



OFFICE OF INSPECTOR GENERAL

AUDIT OF USAID/AFGHANISTAN'S USE OF THIRD-COUNTRY NATIONAL EMPLOYEES

AUDIT REPORT NO. F-306-13-002-P
August 31, 2013

KABUL, AFGHANISTAN



Office of Inspector General

August 31, 2013

MEMORANDUM

TO: USAID/Afghanistan Mission Director, William Hammink

FROM: OIG/Afghanistan Director, James C. Charlifue /s/

SUBJECT: Audit of USAID/Afghanistan's Use of Third-Country National Employees
(Report No. F-306-13-002-P)

This memorandum transmits our final report on the subject audit. In finalizing the report, we considered your comments and included your response in Appendix II.

The report contains six recommendations to assist USAID/Afghanistan in improving its procedures for using third-country national employees. Information provided by the mission showed it has taken final action on Recommendation 4. We acknowledge management decisions on Recommendations 1-3 and 5-6. Please provide the Audit Performance and Compliance Division with evidence of final action to close the open recommendations.

Thank you for the support and assistance provided on this audit.

CONTENTS

Summary of Results	1
Audit Results	6
Mission Records Did Not Justify Use Of Third-Country National Employees	6
Contract Positions Held by Third-Country Nationals Lacked Proper Classifications	7
Mission Did Not Sufficiently Justify Sole-Sourcing Third-Country National Contracts.....	11
Evaluation of Management Comments	14
Appendix I—Scope and Methodology	15
Appendix II—Management Comments	17

Abbreviations

The following abbreviations appear in this report:

EXO	Mission Executive Office/Officer
FSN	Foreign Service National
GS	General Schedule
PSC	Personal Services Contract/Contractor
SIV	Special Immigrant Visa
TCN	Third Country National
USDH	U.S. direct-hire staff

SUMMARY OF RESULTS

U.S. Government strategy in Afghanistan—as in other missions—prioritizes the employment of nationals from the host country over the use of third-country nationals (TCNs).¹ Employing host-country nationals helps by integrating the foreign assistance effort in the country, building local capacity, and contributing to the local economy. Therefore, for positions that are not inherently governmental functions, the order for hiring should be (1) locally engaged Foreign Service Nationals (FSNs), who for the purpose of this report are contract employees and citizens of the host country, (2) U.S. direct-hire staff, (3) U.S. personal services contractors, and (4) TCN personal services contractors.

In 2003 USAID decided it was important to U.S. goals to staff the new Afghanistan mission as quickly as possible with qualified and experienced personnel. However, the Agency did not initially attract enough U.S. direct-hire personnel to volunteer for tours in Afghanistan. In addition, the Agency did not find enough U.S. personal services contractors² to meet staffing needs. Furthermore, the mission deemed there was not as much local capacity as in other countries to staff the new mission. To prevent U.S. foreign policy from being “irrevocably damaged,” USAID implemented policies to encourage experienced TCNs from other USAID missions to work in Afghanistan.³

Therefore, the Agency determined in 2003 that TCN personal services contractors (hereafter TCNs) in Afghanistan would not be subject to the local compensation plan—the norm in other missions—but would be authorized pay and benefits on par with those of offshore U.S. personal services contractors.⁴ Pay or direct compensation in what USAID calls “critical priority countries,” the posts it considers most challenging, includes danger pay and post differential; together they add 70 percent to base pay in Afghanistan. In addition, TCNs, like other mission employees, were eligible to work overtime. As for benefits, personal services contractors, like U.S. direct-hire staff, were authorized repatriation, rest and recuperation travel, and separate maintenance allowance (designed to offset expenses of maintaining family members in a country other than the employee’s post). These costs are budgeted separately from direct compensation. FSNs do not receive these benefits.

From 2004 to 2012, USAID/Afghanistan employed 59 TCNs long term (for more than 6 months) and expended \$20 million in direct compensation. Also, from 2003 to mid-2013, the mission brought in 96 TCNs hired for temporary-duty assignments (6 months or less) according to financial records. The mission expended \$4.5 million over 10 years in direct compensation to temporary-duty TCNs.

¹ TCNs are neither host-country citizens nor citizens or permanent legal resident aliens of the United States. They are eligible for return travel to their home country or country of recruitment at U.S. Government expense.

² According to the USAID Web site, a personal services contractor is “an individual who enters into a contract that generally establishes an employer-employee relationship with the Agency. The individual appears, in many respects, to be a Government employee; however, USAID’s [personal services contractors] are legally not [U.S. Government] employees for the purpose of any law administered by the Office of Personnel Management.”

³ Acquisition & Assistance Policy Directive 03-11, December 2, 2003.

⁴ “Offshore” personal services contractors are hired abroad and brought to Afghanistan, instead of being hired in Afghanistan. They have different compensation and benefits than do those hired locally.

In November 2010, the Government of Afghanistan and the International Security Assistance Force led by the North Atlantic Treaty Organization agreed on the withdrawal of international forces from the country by the end of 2014. During the transition period, aid inflows, which Afghanistan depends on, will decline.

Although in July 2012 international donors and the Afghan Government reaffirmed their shared commitment to the development of Afghanistan after 2014, as part of the transition, the mission is reducing its field presence and, consequently, its staff level. Moreover, the mission expects to lose FSN staff who have applied for the U.S. Government's Special Immigrant Visa program.⁵ Mission officials estimated that 90 percent of their FSN staff have applied for the visas.

Mission officials said that if they lose many FSNs, the mission will need TCNs to bridge the staffing gap. They explained that the process of hiring an FSN takes several months. Meanwhile, TCNs could maintain operations and train new FSNs.

In commenting on the draft report, the mission noted several key points that might affect how it recruits TCNs in the future. Although the operating year budget "may very well decline in the ensuing years, the pipeline balance creates continuing need for significant numbers of staffing at post." Further, "despite the large funding pipeline, the Mission is currently in the process of reducing its [U.S. direct-hire] cadre of staff" from about 400 at the start of fiscal year 2013 to 110 by the close of fiscal year 2014 (Appendix II).

The Office of Inspector General conducted this audit to determine whether USAID/Afghanistan was employing third-country national employees in accordance with the U.S. Government's strategy for Afghanistan and applicable laws and regulations. While the Agency's special efforts to attract TCNs were justified by the need to staff the Afghanistan mission as quickly as possible, these efforts were expected to be an exception to normal recruitment practices and temporary—although "exceptional" and "temporary" were not clearly defined. The audit found that the overall use of TCNs was rare. However, during the period examined, some TCNs occupied positions for years. Moreover, the mission did not manage its use of TCN personal services contractors in accordance with applicable regulations and policies in three areas: justification of TCN recruitment, classification of positions held by TCNs, and justification of sole sourcing TCN contracts.

Was the Hiring of Third-Country Nationals the Exception to Normal Recruitment Practices? The use of TCNs was unusual at USAID/Afghanistan. As shown in the following table, the number of TCNs employed at the mission ranged from 12 in 2004 to 22 in 2012. While the number of TCNs doubled, TCNs' share of the total staff decreased because of the larger increase in U.S. staff. The number of TCNs as a percentage of total staff was highest from 2004 to 2008, when it hovered between 7 and 8 percent. In 2012, TCNs made up 4 percent of mission staff.

Were Third-Country Nationals Hired to Fill Positions Temporarily? Certain mission offices have employed TCNs continuously from 2004 to 2012, the period for which the mission provided staffing patterns (lists of approved positions, both filled and vacant, at a certain point in time). As shown in the following figure, the Office of Acquisition and Assistance employed the

⁵ The Afghan Allies Protection Act of 2009 authorizes the issuance of Special Immigrant Visas to Afghan nationals who have worked for or on behalf of the U.S. Government for at least 1 year and have experienced serious threat because of that employment. The U.S. Government has a similar program in Iraq.

most, 17 over 9 years, not including those hired for a temporary-duty assignment.

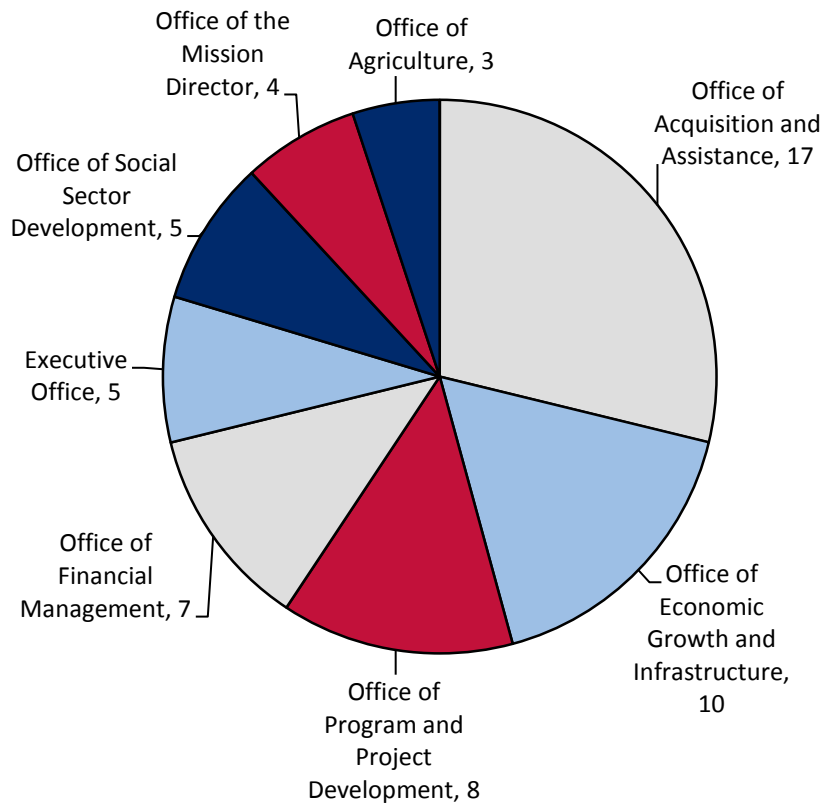
Composition of Mission Staff by Type and Year (unaudited)

Type	2004	2005	2006	2007	2008	2009	2010	2011	2012
U.S.*	53	64	71	90	94	166	282	343	374
FSN	84	77	91	126	134	129	160	171	218
TCN*	12	12	13	18	16	16	17	17	22
Total	149	153	175	234	244	311	459	531	614
TCNs as % of total staff	8	8	7	8	7	5	4	3	4

* Totals do not include those on temporary-duty assignments.

Source: USAID/Afghanistan.

Third-Country Nationals Working at USAID/Afghanistan by Office, 2004-2012 (unaudited)



Source: USAID/Afghanistan.

An Office of Acquisition and Assistance official explained that the mission has hired TCNs as senior acquisition and assistance specialists since the mission opened and will likely continue to do so because of the specialized training and experience the positions require. It can take years for an FSN to reach a senior position. Moreover, the office expects FSNs to be increasingly scarce because of the Special Immigrant Visa program.

The mission does not track how many TCN-held positions were eventually taken over by FSNs or U.S. personnel, but staffing patterns from 2004 to 2012 show the following:

- The mission's front office has employed at least one TCN as an administrative assistant since 2004. The front office employed three TCNs (not including those hired for a temporary-duty assignment) in 2012.
- The Office of Financial Management employed a TCN as a supervisory financial analyst from 2004 to 2008. An FSN took over this position in 2009. The Office of Financial Management employed three TCNs in 2012, not including those hired for a temporary-duty assignment.
- The Executive Office (EXO)⁶ employed a TCN as deputy executive officer from 2004 to 2007. EXO now has two deputies, both U.S. direct hires. EXO employed one TCN in 2012, not including those hired for a temporary-duty assignment.

Records show several examples of TCNs temporarily filling positions—eventually replaced by FSNs or Americans, in accordance with U.S. strategy. Further, a senior mission official posited that the expansion of the Afghanistan mission and the lack of local capacity resulted not in the prolonged use of TCNs, but in the hiring of more U.S. personnel, who made up 61 percent of mission staff in October 2012.

As for managing the use of TCNs in accordance with regulations, mission officials explained that the difficult operating environment in Afghanistan affected their performance. The mission's Foreign Service staff typically serve 1-year tours, which hinder continuity and the accumulation of institutional knowledge. An official said the rapid expansion of the mission's personnel and operations during the "civilian uplift"⁷ (also referred to as the "civilian surge") in 2009 and 2010 affected compliance with procedures and the quality of record keeping. Moreover, during this period, the size of EXO staff remained static. According to the official, the mission has been addressing the issues uncovered by the audit as it manages the reduction in staff during the transition.

Since the mission will continue to employ personal services contractors, including TCNs, this audit highlights three problems that require attention:

- Mission records did not justify the use of TCNs (page 6).
- Contract positions held by TCNs lacked proper classifications (page 7).
- The mission did not sufficiently justify sole sourcing TCN contracts (page 11).

⁶ EXO is responsible for human resources and contract management at the mission.

⁷ In March 2009, the U.S. Government announced a new strategy, civilian uplift, to combat al-Qaeda. The strategy, designed to complement expanded military efforts, increased resources for civilian-led efforts to build Afghan capacity in governance and economic growth.

To address these issues, we recommend that USAID/Afghanistan:

1. Issue interim guidance explaining how mission offices should determine that the conditions justifying hiring TCNs exist and how EXO should document the determination (page 7).
2. Immediately survey personal services contractor files to confirm that valid classifications exist for all active positions (page 11).
3. Strengthen internal controls and improve procedures for managing classification records (page 11).
4. Verify that any future award of a personal services contract for a program administration and budget team leader position reflects its correct market value of General Schedule-13 (page 11).
5. Immediately classify the intermittent/remote senior acquisition and assistance technical adviser position held by two TCNs (page 11).
6. Analyze justifications for other than full and open competition for personal services contracts after 2009, and issue guidance if deficiencies are found (page 13).

Detailed results appear in the following section. Appendix I contains information on the scope and methodology (page 15). Management comments are included in their entirety in Appendix II, and our evaluation of them is on page 14.

AUDIT RESULTS

Mission Records Did Not Justify Use of Third-Country National Employees

The U.S. Department of State and USAID have developed guidance regarding the employment of third-country nationals at missions overseas.⁸ That guidance indicates that TCNs should be hired only when qualified personnel from the cooperating country are not available and program objectives do not allow enough time to train local candidates.

To provide guidance on recruiting and hiring TCNs, USAID/Afghanistan issued two mission orders. Mission Order 302.01, “U.S. PSC [Personal Services Contractor] and TCN Employees Policies and Procedures,” April 2005, states that a TCN shall not be recruited if a U.S. citizen or local national is available and that the mission director’s approval is required in advance of hiring a TCN for any position. Mission Order 495.04, “Recruitment Procedures for Personal Services Contract Positions,” March 2009, like the previous order 495.01, includes a list of required documents to be gathered during the recruitment process and filed. Specifically, the hiring office must write an action memorandum justifying hiring a TCN and obtain the mission director’s approval.

According to testing done for this audit, mission employee records did not contain justifications (action memorandums) for TCN contracts. The audit team judgmentally selected a sample of ten TCNs hired for long-term positions. The ten long-term TCNs worked on 17 contracts during the audit period—12 after March 2009 (when Mission Order 495.04 was in effect) and 5 before (when Mission Order 495.01 was in effect). In 17 of 17 cases, the mission could not provide documentation to support the decision to hire a TCN over an FSN or a U.S. candidate.

The mission’s recruitment of TCNs did not meet requirements established by the Department of State, the Agency, and the mission for three reasons:

1. Mission orders on recruitment listed the conditions under which TCNs are appropriate (or cited the Foreign Affairs Manual) but did not spell out how or who—EXO or the hiring office—should determine the conditions have been met or how EXO should document that determination.
2. EXO did not define “justification” in its mission orders applying to TCNs. As a result, mission personnel did not have a consistent understanding of what justification of a TCN position meant. Since the mission did not have action memorandums in employment files for any of the employees in the audit sample, the audit could not assess what information was used to justify hiring a TCN.
3. EXO did not enforce or did not document the requirement for advance approval by the mission director for filling a position with a TCN.

⁸ USAID’s Automated Directives System 495, “Foreign Service Personnel Administration”; Acquisition & Assistance Policy Directive 06-09, “Order of Preference for Hiring Cooperating Country Nationals and Third Country Nationals”; and 3 Foreign Affairs Manual 7271.4, “When TCN’s are Appropriate.”

According to an acquisition official in Washington, the mission's justification for hiring TCNs should be on a case-by-case basis. In other words, it is not sufficient for a mission to determine that local capacity in the cooperating country is generally insufficient and on that basis continue hiring TCNs indefinitely. A former mission official explained that documentation on the lack of qualified local candidates should include the FSN vacancy announcement, along with an assessment of the quality of the applications received. The unavailability of U.S. direct-hire personnel could be documented by correspondence from USAID/Washington. Mission officials from hiring offices interviewed during the audit said they do not maintain recruitment records, as that is the responsibility of EXO.

Because records did not contain justifications of the use of TCNs, the mission cannot be sure how many more positions could have been filled with local staff, in keeping with normal mission practice and U.S. strategy in Afghanistan. Lost cost savings opportunities are another issue since TCNs are paid significantly higher salaries than FSNs and entail additional costs.

Concerning the lack of documentation supporting the mission director's advance approval of hiring a TCN to fill a position, the mission sought to remedy that by instituting a new process for justifying and approving TCN hires; however, our audit did not test that process. According to EXO, the 17 TCN contracts reviewed and lacking justifications were created before 2011, when the mission implemented its new process. An official stated that no new TCN positions have been created since the fall of 2011. Although the Office of Acquisition and Assistance added TCNs in February 2012, an EXO official said they had already been approved. Nevertheless, the two current mission orders related to the recruitment of TCNs for contract positions are unclear about what information is required to justify hiring a TCN.

To address this issue, we make the following recommendation.

***Recommendation 1.** We recommend that USAID/Afghanistan issue written interim guidance explaining how hiring offices should determine that the conditions justifying hiring third-country nationals exist and how the mission Executive Office should document the determination. The guidance should be in effect until applicable mission orders are issued or updated.*

Contract Positions Held by Third-Country Nationals Lacked Proper Classifications

USAID Acquisition Regulation sets the policy and procedures for personal services contracts abroad. Appendix J of the regulation states that the mission's contracting officer is responsible for ensuring that each position has been classified and that the classification report is in the contract file before the contract is awarded. The purpose of a position classification is to establish the market value of a job and ensure that the amount spent on compensation is reasonable.

To supplement the regulation, the Office of Acquisition and Assistance/Washington issued policy directives and contract information bulletins. Acquisition and Assistance Policy Directive 05-02⁹ states that personal services contracts do not allow position descriptions that

⁹ Acquisition and Assistance Policy Directive 05-02, "Clarification of Policy for Personal Services Contracts with Anticipated Contract Performance Periods Exceeding Five (5) Years," March 10, 2005.

include “other duties as assigned.” The purpose of this rule is to ensure that contractors have position descriptions that reflect the work they are doing and that the classifications are appropriate. Contract Information Bulletin 98-11, “Determining a Market Value for [Personal Services Contractors] Hired under Appendix D, Handbook 14,” April 21, 1998, states: “All contract files must be documented to indicate that a grade-level review was performed, and the results of that review.”

USAID/Afghanistan didn’t follow this guidance. Its classification reports were missing, incomplete, or incorrect, and some classifications bypassed the guidance in not reflecting the work performed.

Classification Reports Were Insufficient. Of 17 contract positions held by ten TCNs in the audit’s judgmental sample, 13 (76 percent) lacked proper classifications. The files were either missing or contained one or more anomalies, as detailed below:

- The mission was unable to locate classification reports for two active positions (held by three TCNs).
- Two classification reports contained position descriptions that did not match the contracts (held by five TCNs).
- Two classification reports contained grade levels that did not match those in the contracts (held by two TCNs).
- Three classification reports were dated after the start of the contracts (held by three TCNs).
- Five classification reports included job descriptions with some variation of “other duties as assigned,” contrary to Acquisition and Assistance Policy Directive 05-02.

As of June 2013, four of the ten long-term TCNs in the sample were still employed at the mission in positions for which no valid or complete classification was on file.

Two examples illustrate the problems with the mission’s classification process and records:

- **Financial management trainer.** EXO was unable to provide a classification report for a financial management trainer position in the Office of Financial Management. The mission awarded the contract in December 2008 to a TCN who had been working in the office since 2006.
- **Senior acquisition and assistance specialists.** EXO provided a single classification report, dated May 11, 2007, for the position of senior acquisition and assistance specialist (a position held by four TCNs in our sample). However, the position description did not match the market value analysis, and two of the employees were awarded contracts that were announced before the date of the classification report.

EXO’s procedures for managing classification records were antiquated. First, EXO maintained classification files in hard copy, separate from employee files, and did not include a copy of the classification report in each employee file. Second, EXO did not keep electronic backups of all classification files kept in binders. Third, EXO staff did not keep or maintain a checklist in every employee file. The staffing pattern, which should contain up-to-date information, cannot be used

to track classifications because job titles in some classification reports do not match those in contracts or staffing patterns and because not all classification reports contain position numbers that can be cross-referenced with the staffing pattern.

Classification Did Not Reflect Duties Performed. The overarching principle in classification of personal services contract positions is that the grade level of a position is based on the duties being performed, not on the person performing them. This principle helps ensure that the government obtains services at a reasonable cost. In two cases, EXO allowed hiring offices to take actions that resulted in contract positions being awarded to TCNs at grade levels unsupported by a valid analysis of market value.

- **Program administration and budget team leader.** In May 2012, the mission awarded a personal services contract for a program and budget team leader in the Office of Economic Growth and Infrastructure to a TCN. Mission records show that this office submitted three proposals between January and December 2011 with three different titles but all with a proposed grade of General Schedule-14. Each time, EXO classified the proposed position as a 13. Nonetheless, the mission announced the position as a 14 in January 2012. In April 2012, the technical evaluation committee selected a TCN who had been at the mission since 2006.

In seeking to determine why the mission solicited the position as a 14 after it had been classified as a 13, auditors found:

- EXO could not produce a classification report signed by a contracting officer setting the position’s grade level at GS-14.
- The classification file contained no documentation of an appeal by the Office of Economic Growth and Infrastructure of the 13 grade level decision by EXO or a final decision by the mission director, as required by Acquisition and Assistance Policy Directive 04-13, “Revised Procedures Allowing for Classification of U.S. Personal Services Contracts Positions Up to the GS [General Schedule]-15 Equivalent,” September 21, 2004.
- The position descriptions in the 13 classification report and the TCN’s 14 contract are essentially the same, in violation of the principle of classifying positions based on the duties being performed.

Internal correspondence suggests that the Office of Economic Growth and Infrastructure’s objective in repeatedly rewriting the position description and submitting new proposals was to get the position classified at a higher grade rather than to meet organizational needs.

Moreover, aspects of the selection process in April 2012 raise doubts about the office’s objectivity. After EXO announced the position in January 2012, nine applicants met the minimum qualifications, and the Office of Economic Growth and Infrastructure selected four for interviews. Mission records show the technical evaluation committee (1) was made up of four staff members from the office—individuals who already knew the TCN eventually selected, who had been working in the same office since 2006; (2) was chaired by the office deputy director, who months earlier had asked EXO to set the grade level for the position at 14; (3) did not include anyone from outside the office, as recommended by Mission Order 495.04; and (4) was supposed to include someone from EXO as a nonvoting

member, but did not, according to the selection memorandum.

The TCN in the position had held three positions under separate contracts at the mission since 2006; with each new contract, the employee rose a grade level. The mission took unusual actions for the employee's previous positions as well. The mission sole sourced the employee's first two personal services contracts in 2006 and 2009. In the latter case, the mission violated its Mission Order 302.01, which required reopening to competition a position that expands the scope of work of an existing position.

- **Intermittent/remote senior acquisition and assistance technical advisers.** In October 2012 and January 2013, the Office of Acquisition and Assistance awarded personal services contracts for intermittent/remote senior acquisition and assistance technical advisers to two TCNs who had previously held onsite senior acquisition and assistance specialist positions at the mission. An intermittent/remote adviser differs from an onsite specialist in that the remote employee teleworks from his or her home country, traveling to Afghanistan on short trips whenever needed. The Office of Acquisition and Assistance did not submit a position description to EXO for classification. Instead, in February 2012, the office asked EXO to extend an authorization in place since 2006 allowing USAID Afghanistan to recruit U.S. personal services contractors. EXO granted the request and initiated recruitment procedures.

Actions related to the awarding of these two contracts were problematic for three reasons:

1. An authorization to add a position at a certain grade level is not a substitute for a market value assessment. EXO was unable to produce the classification report for the U.S. personal services contractor position authorized in 2006. Thus, it appears that EXO recruited these two positions in 2012 without having a market value assessment on file.
2. The position authorized for recruitment in 2006 and the position solicited in 2012 are not the same. For example, the 2006 position was supervisory—a factor in justifying its grade level—whereas the 2012 position was not. Also, the differences in working conditions—job location and the supervisory reporting relationship—should have resulted in a new classification.
3. Although the job titles are slightly different, the duties performed in the onsite and intermittent/remote positions are similar. However, the grade level of the onsite position is 13, while the remote one is 14. Thus, the Office of Acquisition and Assistance currently employs two groups of TCNs performing the same job but at different grade levels—neither of which is supported by a proper market value analysis.

This situation occurred because of inadequate oversight by EXO, which manages the classification process and maintains classification records. Classification policy and compensation policy have different objectives, and it is EXO's responsibility to keep the processes separate and preserve the integrity of each.

In the examples described above, it also appears that managers in the Office of Economic Growth and Infrastructure and the Office of Acquisition and Assistance used classification to boost compensation and facilitate recruitment. According to mission officials, highly qualified TCNs are important resources that require specialized skills and experience. Officials from these offices added that recruiting TCNs to come to Afghanistan and retaining them have been difficult. However, the Agency addressed this problem in 2003, when it decided to offer TCN

contractors salaries and benefits on par with those of U.S. contractors, rather than the local compensation plan.

Because TCN contract positions lack proper classifications, the mission does not have assurance that its contract positions are appropriately valued. The problem is potentially greater than inadequate record keeping; since USAID Acquisition Regulation does not allow awarding contracts for positions that have not been classified, contract extensions and new contracts under negotiation may become snagged. As of June 2013, the mission had 48 personal services contractors (U.S. and TCN) on board.

Further, as a result of the mission's bypassing classification, employees were improperly promoted. Personal services contractors are hired to perform a specific function for a set period and therefore are normally brought in at the full performance level. The actions left the mission without reasonable assurance that the U.S. Government obtained services at a reasonable cost. Moreover, the lack of consistency in enforcing classification rules constitutes unfair treatment of employees, particularly the ones who are doing similar work at a lower grade.

To ensure that all active contract positions at the mission are supported by a proper market value analysis and to bring the two positions held by three TCNs described above into compliance with policies on position classification, we make the following recommendations.

***Recommendation 2.** We recommend that USAID/Afghanistan immediately survey its records of all active personal services contractor positions to confirm that valid classification reports are on file and document the results.*

***Recommendation 3.** We recommend that USAID/Afghanistan improve records management by adding new controls over classification files for personal services contractor positions.*

***Recommendation 4.** We recommend that USAID/Afghanistan verify that any future contract awarded for the program administration and budget team leader position reflects its correct market value of General Schedule-13 grade level as determined by the classification report on file.*

***Recommendation 5.** We recommend that USAID/Afghanistan immediately classify the intermittent/remote senior acquisition and assistance technical adviser position.*

Mission Did Not Sufficiently Justify Sole Sourcing Third-Country National Contracts

U.S. Government and USAID regulations provide guidance on awarding contracts without full and open competition. Federal Acquisition Regulation Subpart 6.3, "Other Than Full and Open Competition," describes the *minimum* information that must be included to justify not competing a position. Section 6.303-1(a), "Requirements," states that a personal services contract awarded with limited competition must be justified in writing and approved. Section 6.303-1(b) states that technical and contracting personnel are responsible for providing the necessary data to support the justification and certifying that the data are accurate and complete. Subpart 6.303-2, "Content," lists the requirements for each justification. These requirements include:

- Identifying the statutory authority permitting other than full and open competition.
- Describing the services needed to meet the mission's needs and including estimated value.
- Listing actions under consideration to remove barriers to competition before entering into subsequent acquisitions.
- Including a determination by the contracting officer that the anticipated cost of the contract will be reasonable.

USAID policies reinforce these requirements. Appendix J of USAID Acquisition Regulation allows limiting competition for personal services contracts under certain conditions, including that the justification for less than full and open competition must be in accordance with Federal Acquisition Regulation 6.303 and that the use of an approved class justification meets required conditions.

Acquisition and Assistance Policy Directive 05-02 states that after 5 years, a personal services contract may be renewed without competition for the same person in the same job at the same mission as long as the TCN belongs to one of the appropriate classes. The directive cites the contract information bulletins that define TCN personnel classes for which a mission may apply a class justification.

The mission sole sourced personal services contracts for three TCNs in our judgmental sample in 2008 and 2009. The mission did not fully justify using other than full and open competition or produce the documentation required to support the justification. For example, in all three cases, the justification documents either did not include the estimated value of the contract or a sound basis for the estimated value. In none of the cases did the contracting officer document a determination that the cost of the contract was fair and reasonable. In two cases, no statutory authority was cited.

Classification Report Lacking. As noted above, in December 2008, the mission awarded a personal services contract for a financial management trainer to a TCN who had been working in the Office of Financial Management since 2006. In a memorandum justifying sole sourcing the contract, the mission cited Federal Acquisition Regulation 13.106-1-b, "Simplified Acquisition Procedures," and stated that the employee was uniquely qualified for the position and the mission had limited time to fill the position. The justification memorandum had the following problems:

- The section of the Federal Acquisition Regulation cited in the justification memorandum applies to certain types of small businesses, not to personal services contractors.
- The estimated value of the TCN's personal services contract exceeded the simplified acquisition threshold, which in 2008 was \$100,000.

EXO was unable to produce the classification report for the position, so it cannot support a Federal Acquisition Regulation requirement: certification by the contracting officer that the cost of the contract was reasonable.

In summary, the mission cannot justify sole sourcing a personal services contract for a position that has not been classified.

Statutory Authority Not Cited. In March 2009, the mission sole sourced a personal services contract for a senior program management specialist position to a TCN already working in the Office of Infrastructure, Engineering and Energy. However, the mission did not cite the statutory authority permitting limited competition in its justification document. The mission initially solicited the position, then decided to cancel the competition and award the contract to the TCN because, according to the justification memorandum, of a shortage of applicants with infrastructure experience and the strong track record of the TCN. The sole-source action was also contrary to Mission Order 302.01, which required competitive selection for new positions resulting in an expanded scope of work and a higher grade level. The TCN had previously held a position as a program management specialist one grade level lower than the new position.

Future Actions to Overcome Barriers to Competition Not Mentioned. In November 2009, the mission sole sourced a contract renewal for an administrative assistant who had been working in the mission director's office for 5 years. The justification memorandum cited Acquisition and Assistance Policy Directive 05-02 as the authority to award the contract without competition, but did not include all of the elements required by the Federal Acquisition Regulation. Specifically, the mission did not include a statement describing any planned actions to overcome barriers to competition in the future—particularly for a position that had existed for 5 years.

In the three cases above, contracting officers in EXO approved sole sourcing of contracts that did not have sufficient justification or supporting documentation. In the past, EXO used a checklist in the employee's file to ensure that justifications for sole-sourced contracts were properly supported and documented. This type of procedure did not appear to be in place for the actions reviewed.

As a result, the mission may have incurred unnecessary costs from the lack of competition. Moreover, it did not maximize the benefits of foreign aid by broadening the knowledge of host-country citizens and contributing to the host country's economy.

Mission officials responded that the most recent example uncovered by the audit of inadequate justification of sole sourcing a personal services contract was 4 years old and that they had no reason to believe the problems cited were not isolated incidents. Nevertheless, the examples presented occurred under two supervisory EXOs, and the mission's process for justifying sole-sourced personal services contracts has not changed. For these reasons, we make the following recommendation.

Recommendation 6. *We recommend that USAID/Afghanistan conduct a comprehensive analysis of justifications for sole-sourced personal services contracts after 2009 and document the results. If it discovers additional deficiencies, the mission should issue written guidance on justifications for other than full and open competition for personal services contracts.*

EVALUATION OF MANAGEMENT COMMENTS

The mission provided comments on the draft report. The information provided showed that the mission has taken final action on Recommendation 4. We acknowledge management decisions on Recommendations 1-3 and 5-6. Our evaluation of management comments follows.

Recommendation 1. The mission agreed and made a management decision. EXO was charged with disseminating interim guidance explaining how hiring offices should determine whether the conditions justifying hiring third country nationals have been met and how hiring offices should document their determination. The mission planned to disseminate this interim guidance by the end of August 2013.

Recommendation 2. The mission agreed and made a management decision. It will conduct a survey of all active personal services contractor positions to confirm that valid classification reports are on file. According to the mission, this activity has been initiated and will be completed by September 30, 2013, with the results appropriately documented.

Recommendation 3. The mission agreed and made a management decision. It will improve records management by adding new controls over classification files for personal services contractor positions. It has reallocated staffing resources to assist in this effort. The mission also stated that EXO would not sign off on a solicitation for a position without substantiating the position description and applicable reports. In addition, the mission reported taking several steps concerning the classification of positions. It established a clearance process for solicitations, established a process and documentation requirements for classifications, and evaluated and corrected deficiencies in its filing system. The mission set a target date of August 31, 2014, to close this recommendation.

Recommendation 4. Noting that the most recent incumbent in this position has left the mission and that the hiring office has no plan to fill the slot, the mission agreed to verify that any future contract awarded for the program administration and budget team leader position reflects the correct market value at the General Schedule-13 grade level. Final action has been taken.

Recommendation 5. The mission agreed and made a management decision to classify the intermittent/remote senior acquisition and assistance technical adviser position immediately. The mission planned to notify each contractor of the error in recruiting their positions at the General Schedule-14 grade level and modify their contracts and position descriptions to reflect the correct grade of General Schedule-13. The mission set a target date of August 31, 2013, for closing this recommendation.

Recommendation 6. The mission agreed and made a management decision. It will conduct a comprehensive analysis of justifications for sole-sourced personal services contracts after 2009 and document the results. The mission said it has taken initial steps to pull the applicable documents and supporting files for the contracts. EXO will look for deficiencies in the justifications and, if it finds any, issue appropriate written guidance on preparing justifications. The mission set a September 15, 2013, target date for closing this recommendation.

SCOPE AND METHODOLOGY

Scope

The USAID Office of Inspector General Afghanistan Country Office conducted this performance audit 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, in accordance with our audit objective. We believe that the evidence obtained provides that reasonable basis.

The objective of this performance audit was to determine whether the USAID/Afghanistan's employment of TCNs was in accordance with the U.S. Government's strategy for Afghanistan and applicable laws and regulations. Between 2004 and 2012, the mission awarded personal services contracts to 59 TCNs. As of December 2012, the mission had expended \$20 million in direct compensation to TCNs, not including other compensation and benefits that are budgeted separately. Throughout this period, the mission also employed 96 TCNs who came to Afghanistan for temporary-duty assignments of up to 6 months and then returned to their home missions. The mission expended \$4.5 million in direct compensation to these employees, not including other benefits that are budgeted separately.

The audit covered fiscal year 2004 to fiscal year 2012. The audit team judgmentally selected a sample of ten TCNs hired for long-term positions. In addition, seven TCNs who mostly came to Afghanistan for the first time in 2010 or later on temporary-duty were included. We tested all contracts awarded to those in our sample.

The Office of Inspector General performed this audit in Afghanistan from October 14, 2012, through June 4, 2013. Fieldwork was carried out at USAID/Afghanistan's offices in Kabul.

Methodology

To answer the audit objective, the audit team interviewed mission managers and TCNs in Afghanistan. In addition, the team interviewed two former employees outside Afghanistan by telephone and received statements from former mission officials by e-mail.

In planning the audit, the team assessed the mission's system of internal controls over the justification and recruitment of TCNs. The team also considered risks and vulnerabilities reported in the mission's fiscal year 2012 Federal Managers' Financial Integrity Act report. The team reviewed procedures documented in mission orders and Agency guidance such as policy directives. The team interviewed managers and staff in EXO, which manages human resource operations. We also interviewed officials from the two offices that hired the most TCNs during the audit period, the Office of Acquisition and Assistance and the Office of Economic Growth and Infrastructure. The Office of Financial Management provided financial data.

The team reviewed and determined the applicability of laws, regulations, and standards to TCNs at USAID/Afghanistan. These included the Foreign Affairs Manual and Foreign Affairs Handbook, as well as USAID policy in the Automated Directives System and USAID Acquisition

Regulation. Finally, officials from USAID/Washington's Office of Acquisition and Assistance provided additional information on classification policies for personal services contractors.

MANAGEMENT COMMENTS



MEMORANDUM

August 15, 2013

TO: James Charlifue, OIG/Afghanistan Director

FROM: William Hammink, Mission Director /s/

SUBJECT: OIG Draft Report titled "Review of USAID/Afghanistan's Use of Third-Country National Employees (Report No. F-306-13-XXX-P)"

REFERENCE: JCharlifue/SWines memo dated July 16, 2013

USAID/Afghanistan thanks OIG/Afghanistan for its comprehensive report on the use of Third-Country National employees (TCNs) at post. Mission senior management considers the concerns raised by OIG/Afghanistan valid and warranting attention.

At the same time, we bring to your attention several key points that might affect how the Mission recruits TCNs in the future.

- While the [operating year budget] for the Mission may very well decline in the ensuing years, the pipeline balance creates continuing need for significant numbers of staffing at post.
- Despite the large funding pipeline, the Mission is currently in the process of reducing its USDH cadre of staff and will have gone from about 400 USDHs at the commencement of FY 2013 to a notional level of 110 USDHs by the close of FY 2014.
- While the Mission cannot precisely ascertain the percentage of FSNs successfully attaining Special Immigrant Visas (SIVs) to the United States, the number of FSNs departing USAID/Afghanistan is expected to be significant.
- In Afghanistan, unlike other posts, FSNs who obtain SIVs to the U.S. must depart the country within 90 days of getting their SIVs – a considerably shorter time-span than required to replace them, as it can take six or more months to bring on a new FSN employee.
- With the foregoing constraints that make for the perfect (staffing) storm, coupled with a large funding pipeline, the Mission has little choice but to rely on TCN staff for two purposes:
 - Bridge the gap between departing FSN staff and newly hired FSN staff;
 - Mentor, train, and grow capacity in the new cadre of FSNs joining the USAID/Afghanistan team.

Comments on OIG's Recommendations

Recommendation 1. *We recommend that USAID/Afghanistan issue written interim guidance explaining how hiring offices should determine that the conditions that justify hiring third-country nationals exist and how the mission Executive Office should document the determination. The guidance should be in effect until applicable mission orders are issued or updated.*

Mission Comments: The Mission concurs with Recommendation 1.

Actions Taken/Planned:

The Mission, in its formulation of a comprehensive staffing strategy for the Embassy front office, reviewed all positions office by office – particularly USDH and TCN positions. Prior to the submission of the Mission staffing strategy to the Embassy, Office Directors all met with the Mission Director to explain and substantiate their TCN staffing numbers. No formal guidance was disseminated at that time. EXO will disseminate interim guidance by the end of August 2013.

Target Closure Date: August 31, 2013

Based on the above actions, the Mission requests OIG/Afghanistan's agreement with the management decision on Recommendation 1.

Recommendation 2. *We recommend that USAID/Afghanistan immediately survey its records of all active personal services contractor positions to confirm that valid classification reports are on file and document the results.*

Mission Comments: The Mission concurs with Recommendation 2.

Actions Taken/Planned:

The senior Executive Officer recently reallocated USDH staff to address shortfalls in the EXO/HR office to ensure implementation of the recommendation. A survey of all active personal services contractor positions, to confirm that valid classification reports are on file, has been initiated and is expected to be completed by the end of September 2013. The results of the survey will be appropriately documented.

Target Closure Date: September 30, 2013

Based on the above actions, the Mission requests OIG/Afghanistan's agreement with the management decision on Recommendation 2.

Recommendation 3. *We recommend that USAID/Afghanistan improve records management by adding new controls over classification files for personal services contractor positions.*

Mission Comments: The Mission concurs with Recommendation 3.

Actions Taken/Planned:

EXO already has taken steps to address this issue. As with Recommendation 2, there has

been a reallocation of staffing resources within EXO to assist with this endeavor. Two [Foreign Service Limited employees] are assisting part-time in the review of records and the recruitment of future staff – both FSNs and TCNs. The Mission is now at a point where for any new recruitment or extension of a contract, the EXO will not sign off on a solicitation for a position until the EXO has personally seen the position description, the [Computer Aided Job Evaluation] report (for FSN positions) or classification report (for TCN and USPSC positions).

In addition, the following steps have been taken concerning classification of positions:

- Established a clearance process for solicitations,
- Established a process and documentation requirements for classifications,
- Started reviewing classification records for all positions,
- Ensured classification of positions to be filled prior to solicitation,
- Established on-the-job training for all HR staff,
- Evaluated and taken corrective action on our filing system.

To continue these efforts in the long term, recruitment for additional TCN staff in EXO/HR is underway. EXO/HR FSN staff will be increasingly empowered and held accountable for recruitment actions. Finally, new EXO/HR FSN staff will be appropriately recruited, which will include several facets:

- [Office of Afghanistan and Pakistan Affairs] Tiger Team in Washington will assist with initial screening of applications for EXO/HR FSN positions to determine those candidates who meet minimum qualifications.
- All EXO/HR FSN positions will be thoroughly competed.
- Written tests will be solely overseen by TCN and USDH staff.
- USDH staff will be present at all interviews.

As new FSN staff are brought on board and sufficiently trained, EXO plans to eventually turn the review and maintenance of records (including classification) over to the EXO/HR FSN staff. Implementation of the above procedures is expected to commence as soon as the EXO/HR TCN staff comes on board.

Target Closure Date: August 31, 2014

Based on the above actions, the Mission requests OIG/Afghanistan's agreement with the management decision on Recommendation 3.

Recommendation 4. *We recommend that USAID/Afghanistan verify that any future contract awarded for the program administration and budget team leader position reflects its correct market value of General Schedule-13 grade level as determined by the classification report on file.*

Mission Comments: The Mission concurs with Recommendation 4.

Actions Taken/Planned:

The most-recent incumbent in this position has left the mission. The hiring office has not indicated any plan to fill this position. Should it do so, the position will be advertised at the market value of General Schedule GS-13 grade level, as determined by the classification report

on file.

Based on the above actions, we therefore request OIG's concurrence to the closure of Recommendation 4.

Recommendation 5. *We recommend that USAID/Afghanistan immediately classify the intermittent/remote senior acquisition and assistance technical adviser position.*

Mission Comments: The Mission concurs with Recommendation 5.

Actions Taken/Planned:

The two incumbents in these positions already have been advised by their home office that their positions were incorrectly advertised at the GS-14 grade level and that the Mission would be taking steps to move their positions to the GS-13 grade level. During the week of August 11, the Mission's HR office will be sending these two contractors official letters informing them of the error in recruitment of their positions at the GS-14 level and the corrective actions that will take place, i.e., their contracts and position descriptions will reflect a GS-13 grade level. Their contracts will then be modified to the correct grade level of GS-13, based on existing position descriptions for senior acquisition and assistance specialist that have been classified at the Mission at the GS-13 level.

Target Closure Date: August 31, 2013

Based on the above actions, the Mission requests OIG/Afghanistan's agreement with the management decision on Recommendation 5.

Recommendation 6. *We recommend that USAID/Afghanistan conduct a comprehensive analysis of justifications for sole-sourced personal services contracts after 2009 and document the results. If it discovers additional deficiencies, the mission should issue written guidance on justifications for other than full and open competition for personal services contracts.*

Mission Comments: The Mission concurs with Recommendation 6.

Actions Taken/Planned:

The Mission estimates that it awarded a limited number of sole-sourced personal services contracts (PSCs) after 2009. Initial steps have been taken to pull the documents and supporting files for these sole-source PSCs so the EXO can review these documents for any deficiencies in the justifications for other than full and open competition for PSCs. Should the Mission find discrepancies in the award of sole-source contracts, it will issue appropriate written guidance on justifications for other than full and open competition for PSCs.

Target Closure Date: September 15, 2013

Based on the above actions, the Mission requests OIG/Afghanistan's agreement with the management decision on Recommendation 6.

cc: OAPA: RPorter/HDorcus

U.S. Agency for International Development
Office of Inspector General
1300 Pennsylvania Avenue, NW
Washington, DC 20523
Tel: 202-712-1150
Fax: 202-216-3047
<http://oig.usaid.gov>