



*Office of Inspector General*

September 7, 2014

**MEMORANDUM**

**TO:** USAID/Afghanistan Acting Mission Director, James Hope  
USAID Chief Financial Officer, Reginald Mitchell

**FROM:** OIG/Afghanistan Acting Country Director, Sarah E. Dreyer /s/

**SUBJECT:** Follow-Up on a Department of Defense Audit of Commander's Emergency Response Program Funds Provided to USAID/Afghanistan (Report No. F-306-14-003-S)

This memorandum transmits our final follow-up assessment related to a Department of Defense (DoD) audit of \$40.1 million in Commander's Emergency Response Program (CERP) funds provided to USAID/Afghanistan. Although not an audit, this memorandum includes five recommendations for USAID's action.

In response to management's comments, we deleted one recommendation that was in the draft memorandum. We acknowledge management decisions on the five remaining recommendations; please provide the Audit Performance and Compliance Division with the necessary documentation to achieve final action on them. We disagree with management's decision on Recommendation 4, as described in our evaluation of management comments. Please submit any revisions to OIG/Afghanistan.

Thank you for the cooperation and courtesy extended to my staff during this assessment.

## Background

In 2009, the U.S. Department of Defense (DoD) entered into three Economy Act<sup>1</sup> orders with USAID/Afghanistan. DoD provided funding to USAID—\$40.1 million in CERP funds<sup>2</sup>—to implement three construction projects:

- Construct two permanent two-way traffic bridges at Regak and Oshay in northern Uruzgan Province (\$15.5 million).
- Repair nine destroyed or damaged bridges in Ghazni and Zabul Provinces (\$12.5 million).
- Perform rough grading, maintenance, and minor upgrades to the Bamyan to Doshi Road (\$12.1 million).

To implement the projects, USAID/Afghanistan awarded task orders under an indefinite quantity contract to Louis Berger Group Inc./Black and Veatch Joint Venture (LBG/B&V).

The Office of Inspector General's Country Office in Afghanistan (OIG/Afghanistan) followed up on the DoD Office of Inspector General's (DoD IG's) audit<sup>3</sup> to determine whether the CERP funds provided by DoD to USAID/Afghanistan were used for intended purposes and in compliance with applicable laws and regulations.

## Results

We conclude that the funds provided by DoD to USAID/Afghanistan were not always used for their intended purposes or in compliance with applicable laws. The following sections summarize DoD IG's major findings and conclusions, as well as our conclusions on the same matters.

### ***Regak and Oshay Bridges Project***

DoD IG reported that instead of two 2-lane bridges at Regak and Oshay, as called for in the Economy Act order, only one 1-lane bridge at Regak was delivered. Our work confirmed this. E-mail correspondence (detailed on the following page) between USAID and DoD project managers for this Economy Act order indicates that DoD was aware that the funds provided were insufficient for two bridges, but there was no amendment of the Economy Act order to formalize the agreement between USAID and DoD to proceed with the Regak Bridge only.

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<sup>1</sup> The Economy Act (31 U.S.C. 1535) authorizes federal departments and agencies to enter into interagency agreements to obtain supplies or services.

<sup>2</sup> CERP is an appropriation designed to enable military commanders to respond to urgent humanitarian relief and reconstruction requirements.

<sup>3</sup> DoD IG, *DoD Needs to Improve Controls Over Economy Act Orders with U.S. Agency for International Development*, Report No. DODIG-2012-117, August 14, 2012.

## Summary of Key Correspondence Related to the Regak and Oshay Bridges

- On January 1, 2010, an engineer with the Combined Forces Special Operations Component Command – Afghanistan (CFSOCC-A) sent an e-mail to USAID/Afghanistan, indicating that the Regak Bridge should receive higher priority than the Oshay Bridge.
- In a June 11, 2010, meeting, the USAID/Afghanistan technical officer advised a technical officer representing the CFSOCC-A that:

... the original budget of \$15.5M provided by CERP did not include a superstructure for the Regak bridge [and] ... TO [Task Order] #25's scope of work [SOW] only included the foundations, piers and abutments for that bridge. The SOW stated that the military would provide a steel-truss military-style bridge and erect it after LBG completed the substructure. There was later some documentation done in 2009 for CERP to add another \$2.9M to TO #25 to include the Regak bridge superstructure, but [a previous CFSOCC-A technical officer] and USAID decided to hold off until we had firm prices from bids on both bridges, so that we would know exact costs. My opinion is that the cost of the Regak bridge alone from the upcoming bid opening, plus LBG's overhead and security costs and helicopter support costs, should be within the current \$15.5M budget. This should allow us to have LBG start the Regak bridge construction after the June 24 bid opening, and the military to decide if they want to add more CERP funding to cover the total costs of the Oshay bridge.
- On September 4, 2010, the USAID/Afghanistan technical officer advised several CFSOCC-A engineers that building the Oshay Bridge in addition to the Regak Bridge would increase the budget from \$15.5 million to between \$21 million and \$22 million. He indicated that "CFSOCC-A so far has expressed a preference to wait and see if the contractor can perform on the Regak bridge before they commit several million more for the Oshay bridge."
- In response, on September 5, 2010, a CFSOCC-A engineer advised that "For now, I'd like to stick with the wait and see approach. If we find that the contractor is making progress and we expect complete success, then we will consider a mod to add the Oshay bridge."

USAID/Afghanistan signed a modification to its task order with LBG/B&V to remove construction of the Oshay Bridge from the scope of work on May 19, 2011. USAID/Afghanistan provided CFSOCC-A a copy of the modification on August 21, 2011.

***Recommendation 1.*** We recommend that USAID/Afghanistan request that the Department of Defense (DoD) amend its Economy Act order for the Regak and Oshay Bridges to formalize the agreement between USAID and DoD to construct the Regak Bridge only.

Additionally, according to the DoD IG audit report, LBG/B&V spent \$1.7 million for security at the Regak Bridge work site during a 9-month period when limited construction activity was under way. Our work generally confirmed this observation. LBG/B&V incurred security costs to protect the construction site and LBG/B&V's fortified camp 7 kilometers away. These

installations were in a remote area affected by antigovernment elements.<sup>4</sup> Because insurgents blocked access to the area, helicopters had to airlift equipment and materials to the site.

DoD IG reported that USAID potentially violated the Recording Statute<sup>5</sup> by not obligating the funds for the agreed purpose. The Recording Statute requires agencies to record transactions that meet specified standards for legitimate obligations. However, USAID has since clarified that a section of the Economy Act order included security costs related to these activities, thereby providing the appropriate authorization. The task orders that obligated funds for these security costs were documented in writing, for a purpose authorized by law, as required by the Recording Statute. Therefore, OIG makes no recommendation on this matter.

### ***Nine Bridges Project***

According to DoD IG, USAID paid the entire \$12.5 million in this Economy Act order to its contractor,<sup>6</sup> but only four of nine bridges were delivered. We confirmed that LBG/B&V delivered only four of nine bridges. According to mission officials, they evaluated an inspection of the four bridges and accepted them as meeting project requirements. On August 28, 2014, USAID provided updated figures showing they paid LBG/B&V \$6.7 million for the four bridges that were delivered. USAID had also reported deobligating \$5.7 million of the remaining funds from the task order. On April 15, 2014, USAID reported that it had recently returned \$5.58 million to DoD after we asked if funds for the five unrepaired bridges had been returned. We were unable to reconcile the difference.

***Recommendation 2.*** *We recommend that USAID/Afghanistan examine the difference between the amount deobligated and the amount returned to the Department of Defense (DoD) to determine whether additional funds should be returned to DoD based on the amount DoD paid USAID.*

DoD IG's audit report indicated that USAID obligated \$0.7 million from the Economy Act order for "emergency or urgent works to be performed," which was not part of the Economy Act order and was not a bona fide need established during fiscal year 2009, when the appropriation was available. This action potentially violated the Bona Fide Needs Rule,<sup>7</sup> the Economy Act, and the

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<sup>4</sup> The Regak Bridge had been partially destroyed by insurgents who made a second, failed attempt to destroy the bridge after LBG/B&V began work at the site.

<sup>5</sup> The Recording Statute (31 U.S.C. 1501, "Documentary evidence requirement for Government obligations") provides, in part:

(a) An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of—

(1) a binding agreement between an agency and another person (including an agency) that is—

(A) in writing, in a way and form, and for a purpose authorized by law; and

(B) executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided; ...

<sup>6</sup> USAID reports that it paid \$12.35 million to the contractor. However, USAID officials noted that an additional \$164,804 for USAID's administrative fee and \$39,059 reflects USAID's indirect costs.

<sup>7</sup> The Bona Fide Needs Rule (31 U.S.C. 1502, "Balances available") states:

a) The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability. Also, according to the Government

Recording Statute. The Antideficiency Act may have been violated as well. We agree with the DoD IG finding that USAID's subobligation<sup>8</sup> of \$0.7 million for "emergency and urgent works to be performed" did not represent a bona fide need. It was outside the scope of the Economy Act order, and USAID had no authority to enter into a subobligation for this purpose. Therefore, USAID's action violated the Bona Fide Needs Rule, the Recording Statute, and the Economy Act. The violation of the Bona Fide Needs Rule implies that USAID may have violated the Antideficiency Act,<sup>9</sup> unless other unexpended funds were available to replace the DoD funds to which the \$0.7 million subobligation was improperly charged.

DoD ratified USAID's earlier use of this \$0.7 million on August 14, 2013, by providing \$0.7 million in fiscal year 2010 CERP funds for this purpose, but USAID still needs to investigate whether its subobligation resulted in a violation of the Antideficiency Act.

***Recommendation 3.*** We recommend that the Chief Financial Officer conduct an investigation of USAID/Afghanistan's subobligation of \$0.7 million in Commander's Emergency Response Program funds for "emergency and urgent works to be performed" to see if this subobligation resulted in an Antideficiency Act violation.

### **Bamyan to Doshi Road Project**

DoD IG reported that DoD received only \$3.0 million worth of road maintenance, instead of the full \$12.1 million that was provided to USAID for this purpose. USAID unilaterally decided to use the remaining \$8.9 million for community development projects.<sup>10</sup> We confirmed that USAID obligated \$8.9 million from the Economy Act order for community development projects, a purpose that was outside the scope of the Economy Act order.

***Recommendation 4.*** We recommend that USAID/Afghanistan obtain ratification of its use of \$8.9 million for community development projects or return these funds to the Department of Defense.

DoD IG concluded that USAID's obligation of \$8.9 million for community development projects, which were outside the scope of the Economy Act order, potentially violated the Bona Fide Needs Rule and violated the Economy Act and the Recording Statute.

We confirmed that USAID's obligation of \$8.9 million for community and other development projects was outside the scope of the Economy Act order and that USAID had no authority to subobligate funds for this purpose. Therefore, USAID's action violated the Bona Fide Needs Rule, the Recording Statute, and the Economy Act. Moreover, USAID's violation of these

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Accountability Office's General Counsel (GAO/OGC 91-5 Appropriations Law Vol.1, pp. 5-10), the balance of a fixed-term appropriation "is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period."

<sup>8</sup> DoD obligated these funds through its Economy Act order with USAID. When USAID entered into a contract with LBG/B&V, it used those same funds to fund the contract. We use the term "subobligation" to distinguish USAID's action (which used funds that were already obligated) from DoD's action (which obligated funds provided by an appropriation).

<sup>9</sup> The Antideficiency Act prohibits "making obligations or expenditures in excess of an apportionment or reapportionment, or in excess of the amount permitted by agency regulations" [31 U.S.C. 1517(a)].

<sup>10</sup> DoD IG reported that \$11.9 million paid to the contractor for the project was \$0.2 million less than the \$12.1 million transferred to USAID for the project. The difference represents USAID's project management support and overhead costs.

statutes implies that USAID may have violated the Antideficiency Act, unless other unexpended funds were available to replace the DoD funds to which the \$8.9 million subobligation was improperly charged.

***Recommendation 5.*** *We recommend that the Chief Financial Officer conduct an investigation of USAID/Afghanistan's subobligation of \$8.9 million in Commander's Emergency Response Program funds for community development projects to see if this subobligation resulted in an Antideficiency Act violation.*

# EVALUATION OF MANAGEMENT COMMENTS

Management provided comments in response to the draft memorandum. They are included in Appendix II, without attachments, and represent the response for both addressees of this memorandum. The comments indicate that USAID made management decisions on all five recommendations.

In response to management's comments, we deleted what was Recommendation 2 in the draft memorandum and renumber subsequent recommendations accordingly. Management did not agree with this recommendation, citing that security costs for activities were specified in Section III-B.7 of the Economy Act order and are a vital component of road construction in Afghanistan. Management considers these costs to be within the scope of the order. USAID's response called our attention to a provision in the applicable Economy Act order, which states that the contractor, "will be responsible for security on the project ..." We agree the terms of the Economy Act order do specifically address security costs. In light of the Economy Act order's content related to this issue, which we previously did not consider, the task orders constitute the requisite written record for security costs, authorized by law.

**Recommendation 1.** Management agreed with the recommendation and made a decision to work with DoD to amend the Economy Act order to formalize the agreement to remove the Oshay Bridge activities from the order. Management provided a target date of December 31, 2014, to complete this action. We acknowledge a management decision.

**Recommendation 2 (Recommendation 3 in draft).** Management partially agreed with this recommendation. They disagreed with the amount that it was said to have paid LBG/B&V and provided updated support for their figure of \$6.7 million. Also, management reports not having returned \$5.58 million back to DoD. However, the OIG had already received correspondence and supporting documentation showing this happened. Nonetheless, management said they would work with the Office of Afghanistan and Pakistan Affairs Controller to ensure the full amount of deobligated funds, \$5,675,889, is reimbursed to DoD by USAID in Washington. They provided a target date of December 31, 2014, to complete this action. We acknowledge a management decision.

**Recommendation 3 (Recommendation 4 in draft).** Management agreed with the recommendation and decided to ask the Chief Financial Officer to conduct an investigation on the matter through the Funds Control Review Board. The board will determine whether a funds control violation occurred. This action is in accordance with procedures described in USAID's Automated Directives System 634. Management provided a target date of December 31, 2014, to complete this action. We acknowledge a management decision.

**Recommendation 4 (Recommendation 5 in draft).** Management disagreed with this recommendation, referring to Section II-A of the Economy Act order, which states, "The CERP is designed to enable local commanders in Iraq and Afghanistan to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility by carrying out programs that will immediately assist the local population." The comments state

that the community development projects were designed for this purpose, and management asks that the recommendation be closed.

OIG disagrees with management's definition of activities that properly fall within the scope of this Economy Act order. USAID points to the "Authority and Purpose" section of the Economy Act order, which incorporates purposes for which CERP was designed. However, not all activities that could be legally funded with CERP funds fall within the scope of this Economy Act order. Legitimate activities are only those clearly falling within the "Scope of Work" section of the order, which describes rough grading and maintenance of the Bamyan to Doshi Road. Applying the mission's logic, any USAID activity that would "enable local commanders in Iraq and Afghanistan to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility by carrying out programs that will immediately assist the local population" could legitimately be funded by DoD's \$12.1 million underlying the order. That logic ignores the "Scope of Work" section of the Economy Act order.

More importantly, however, the specificity requirements of the Recording Statute would not permit the "Authority and Purpose" section of the Economy Act order to serve as the scope of work for this agreement, as USAID argues it does. In a relevant 2007 U.S. Government Accountability Office (GAO) Decision, *B-308944, Expired Funds and Interagency Agreements between GovWorks and the Department of Defense*, GAO found only one of several interagency agreements, in place between DoD and GovWorks, a Department of the Interior franchise fund, defined items and services for GovWorks to acquire on its behalf with enough specificity to meet the requirements of the Recording Statute. In this decision GAO describes the specificity requirement as "a long-standing principle of appropriations law, supported by decisions of the Comptroller General and by the recording statute, 31 U.S.C. § 1501(a)." GAO's decision analysis continues:

[The recording statute] requires that an interagency agreement be evidenced by a written document, executed during the period of availability of the appropriation used, for "*specific goods to be delivered ... or work ... to be provided.*" 31 U.S.C. § 1501(a) (emphasis added). The statute's obvious purpose is to ensure that the parties understand and accept their rights and duties under the agreement and that Congress, as part of its oversight role, knows how agencies are obligating their funds.

The "Authority and Purpose" section of the Economy Act order would not, under this legal authority, define with enough specificity the "rights and duties under the agreement." Reliance on the general purpose of the CERP funds to define the scope of work is insufficient and does not address the potential Antideficiency Act violation described in this report.

USAID has therefore not provided information that would serve as a basis to remove this recommendation. As a result, although we acknowledge that USAID has made a management decision, to effectively not take any action regarding this recommendation, we disagree with that decision.

**Recommendation 5 (Recommendation 6 in draft).** While management stated that the \$8.9 million in question was reasonable, necessary, and within the scope of the Economy Act order, they decided to follow Automated Directives System 634. It will ask the Chief Financial Officer to conduct an investigation through the Funds Control Review Board review process. The board will determine whether a funds control violation occurred. Management established a target date of December 31, 2014, to complete this action. We acknowledge a management decision.

# SCOPE AND METHODOLOGY

## Scope

OIG's Country Office in Afghanistan conducted this assessment in accordance with the *Quality Standards for Inspection and Evaluation*, as issued in 2012 by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that findings be supported by sufficient, competent, and relevant evidence. We believe that our conclusions are logical inferences about the program or activity based on the assessment results.

The objective of the initial assessment was to determine whether CERP funds that DoD/Combined Joint Task Force and Task Force Warrior and DoD/United States Forces-Afghanistan distributed to USAID for specific projects were used for their intended purposes and in compliance with applicable laws and regulations. The assessment was conducted in Afghanistan from October 25, 2011, through April 19, 2012, and covered activities from October 2009 through March 2012. We conducted fieldwork at USAID/Afghanistan, work sites in Uruzgan and Ghazni Provinces, and at LBG/B&V's office in Kabul. A more focused supplemental assessment was performed from September 2012 through November 2013, following the release of a related DoD IG report, *DoD Needs to Improve Controls Over Economy Act Orders with U.S. Agency for International Development*, Report No. DODIG-2012-117, August 14, 2012. This report alleged a number of violations by USAID/Afghanistan in using the CERP funds. This memorandum communicates the results of our follow-up assessment related to a DoD audit of \$40.1 million in CERP funds provided to USAID/Afghanistan.

The scope of our assessment was two bridges in Uruzgan Province, nine bridges on Highway One, and the Bamyan to Doshi Road. However, it was constrained by security conditions that prevented us from visiting all the CERP-funded bridges. In Ghazni Province—one of the two provinces where the nine bridges were being constructed—we could evaluate only three bridges because of the high security threat there.

## Methodology

To answer the objective, the assessment covered projects as stipulated by the CERP funding agreements between USAID/Afghanistan and DoD. We selected projects that were accessible for evaluation, given the security situation.

The assessment team analyzed the Economy Act orders and interviewed DoD employees to gain an understanding of the projects. The team selected employees at USAID/Afghanistan and LBG/B&V to interview by e-mail and in person to gain an understanding of the progress of the projects, all of the key players, and their roles and responsibilities.

We analyzed and evaluated monitoring reports and weekly progress reports that LBG/B&V submitted to fulfill the reporting requirements.

To evaluate project progress, we got approval from the Embassy's regional security office to visit Uruzgan and Ghazni Provinces and see bridges there. We also reviewed DoD's, USAID's, and LBG/B&V's monitoring by examining procedures and interviewing staff from all three organizations.

As background for determining whether USAID/Afghanistan violated the statutes in using CERP funds provided through Economy Act orders, the assessment team obtained an understanding of the Antideficiency Act, the Bona Fide Needs Rule (31 U.S.C. 1502), and the Recording Statute (31 U.S.C. 1501). We also obtained USAID/Afghanistan's regional legal advisor's interpretation of the rule and statute.

After DoD IG's report on this project was issued in August 2012, OIG performed supplemental assessment procedures to confirm or refute those assertions. Those procedures included additional interviews with USAID/Afghanistan officials (current and past) with knowledge of the CERP projects, as well as further analyses of agreements and regulations governing them.

# MANAGEMENT COMMENTS



## MEMORANDUM

August 27, 2014

**TO:** James Charlifue, OIG/Afghanistan Director

**FROM:** William Hammink, Mission Director

**SUBJECT:** Draft Report on the Follow-up on a DoD Audit of CERP Funds Provided to USAID/Afghanistan (Report No. F-306-14-00X-P)

**REFERENCE:** JCharlifue/WHammink memo dated May 8, 2014

Thank you for providing USAID/Afghanistan with the opportunity to respond to the Follow-up Report on a DoD Audit of CERP Funds Provided to USAID/Afghanistan.

### Background Information

Over 30 years of war has taken its toll on Afghanistan's fragile infrastructure – especially those roads and bridges essential to service delivery and economic growth. USAID/Afghanistan is helping rebuild the transport sector to promote trade and access to essential services in an effort to reduce unemployment and improve the general security and stability of the region.

The northeastern section of the Ring Road, including the Salang Tunnel, is the primary route connecting the north of the country to both the capital and the provinces of the central and southern regions. The route and the tunnel are highly susceptible to winter weather, traffic and congestion. Given the economic importance of this trade route and vital importance of uniting the country, the rehabilitation of an alternate route was essential. The temporary improvements and maintenance of the Bamyan to Doshi Road consisted of implementing a design and follow-on construction project for this vital link.

A second component of rebuilding the transport sector was reconstruction of nine bridges on Regional Highway I (Ring Road) in Ghazni and Zabul provinces destroyed by Anti-Governmental Elements (AGE) in 2008. The required work at each bridge ranged from complete reconstruction to repair of the superstructure.

A third transport sector project included reconstruction of a flood damaged bridge near Regak in Uruzgan Province. The U.S. military at Forward Operating Base (FOB) Cobra originally designated the Regak and Oshay bridges as essential for their efforts in resisting AGE. Further, these bridges benefited the local population (70,000) by providing access to social services (health and education), new regional trade opportunities, and enabled easy access for farm-to-market activities.

### **COMMENTS ON OIG'S RECOMMENDATIONS**

*Recommendation 1. We recommend that USAID/Afghanistan request that DoD amend its Economy Act order for the Regak and Oshay bridges to formalize the agreement between USAID and to construct the Regak bridge only.*

**USAID Comments:** The Mission concurs with Recommendation 1.

**Actions Taken/Planned:** As it was noted in the audit report, on September 4, 2010, the USAID/Afghanistan technical officer advised Combined Forces Special Operations Component Command – Afghanistan (CFSOCC-A) engineers on the potential increase of the project budget from \$15.5 million to about \$21 - \$22 million in case the Oshay bridge was built in addition to the Regak bridge. In response, on September 5, 2010, CFSOCC-A advised waiting to see if the contractor was making progress and would complete the Regak bridge project successfully. Then a modification could be considered to add the Oshay bridge and increase the amount of CERP funds. USAID/Afghanistan signed a modification to its task order with Louis Berger Group and Black & Veatch to remove construction of the Oshay bridge from the scope of work on May 19, 2011. USAID/Afghanistan provided CFSOCC-A a copy of the modification on August 21, 2011.

USAID will work with DoD to amend the Economy Act Order to formalize the agreement and properly de-scope the Oshay bridge part of the project.

**Target Closure Date: December 31, 2014**

**Recommendation 2.** *We recommend that USAID/Afghanistan request that DoD amend its Economy Act order to authorize expenses of \$1.7 million on security related expenses incurred at the Regak work site, or return these funds to DoD.*

**USAID Comments:** The Mission does not concur with Recommendation 2. Section III.B.7 of the Economy Act Order specifically notes security to be provided. Further, security is a vital component of road construction in Afghanistan. Therefore, USAID considers the security work and related costs to be within the scope of the Economy Act Order. No further amendment of the Economy Act Order is required.

**Closure Request:**

Based on the above, we request OIG concurrence to close Recommendation 2.

**Recommendation 3.** *We recommend that USAID/Afghanistan examine the difference between the amount deobligated and the amount returned to DoD to determine whether additional funds should be returned to DoD based on the amount DoD paid USAID.*

**USAID Comments:** The Mission partially concurs with Recommendation 3.

**Actions Taken/Planned:** The draft OIG report states USAID reported paying \$12.35 million to the contractor. According to the Phoenix report (Attachment 1), USAID/Afghanistan obligated \$12.35 million and paid \$6.67 million to the contractor. Attachment 1 also shows USAID de-obligated \$5,675,889 of CERP funds on April 6, 2013. USAID did not report returning \$5.58 million to DoD.

The Mission will work with OAPA Controller to ensure the de-obligated funds of \$5,675,889 are fully reimbursed by USAID/Washington.

**Target Closure Date: December 31, 2014**

**Recommendation 4.** *We recommend that the Chief Financial Officer conduct an investigation of USAID/Afghanistan's subobligation of \$0.7 million in CERP funds for "emergency and urgent works to be performed" to see if this subobligation resulted in an Antideficiency Act violation.*

**USAID Comments:** The Mission concurs with Recommendation 4.

**Actions Taken/Planned:** Per ADS 634, the Mission will request M/CFO/FPS to conduct an investigation via the Funds Control Review Board to make the final determination on whether or not a funds control violation has occurred.

**Target Closure Date: December 31, 2014**

*Recommendation 5. We recommend that USAID/Afghanistan obtain ratification of its use of \$8.9 million for community development projects or return these funds to DoD.*

**USAID Comments:** The Mission does not concur with Recommendation 5. Section II.A of the Economy Act Order specifically states that “The CERP is designed to enable local commanders in Iraq and Afghanistan to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility by carrying out programs that will immediately assist the local population.” These projects were designed for this purpose. USAID experience with road construction in Afghanistan has demonstrated that community development projects and buy-in are a critical part of any road project. Without these projects and community buy-in, road construction would be severely hindered or stopped altogether. Therefore, USAID considers this work and the associated costs to be within the scope of the Economy Act Order.

**Closure Request:**

Based on the above, we request OIG concurrence to close Recommendation 5.

*Recommendation 6. We recommend that the Chief Financial Officer conduct an investigation of USAID/Afghanistan's subobligation of \$8.9 million in CERP funds for community development projects to see if this subobligation resulted in an Antideficiency Act violation.*

**USAID Comments:** The Mission considers the sub-obligation of \$8.9 million in CERP funds for community development projects were reasonable and necessary expenditures within the scope of the Economy Act Order, and therefore believes no funds control violation occurred.

**Actions Taken/Planned:** The Mission will follow ADS 634 policy in requesting M/CFO/FPS to conduct an investigation via the Funds Control Review Board review process and make the final determination on whether or not a funds control violation has occurred to ensure due process/diligence in resolving this issue.

**Target Closure Date: December 31, 2014**

**Attachments:**

1 – Phoenix Report

cc: OAPA Afghanistan Audit  
Reginald Mitchell, Chief Financial Officer

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