



# USAID

FROM THE AMERICAN PEOPLE

(b)(6)

The Development Research Center  
1700 North Moore Street, Ste. 1720  
Arlington, VA 22209

Subject: Appeal of Agreement Officer's Decision under Cooperative Agreement  
RLA-A-00-08-00045-00, Supporting Civil Society for Democracy in Cuba

Ref: The Development Research Center Appeal on Cost Share Items of June 21, 2010

Dear (b)(6):

This is the Final Decision by USAID on the referenced Appeal of the Agreement Officer's final determination addressing The Development Research Center's cost share questions. Per 22 CFR 226.90(d), this decision shall be final. I have reviewed the information submitted with your Appeal and decided to grant your appeal in part. My decision in this Appeal is explained below.

On August 26, 2008, USAID/Washington awarded DRC a (b)(4), two-year cooperative agreement. The program, entitled *Supporting Civil Society for Democracy in Cuba*, was designed to develop and support the conditions necessary for a peaceful and orderly democratic transition in Cuba. The award required DRC to contribute (b)(4) in non-federal funds as cost-sharing. DRC attempted to meet this requirement by leveraging several donations from volunteer consultants and private companies. However, DRC's Technical Application, which had been incorporated by reference into the program description, specifically identified certain contributions to the program as donations from DRC, not cost sharing.

As the award progressed, DRC advanced 14 requests related to cost share that were eventually addressed in the AO's Final Decision dated May 27, 2010. The AO denied 11 of the requests, and approved three with conditions. On June 21, 2010, DRC timely appealed seven of these decisions.

Your appeal requests that USAID reconsider several of the AO's decisions. First, you identify four particular items or services and requests that they be deemed permissible cost sharing contributions. Next, your appeal requests that the total amount of non-federal funds DRC is required to contribute be reduced.

A. (b)(6)

After receiving an in-kind contribution of 400 copies of (b)(6)'s book, DRC requested that (b)(4)—the value of the books—be counted towards its cost share requirement. The AO's final decision denied the request, citing concerns that doing so would create or could be

perceived as a conflict of interest. Because the book's author was affiliated with DRC, the AO questioned the propriety of DRC counting as their contribution what would, in some proportion, be returned as royalties to (b)(6).

In your appeal, DRC explained that no conflict of interest exists to jeopardize the propriety of the contribution. You state that DRC obtained the books from its publisher, then used them as training materials described in the award's program description. Because DRC used the books to implement program activities, and the conditions of 22 CFR 226.23(a)(1-7) appear to have been satisfied, it suggests that counting the cost of the books towards cost share may be proper.

Your appeal further certified that (b)(6) would not receiving any financial benefit from the transaction, since the books had been donated, not purchased. This additional information does help to dispel the appearance of conflict of interest. With no compensation changing hands, it eliminates the concern that DRC was using its federal award to benefit its (b)(6).

Since the books represented a third-party, in-kind contribution, which 22 CFR 226.23(a) permits as cost sharing, and DRC has clarified the transactions' details sufficiently to dispel concerns regarding conflicts of interest, I therefore permit DRC to count up to the value of the donated books that were contributed to program activities. If all 400 books were used for approved program activities, then the total allowable cost share would be (b)(4).

B. (b)(6)'s time and airfare to attend the *Cuba and Strategic Engagement* conference.

The AO denied DRC's request for cost share based on disagreement over whether (b)(6)'s time and airfare to attend the conference was "critical" for successful program implementation. You have appealed that determination.

To count as cost share, 22 CFR 226.23(a)(3) requires a contribution to be "necessary and reasonable for proper and efficient accomplishment of project or program objectives." Neither DRC's Technical Application nor the program description mention travel for (b)(6). Additionally, (b)(6)'s program contribution was explicitly considered to be on a "pro bono (no cost share allowed) basis."<sup>1</sup>

DRC has not identified how conference attendance was "necessary and reasonable" in implementing the approved activities listed in the award's program description. As such, I sustain the AO's Final Decision that (b)(6)'s travel for conference participation may not be counted toward the award's cost sharing requirement.

C. Retroactively counting (b)(6)'s contributions to program implementation

On March 31, 2010, DRC formally requested the AO permit it to count (b)(6)'s time as a contribution towards cost share. DRC's request was granted, beginning April 1. From this date onward, DRC would be permitted to count (b)(6)'s time as cost share; for activities completed prior to this date, his time would be counted as described in the award.

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<sup>1</sup> DRC Technical Application, Page 2

You have appealed the decision, requesting that (b)(6)'s time be counted retroactively, as well. In your appeal, DRC cites 22 CFR 226.23(d), under which the time of volunteer consultants may be counted as cost share.

In its Technical Application, DRC stated:

(b)(4)

While DRC would ordinarily have been permitted to count (b)(6)'s time as cost share, it proposed that DRC would donate his time rather than count it as cost sharing. DRC willingly imposed additional constraints upon itself beyond those contemplated in 22 CFR 226.23(d).

Additionally, 22 CFR 226.25(a-b) states that, "Recipients are required to report deviations from budget and program plans [which includes the sum of Federal and non-Federal contributions], and request prior approvals for budget and program plan revisions." Since DRC did not formally make a request to change (b)(6)'s contribution from "pro bono" to cost share until March 31<sup>st</sup>, the AO's decision not to retroactively attribute his contributions to cost share is reasonable.

I therefore uphold her decision. (b)(6)'s time may be counted as cost sharing only from the date of the AO's authorization.

#### D. Counting the contribution of 50 Microsoft Office 2007 user licenses as cost share

The AO rejected, and DRC has appealed, the allowability as cost share of the in-kind contribution of 50 user licenses of Microsoft Office 2007 (Spanish), which they received from a third party. DRC asserts that the licenses should be allowable cost share at the rate of (b)(4) per license, which you claim was the fair market value at the time of donation.<sup>3</sup> The AO decided that this price was not an allowable cost, stating that DRC could only count as cost share the actual expenses incurred for the software that didn't use USAID funds.<sup>4</sup>

22 CFR 226.23(a) permits third party in-kind contributions to be part of a recipient's cost share. Circumstances such as those here, where DRC received the licenses from a third party donor, then installed them on laptops sent to Cuba, seems to be the sort of scenario .23(a) was intended to address. I therefore disagree with the AO's assertion that DRC may only count as cost share expenses as actually incurred.

<sup>2</sup> DRC Technical Application, Page 2.

<sup>3</sup> DRC Appeal; June 21, 2010; Issue Number 7.

<sup>4</sup> *Agreement Officer's final determination addressing The Development Research Center's cost share questions.*; May 27, 2010, Page 3

However, 226.23(f) further states that “value assessed to donated supplies included in the cost sharing or matching share shall be *reasonable* and shall not *exceed the fair market value* of the property at the time of donation.”[emphasis added]

I question whether (b)(4) is a reasonable assessment of the retail market value per license. Both currently and at the time of the donation, a single license could be purchased off a GSA schedule for (b)(4) per unit. I therefore conclude that any amount more than (b)(4) per license would be an unreasonable cost.

Therefore, I permit DRC to count as cost share the value of donated Microsoft Office 2007 licenses; however, such amounts should not exceed (b)(4) per unit, totaling (b)(4).

#### E. Reducing total DRC cost share obligations

In the appeal, DRC requests that it be permitted to reduce their total cost share by (b)(4). DRC states that, although it had planned to pay for postage to mail booklets as part of their cost share contribution, circumstances dictated that the booklets be sent via e-mail instead of via postal mail; therefore, not incurring (b)(4) in postage expense.<sup>5</sup>

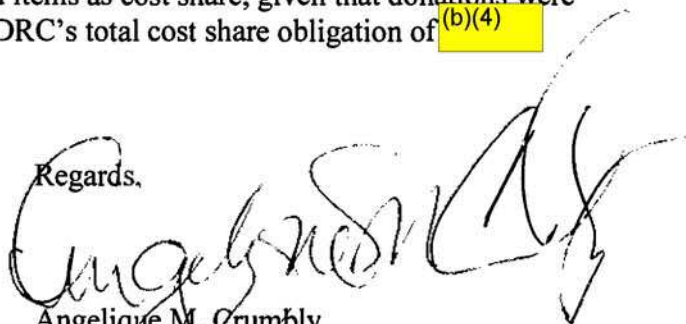
In the cooperative agreement, USAID expressed intent to fund the program up to (b)(4), while DRC bound itself to a cost share of (b)(4). The award did not specify on which budget items DRC would provide non-federal funds. Although programmatic realities may have dictated a change in plans, that does not eliminate DRC’s responsibilities under the award.

I therefore decline to reduce DRC’s cost sharing requirement. The amount which DRC is required to provide in non-federal funds will remain unchanged.

#### 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 DRC will be permitted to count up to (b)(4) for the appealed items as cost share, given that donations were used for approved program activities. However, DRC’s total cost share obligation of (b)(4) remains unchanged.

Regards,



Angelique M. Crumbly  
Senior Deputy Assistant Administrator  
Bureau for Management

<sup>5</sup> DRC Appeal, June 21, 2010; Issue Number 13.