



USAID
FROM THE AMERICAN PEOPLE

MAR 15 2013

Dr. Arthur B. Keys, Jr.
President & CEO
International Relief and Development
1621 North Kent Street
Fourth Floor
Arlington, VA 22209

Subject: International Relief and Development's (IRD's) Appeal of Agreement Officer's Decision Disallowing Mosque Rehabilitation Costs in Fallujah under Cooperative Agreement No. 267-A-00-06-00503-00, "Community Stabilization Program."

Ref: IRD's Appeal of June 4, 2009

Dear Dr. Keys:

This is the Final Decision by USAID on the referenced Appeal of the Agreement Officer's (AO's) decision. I have reviewed the information submitted with your Appeal and decided to deny your appeal. My decision in this appeal is explained below.

On May 24, 2006, USAID awarded CA-267-A-00-06-00503-00 granting (b)(4) to IRD to provide support to CSP. This is the first of five appeals arising under that cooperative agreement.

As contemplated in the award, IRD collaborated with stakeholders to identify the activities that would become job projects. Through this process, Iraqi representatives identified facilities in need of rehabilitation. These were included in IRD's 2007 work plan, which USAID approved. Among the many projects approved was the "Landscaping, beautification of local mosque."

In 2009, USAID/Iraq requested a description of any community stabilization activities which entailed mosque rehabilitation. When IRD responded, it confirmed that two of its projects had involved work within mosque facilities. The AO did not question costs for adjacent facilities such as community centers, but communicated her intent to disallow costs applied for the rehabilitation of mosques themselves. The AO reasoned that, under the Establishment Clause of the First Amendment, the U.S. Government was prohibited from sponsoring or supporting active involvement in religious activities. She concluded that, because the Establishment Clause also applied to government expenditures in foreign territories, USAID could not provide federal funds to rehabilitate a pervasively sectarian facility, such as a mosque.

Although IRD asserted that the Establishment Clause did not prohibit its activities, ultimately, the AO disallowed (b)(4) spent on mosque rehabilitation. Her final decision emphasized the constitutional issue as the primary reason for the disallowance, but also asserted that the activity may not have been approved by USAID or insufficiently connected to the objectives of the cooperative agreement. IRD timely appealed in June 2009. Your appeal asserts that the mosque

rehabilitation costs were validly incurred in support of an approved program, and no impediment exists to their allowability. It urges that I reject the three bases on which the disallowance was based: that the activity did not support the objectives of the cooperative agreement, that USAID did not approve the activity, and that the federal government could not finance the refurbishment of a primarily religious facility.

I have fully considered each argument, as well as the information IRD included as exhibits. Although I am persuaded that the activity supported the objectives of the cooperative agreement, I concur with the AO that the mosque construction activity lacked USAID approval and that USAID funds may not be applied to refurbish a primarily religious facility.

Your appeal reiterates that IRD referenced mosque activities in the work plan, which the USAID CTO approved. Also, during implementation, IRD included updates on progress in weekly reports. However, what USAID approved in the implementation plan was the “landscaping and beautification” of mosque grounds. Beautification and landscaping are substantially different activities from structural repair. Certainly the change from landscaping to refurbishment relocated the work site itself from the exterior to the inside of the mosque, which triggered the separate issue of support within a religious facility. Moreover, I observe that the AO’s final decision allowed the costs for areas such as gardens and community centers. She disallowed only those costs incurred for work within areas such as the main worship area of the mosque, the Imam’s room, and “the holy place of the mosque.” To the extent that some of IRD’s work was approved “landscaping and beautification,” those costs have already been allowed. I conclude that, though IRD did secure approval for its work plan, the specific activities at issue were not among those approved.

Furthermore, the AO found that, since the federal government was prohibited from supporting active involvement in religious activities, a USAID funded recipient could not provide federal funds to rehabilitate a mosque. Your appeal contends that, although the Establishment Clause applies, IRD may nevertheless use federal funds on the activities at issue. USAID policy provides additional guidance. Under 22 CFR 205.1(d), “USAID funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities.” The costs IRD incurred performing mosque reconstruction activities are precisely the type for which 22 CFR 205.1(d) prohibits USAID financing.

To be allowed under the cooperative agreement, an expense must conform to the federal cost principles. OMB Circular A-122 requires that, to be allowable, a cost must be consistent with policies that apply to all federally-financed and Agency activities. Furthermore, it directs Agencies weighing cost reasonableness to consider the requirements imposed by federal regulations. Because the mosque reconstruction activities were inconsistent with 22 CFR 205.1(d), I find them neither reasonable nor allowable costs. I concur with the AO that the improper application of federal funds to mosque reconstruction activities is a proper grounds for disallowance and decline to overturn her decision.

In my capacity as the Senior Deputy Assistant Administrator, I have fully considered your appeal and the information provided with it. Based on the lack of USAID approval for the activities at issue, together with the prohibition of USAID financing for construction within houses of

worship, I uphold the AO's decision. IRD must repay USAID (b)(4). Per 22 CFR 226.90(d), this decision shall be final.

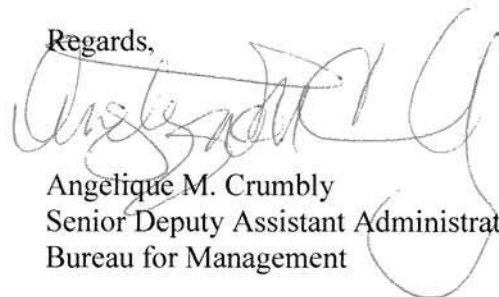
However, I also find that, through no fault of IRD's, this appeal took over three years to resolve. Therefore, I waive the collection of interest that would otherwise have accrued during the pendency of this appeal. Please remit payment of (b)(4) within 30 days of receipt of this decision to:

M/FM/CAR, Cashier
US Agency for International Development
1300 Pennsylvania Ave. NW
SA-44, Room 485C
Washington, DC 20523-7802

Any amounts which remain unpaid beyond that date will bear interest from the payment due date at the rate established by the Secretary of the Treasury, for the period affected, per 31 U.S. Code Section 3717. If payment is not received within 30 days of receipt of this letter, USAID intends to use non-centralized administrative offset to collect the debt plus any additional administrative expenses, if appropriate. If collection cannot be accomplished by offset, then M/FM/A will transfer the debt to the Financial Management Service in the Department of Treasury, which will collect the amount owed to USAID plus Treasury's processing and administrative costs from the debtor. FMS will use all means available to the Federal government for debt collection, including the possibility of referral to the Department of Justice for litigation if the debt cannot be collected. Detailed procedures for collection are contained in 22 CFR 213. IRD has the right to inspect and copy records related to this debt. It has the right to discuss and propose a repayment agreement. Any dispute of the validity of this debt must be conducted under 22 CFR 213. Please include a copy of this letter with your remittance for our financial management section.

Thank you very much for your patience throughout this process. I look forward to our organizations' continued collaboration in the future.

Regards,



Angélique M. Crumbly
Senior Deputy Assistant Administrator
Bureau for Management