



USAID
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FROM THE AMERICAN PEOPLE

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Jeremiah Centrella
Associate General Counsel
Mercy Corps
45 SW Ankeny Street
Portland, OR 97204

Subject: Appeal of Agreement Officer's Decision from Mercy Corps Relating to Fraud in Lebanon Construction Programs

Ref: Mercy Corps' Appeal of July 7, 2008

Dear Mr. Centrella:

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 allow your appeal in part. My decision in this appeal is explained below.

After Mercy Corps received reports of widespread fraud under its program in Lebanon, it investigated, eventually hiring both engineering and accounting firms to evaluate the situation. As it described in correspondence from 2003 to 2005, Mercy Corps concluded that fraud had occurred and began taking corrective action. These responses included terminating several employees, initiating legal proceedings, and introducing internal reviews. Around the same time, Mercy Corps also notified the Agreement Officer (AO), the Mission Director, and the Office of the Inspector General (OIG) of its findings.

The OIG confirmed that Mercy Corps had submitted invoices for (b)(4) associated with the programs; it noted that Mercy Corps' engineering consultant had estimated the cost of the work performed as approximately (b)(4). The investigation report questioned the difference between the two numbers, but took no further formal action.

Throughout 2004 and 2005, USAID and Mercy Corps negotiated the issue of the questioned costs. The AO adopted the engineering report's cost estimate as a fair valuation of the work performed and declared his intention to request refund of the difference between the cost estimate and the invoiced amount. This difference totaled (b)(4).

Mercy Corps argued that it commissioned the engineering consultant to produce a rough estimate to help ascertain whether fraud had occurred; as a result, the engineering consultant's methodology was not designed to yield a precise valuation of the program's cost. Mercy Corps identified seven adjustments to its estimates which, if made, Mercy Corps asserted would more

accurately reflect the program's true expenses. The AO accepted only one of these adjustments, and announced his intention to demand the refund of the remainder.

In June 2005, USAID staff from M/OAA/CAS/CAM (Management Bureau/ Office of Acquisition and Assistance/ Cost, Audit, and Support Division/ Contract Audit Management Branch) contacted Mercy Corps to inform it that, because of the audit involvement, the issue had been transferred to Washington for resolution. M/OAA/CAS/CAM had received and reviewed all documentation compiled to date. However, in light of the ongoing legal proceedings, the auditors were inclined to await the courts' decisions before finalizing the amount owed to USAID as a refund.

In January 2008, the AO issued his final decision. Given the absence of additional information or documentation, he returned to the engineering consultant's report as an estimate of the program costs. Although the AO reiterated his 2005 acceptance of (b)(4) for wastage rates, he disallowed the remainder of the difference between the report's estimate and the vouchered amount. Therefore, the final decision was that Mercy Corps owed USAID (b)(4)

Mercy Corps timely appealed. It proposed that Mercy Corps pay USAID (b)(4) as a direct refund of federal funds. Furthermore, it assured that Mercy Corps would continue to pursue, at its own expense, civil and criminal claims against the former employees, handing over any amounts recovered to USAID. Mercy Corps noted that it had already expended significant amounts pursuing legal action against its former employees.

Nothing further transpired with the appeal until September 2011. During a meeting with M/OAA/COPP (Management Bureau/ Office of Acquisition and Assistance/ Compliance and Oversight of Partner Performance Division), Mercy Corps asked about the outstanding appeal. It explained that further events had transpired since 2008 and inquired whether it could submit additional information for consideration with the appeal. COPP agreed, and invited Mercy Corps to supplement its appeal with the outcome of court proceedings in Lebanon. Its timely submission explained that the former employees had been acquitted, and Mercy Corps had lost civil counterclaims for wrongful termination and defamation.

I have fully considered Mercy Corps' arguments that: 1) it should not be required to refund any additional sums; and 2) that if it must submit a refund, the amount should be reduced from the AO's final decision..

Turning first to Mercy Corps' argument that the disallowance should be overturned in its entirety, I disagree. Although some deference must be paid to foreign courts' findings, the question before the Lebanese courts was not whether any fraud had occurred in the program. Rather, the courts considered whether the accused individuals could be found criminally and civilly liable for that fraud. Although the courts did not find criminal or civil liability, that fact does not undermine the conclusion—with which Mercy Corps agreed until 2011—that fraud had occurred.

As the prime recipient, Mercy Corps remains responsible for the funds entrusted to it, even if it was not Mercy Corps' malfeasance that caused them to be diverted. Under the cooperative

agreement, Mercy Corps was permitted to charge only allowable costs to the USAID program. Though it is difficult to ascertain the precise amount, some portion of USAID funds were applied to fraudulent charges, which cannot be deemed allowable costs. Therefore, I find that Mercy Corps must be required to refund at least some portion of the AO's original disallowance.

Under 22 CFR 213.25, USAID is authorized to compromise a debt owed to it. I am persuaded that, although Mercy Corps must reimburse the Agency, it is proper to adjust the amount demanded. I therefore reduce the AO's demand to (b)(4)—the amount listed in Mercy Corps' appeal, and first offered by Mercy Corps in its May 2008 letter.

Moreover, I find that, through no fault of Mercy Corps, this appeal took almost four years to resolve. Therefore, I hereby waive the calculation of interest that would ordinarily be assessed on an outstanding debt under Treasury and USAID regulations. Instead, action will be taken to recover only the compromised amount of (b)(4).

In my capacity as the Senior Deputy Assistant Administrator, I have fully considered your appeal and the information provided with it. I have decided to overturn in part the AO's previous final decision. Thus, (b)(4) remains owed to the Agency. Per 22 CFR 226.90(d), this decision shall be final.

Please remit payment of (b)(4) within 30 days of receipt of this decision to:

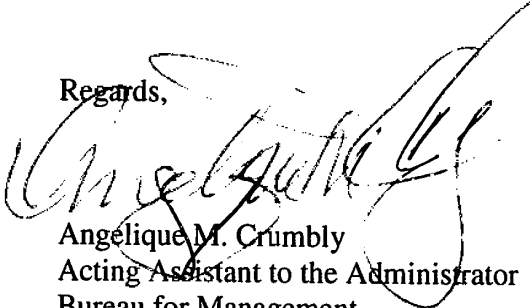
M/FM/CAR, Cashier
US Agency for International Development
1300 Pennsylvania Ave. NW
SA-44, Room 485C
Washington, DC 20523-7802

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.

Mercy Corps 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 sincerely appreciate Mercy Corps' commitment to transparency and conscientiousness in its handling of this long-standing and difficult matter. I look forward to our continued collaboration on humanitarian assistance.

Regards,

A handwritten signature in black ink, appearing to read "Angelique M. Crumbly", is written over the typed name and title. The signature is fluid and cursive, with a large loop at the end.

Angelique M. Crumbly
Acting Assistant to the Administrator
Bureau for Management