership with GiRoA [Government of the Islamic Republic of Afghanistan], and other donors to ensure such costs are priorities and are within budgets in a scarce resource environment,” which are requirements in the guidance. As such, we maintain that USAID has not fulfilled its 2011 sustainability guidance requirements, thus justifying our recommendation. However, we modified the recommendation to better reflect the need for the agency to meet all of the guidance’s requirements.

## APPENDIX I - SCOPE AND METHODOLOGY

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This audit examined the U.S. Agency for International Development's (USAID) efforts to support land reform efforts in Afghanistan from 2004 through 2014, with a focus on the Land Reform in Afghanistan (LARA) program, implemented by Tetra Tech ARD from January 2011 to November 2014. The objectives of this audit were to determine the extent to which (1) USAID and Tetra Tech ARD measured the LARA program's performance and whether it achieved its goals and objectives; (2) USAID conducted its required oversight of the contract; (3) USAID and Tetra Tech ARD designed and assessed LARA's sustainability; and (4) the challenges USAID, Tetra Tech ARD, and the Afghan government faced threaten the sustainment of U.S. land reform efforts.

For all of the objectives, we interviewed current and former agency officials from the Department of State, USAID, and the U.S. Embassy in Kabul. With respect to the Department of State, we met with officials from the Office of the Special Representative for Afghanistan and Pakistan and the Office of the Coordinating Directorate for U.S. Embassy Kabul. For USAID, we interviewed officials from the Office of Afghanistan and Pakistan Affairs, and the USAID Mission for Afghanistan's Office of Economic Growth and Infrastructure and Office of Acquisition and Assistance. We also interviewed officials from Tetra Tech ARD and Thomson Reuters, one of its subcontractors; Afghan government officials agencies from the Afghan Land Authority, commonly referred to as Arazi, and the Independent Directorate of Local Governance; and nongovernmental organizations' staff from the Afghan Land Consulting Organization and the Afghan Women's Network. Additionally, we interviewed land reform experts that we identified through independent research of land reform and land-related issues in Afghanistan from the Fletcher School at Tufts University and the U.S. Institute of Peace, and the international organization United Nations Human Settlements Programme. We also collected information from these sources through requests for information and additional independent research.

To determine the extent to which USAID and the contractor measured the program's performance and can determine the extent to which the goals and objectives were met, we requested information from USAID and Tetra Tech ARD to identify LARA's goals and objectives, obtain performance documents on the program, and understand how USAID and Tetra Tech ARD assessed performance. We reviewed Tetra Tech ARD's, Ernst & Young's, and Checchi and Company Consulting Inc.'s evaluations of LARA.<sup>59</sup> In addition, we followed up on the findings from Checchi's final performance evaluation to verify Tetra Tech ARD training and workshop records. We assessed USAID and Tetra Tech ARD performance monitoring activities against the Federal Acquisition Regulation (FAR), USAID's Automated Directives System (ADS) Chapter 203, and LARA contract requirements describing how the performance monitoring should be conducted. We also analyzed Tetra Tech ARD's performance monitoring plan and final report to determine the extent to which the contractor measured and reported on all of LARA's performance indicators.

To determine the extent to which USAID completed its required oversight activities of the contractor, we reviewed the LARA contract and contract modifications to identify the list of deliverables that Tetra Tech was required to provide USAID to assess the contractor's level of compliance with the contract and the extent of USAID oversight.<sup>60</sup> For our analysis, we focused on nine deliverables the contractor had to produce to help ensure the LARA program met its objectives. There were two additional deliverables included in the contract,

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<sup>59</sup> Tetra Tech ARD, *Land Reform in Afghanistan (LARA) – Final Report*, November 2014; Ernst & Young, *Regulatory Compliance (Vetting and Procurement) Review of USAID Afghanistan Awards – Land Reform in Afghanistan (LARA)*, July 2012; Checchi and Company Consulting Inc., *Land Reform in Afghanistan Mid-term Evaluation*, March 2013; and Checchi and Company Consulting Inc., *Land Reform in Afghanistan Final Performance Evaluation*, November 2014.

<sup>60</sup> In September 2015, we completed a financial audit of the costs Tetra Tech ARD incurred under the LARA contract. We did not identify any material weaknesses or significant deficiencies in Tetra Tech ARD's internal controls, or instances of noncompliance with the terms and conditions of the contract. As a result, we did not identify any questioned costs or make any recommendations to USAID. See SIGAR, *USAID's Land Reform in Afghanistan Program: Audit of Costs Incurred by Tetra Tech ARD*, SIGAR 15-88-FA, September 28, 2015.

but they were for reporting repetitive information into two different databases USAID used to track program activities. USAID provided us evidence that the contractor met these requirements, but we did not conduct an in-depth analysis of this information because it repeated what was included in the nine deliverables we did review. Therefore, we did not include these two additional deliverables in our analysis. In addition to the reports required in the contract, we used the contracting officer's representative LARA *Activity Tracker*, which USAID developed to identify what deliverables Tetra Tech ARD was to provide to USAID, as required by the contract. We then reviewed USAID documentation explaining or demonstrating the oversight USAID performed of Tetra Tech ARD and compared the evidence against application sections of the FAR, which lays out government contracting requirements for a contractors implementing contracts and the government agency's management and oversight of the contracts, and USAID's ADS, which provides further guidance on contract planning, implementation, performance, and oversight. With respect to the ADS, we specifically referred to Chapter 200, "Introduction to Programming Policy," and Chapter 203, "Assessing and Learning," to understand the extent to which USAID completed required oversight.

To determine the extent to which USAID and the contractor designed and assessed LARA for sustainability, as required, and USAID, the contractor, and the Afghan government identified and overcame challenges to help sustain LARA's efforts to date, we interviewed USAID and Afghan government officials, Tetra Tech ARD contractors, and land reform experts to identify assessments or evaluations regarding the sustainability of LARA and challenges to sustaining LARA efforts and land reform in Afghanistan. We identified LARA contract and USAID requirements for sustaining program activities. We obtained documentation and records from USAID and Tetra Tech ARD regarding their approach to sustainability in the LARA program. Through interviews and document analysis, we determined whether USAID and Tetra Tech ARD met the requirements of the *Administrator's Sustainability Guidance for USAID in Afghanistan, June 2011*. We then determined the extent to which USAID ensured the Afghan government intended to and was prepared to sustain LARA's efforts through document analysis and interviews with Tetra Tech ARD, USAID, and Afghan government officials. Finally, we identified the challenges USAID and Tetra Tech ARD reported in conducting and sustaining LARA program efforts, and assessed if and how USAID and Tetra Tech ARD have addressed those challenges.

We utilized some computer-processed data from USAID to identify the programs the agency implemented from 2004 through 2014 that supported land reform efforts in Afghanistan. We determined the data was sufficiently reliable for the purposes of this audit by corroborating information USAID provided us with other sources, such as the contract and modifications, and interviews with agency officials. We also assessed internal controls to determine the extent to which the agencies had systems in place to oversee and report on their efforts specifically supporting the land reform efforts in Afghanistan. The results of our assessment are included in the body of the report.

We conducted our work in Kabul, Afghanistan; Burlington, VT; and Washington, D.C., from May 2015 through February 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was performed by SIGAR under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended.

## APPENDIX II - LIST OF ALL LARA PERFORMANCE INDICATORS AND THEIR STATUS

In total, the U.S. Agency for International Development (USAID) and Tetra Tech ARD identified 35 performance indicators to be monitored, evaluated, and reported on in the final report on the Land Reform in Afghanistan (LARA) program.<sup>61</sup> See table 2 for information on the 29 indicators Tetra Tech ARD reported on in the LARA final report and table 3 for the 6 indicators on which it did not report.

**Table 2 - Description of LARA Performance Indicators Reported on in the LARA Final Report and Their Status**

Performance Indicator Number	Performance Indicator Description (as described in the LARA Performance Monitoring Plan)	Indicator Baseline and Target(s)*	Met Target?
1.0.1	Revenues to the Afghan government from leases of government land (percent increase)	Baseline: \$4.7 million Target: 10 percent above baseline	Yes
1.0.2	Number of policy and procedural reforms improving tenure security for informal settlers, and enhancing revenue collection capabilities	Baseline: 0; Poor existing policies and procedure for land revenue. Target: 3	Yes
1.1.2	Service delivery management and monitoring systems established and operational, such as the Afghan Land Records Management Information System	Baseline: Ministry of Agriculture, Irrigation and Livestock (MAIL)/Arazi lacks a professional system for land management and monitoring Target: Yes	Could not determine <sup>a</sup>
1.2.1	Government/private land dispute mechanism developed and refined	Baseline: N/A; MAIL/Arazi lack specific procedures for land case management. Target: Yes (Land dispute mechanism developed and refined.)	Yes
1.2.2	Number of training courses provided to government and private sector on use of land dispute resolution mechanism	Baseline: 0 Target: 7	Yes
1.2.3	Percent of private sector indicating satisfaction with the dispute resolution mechanism	Baseline: 43 percent Target: 80 percent	Yes
2.0.1	Number of properties paying sanitation/property tax at the municipal level for targeted communities increased	Baseline: 38 percent (2,057 properties) Target: 25 percent above baseline	Yes
2.0.2	Number of properties registered/recorded with municipal registration offices	Baseline: 0 Target: 1,800	Yes
2.1.1	Number of persons trained observed to be using skills gained through training	Baseline: 0 Target: 762	Yes
2.1.2	Number of persons trained in key technical land management skills	Baseline: 0 Target: 375	Yes
2.1.3	Number of urban development guidelines approved	Baseline: 0 Target: 1	Yes
2.2.1	Number of community upgrade development plans approved	Baseline: 0 Target: 3	No
2.2.2	Number of informal settlements upgraded	Baseline: 0 Target: 2	Yes
2.2.3	Urban Steering Committee reestablished and functioning	Baseline: Urban Steering Committee did not exist nor functional Target: Yes (Committee is established and functioning.)	Yes
2.2.4	Number of households that have obtained documented property rights as a result of U.S. government assistance	Baseline: 0 Target: 1,800	Yes
2.3.1	Number of private sector firms and public institutions receiving institutional capacity building training (related to business functions)	Baseline: 0 Target: 40	Yes
2.3.2	Number of private sector firms/public institutions receiving capacity training in land reform-related programs (technical)	Baseline: 0 Target: 20	Yes
2.3.3	Number of private sector/public sector employees trained in Geographic Information Systems and Land Records for formalization support activities	Baseline: 0 Target: 60	Yes

*Continued on the next page*

<sup>61</sup> Tetra Tech ARD's final report on LARA included 35 performance indicators from the contractor's USAID-approved final performance monitoring plan, dated October 2012. However, neither Tetra Tech ARD nor USAID measured six of these indicators.

Performance Indicator Number	Performance Indicator Description (as described in the LARA Performance Monitoring Plan)	Indicator Baseline and Target(s)*	Met Target?
2.3.4	Number of private sector firms bidding on donor-funded requests for application	Baseline: 0 Target: 3	No
2.3.5	Number of people employed by private sector partners as a result of project activities	Baseline: 0 Target: 20 percent above baseline	Could not determine <sup>b</sup>
2.3.6	Number of people trained in organizational development disaggregated by gender	Baseline: 0 Target: 350	Yes
2.3.7	Number of land governance actors receiving U.S. government-funded training or upgraded facilities/equipment	Baseline: 0 Target: 1,480	Yes
2.4.1	Land Management Law improvements agreed and drafted by MAIL (later became Business Climate, Legal & Institutional Reform, or BIZCLIR)	Baseline: The existing land management laws have multiple gaps identified via BIZCLIR Target: 6	Yes
3.1.2	Reduction in number of land transaction steps from the Land Registration and Record-Keeping system implemented to streamline operations	Baseline: 9 Target: 6	No
3.2.1	Number of proposed improvements in laws and regulations affecting property rights of the urban and rural poor enacted with U.S. government assistance	Baseline: The existing property rights related laws, and its procedures have gaps Target: 4	Yes
3.3.1	Number of public information campaigns promoting women's rights to land	Baseline: 0 Target: 4	Yes
3.3.2	Number of public information campaigns targeting Afghan property rights and procedures	Baseline: 0 Target: 3	Yes
3.3.3	Percent of public in targeted areas aware of public information messages related to land management improvements	Baseline: 0 percent Target: 50 percent	Yes
3.3.4	Number student clubs established	Baseline: 0 Target: 3	No
Number of performance indicators reported on in the LARA final report that met their target			23
Number of performance indicators reported on in the LARA final report that did not meet their target			4
Number of performance indicators reported on in the LARA final report that we could not determine met their target			2
Number of performance indicators reported on in the LARA final report			29

Source: SIGAR analysis of information provided by USAID and Tetra Tech ARD

\* We took the baselines and targets from Tetra Tech ARD's final performance monitoring plan, unless the indicator was only noted in the initial performance monitoring plan. In the latter cases, we got the baselines and targets from the original performance monitoring plan.

<sup>a</sup> We were unable to determine whether Tetra Tech ARD met the target because it was partially met. An IT system was developed; however, it was also partially not met because the IT system was not operational.

<sup>b</sup> We could not determine whether Tetra Tech ARD met the target because the unit of measurement changed from number of people to percentage increase.

**Table 3 - Description of LARA Performance Indicators Not Reported on in the LARA Final Report and Their Status**

<b>Performance Indicator Number</b>	<b>Performance Indicator Description (as described in the LARA Performance Monitoring Plan)</b>	<b>Indicator Baseline and Target(s)*</b>	<b>Met Target?</b>
1	Percent of surveyed Afghan community members that report satisfaction with land tenure security in targeted informal settlement communities	Baseline: 56 percent Target: 15 percent above baseline	N/A
1.1.1	Milestone index based on a competency framework for the Ministry of Agriculture, Irrigation and Livestock/Arazi to fulfill its mandate, based on negotiated phased performance standards (milestone index is to be determined and number of milestones is to be assessed during the baseline survey)	Baseline: N/A Target: 10 percent	N/A
3.0.1	Percent increase of surveyed Afghans that report satisfactory land service delivery by the Makhzan	Baseline: 60 percent Target: 30 percent above baseline	N/A
3.0.2	Percent increase of surveyed Afghans that report satisfactory service delivery by Municipality	Baseline: 16 percent Target: 25 percent above baseline	N/A
3.0.3	Percent increase in women's inclusion in new deed registrations and leases/Occupancy Certificates	Baseline: TBD Target: 15 percent above baseline	N/A
3.1.1	Reduction in average time in days from submission of paperwork to issuance of registration/certification documents related to private land and property rights	Baseline: 250 Target: 15 working days	N/A
Number of performance indicators not reported on or measured in the LARA final report			6

Source: SIGAR analysis of information provided by USAID and Tetra Tech ARD

Note: \*Tetra Tech ARD reported in the final report that it did not have final data for these six indicators.

## APPENDIX III - DEFINING TERMS USED IN LAND ADMINISTRATION AND LAND REFORM

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The United States' and other donors' land reform efforts in Afghanistan have sought to address multiple legal, technical, and capacity-building challenges the Afghan government faces in land administration, land tenure, and land rights, as well as building land markets.<sup>62</sup> Figure 1 lists the United Nations' definitions of common land administration and land reform terms.

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### Figure 1 - United Nations Definitions of Commonly Used Terms in Land Administration and Reform

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**Land tenure** [is] an institution, i.e., rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.

**Land administration** [is] the way in which the rules of land tenure are applied and made operational. Land administration, whether formal or informal, comprises an extensive range of systems and processes to administer:

- **Land rights:** the allocation of rights in land; the delimitation of boundaries of parcels for which the rights are allocated; the transfer from one party to another through sale, lease, loan, gift or inheritance; and the adjudication of doubts and disputes regarding rights and parcel boundaries.
- **Land-use rights:** rights of access may have their origin in the use of the land over a long period. They are often rights developed by ancestral occupation and by the use of land by ancestral societies. In such cases, it is through the act of original clearance of the land and settlement by ancestors that rights are claimed.
- **Land-use regulation:** land-use planning and enforcement and the adjudication of land use conflicts.
- **Land valuation and taxation:** the gathering of revenues through forms of land valuation and taxation, and the adjudication of land valuation and taxation disputes.
- **Land registration:** the recording of rights to land in some form of public register. It includes information on the rights, their location, and their holders.

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Source: Food and Agriculture Organization of the United Nations, *Land Tenure and Rural Development*, Chapter 3, "What Is Land Tenure," Rome, 2002.

Note: The definitions reprinted here cover a broad range of activities that fall under land reform efforts. We use the term "land reform" in this report to refer to the U.S. Agency for International Development's efforts, including the redistribution of property rights and land; land administration, for example, surveying land, recording land plots, issuing titles and digitizing records into databases; and land tenure and other legislation related to land rights and land laws.

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<sup>62</sup> U.S. Agency for International Development, *Land Reform in Afghanistan Overview*, December 2013.

## APPENDIX IV - COMMENTS FROM THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

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### MEMORANDUM

**DATE:** January 30, 2017

**TO:** John F. Sopko  
Special Inspector General for  
Afghanistan Reconstruction (SIGAR)

**FROM:** Herbert Smith, Mission Director 

**SUBJECT:** Mission Response to Draft SIGAR Report titled "Land Reform in Afghanistan: Full Impact and Sustainability of \$41.2 Million USAID Program is Unknown", (SIGAR Report 17-XX-AR under Code 108A)

**REF:** SIGAR Transmittal email dated 12/22/2016

USAID thanks SIGAR for the opportunity to comment on the audit of land reform in Afghanistan.

**SIGAR Recommendation:** *In accordance with the June 2011 USAID Administrator's Sustainability Guidance for Afghanistan, conduct a final sustainability assessment of the LARA program to fully determine whether sufficient capacity exists for the Afghan government to sustain the program's achievements, and provide the results to the Afghan government.*

**USAID Comments:** USAID/Afghanistan does not concur with the recommendation and kindly requests that it be withdrawn. The Mission, under USAID Contract AID-306-C-12-00012, Afghanistan Services Under Program and Project Office for Results Tracking Phase II (SUPPORT II), conducted a Final Performance Evaluation<sup>1</sup> of the LARA Project in November 2014. We

<sup>1</sup> "Land reform in Afghanistan (LARA) project: final performance evaluation" (October-November 2014); Checchi and Co. Consulting Inc. Available on the USAID Development Experience Clearinghouse; [http://pdf.usaid.gov/pdf\\_docs/PA00KB6W.pdf](http://pdf.usaid.gov/pdf_docs/PA00KB6W.pdf)

believe this report sufficiently provides recommendations for improving the Afghan institution's capacity to sustain the LARA Project achievements.

Specifically, the Final Performance Evaluation describes how the Afghanistan Independent Land Authority (ARAZI) can maintain resulting land management systems and sustain operations, how the Government of the Islamic Republic of Afghanistan (GIROA) can contribute to the transition of the projects, and articulates detailed programmatic recommendations and guidance, broadly summarized as follows:

- Provide education and training to a core group of professional that will enable the entire 'value chain' of land titling, registration and appraising.
- Enact legislation reforms, policies and regulations that empower and institutionalize ARAZI as the government agency responsible for land records and the arbiter of land disputes.
- Institute a fair, equitable and transparent fee based structure that will help ARAZI maintain a revenue stream that will provide sustainable financing and a degree of autonomy from political pressures.

SIGAR Comment 1

This final report incorporates consultations which were held with a comprehensive set of stakeholders, including ARAZI, the Ministry of Urban Development Affairs, Municipality of Jalalabad, the Independent Directorate of Local Governance, the Ministry of Women's Affairs, and the Afghan Geodesy & Cartography Office.

Further, ARAZI today is a functioning government entity. ARAZI is generating its own annual revenue stream, which has increased from approximately \$255,000 in 2012 to nearly \$3,000,000 today. ARAZI has offices in all 34 provinces, has provided support to the private sector, and has contributed to a decrease in land-grabbing. The Government of Afghanistan has recently taken steps towards enacting the Land Management Law, which addresses occupancy certificates that were previously not in place. The Cabinet approved the Law on December 7, 2016 (see Attachment #1), but it has not yet been enacted.

SIGAR Comment 2

Lastly, page 11 of the draft audit report states that "USAID did not conduct subsequent sustainability assessments of LARA between June 2012 to the close of the program in November 2014." This is incorrect, as evidenced by the Final Performance Evaluation of the LARA project. The absence of certain documentation should not be construed that Mission staff did not execute the

SIGAR Comment 3

required due diligence in overseeing the LARA program. We therefore request that this sentence be removed.

**Attachments:**

1 – ARAZI Cabinet Resolution #19

cc: U.S. Embassy Kabul

## SIGAR Response to USAID Comments

**SIGAR Comment 1.** We reviewed the U.S. Agency for International Development's (USAID) "broadly summarized" programmatic recommendations. However, it is not clear to us what specifically USAID is highlighting and summarizing from Checchi's evaluation or how this addresses the requirements in USAID's 2011 sustainability guidance. Furthermore, the recommendations included in the 2014 evaluation do not address our concerns that a sustainment assessment was fully conducted.

**SIGAR Comment 2.** USAID states that "ARAZI is generating its own annual revenue stream, which has increased..." However, USAID did not explain whether this revenue stream is adequate to fund and sustain Land Reform in Afghanistan (LARA) activities, such as the Arazi Land Records Management Information System (ALRMIS) IT system to ensure the security of land records. Without an assessment of revenues and expenditures, USAID does not know if Arazi can sustain LARA's achievements.

**SIGAR Comment 3.** In response to USAID's comment, we have modified the sentence to say "USAID did not conduct subsequent sustainability assessments that address all of the requirements in the 2011 sustainability guidance for LARA between June 2012 to the close of the program in November 2014, which amounted to a majority of the program's implementation period."

## APPENDIX V - ACKNOWLEDGMENTS

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Eugene Gray, Senior Program Manager

James Smith, Analyst-in-Charge

Michael Graham, Senior Program Analyst

This performance audit was conducted  
under project code SIGAR-108A.

## SIGAR's Mission

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