



USAID

FROM THE AMERICAN PEOPLE

Ms. Neta Fernandez
Director, Office of Grants and Contracts
New Mexico State University
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Las Cruces, NM 88003-8001

OCT

Subject: Appeal of Agreement Officer's Decision under Agreement
#306-A-00-08-00506-00, Afghanistan Water, Agriculture and Technology
Transfer (AWATT) Program

Ref: Your Appeal of August 4, 2011

Dear Ms. Fernandez:

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.

NMSU has requested that USAID provide it an additional obligation of (b)(4) to finance cost overruns incurred in the AWATT program. In your appeal, you restate four factors NMSU identified as contributing to the cost overruns: 1) a lag in financial reporting which prevented NMSU from ascertaining total expenditures, 2) an accelerated burn rate in the final months of program implementation, 3) confusion regarding the availability of further funding, and 4) implementation of activities not previously budgeted for.

I note that, in his final decision letter, though the AO responded to each of these points, he indicated that he denied your request for additional funding because the award provided that USAID would not reimburse NMSU for expenditures beyond the total obligated amount. Nevertheless, much of your appeal revisits these four factors to attempt to explain the overspending.

I emphasize that the Agency does not dispute that cost overruns occurred. Rather, the AO declined for USAID to take responsibility for financing NMSU's overruns. I concur with his conclusion. The award explicitly cautioned that USAID would reimburse expenses only to the total amount obligated. It was NMSU's responsibility as the recipient to safeguard, report on, and properly expend the funds entrusted to it. Neither NMSU's inability to track or timely report on expenditures, nor its stated belief that additional funding would eventually be obligated persuade that USAID should provide an additional (b)(4)

Next, you contend that USAID should finance the cost overruns because its actions in managing the award exceeded "substantial involvement" in a way that contributed to the overruns. As asserted examples of excessive involvement, you object that USAID officials actively

participated in reviewing, commenting on, and proposing changes to work plans, budgets, subawards, and revised program descriptions. The only rationale you identify for why you believe these actions exceeded substantial involvement is that the program description did not explain the specific authorizations USAID would require.

However, your appeal does properly observe that substantial involvement is a broad concept, which encompasses actions “reasonable and necessary” for program implementation. Moreover, you note that approval of implementation plans and subawards falls squarely into USAID’s purview under ADS 303.3.11, as does monitoring to permit program direction. You have not shown that USAID’s actions were unreasonable or unnecessary, given the program’s operating environment. Moreover, the specific actions you noted are commonly used methods for USAID to participate and collaborate on program direction. I therefore am not persuaded that USAID’s management exceeded the substantial involvement provided for in the agreement.

I note for your information that much of NMSU’s confusion seems to originate from your misunderstanding of the process of extending an award. At the time the agreement is executed, it obligates funds for a limited time period. Although additional funds were obligated into AWATT, the period of support remained unchanged. Had the award not been extended, upon the original termination date, NMSU would have needed to return to USAID funds it had not yet liquidated. To afford more time in which to conclude activities, the AOTR recommended and NMSU proposed a no-cost extension. Your assertion that NMSU could unilaterally extend the period of support by providing 10 days’ notice is misplaced. Because AWATT involved program implementation, and not research, it was not one of the awards contemplated in 22 CFR 226.25(e)(4) for which prior approvals were waived. Absent some affirmative waiver that would apply to AWATT, you were required to obtain USAID’s consent to amend a term of the award such as its conclusion date. Preparing and submitting work plans and budgets is a proper part of that process. NMSU may have interpreted various steps in the process of extending the award as a sign that additional funding would be provided. However, that does not mean that USAID’s actions exceeded substantial involvement, and it does not persuade that NMSU should receive an additional obligation.

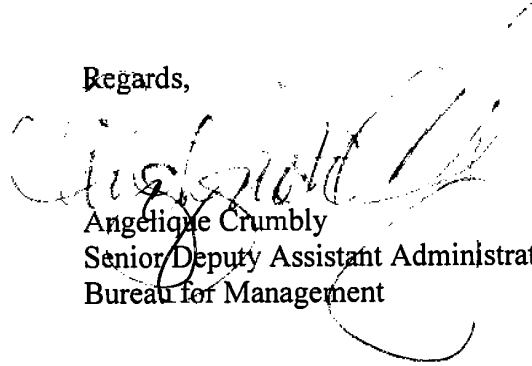
Finally, you insist that it would be inequitable not to obligate additional funding. You argue that NMSU undertook in good faith work which USAID had reviewed and approved. Moreover, you assert that both the Afghan people and United States foreign policy interests have benefitted from AWATT, and it would be unfair not to compensate NMSU for all costs associated with implementing the program. And, lastly, you contend that if USAID does not reimburse NMSU for the cost overruns, the resulting financial loss will jeopardize the expertise gained during AWATT implementation.

None of these points convince that USAID should provide NMSU an additional (b)(4). Although USAID may have benefitted from the program, the award made explicit that the public support provided was contingent on availability of funding. And, more specifically, it cautioned that USAID was responsible only to the amount obligated. You cannot impose an additional obligation on a federal agency by asserting that costs were incurred in good faith; the agreement set forth the terms and conditions on which funding was provided. While it would be unfortunate if NMSU was unable to participate in future programs, your failure to take seriously

the provisions of the agreement does not persuade that the Agency should provide an additional obligation. I therefore decline to do so.

As the Senior Deputy Assistant Administrator, I have considered your appeal and decided to deny it. Per 22 CFR 226.90(d), this decision shall be final.

Regards,

A handwritten signature in black ink, appearing to read "Angelique Crumbly", is written over the typed name and title.

Angelique Crumbly
Senior Deputy Assistant Administrator
Bureau for Management