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FROM THE AMERICAN PEOPLE

Mr. Douglas Stevens, Chief Financial Officer  
Population Services International (PSI)  
1120 19<sup>th</sup> St. NW, Suite 600  
Washington, DC 20036-3605

**Subject:** Appeal of Agreement Officer's Decision under Cooperative Agreement  
623-A-00-05-00346-00, Provide Social Marketing for Health Products, Services,  
and Messages

**Ref:** Population Services International (PSI) Appeal of October 7, 2009

Dear Mr. Stevens:

This is the Final Decision by USAID on the referenced Appeal of the Agreement Officer's decision to disallow costs of (b)(4) under the subject Cooperative Agreement. Per 22 CFR 226.90(d), this decision shall be final. I have reviewed the information submitted with your Appeal and concluded that, in addition to the approximately (b)(4) with which PSI concurs, the (b)(4) appealed should remain disallowed. Therefore, the prior decision to disallow (b)(4) in questioned costs is sustained. My decision in this Appeal is explained below.

DCAA's audit report questioned both PSI's practice of reclassifying costs to match funding levels and the allocability of those reclassified costs. I concur with their conclusion, which Agreement Officer (AO) William Reynolds adopted, that PSI has not established that the reclassified costs are allocable to the USAID cooperative agreement.

Because PSI had grants from both USAID and the United Kingdom's Department for International Development (DFID) to support the same activities, it charged costs to whichever award had an active funding stream; when additional USAID funds became available, you sought to shift some of that money to reimburse DFID for invoices previously paid. OMB Circular A-122 expressly prohibits this practice among federal awards. Applying 2 CFR 230 in its entirety, PSI's practice of reclassifying costs among awards to overcome funding deficiencies violates the OMB A-122 cost principles. Also, by charging costs to the DFID grant, PSI was documenting that the costs were properly allocable to the DFID grant. PSI cannot later attempt to deem them allocable to the USAID award merely by reclassifying the costs; documentation must support why a cost formerly allocable to one award has become allocable to another. Despite numerous opportunities, PSI has not documented that the reclassification was in accordance with the relative benefits received, or anything other than changed funding levels.

Moreover, because only some of the costs were charged to the DFID grant, and only some of those were later reclassified to the USAID award, PSI has failed A-122's threshold test of allocability set forth at 2 CFR 230, Appendix A, (A)(4). Namely, the costs were not treated consistently with other costs incurred for the same purpose in like circumstances. Also, the

documentation provided by PSI indicates that, by the time Mod #4 obligated additional funds to cover the overspending, the associated invoices had been paid nearly a year earlier. Thus, although PSI contends in the appeal that the funds were to cover costs such as labor, travel, and advertisements, they actually were used to reimburse DFID for paying those costs—and loan repayment was not a type of cost allocable to or allowable under the USAID award.

I note that PSI has been afforded multiple opportunities to present documentation to rebut the conclusion that the reclassified costs are not allocable. During the audit process, PSI had the opportunity to react to DCAA's evaluations, but argued that the interrelation of the DFID and USAID projects justified the reclassifications. When presented with the audit report's conclusion that costs must still be segregated for interrelated programs, PSI offered no new information to show that it had properly allocated costs and seemed to contend that costs were allocable merely because they had been reclassified. In the appeal, PSI requested until October 31, 2009, to gather documentation regarding the allocability of each category of disallowed costs. When, almost a year later, no additional information had been submitted, USAID contacted PSI's counsel to request that any supporting documentation be provided by the end of September 2010. Instead of providing documentation, PSI's response simply reiterated the arguments in its appeal. Despite numerous opportunities, at no point has PSI presented documentation to support its assertion that the disallowed costs are properly allocable to the award. I therefore decline to overturn Mr. Reynolds' final decision by finding the costs allocable.

The appeal argues first that neither DCAA nor the Agency questioned the allocability of the costs at issue. I find that, contrary to PSI's assertions, both DCAA and USAID questioned the allocability of the reclassified costs. The audit report questioned reclassified direct labor costs "since there wasn't an adequate explanation that the costs were allocable" to the USAID award. (DCAA audit report, at 4). Regarding other direct costs, the report indicated that "PSI did not state how much of the reclassifications were for items that are not allocable to the USAID. We continue to question the remaining non-concurred reclassified costs due to reasons explained in Note 2." (Exhibit 3, at 10). Note 2 had elaborated:

*"PSI is using periodic adjusting entries to transfer funds between projects to match costs to funding levels. We question this practice. A requirement for an adequate cost accounting system, as stated in SF 1408, is identification and accumulation of direct costs by contract. Original entries show that the costs are allocable to the original project. PSI should not transfer costs to match funding levels"*

(Emphasis added). (Exhibit 3, at 4). Throughout the report, DCAA's auditors questioned PSI's practice of shifting costs among awards, and the associated allocability. Moreover, USAID advised PSI that it was allocability issues that prompted the costs' disallowance. Upon receipt of the AO's final decision, PSI inquired with USAID's Office of General Counsel (GC). Raghav Kotval, GC Attorney, directed PSI to several of the audit report's statements noted above and clarified for PSI that USAID had disallowed the reclassified costs for their allocability. Therefore, I disagree with your appeal's assertion that the Agency has not stated a legal basis for disallowing the costs.

Your appeal next argues that, with Mod. #4, Agreement Officer O'Donnell determined the questioned costs were allocable, and no USAID official may overturn that determination. However, I note that Mod. #4 does not mention allocability. The audit report, however, which specifically examined costs for allocability, considered the impact of Mod. #4 and continued to question the reclassified costs' allocability. Mr. Reynolds' final decision adopted these findings. Thus, the only times the issue of the reclassified costs' allocability has been considered, they have been found not allocable.

By the time Mod. #4 was prepared, nearly a year had elapsed since PSI used DFID funds to pay the invoices for the questioned costs. USAID funds were not being spent to cover the expenditures listed in the "Reconciliation" report; rather, PSI sought to use them to reimburse DFID. Thus, PSI's failure to apply the funds as itemized in the "Reconciliation" described in Mod. #4 ultimately precludes the costs' allocability.

Additionally, PSI offered no support for the appeal's contention that AO decisions may not be overturned. Nothing in the award itself suggested that a modification would answer all such questions with finality. Rather, the agreement incorporated 22 CFR 226. That part provides, for example, for the recovery of amounts paid to a Recipient which are later found to have violated federal cost principles,<sup>1</sup> as well as for the dispute of an AO's final decision.<sup>2</sup> This suggests that AO decisions may be reconsidered, when significant additional information comes to light that affects the underlying basis of the AO's final decision.

This is consistent with the treatment regularly afforded assistance agreements. Auditors often review federal awards. When such examinations reveal problems with expenditures or records, costs may become disallowed, even if the funds to cover those costs were properly obligated. This process of review and response is necessary to support the important public purpose of ensuring proper accountability for federal funds.

Here, the audit process confirmed that PSI had spent DFID funds to cover the costs listed in the "Reconciliation," then used USAID funds almost a year later to reimburse DFID. Although the auditors explicitly examined Mod. #4, their report questioned the propriety of reclassifying costs to the USAID award and the allocability of those costs. PSI has not demonstrated otherwise. Despite multiple opportunities, PSI has not documented the reclassified costs' allocability to the USAID award. Therefore, I decline to now allow those costs.

I reiterate that PSI has had numerous opportunities to supplement the documentation submitted. Despite our exhortations that PSI document its assertions, PSI has not done so. As the recipient, PSI bore the burden of documenting your costs and demonstrating compliance with the terms of the award.

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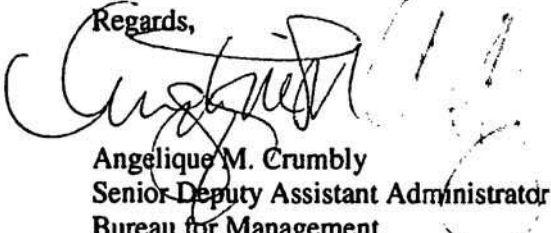
<sup>1</sup> 22 CFR 226.73(a).

<sup>2</sup> 22 CFR 226.90

**DECISION**

In accordance with 22 C.F.R. 226.90(d), this is the Final Decision of the Deputy Assistant Administrator for Management. I have considered your appeal and conclude that the costs questioned in the DCAA audit report and the Agreement Officer's final decision should remain disallowed. However, I also find that, through no fault of PSI's, this appeal took almost two years to resolve. Therefore, interest on the amounts due (b)(4) shall be waived. When the amounts appealed are combined with the approximately (b)(4) PSI concurred had not been documented, the total amount on which action shall be taken is the amount originally listed in the demand letter: (b)(4)

Please remit a check to USAID in the amount of (b)(4) within 30 days of receipt of this decision. Reference the agreement number 623-A-00-05-00346-00 on the check remittance stub for our financial management section, and please include a copy of this letter with your remittance.

Regards,  
  
Angelique M. Crumbly  
Senior Deputy Assistant Administrator  
Bureau for Management

Cc: Robert Sonenthal, Sonenthal & Overall, P.C.