

SIGAR

Special Inspector General for Afghanistan Reconstruction

SIGAR 22-21 Audit Report

Contracting in Afghanistan: USAID Did Not Complete or Did Not Maintain Required Documentation for 8 of its 11 Terminated Awards



MAY
2022

SIGAR

Special Inspector General for Afghanistan Reconstruction

WHAT SIGAR REVIEWED

The U.S. Agency for International Development's (USAID) goal in Afghanistan was to promote a stable, inclusive, and increasingly prosperous country. To achieve this goal, USAID has obligated over \$25 billion since 2002 towards programs to develop and sustain improvements in Afghanistan in areas such as health, education, gender equality, agriculture, economic development, and good governance. To help protect that funding, USAID provided oversight on awards and exercised its authority, where it deemed appropriate, to terminate those awards that were not achieving their goals or performing as intended.

This audit follows SIGAR's July 2014 letter that summarized and expressed concerns related to, among other things, the cost, cause, and planning of USAID's termination of 19 awards supporting reconstruction in Afghanistan between 2008 and 2013. This audit examines USAID's termination of awards supporting reconstruction in Afghanistan between January 1, 2014, and December 31, 2020.

SIGAR announced this audit in March 2021, prior to the collapse of the Afghan government in August 2021. Due to the collapse, USAID is in the process of terminating and canceling additional awards. SIGAR has an ongoing evaluation of the status of awards that were active following the events of August 2021. Nevertheless, USAID continues to provide aid to Afghanistan, and therefore, the findings and recommendations contained in this report remain relevant.

The objectives of this audit were to assess the extent to which (1) USAID terminated awards in compliance with applicable laws, regulations, and policies; and (2) award terminations affected intended programmatic outcomes in Afghanistan.

May 2022

Contracting in Afghanistan: USAID Did Not Complete or Did Not Maintain Required Documentation for 8 of its 11 Terminated Awards

SIGAR 22-21-AR

WHAT SIGAR FOUND

Between January 1, 2014, and December 31, 2020, USAID implemented 698 awards to support the reconstruction of Afghanistan. Of those awards, USAID terminated 11, or less than 2 percent. All 11 were terminated for convenience of the government, and they had a cumulative value of over \$390 million, of which \$172 million was disbursed prior to the terminations

SIGAR determined that either USAID did not maintain or did not complete all of the required termination documentation for 8 of the 11 awards, or almost 73 percent. As a result, USAID did not comply with applicable sections of the Code of Federal Regulations (CFR), Federal Acquisition Regulation (FAR), and USAID's own Automated Directives System (ADS). For the 3 awards where USAID provided all of the required termination documentation, SIGAR determined that USAID terminated them in compliance with CFR, FAR, and ADS guidance.

Title 2 of the CFR establishes requirements relating to the termination of grants and cooperating agreements, while the FAR establishes requirements relating to the termination of procurement contracts, including terminations for convenience or default. Additionally, the FAR and ADS provide general policies and procedures concerning the award termination process, including requirements for termination decision memos, contractor termination notices, termination settlement agreements, termination contract clauses, and financial statement audits of incurred costs. Lastly, the FAR and ADS require contracting officers to establish termination case files to retain all applicable termination records, memos, and maintain all award files for 6 years. For six of the eight awards for which USAID did not provide all required documentation, SIGAR used professional judgment based on available termination documents USAID provided for each award's respective termination file to determine that USAID likely completed (but did not maintain) documents in compliance with CFR, FAR, and ADS requirements. For the two remaining awards, USAID did not provide SIGAR with any documentation for one award and provided only one document for the second award.

Adherence to these requirements is not unimportant or an obscure bureaucratic constraint. Completing and maintaining termination documentation is critical to understanding the issues surrounding a termination, and is necessary to arrive at appropriate settlements and conduct complete financial audits. Contracting officers, auditors, and other government officials need access to complete and accurate records, which document such things as why a contracting officer terminated an award, how the agency and contractor reached

a settlement amount, and what monitored costs and activities were associated with the termination. Additionally, agencies are required to keep records of their activities, in part, to protect the legal and financial rights of the government and persons affected by the government's activities. USAID recognizes the importance of award files, and considers them part of USAID's Essential Records Program. This program established internal controls to help ensure the preservation of key documents, even in disasters or emergencies, and the government's continued ability to operate.

However, the document retention failures outlined in this report occurred because USAID officials, including contracting officers, did not adhere to federal requirements and agency policy, and because they did not follow established internal controls meant to ensure that award files were complete and stored electronically.

Lastly, SIGAR examined the 11 terminated awards to determine if their termination affected USAID's intended programmatic outcomes. Most of the awards were terminated due to changes in USAID's programming strategy or because the programs were not achieving their expected results. For each terminated award, SIGAR examined every subsequent award USAID issued within the same technical office to determine whether they contained the same or similar goals, objectives, and metrics. SIGAR determined that none of the 11 terminations had an effect on USAID's programming outcomes because USAID implemented subsequent awards that either (1) had similar goals and objectives to the terminated awards, (2) took over the goals and objectives directly from the terminated award, or (3) had goals and objectives that aligned with changes in strategy.

WHAT SIGAR RECOMMENDS

To help ensure that USAID maintains all required award termination documentation in compliance with federal regulations and its own internal guidance, SIGAR recommends that the USAID/Afghanistan Mission Director and the Mission's Director of the Office of Acquisition and Assistance:

- 1. Take appropriate action to remind or retrain contracting officers about the importance of existing documentation requirements for terminating awards.**
- 2. Take action to help ensure that responsible officials follow internal controls related to the completion and storage of award files.**

SIGAR provided a draft of this report to USAID for review and comment. SIGAR received written comments on the draft of this report from the USAID/Afghanistan Mission Director, which SIGAR reproduced in appendix IV. In its comments, USAID concurred with both of SIGAR's recommendations. Regarding these recommendations, the Mission Director stated that the mission has issued an administrative notice reminding contracting officers, and their representatives, of FAR regulations pertaining to document retention and the importance of adherence to those regulations. Additionally, regarding the second recommendation, the Mission Director stated USAID has added controls within its centralized storage system to ensure compliance with pre-award documentation retention requirements, but did not comment if USAID had, or intended to add, controls to ensure compliance with post-award document retention requirements.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

May 9, 2022

The Honorable Samantha Power
Administrator, U.S. Agency for International Development

Mr. Peter Duffy
USAID Mission Director for Afghanistan

This report discusses the results of SIGAR's audit of U.S. Agency for International Development's (USAID) termination of awards from January 1, 2014, through December 31, 2020. During this period, USAID terminated 11 awards for convenience of the government. We announced this audit in March 2021, prior to the collapse of the Afghan government in August 2021. While this report does not examine award terminations or cancelations that occurred after the collapse, we recently issued an evaluation of the status of awards that were active following the events of August 2021.¹

We determined that USAID did not maintain or did not complete the required documentation for 8 of the 11 awards it terminated, or 73 percent. These failures occurred because USAID officials, including contracting officers, did not adhere to federal requirements and agency policy, and because they did not follow established internal controls meant to ensure that award files were complete and properly stored electronically. Agencies are required to keep records of their activities, in part, to protect the legal and financial rights of the government and persons affected by the government's activities. However, we also determined that USAID's termination of awards did not affect its intended programming outcomes in Afghanistan.

We are making two recommendations to help ensure that USAID maintains all required award termination records in compliance with federal regulations and their own internal guidance. We recommend that the USAID/Afghanistan Mission Director and the mission's Director of the Office of Acquisition and Assistance (1) take appropriate action to remind or retrain contracting officers about the importance of existing documentation requirements for terminating awards, and (2) take action to help ensure that responsible officials follow internal controls related to the completion and storage of award files.

We received written comments on a draft of this report from the USAID/Afghanistan Mission Director. USAID concurred with both recommendations and stated that the mission has issued an administrative notice reminding contracting officers, and their representatives, of FAR regulations pertaining to document retention and the importance of adherence to those regulations. Regarding the second recommendation, the Mission Director stated USAID has added controls within its centralized storage system to ensure compliance with pre-award documentation retention requirements, but did not comment if USAID had, or intended to add, controls to ensure compliance with post-award document retention requirements. This recommendation will remain open, as USAID did not take action to help ensure responsible officials follow the related internal controls

¹ SIGAR, *Status of U.S. Funding and Activities for Afghanistan Reconstruction: On-budget Assistance Has Ended, Off-budget Assistance Continues, and Opportunities May Exist for U.S. Agencies to Recover Some Unliquidated Funds*, SIGAR 22-20-IP, April 22, 2022.



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for Afghanistan Reconstruction

SIGAR conducted this work under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended, and in accordance with generally accepted government auditing standards.

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

TABLE OF CONTENTS

Background.....	1
USAID Did Not Comply with Federal Requirements and Agency Guidance for 8 of 11 Terminated Awards.....	3
USAID’s Termination of Awards Did Not Affect Its Reconstruction Efforts in Afghanistan Because Subsequent Awards Had Similar Goals and Objectives	6
Conclusion.....	8
Recommendations	8
Agency Comments	8
Appendix I - Scope and Methodology	10
Appendix II - Summary of the U.S. Agency for International Development’s Terminated Awards	12
Appendix III - Additional Details of SIGAR’s Review of Available USAID Termination Documentation.....	14
Appendix IV - Comments from the U.S. Agency for International Development.....	16
Appendix V - Acknowledgments	19

TABLES

Table 1 - Missing Required Award Documents per Award	5
Table 2 - USAID Contracts Terminated for Convenience	12
Table 3 - Costs of USAID Contracts Terminated for Convenience	13

ABBREVIATIONS

ADS	Automated Directives System
CFR	Code of Federal Regulations
FAR	Federal Acquisition Regulation
USAID	U.S. Agency for International Development

The U.S. Agency for International Development's (USAID) goal in Afghanistan was to promote a stable, inclusive, and increasingly prosperous country. To achieve this goal, USAID has obligated over \$25 billion since 2002 for programs to develop and sustain improvements in health, education, gender equality, agriculture, economic development, and good Afghan governance. To help protect that funding, USAID's contracting officers, contracting officer's representatives, and other officials have provided oversight on awards. Where they deemed appropriate, contracting officers exercised their authority to terminate awards that were not achieving goals or performing as intended.²

This audit follows our July 2014 letter that summarized and expressed concerns related to, among other things, the cost, cause, and planning of USAID's termination of 19 awards supporting reconstruction in Afghanistan between 2008 and 2013.³ This audit provides information on awards supporting the reconstruction of Afghanistan that USAID terminated from January 1, 2014, through December 31, 2020.⁴ The objectives of this audit were to assess the extent to which

1. USAID terminated awards in compliance with applicable laws, regulations, and policies; and
2. award terminations affected intended programmatic outcomes in Afghanistan.

To accomplish these objectives, we reviewed federal laws, regulations, and procedures, including the Code of Federal Regulations (CFR), Federal Acquisition Regulation (FAR), and USAID's Automated Directives System (ADS) guidance related to the termination of USAID awards and document retention. We analyzed USAID's pipeline report to determine the number and value of disbursement amounts of USAID awards dedicated to supporting the reconstruction of Afghanistan.⁵ We reviewed each award's termination documentation to determine if USAID adhered to applicable guidance when terminating awards. Additionally, we determined if the award terminations had any effect on USAID's intended reconstruction effort in Afghanistan by examining the subsequent award's goals, objectives, and metrics. We also interviewed USAID officials responsible for administering awards, including terminations. We conducted our work in Arlington, Virginia, from March 2021 through May 2022, in accordance with generally accepted government auditing standards. Appendix I has a more detailed discussion of our scope and methodology.

BACKGROUND

Title 2 of the CFR governs the awarding of grants and cooperative agreements to non-federal agencies, while the FAR governs the procurement of goods and services by federal agencies through contracts, such as firm-fixed-price or cost-reimbursable awards.⁶ In broad terms, the CFR and FAR establish the fundamental regulations for the planning, award, and management of federal awards. In addition, the ADS outlines USAID's policies and procedures for the award, administration, and closeout of grants, cooperative agreements, and

² For the purposes of this report, the term "award" refers to all types of procurement contracts, cooperative agreements, and grants.

³ SIGAR, *Inquiry Letter: Canceled USAID Contracts*. SIGAR-14-73-SP, July 1, 2014.

⁴ We announced this audit in March 2021, prior to the collapse of the Afghan government in August 2021. USAID is in the process of terminating and canceling additional awards that it was implementing, or planning to implement, in Afghanistan as a result of the collapse. While this report does not examine these award terminations or cancellations, we have an ongoing evaluation of the status of awards that were active following the events of August 2021.

⁵ USAID's pipeline report lists every award USAID is implementing in Afghanistan, and provides financial obligation and other information about each award.

⁶ The FAR is located at Title 48 of the CFR. However, for the purpose of this report, when we refer to the CFR, we are referring to Title 2, unless otherwise specified. When we refer to the FAR, we are referring to Title 48 of the CFR.

procurement contracts.⁷ The ADS and FAR require that award documents be retained for 6 years from the final contracting action and include documents related to the close-out or termination of an award.⁸

The CFR and FAR require contracting officers to include clauses in awards that enable the federal government to terminate them for either convenience or default.⁹ The FAR defines terminating an award for convenience as “the exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the government’s interest.”¹⁰ The FAR defines terminating an award for default as “the exercise of the Government’s right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations.”¹¹

The federal government’s authority to terminate for convenience is intended to protect the public interest by ensuring that the government does not have to pay for something that it may no longer need or want. Some reasons for terminating contracts for convenience include (1) the government no longer needs the supplies or services; (2) the awardee refuses to accept a modification deemed necessary by the government; (3) the government determines that the awardee was or became ineligible to continue implementing the award; (4) the professional relationship between the government and the awardee deteriorates; or (5) the work under the award proves to be too difficult or costly.¹² As a general principle, contractors and grantees cannot hold the government liable when the government exercises its right to terminate an award for convenience because the government has the contractual and inherent right to do so.¹³

When terminating an award for convenience, the government can choose to perform a total or partial termination. A total termination halts and eliminates all the work remaining on an award, while a partial termination halts and eliminates only part of the remaining work.¹⁴ After the government decides to terminate an award for convenience, it must notify the contractor in writing.¹⁵ The notice must include a statement that the agency is terminating the award, the effective date of the termination, the extent of the termination, and any special instructions to minimize the impact of the termination.¹⁶ After notifying the contractor, the contracting officer may appoint a termination contracting officer to handle the award’s termination, including negotiating any settlement with the contractor.¹⁷

When the government terminates an award for convenience, the contractor may be entitled to a settlement, a consideration that represents the government’s acknowledgement of the challenges of termination for convenience on a contractor. The government’s failure to pay a settlement could diminish the willingness of contractors to deal with the government in the future, potentially resulting in the government’s having to pay higher prices for lower quality supplies and services, as the pool of potential contractors decreases. The

⁷ ADS 300 series.

⁸ FAR 4.805 and ADS 502.3.4.5. Further, although 2 CFR 200.334 requires documents be retained for 3 years, USAID’s internal guidance extends that requirement to 6 years.

⁹ 2 CFR 200 Appendix II (B), which refers to the termination for cause in lieu of termination for default; FAR § 49.5.

¹⁰ FAR 2.101.

¹¹ FAR 2.101.

¹² Congressional Research Service, *Terminating Contracts for the Government’s Convenience: Answers to Frequently Asked Questions*, R43055, February 3, 2015, p. 5.

¹³ Congressional Research Service, *Terminating Contracts for the Government’s Convenience*, p. i. For the purposes of this report, we use the term “contractor” when referring to individuals or entities that are awarded federal contracts, cooperative agreements, or grants.

¹⁴ During the period under audit, USAID terminated ten awards and canceled one award. The distinction between the two terms is that a termination may occur at any time during the award, while a cancellation occurs in-between award years on a multi-year contract. However, for the purposes of this report, we refer to terminated and canceled awards as “terminated awards.”

¹⁵ FAR 49.102.

¹⁶ FAR 49.102.

¹⁷ FAR 49.101, 105. For the purposes of this report, we use the term “contracting officer” when referring to a government official who undertakes termination actions against an awardee.

termination settlement consists of the government's liability for a contractor's incurred costs and profit on all work performed.¹⁸

By contrast, a termination for default occurs when a contractor does not meet its obligations under the terms of the award.¹⁹ As such, the government may be entitled to receive compensatory damages, and may be able to charge the contractor the additional costs associated with re-acquiring the goods or services from another contractor.²⁰ When the contracting officer decides to terminate an award for default, the contracting officer must notify the contractor in writing and follow the FAR procedures for terminating for default.²¹

USAID DID NOT COMPLY WITH FEDERAL REQUIREMENTS AND AGENCY GUIDANCE FOR 8 OF 11 TERMINATED AWARDS

From January 1, 2014, through December 31, 2020, USAID implemented 698 awards to support the reconstruction of Afghanistan.²² Of those awards, USAID terminated or canceled 11, or less than 2 percent, of all awards. The terminated awards were valued at over \$390 million, of which USAID had disbursed \$172 million prior to termination. See Appendix II for further details on each of the 11 terminated awards. We determined that for 8 of the 11 awards, or about 73 percent, USAID did not retain all of the termination documentation required by the CFR, FAR, and ADS. For the 3 awards where USAID provided all the required documentation, we determined that USAID complied with termination guidance.

The CFR establishes regulations relating to the termination of grants and cooperative agreements, and the FAR establishes regulations relating to the termination of procurement awards, including terminations for convenience or default.²³ FAR and ADS guidance provide general policies and procedures concerning the award termination process, including requirements for termination decision memos, contractor termination notices, termination settlement agreements, termination contract clauses, and financial statement audits of incurred costs. Additionally, the FAR and ADS require that contracting officers retain all applicable award files, including files relating to an award's termination, for 3 years and 6 years, respectively.²⁴ Furthermore, ADS guidance establishes various policies for records management, including a requirement that all new USAID employees must attend records management training included in New Employee Orientation and complete training activities commensurate with each employee's records management responsibilities.²⁵ These trainings provide basic information on the importance of records management, records management theory, and USAID's policies and procedures.

Adherence to these requirements is not unimportant or an obscure bureaucratic constraint. Completing and maintaining termination documentation is critical to understanding issues surrounding a termination, and is necessary to arrive at appropriate settlements and conduct complete financial audits. Contracting officers, auditors, and other government officials need access to complete and accurate records, which document such things as why a contracting officer terminated an award, how the agency and contractor reached a settlement amount, and what monitored costs and activities were associated with the termination. Additionally, agencies

¹⁸ Congressional Research Service, *Terminating Contracts for the Government's Convenience*, p. 1. FAR 49.103 lists methods of settlement contracting officers may use for fixed-priced and cost-reimbursable contracts terminated for convenience, including determining the amount of profit owed to the contractor.

¹⁹ FAR 49.401.

²⁰ FAR 49.402-2.

²¹ FAR 49.102.

²² The number of awards includes multi-year awards, including those that started prior to January 1, 2014. For the purposes of this report, we did not examine awards that had programming both within and outside of Afghanistan.

²³ 2 CFR 200.340; FAR 49 subparts 49.1, 49.2, 49.3, 49.4, 49.5, and 49.6.

²⁴ FAR 4.805 and ADS 502.3.4.5. While 2 CFR 200.334 requires documents be retained for 3 years, USAID's internal guidance extends that requirement to 6 years.

²⁵ ADS 502.3.1.

are required to keep records of their activities, in part to protect the legal and financial rights of the government and persons affected by the government's activities.²⁶ To help ensure compliance with these regulations and principles, USAID has established internal controls to ensure that award files are complete and accurate after an award has concluded.²⁷ For example, during an awards closeout process, USAID's internal controls require that contracting officers review the award's official file to ensure that it includes all of the required documentation, and then sign and include the completion statement, which signifies they completed all the closeout procedures, in the award's official file.²⁸

USAID has recognized the importance of award files, deeming them "essential files," and making them part of USAID's Essential Records Program.²⁹ This program established internal controls to help ensure the preservation of key documents, even in disasters or emergencies, and the government's continued ability to operate. These internal controls are in addition to the internal controls for ensuring a contract file is complete and accurate. Additionally, the USAID/Afghanistan Mission issued guidance on records management to ensure that it complied with agency records management policies, which included multiple layers of review.³⁰

For the 3 awards where USAID provided all of the required termination documentation, we determined that USAID terminated them in compliance with CFR, FAR, and ADS guidance.³¹ For the remaining 8 awards, we reviewed the available termination documentation and found that USAID did not comply with CFR, FAR, and ADS requirements. See table 1 on the following page for details on which required documents were present and missing for each of the 11 terminated awards. See appendix II for award details, including type, start date, termination date, original value, and amounts disbursed.

²⁶ ADS 502.3.

²⁷ ADS 596.

²⁸ ADS 302sat §§ II, IV.

²⁹ ADS 511.3(b).

³⁰ USAID Mission Order 502.03, "Records Management," July 3, 2018.

³¹ The three awards are the (1) Afghanistan Monitoring, Evaluation and Learning Activity; (2) Afghan Agricultural Research and Extension Development program; and (3) E-Government Resource Center II.

Table 1 - Missing Required Award Documents per Award

Award	Termination Date	Termination Decision Memo	Termination Notification to Contractor	Settlement Proposal	Final Settlement Agreement	OAA Desk Audit	Financial Statement Audit
Logistical Support Service	09/16/2014	X	X	X	X	X	N/A
Regional Agricultural Development Program- West	05/31/2016	✓	✓	✓	X	X	✓
Afghan Agricultural Research and Extension Development	05/31/2014	✓	✓	✓	✓	✓	✓
Irrigation and Watershed Management Program	07/27/2015	X	X	X	X	X	✓
Regional Agricultural Development Program- South	11/20/2017	✓	✓	✓	X	X	✓
Afghanistan Reads Program	04/30/2014	X	✓	N/A	✓	N/A	N/A
Afghanistan Tuition Scholarship Program	09/30/2014	✓	X	N/A	X	N/A	✓
Trade Show Support Activity	06/05/2020	X	✓	✓	X	N/A	X
E-Government Resource Center-II	03/09/2017	✓	✓	N/A	N/A	N/A	N/A
Emergency Road Operation and Maintenance	08/04/2015	X	✓	N/A	X	N/A	N/A
Afghanistan Monitoring, Evaluation, and Learning Activity	08/02/2018	N/A	✓	N/A	✓	N/A	N/A

Source: SIGAR analysis of USAID-provided documents.

Note: Within the table, a check mark notes USAID provided the required documentation. An "X" notes that USAID did not provide the required documentation. Documents marked "N/A" were not required for that specific award.

We made several requests from USAID for all termination documentation for each award, first in April 2021, then in June 2021, and finally in July 2021. Due to the fall of the Afghan government in August 2021, operations ceased at the U.S. Embassy-Kabul, and all Embassy personnel evacuated the country. In October 2021, USAID notified us that it was unable to comply with our request for documentation. USAID told us that during the Embassy evacuation, electronic records stored on its computers at the Embassy were partially corrupted, and USAID had not uploaded all the requested records onto its central database. In November 2021, USAID notified us that it could not recover the electronic records and that they were permanently lost. USAID could not provide a reason for the failure of responsible officials to adhere to the requirements of the Essential Records Program.

For those 8 awards, we were unable to determine with certainty whether USAID completed the required documents and did not save them in accordance with CFR, FAR, and ADS guidance, or whether the documents

were never completed. However, we used our professional judgement throughout our review of available documentation and found that USAID officials likely completed at least 26 of the 48 required records. For example, for the Afghanistan Reads award, we determined that USAID likely completed the termination decision memo, even though it was not stored and available as required, because USAID was able to prove its intention of terminating the award by (1) notifying the contractor it was terminating the award, (2) terminating the award through an award modification, and (3) reaching a settlement agreement with the contractor. Nevertheless, and regardless of whether USAID completed the documents, they are no longer available and cannot be used to inform future programmatic decisions, oversight activities, and audit requirements. Appendix III contains additional details related to our review of available documentation for each award.

We determined that the mission failed to upload those missing documents into USAID's central database prior to August 2021, in compliance with CFR and ADS guidance. The CFR requires agencies to have internal controls over federal records that are electronically stored so that the electronic storage system can ensure a "full and accurate representation" of the agency's business for as long as it needs the information.³² Additionally, ADS guidance requires contracting officers to use USAID's centralized electronic documentation system, called Agency Secure Image and Storage Tracking System, to store all award files for awards issued after April 2014.³³ Also, all awards issued before April 2014 were required to be upload into the tracking system by June 2019. The ADS guidance requires those award files be stored in the tracking system for 6 years after the closeout of the award. Furthermore, USAID issued a mission order requiring information technology management to backup these documents at an off-site approved storage location.³⁴

USAID'S TERMINATION OF AWARDS DID NOT AFFECT ITS RECONSTRUCTION EFFORTS IN AFGHANISTAN BECAUSE SUBSEQUENT AWARDS HAD SIMILAR GOALS AND OBJECTIVES

We examined the 11 terminated awards to determine if their termination had any effect on USAID's reconstruction efforts in Afghanistan. We first examined the reasons why USAID terminated each of the awards. We determined that USAID terminated

- four awards due to changes in its programming strategy,
- three awards to protect U.S. taxpayer funds because the programs were not achieving their expected results,
- one award because the Afghan government was not meeting requirements,
- one award to avoid a duplication of work,
- one award due to a bid protest, and
- one award for an unknown reason because USAID either did not complete or did not maintain documentation related to the termination.

For each terminated award, we examined every subsequent award USAID issued within the same technical office to determine whether the subsequent awards had the same or similar goals, objectives, and metrics as the terminated awards. We found that none of the terminations had an effect on USAID's programming outcomes because USAID implemented subsequent awards that had either (1) similar programming goals and objectives to the terminated awards, (2) assumed the goals and objectives directly from the terminated award, or (3) had goals and objectives that aligned with changes in strategy.

³² 36 CFR 1236.10.

³³ ADS 502.3.4.5; 201.3.4.13.

³⁴ USAID Mission Order 502.03, "Records Management," July 3, 2018.

We determined that for 4 of the 11 terminated awards, USAID subsequently issued awards with similar goals, objectives, and metrics.³⁵ For example, in November 2014, USAID terminated the Irrigation and Watershed Management Program, whose goal was to expand and strengthen central and local government capacity to manage water resources, and to increase agricultural production and productivity. In December 2016, USAID issued the Strengthening Watershed and Irrigation Management Program award, which had a similar goal to strengthen a local government's capacity to manage water resources and increase agriculturally-based economic growth. When we examined the Statement of Work for both awards, we found that USAID used similar metrics to determine whether each program was achieving its results. For example, both awards contained the metrics to measure the number of hectares rehabilitated, the development of water management plans, and the government's capacity building progress. USAID's subsequent awards with similar goals and objectives allowed the agency to continue to meet its programming objectives after having terminated an award.

We determined that for 3 of the 11 terminated awards, USAID subsequently issued awards that retained the goals and objectives of the terminated awards.³⁶ When reviewing USAID's termination decision memos or termination notification letters to the contractors, the memos for two awards mentioned a specific follow-on award that would continue the remaining programming objectives from the terminated awards. For example, in its termination notification letter to the contractor for the Afghanistan Reads award, USAID specifically mentioned that it would be financing a follow-on award to implement the unfinished activities.

We determined that USAID terminated two awards because of changes in programming strategy within its Office of Agriculture.³⁷ In the first occurrence, USAID terminated the Afghan Agriculture Research and Extension Development award. In the award's termination decision memo, USAID cited a change in its agriculture strategy: to re-align its programming with the Afghan government's new strategy, USAID would terminate the award and instead, implement the newly designed Regional Agriculture Development Program awards. In the second occurrence, USAID terminated the Regional Agriculture Development Programs–West. In the award's termination decision memo, USAID again cited a change in the Afghan government's agriculture strategy and USAID's need to re-align its programming with the new strategy. USAID subsequently issued several new agriculture awards to align its programming with the Afghan government's new strategy.

In March 2020, USAID terminated one award, Trade Show Support, due to COVID-19 pandemic restrictions surrounding large events held indoors. In October 2021, USAID told us that it does not intend to issue a follow on award.

In March 2017, USAID terminated one award, E-Government Resource Center II, whose goal was to build the Afghan government's capacity to offer e-government services to Afghans through its ministries by establishing an Information and Communication Technology center. Since this award provided direct assistance to the Afghan government, USAID set conditions that the Afghan government was required to meet in order to continue to receive funding. During the implementation of the award, USAID documentation noted that the Afghan government was unable to meet the required conditions of the award, and USAID decided to terminate the award. After USAID terminated the award, it continued to provide direct support to the Afghan government through other programs. In October 2021, USAID told us that it does not intend to issue a follow on award.

³⁵ The four awards are (1) Logistical Support Service; (2) Irrigation and Watershed Management Program; (3) Afghanistan Monitoring, Evaluation, and Learning Activity; and (4) Emergency Road Operation and Maintenance at Tangi Abrshim to Kabul-Jalalabad Road.

³⁶ The three awards are (1) Afghanistan Reads, (2) Afghan Tuition Scholarship Program, and (3) Regional Agriculture Development Program–South.

³⁷ The two awards are the (1) Afghan Agricultural Research and Extension Development Program, and (2) Regional Agriculture Development Program–West.

CONCLUSION

From January 1, 2014, through December 31, 2020, USAID terminated 11 awards, all for convenience of the government. We determined that either USAID did not maintain or did not complete the required documentation for 8 of the 11 awards, or 73 percent. As a result, USAID officials did not adhere to federal regulations or agency policies that require records be retained. Regardless of the number of awards terminated, or those awards' values or dispersal amounts, there is no threshold for when to follow federal law.

Moreover, USAID officials did not follow established procedures that were meant to help ensure that award files are complete and stored electronically. Without adhering to its own internal controls, USAID does not have complete and accurate records of all of its activities in order to protect the legal and financial rights of the government and persons affected by the government's activities. The failure of personnel to adhere to established procedures has been a long-term problem effecting the mission, as evidenced by missing documentation from awards USAID terminated several years ago.

Since the operating environment in Afghanistan changed with the collapse of the Afghan government, USAID will likely need to terminate additional awards made prior to August 2021 as it adjusts its programming strategy. Additionally, as USAID continues to provide aid to Afghanistan, the possibility remains that USAID will need to terminate other awards in the future. Therefore, the findings and recommendations in this report remain relevant.

RECOMMENDATIONS

To help ensure that USAID maintains all required award termination documentation in compliance with federal regulations and its own internal guidance, we recommend that the USAID/Afghanistan Mission Director and the mission's Director of the Office of Acquisition and Assistance:

- 1. Take appropriate action to remind or retrain contracting officers about the importance of existing documentation requirements for terminating awards.**
- 2. Take action to help ensure that responsible officials follow internal controls related to the completion and storage of award files.**

AGENCY COMMENTS

We received written comments from the USAID/Afghanistan Mission Director, which we reproduced in appendix IV. In its response, USAID concurred with both of our recommendations. The Mission Director also acknowledged that there was a significant loss of digital- and hard-copy documents that had been stored exclusively at the embassy in Afghanistan.

USAID concurred with our two recommendations. For both recommendations, the Mission Director stated that the mission has issued an administrative notice reminding contracting officers, and their representatives, of FAR regulations pertaining to document retention and the importance of adherence to those regulations.

With regard to the second recommendation, the Mission Director also stated USAID has added controls within its centralized storage system to ensure compliance with pre-award documentation retention requirements. However, USAID did not provide SIGAR with documentation demonstrating that USAID added those same controls to ensure compliance with post-award document retention requirements, or commented if it intended to add those controls in the future. Examples of required post-award documents are detailed in Table 1, and include an award's termination decision memo or final settlement agreement.

We will close the first recommendation, as USAID provided documentation showing it took action to remind responsible officials of document retention requirements and their importance. The second recommendation,

however, will remain open. Although USAID took action to remind responsible officials of ADS guidance on the completion and storage of files in the central database, it did not take action to help ensure responsible officials follow the related internal controls. This recommendation will remain open until we receive documentation showing the actions taken by USAID. We will follow up with USAID within 60 days of the publication of this report to identify and assess actions in response to our recommendation.

APPENDIX I - SCOPE AND METHODOLOGY

This report discusses the results of our audit of the U.S. Agency for International Development's (USAID's) termination of awards that supported reconstruction in Afghanistan. The objectives were to assess the extent to which (1) USAID terminated awards in compliance with applicable laws, regulations, and policies; and (2) award terminations effected intended programmatic outcomes in Afghanistan.

To answer the first objective, we first identified which awards USAID terminated prior to their completion by requesting USAID's Afghanistan pipeline report for the period from January 1, 2014, through December 31, 2020, and noting which of those awards USAID terminated. The pipeline report lists all of USAID's awards that directly supported Afghanistan's reconstruction and includes each award's individual number, type, program title, technical office, implementing partner, total estimated cost, amount obligated, amount disbursed, start and end dates, and other information. We summarized this data in order to provide context on the total number of awards, total number of terminated awards, and respective obligation and disbursement information. Additionally, for each terminated award, we requested USAID provide the original awarding documents and any modifications, as well as all documents pertaining to the termination process, such as termination decision memos, termination notification letters to the contractor, termination settlement agreements, and financial statement audits of incurred costs. We reviewed the Code of Federal Regulations (CFR), the Federal Acquisition Regulation (FAR), and USAID's Automatic Directives Services (ADS) guidance to determine the requirements for when agencies terminate an award. We then determined whether USAID documented and maintained required records.

To answer the second objective, for each terminated or canceled award, we determined which technical office issued the award and then identified all subsequently issued awards from the respective technical office through March 31, 2021. For each subsequent award, we examined program fact sheets prepared by USAID or the implementing partner to determine if it had similar goals and objectives as the terminated award. For subsequent awards with similar goals and objectives, we requested the original award documents and any modifications from USAID. We then analyzed the goals and objectives within the awarding documents from both the terminated or canceled award and the subsequent awards to determine whether they had similar programming objectives. Subsequent awards with similar goals and objectives to the terminated or canceled award signified that the termination of the award would not have an effect on USAID's programmatic outcomes. However, for terminated or canceled awards that did not have subsequent awards with similar goals and objectives, we determined if there were strategic programming changes, as identified in USAID's termination decision memos. We then compared USAID's new strategic programming strategies to determine if subsequently issued awards had goals and objectives that would contribute to the new strategy.

For both objectives, we interviewed officials from USAID's Offices of Acquisition and Assistance, Financial Management, and Project and Program Development.

We used computer-processed data from USAID to determine how many awards USAID issued directly to support the reconstruction of Afghanistan and how many of those awards it terminated or canceled. USAID gave us a spreadsheet listing all of the awards it was implementing from January 1, 2014, through December 31, 2020. Within that listing, USAID also identified which of those awards it terminated or canceled during the same period. We assessed the data's reliability by reviewing SIGAR audit, inspection, and evaluation reports; USAID Office of the Inspector General audit reports, quarterly reports, and congressional letters and testimonial reports; USAID financial statement audit reports; and Government Accountability Office audit and testimonial reports to see if those reports identified awards USAID terminated or canceled. Additionally, we compared the data within the spreadsheet to previous data USAID provided SIGAR and against information within the award and termination documents USAID provided to SIGAR during this audit. We determined that the data in the spreadsheet provided by USAID was sufficiently reliable for the purposes of this report.

We conducted our audit work in Arlington, Virginia, from March 2021 through May 2022, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the

audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. SIGAR performed this audit under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended.

APPENDIX II - SUMMARY OF THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT'S TERMINATED AWARDS

Since 2014, the U.S. Agency for International Development (USAID) has terminated a series of awards for convenience in Afghanistan. Table 2 the 11 terminated awards with their award type, start date, termination date, and termination reason. Table 3 lists each of the 11 terminated awards with their award value, amount of funds actually dispersed, and a calculated percentage of the dispersed amount compared to the award amount.

Table 2 - USAID Contracts Terminated for Convenience

Award	Award Type	Start Date	Termination Date	Termination Reason
Logistical Support Service	Firm-Fixed-Price	08/30/2014	09/16/2014	Not Known
Regional Agricultural Development Program–West	Cost-Plus-Fixed-Fee	08/10/2014	05/31/2016	Change in programming strategy
Afghan Agricultural Research and Extension Development	Cost Contract Term	07/12/2012	05/31/2014	Change in programming strategy
Irrigation and Watershed Management Program	Cost-Plus-Fixed-Fee	12/21/2012	07/27/2015	Protect U.S. taxpayer funds by terminating programs not achieving their expected results
Regional Agricultural Development Program–South	Cost-Plus-Fixed-Fee	10/07/2013	11/20/2017	Protect U.S. taxpayer funds by terminating programs not achieving their expected results
Afghanistan Reads Program	Grant Agreement	06/01/2013	04/30/2014	Change in programming strategy
Afghanistan Tuition Scholarship Program	Cooperative Agreement	08/21/2011	09/30/2014	Change in programming strategy
Trade Show Support Activity	Time and Materials	06/11/2018	06/05/2020	Protect U.S. taxpayer funds by terminating programs not achieving their expected results
E-Government Resource Center–II	Grant Agreement	08/28/2013	03/09/2017	Protect U.S. taxpayer funds due to the Afghan government not meeting award requirements
Emergency Road Operation and Maintenance	Firm-Fixed-Price	08/04/2015	08/04/2015	Avoid duplication of work
Afghanistan Monitoring, Evaluation, and Learning Activity	Cost-Plus-Fixed-Fee	07/22/2018	08/02/2018	Bid Protest

Source: SIGAR table based on USAID data.

Table 3 - Costs of USAID Contracts Terminated for Convenience

Award	Total Award Value	Total Amount Dispersed	Percent Dispersed
Logistical Support Service	\$2,863,345	\$66,373	2%
Regional Agricultural Development Program- West	\$69,973,376	\$27,080,422	39%
Afghan Agricultural Research and Extension Development	\$23,638,611	\$6,750,605	29%
Irrigation and Watershed Management Program	\$129,963,114	\$14,947,471	12%
Regional Agricultural Development Program-South	\$125,075,172	\$108,625,771	87%
Afghanistan Reads Program	\$625,000	\$380,000	61%
Afghanistan Tuition Scholarship Program	\$8,890,608	\$6,398,771	72%
Trade Show Support Activity	\$6,921,728	\$6,216,187	90%
E-Government Resource Center-II	\$3,900,000	\$1,875,000	48%
Emergency Road Operation and Maintenance	\$89,288	\$5,996	7%
Afghanistan Monitoring, Evaluation, and Learning Activity	\$18,164,037	\$17,628	0%

Source: SIGAR table based on USAID data.

APPENDIX III - ADDITIONAL DETAILS OF SIGAR'S REVIEW OF AVAILABLE USAID TERMINATION DOCUMENTATION

From January 1, 2014, through December 31, 2020, the U.S. Agency for International Development (USAID) implemented 698 awards to support the reconstruction of Afghanistan. Of those awards, USAID terminated or canceled 11, or less than 2 percent, of all awards. For each terminated award, we requested USAID provide the original awarding documents and any modifications, as well as all documents pertaining to the termination process, such as termination decision memos, termination notification letters to the contractor, termination settlement agreements, and financial statement audits of incurred costs. Guidance from the Federal Acquisition Regulation (FAR) and USAID's Automated Directives System (ADS) provide general policies and procedures concerning the award termination process, including requirements for termination decision memos, contractor termination notices, termination settlement agreements, termination contract clauses, and financial statement audits of incurred costs. Additionally, the FAR and ADS require that contracting officers retain all applicable award files, including files relating to an award's termination, for 3 years and 6 years, respectively.³⁸

For 3 awards where USAID provided all the required documentation, we determined that USAID complied with termination guidance. In the case of 8 awards, or about 73 percent, USAID did not retain all of the termination documentation required by the Code of Federal Regulations (CFR), FAR, and ADS. For these awards, we were unable to determine with certainty whether USAID completed the required documents and did not save them in accordance with CFR, FAR, and ADS guidance, or whether the documents were never completed. However, we used our professional judgement throughout our review of available documentation and found that USAID officials likely completed at least 26 of the 48 required records.

For both the Regional Agriculture Development Program–West and the Regional Agriculture Development Program–South, USAID did not provide us with the desk audit of the contractor's settlement proposal and the final settlement agreement. These documents are required to demonstrate that USAID performed an audit of the contractor's settlement proposal to determine whether that proposal was reasonable, and reached a final settlement with the contractor. Because of these missing documents, we determined that USAID did not comply with the document retention requirements of the FAR and ADS.³⁹ However, based on another document showing that USAID reached a final settlement with the contractor, we used professional judgment to determine that USAID likely met FAR and ADS award termination requirements but not their document retention requirements.

For the Afghanistan Reads award, USAID did not provide us the termination decision memo that documents USAID's reason for terminating the award and documents the approval of the award's termination. Because of the missing documents, we determined that USAID did not comply with the FAR and ADS document retention requirements.⁴⁰ However, based on other documents showing USAID's intention to terminate the award, we used professional judgment to determine that USAID likely met FAR and ADS award termination requirements, but not their document retention requirements.

For the Trade Show Support award, USAID did not provide us with the termination decision memo, final settlement agreement, and financial statement audit. Because of the missing documents, we determined that USAID did not comply with the FAR and ADS document retention requirements.⁴¹ However, based on other documents showing USAID's intention to terminate the award and its final settlement with the contractor, we used professional judgment to determine that USAID most likely met FAR and ADS award termination requirements, but not their document retention requirements.

³⁸ FAR 4.805 and ADS 502.3.4.5. We note that 2 CFR 200.334 requires documents be retained for 3 years; however, USAID's internal guidance extends that requirement to 6 years.

³⁹ FAR 4.803; ADS 302.3.8.16, 302sat, 502, and 511.

⁴⁰ Ibid.

⁴¹ Ibid.

For the Afghan Tuition Scholarship Program, USAID did not provide us with the termination notification letter and final settlement agreement. Because of the missing documents, we determined that USAID did not comply with the FAR and ADS document retention requirements.⁴² However, based on documents showing the contractor acknowledged the award's termination and its financial statement audit, we used professional judgment to determine that USAID likely met FAR and ADS award termination requirements, but not their document retention requirements.

For the Emergency Road Operation and Maintenance at Tangi Abrshim to Kabul-Jalalabad Road award, USAID did not provide us with the termination decision memo and the final settlement agreement. Because of the missing documents, we determined that USAID did not comply with the FAR and ADS document retention requirements.⁴³ However, based on documents showing USAID's intention to terminate the award one day after its award, we used professional judgment to determine that USAID likely met FAR and ADS award termination requirements, but not their document retention requirements.

For the Irrigation and Watershed Management Program award, USAID only provided the financial statement audit of the award's costs. As a result, we determined that USAID did not comply with the FAR and ADS document retention requirements.⁴⁴ Additionally, the lack of documentation prevented us from assessing USAID's compliance with all FAR and ADS termination requirements.

For the Logistical Support Service award, USAID did not provide any of the required termination documentation. Because of the missing documents, we determined that USAID did not comply with the FAR and ADS document retention requirements.⁴⁵ Additionally, USAID's non-compliance with record retention requirements prevented us from assessing its compliance with all FAR and ADS termination requirements.

⁴² FAR 4.803; ADS 302.3.8.16, 302sat, 502, and 511.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

APPENDIX IV - COMMENTS FROM THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT



MEMORANDUM

TO: The Honorable John F. Sopko, The Special Inspector General for Afghanistan Reconstruction (SIGAR)

FROM: Peter Duffy, USAID/Afghanistan Mission Director /s/

DATE: April 27, 2022

SUBJECT: Management Comments to Respond to the Draft Performance Audit Report Produced by the SIGAR titled, *"Contracting in Afghanistan: USAID Did Not Complete or Did Not Maintain Required Documentation for 8 of its 11 Terminated Awards"* (SIGAR XX /SIGAR 149A)

The U.S. Agency for International Development (USAID) thanks SIGAR for the opportunity to provide comments/feedback on the subject draft report. USAID concurs with the draft report's two recommendations and sets out the actions taken to address both recommendations.

On August 15, 2021, the Afghanistan embassy was evacuated. Prior to the evacuation the Office of the Chief Information Officer (M/CIO) attempted to download the information that was stored on the various drives. Unfortunately, the download was largely unsuccessful. Additionally, CIO was unable to retrieve significant data from the tapes which were not destroyed during the evacuation process. As a consequence of the unexpected and immediate evacuation, there was a significant loss of Mission digital- and hard-copy records stored exclusively at post (see Attachment 1: Admin Notice 2022-0004).

Consequently, USAID/Afghanistan's Office of Acquisition and Assistance (OAA) was not able to provide all the requisite documentation. It is not the practice or expectation for the events to be repeated that caused this loss of information. USAID/Afghanistan is working to ensure this does not recur.

The Agency has also mitigated such concerns as guidance was provided on October 2019 that stated: USAID implemented the new functionalities in Global Acquisition and Assistance system (GLAAS) and the Agency Secure Image and Storage Tracking System (ASIST) in order to improve the Agency's award performance with 100 percent compliance in ASIST filing. GLAAS will now check for 12 critical documents in ASIST. If the critical documents are not in ASIST, new awards will not be able to validate or be approved/released through GLAAS.

Comments by USAID on the Draft Report Released By The Special Inspector General For Afghanistan Reconstruction (SIGAR) Titled “Contracting in Afghanistan: USAID Did Not Complete or Did Not Maintain Required Documentation for 8 of its 11 Terminated Awards” (SIGAR 22-XX/SIGAR 149A)

Please find below the Management comments from the U.S. Agency for International Development (USAID) on the draft report produced by the Special Inspector General for Afghanistan Reconstruction (SIGAR), which contains two recommendations for USAID:

Recommendation 1: We recommend that the USAID/Afghanistan Mission Director and the mission’s Director of the Office of Acquisition and Assistance take appropriate action to remind or retrain contracting officers about the importance of existing documentation requirements for terminating awards.

- **Management Comments:** USAID concurs with Recommendation 1. USAID/Afghanistan issued Administrative Notice Number 2022-0002 reminding contracting officers, their representatives, and acquisition and assistance specialists about the importance of existing documentation requirements for terminating awards (see Attachment 1: Admin Notice-2022-0004). The Administrative Notice reminds staff of the requirements to ensure negotiation documentation is in line with FAR 49.110, Settlement Negotiation Memorandum.

Based on the above actions taken, USAID requests that SIGAR close Recommendation 1 upon issuance of the final report.

Recommendation 2: We recommend that the USAID/Afghanistan Mission Director and the mission’s Director of the Office of Acquisition and Assistance take action to help ensure that responsible officials follow internal controls related to the completion and storage of award files.

- **Management Comments:** USAID concurs with Recommendation 2. Agency guidance was provided in October 2019 that stated: USAID implemented the new functionalities on the Global Acquisition and Assistance system (GLAAS) and the Agency Secure Image and Storage Tracking System (ASIST) in order to improve the Agency’s award performance with 100 percent compliance in ASIST filing. GLAAS now checks for 12 critical documents in ASIST (see list below). If the critical documents are not in ASIST, new awards will not be able to validate or be approved/released through GLAAS.

The 12 critical documents checked for GLAAS/ASIST missing documents validation are:

- Pre-award file plan Section I
 - Independent Government Estimate
 - Small Business Review Form/Clearance (if applicable)
 - Selection of Instrument
 - SOAR (if applicable)
- Pre-award file plan Section II
 - Synopsis & Solicitation Document
- Pre-award file plan Section III
 - Proposals & Compliance Checks
 - Technical Evaluation Plan/Chair Appointment
 - Final Technical Memo
- Pre-award file plan Section IV

- Award Document
- Award Negotiation Memo / Selection Decision for Award (Signed)
- Final Negotiated Budget (Text Accessible/Excel Format Only)
- AOR/COR Designation Letter (if applicable)

In addition to the above controls now built into GLAAS and ASIST, USAID/Afghanistan issued Administrative Notice number 2022-0004 (See Attachment 1: Admin Notice 2022-0004). The Administrative Notice reminds staff of the requirements of FAR 49.002 that provides for termination for the convenience of the Government or for the default of the awardee and the need to comply with the internal controls that ensure negotiation documentation are in line with FAR 49.110, Settlement Negotiation Memorandum.

Based on the above actions taken, USAID requests that SIGAR close Recommendation 2 upon issuance of the final report.

Attachment 1: [Admin Notice 2022-0004](#)

APPENDIX V - ACKNOWLEDGMENTS

Carole Coffey, Senior Audit Manager

Adriel Harari, Auditor-in-Charge

Mary “Jackie” Ducharme, Senior Program Analyst

This performance audit was conducted
under project code SIGAR-149A.

SIGAR's Mission

The mission of the Special Inspector General for Afghanistan Reconstruction (SIGAR) is to enhance oversight of programs for the reconstruction of Afghanistan by conducting independent and objective audits, inspections, and investigations on the use of taxpayer dollars and related funds. SIGAR works to provide accurate and balanced information, evaluations, analysis, and recommendations to help the U.S. Congress, U.S. agencies, and other decision-makers to make informed oversight, policy, and funding decisions to:

- improve effectiveness of the overall reconstruction strategy and its component programs;
- improve management and accountability over funds administered by U.S. and Afghan agencies and their contractors;
- improve contracting and contract management processes;
- prevent fraud, waste, and abuse; and
- advance U.S. interests in reconstructing Afghanistan.

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- Phone International: +1-866-329-8893
- Phone DSN International: 312-664-0378
- U.S. fax: +1-703-601-4065

Public Affairs

Public Affairs Officer

- Phone: 703-545-5974
- Email: sigar.pentagon.ccr.mbx.public-affairs@mail.mil
- Mail: SIGAR Public Affairs
2530 Crystal Drive
Arlington, VA 22202