



OFFICE OF INSPECTOR GENERAL

AUDIT OF USAID/AFGHANISTAN'S LAND TITLING AND ECONOMIC RESTRUCTURING IN AFGHANISTAN PROJECT

AUDIT REPORT NO. 5-306-09-004-P
June 8, 2009

MANILA, PHILIPPINES



Office of Inspector General

June 8, 2009

MEMORANDUM

TO: USAID/Afghanistan Mission Director, William Frej

FROM: Regional Inspector General/Manila, Bruce N. Boyer /s/

SUBJECT: Audit of USAID/Afghanistan's Land Titling and Economic Restructuring in Afghanistan Project (Audit Report No. 5-306-09-004-P)

This memorandum transmits our final report on the subject audit. In finalizing the report, we considered your comments on the draft report and included the comments in their entirety in appendix II.

This report contains four recommendations to assist the mission in improving its management and oversight of the Land Titling and Economic Restructuring in Afghanistan Project. On the basis of information provided by the mission in response to the draft report, we determined that final actions have been taken on recommendations 1, 3, and 4. In addition, a management decision has been reached on recommendation 2. A determination of final action will be made by the Audit Performance and Compliance Division upon completion of the planned corrective actions.

I want to thank you and your staff for the cooperation and courtesy extended to us during the audit.

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SUMMARY OF RESULTS

The Government of Afghanistan is committed to reducing poverty and increasing economic growth in the private sector, as reflected in its National Development Strategy and as part of the larger goal of achieving a prosperous and stable Afghanistan. Two primary constraints impede the Government's efforts: (1) limited or ambiguous rights to land, and (2) state ownership of under-utilized or unutilized enterprises. To assist the Government of Afghanistan in addressing these conditions, USAID/Afghanistan designed the Land Titling and Economic Restructuring in Afghanistan Project (the project) and, to implement it, awarded a 3-year \$29.2 million contract in 2004 to Emerging Markets Group, Limited (the contractor), under USAID's Support for Economic Growth and Institutional Reform Privatization II Indefinite Quantity Contract. In October 2007, USAID/Afghanistan extended the project for 2 more years, through October 2009, and increased the total estimated cost to \$56.3 million. (See page 3.)

The project has two components. The first focuses on land titling and registration to help the Government of Afghanistan improve land tenure security in urban areas, with the ultimate goal of introducing a consolidated land administration system in Afghanistan. The second focuses on privatizing state-owned enterprises. (See page 3.)

The Regional Inspector General/Manila conducted this audit as part of its fiscal year 2009 annual audit plan to determine whether the project had achieved planned results and to assess what impact the project has made. (See page 4.)

The project achieved some of its planned results. Under the two project components, USAID/Afghanistan tasked the contractor to implement 18 tasks during the first 3 years of implementation, and the contractor completed 14 of the 18 tasks. (See page 5.) Under the first component, the project laid a foundation that could benefit the Government of Afghanistan's land administration system. (See page 5.) Under the second component, in the first 3 years the project provided technical assistance toward liquidating 23 state-owned enterprises, 3 state-owned banks, and 1 state-owned corporation. As a result, state-owned assets valued at \$10.6 million have been auctioned to successful bidders. (See page 6.)

As a whole, the project achieved positive results under both components. However, because the project will end in October 2009, little time remains to complete the remaining activities. (See page 7.) The audit identified the following issues, which the mission should consider during the implementation of the project over the remaining contract period:

- The liquidation process took longer than expected. (See pages 7–10.)
- The State-Owned Enterprise Department lacked the capacity to manage the liquidation process. (See pages 10–11.)
- USAID investment in privatization was not always successful. (See pages 11–12.)
- More collaboration could strengthen the project's impact. (See pages 13–14.)
- Reduction in scopes of work was not properly administered. (See pages 14–15.)

The report includes four recommendations to address the issues. (See pages 10, 11, 14, and 15.) On the basis of an evaluation of the mission's response to the draft report, the audit determined that final actions have been taken on recommendations 1, 3, and 4, while a management decision has been reached on recommendation 2. (See page 16.) The mission's written comments on the draft report are included in their entirety, without attachments, as appendix II to this report. (See pages 19–22.)

BACKGROUND

To achieve prosperity and stability in Afghanistan, the Afghan Government is committed to reducing poverty and increasing economic growth in the private sector, as reflected in its National Development Strategy. The Government recognizes that it faces constraints that block such economic growth and development, particularly in the private sector. One major constraint concerns access to land. Property and land rights are unclear and enforcement mechanisms weak. Rural and urban land tenure¹ is subject to a vast and fragmented regime of formal and informal mechanisms. The uncertainty of land titling and the unavailability of serviced land² seriously impede the establishment of businesses. Unclear property rights also hinder the private sector's ability to use land as collateral for credit. A second major constraint is state ownership of many enterprises—a dominant factor in certain sectors. Moreover, the government owns a significant number of assets that are either unutilized or significantly under-utilized. Thus, land that could be used for private sector development is tied up by state ownership.

USAID/Afghanistan designed the Land Titling and Economic Restructuring in Afghanistan Project (the project) to address these constraints. In September 2004, to implement this project, the mission awarded a 3-year \$29.2 million contract to Emerging Markets Group, Limited (the contractor), under USAID's Support for Economic Growth and Institutional Reform Privatization II Indefinite Quantity Contract. In October 2007, the mission extended the project for 2 more years, through October 2009, and increased the total estimated costs to \$56.3 million.

The mission designed the project under two components. Under each, the contractor was tasked to complete nine tasks that outlined specific activities toward achieving the components' objectives. The first component focused on the land titling and registration activities that aimed to improve land tenure security for Afghans in urban areas. The project analyzed the existing legal framework of land administration, including issues of adjudicating and registering property, mapping and surveying land, and formalizing informal property rights. The project called for the contractor to identify gaps in the legal framework affecting tenure formalization and to advise the Government of Afghanistan on how to improve its urban land administration system. The mission designed the second component to help the Ministry of Finance and 12 line ministries privatize state-owned enterprises through the liquidation, long-term leasing, and private incorporation of state-owned assets.

As of September 30, 2008, USAID had obligated approximately \$45.9 million and disbursed approximately \$37.7 million toward implementing land titling and economic restructuring activities in Afghanistan.

¹ Tenure—The rights of a tenant to hold property, or the holding of property as a tenant.

² Serviced land—Land containing infrastructure or services provided by the national or local government and paid for by taxation, such as roads, education, or health care.

AUDIT OBJECTIVE

The Regional Inspector General/Manila conducted this audit as part of its fiscal year 2009 annual audit plan to answer the following question:

- Did USAID/Afghanistan's Land Titling and Economic Restructuring in Afghanistan Project achieve planned results, and what has been the impact?

Appendix I contains a discussion of the audit's scope and methodology.

AUDIT FINDINGS

USAID/Afghanistan's Land Titling and Economic Restructuring in Afghanistan Project (the project) achieved some of its planned results. Under the 2 project components, USAID/Afghanistan contracted with Emerging Markets Group, Limited (the contractor), to implement 18 tasks during the first 3 years of implementation, of which the contractor completed 14 of the 18 tasks. Appendix III of the report includes a description of each of the tasks and the status of completion as of September 30, 2008.

Under the first component, the project focused on land titling and registration to assist the Government of Afghanistan in improving land tenure security in urban areas with the ultimate goal of introducing a consolidated land administration system. The project achieved some notable accomplishments, described below, and laid a foundation that could benefit the Government of Afghanistan's land administration system.

The project developed and implemented procedures to improve the land administration process. For example, the project worked with municipal employees in pilot locations, training them to organize a deed registry database that has improved the courts' ability to access property title ownership. At the pilot locations, the project created catalogs and a database for cross-referencing to the original registry books and developed a centralized digital system to manage land documents. These enhancements have helped citizens and the courts by reducing the time needed to access the deeds.

Moreover, the project developed and implemented procedures that reduced the number of steps for transferring and registering private property from 32 to 4. In addition to making the title transfer process simpler and faster, these enhancements reduce the opportunities for corruption because so many steps in the transaction process have been eliminated.

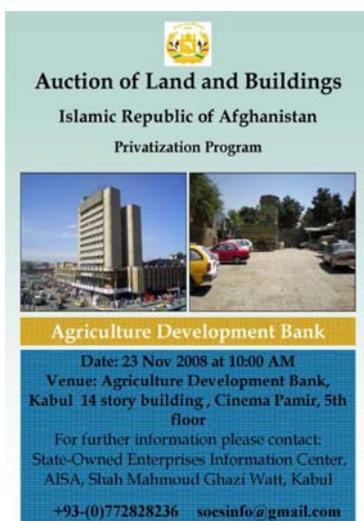
To give citizens faster access to their property deeds, the project has improved the storage and organization of property records archives maintained by the Court of Appeals at 17 locations. Before the project began, municipal record rooms were in utter disarray. Property deeds were kept in sacks or piled in no particular order, and document retrieval was time consuming if not impossible.



Photographs taken by the project of two areas of the property deed archives before (left picture taken in August 2005) and after (right picture taken in September 2005) the reorganization of property deeds was completed.

The project has helped the Afghan Government assist residents of informal settlements—the unstructured neighborhoods built outside city limits and lacking even basic infrastructure and services. The settlers can now work collaboratively with community leaders to resolve land-dispute issues and reach informal agreement on land ownership. The project developed a community-based adjudication process for tenure disputes in the informal settlements and applied the process in different pilot settlement areas in Kabul, Mazar, and Kunduz. As part of this process, the project helped increase tenure security by teaching community leaders how to clarify property ownership for informal settlers, drawing on the leaders' wealth of community knowledge and history.

Under the second component, in the first 3 years the project focused on laying the groundwork for privatizing state-owned enterprises and, specifically, contributed directly to developing the necessary legal framework for the process. For example, the project developed liquidation procedures that the Government of Afghanistan approved and has since implemented. As well, the project developed a standard methodology—which the Government of Afghanistan implemented—for determining the net asset value of each state-owned enterprise. Further, the project designed the plans and the procedures for auctioning off the state-owned enterprises and their associated assets.



Advertising material produced and published through the project to notify potential buyers in Afghanistan of auctions of state-owned enterprise assets.

Taking into account local labor market conditions, statutory provisions under the labor law in Afghanistan, and cross-country experiences, the project drafted the State-Owned Enterprise Directorate, which outlines the comprehensive Social Safety Net Program. To facilitate an orderly transition from public to private sector employment, this program contains provisions to provide short-term support for workers and their families, such as severance pay, retraining, and redeployment. According to the project's severance pay database, 1,050 employees have received the benefits from the Social Safety Net Program after losing their jobs when state-owned enterprises were privatized.

During the 2-year extension of the contract, the project has focused most of its efforts on providing technical assistance toward liquidating 23 state-owned enterprises, 3 state-owned banks, and 1 state-owned corporation. This effort has entailed facilitating the liquidation process from the beginning, when the Cabinet ministers approve a proposal to liquidate a state-owned enterprise, until the end, when the liquidation committee completes the final steps to dissolve the enterprises.



As a result of the project's assistance, the Agriculture Development Bank has been scheduled for public auction with a starting price of approximately \$5.8 million. (Photograph by OIG staff, November 2008.)

As of September 30, 2008, the project had contributed directly to the successful auctioning of state-owned assets valued at \$10.6 million.

Overall, the project has achieved positive results under both components. However the project will end in October 2009, leaving little time to complete the remaining activities. To help the framework's processes continue beyond the contract's end date, the audit identified the following issues, which the mission should consider during the remaining contract period.

Liquidation Process Takes Longer than Expected

Summary: The strategic vision for USAID's Land Titling and Economic Restructuring Project focused on increasing private investment in productive economic activities. To achieve that vision, the strategic framework set milestones for the amounts of state-owned land to be released by the end of 5 years. The project will not be able to assist with divesting all of the land as planned by the end of the 5th and final year of the contract. At best, only 305,000 square meters out of 3.6 million square meters will be divested. The liquidation process is often stalled by the absence of title documents, investors' failure to pay the purchase price of the assets in accordance with purchase terms, lack of financial and property data for valuation purposes, and legal issues arising from tenant leases of space on the state owned-property. As a result, as of September 30, 2008, 27 liquidation plans were still at different stages in the liquidation process. Because of the complications that the project has experienced, some liquidation plans will remain only partially implemented, and the State-Owned Enterprise Department will have to carry out final dissolution.

The strategic vision for the project focused on increasing private investment in productive economic activities. One way to achieve this vision was to assist the Government of Afghanistan in releasing public land to the private sector for private

investment. The strategic framework set milestones to release 25 percent of state-owned enterprise land by the end of the 2nd year of the project and at least 75 percent by the end of the 3rd year; all of the land should be divested by the end of the 5th year. These goals directly supported the Government of Afghanistan's goals, as outlined in the Afghanistan Compact,³ to implement the Government's strategy for divestment of state-owned enterprises by March 2010.

The project has contributed toward developing the regulatory framework for privatization. However, despite these contributions, the project will not be able to assist with divesting all of the land as planned by the end of the 5th and final year of the contract. The total amount of land associated with state-owned enterprises that the project was working to divest approximated 3.6 million square meters. To achieve the mission's vision of the project, 900,000 square meters should have been divested by the end of the 2nd year, 2.7 million square meters by the end of the 3rd year, and 3.6 million square meters by the end of the 5th year. As of the end of September 2008, approximately 254,000 square meters of public land had been divested.

The project identified key milestones throughout the liquidation process, starting at the point when the Cabinet ministers approve a proposal to liquidate a state-owned enterprise until the end of the process, when the liquidation committee completes the final steps to dissolve the different types of organizations. As of September 30, 2008, the project was providing technical assistance to liquidation committees and the State-Owned Enterprise Department in an effort to liquidate 23 state-owned enterprises, 3 state-owned banks, and 1 state-owned corporation. The entities are in different stages of the seven-step liquidation process. Within the timeframes the project estimated for each phase in the liquidation process, a quick liquidation could take 17 months while the lengthiest could take up to 57 months.

The total amount of state-owned land associated with these different organizations approximated 3.6 million square meters. Depending on how much time is needed for each phase in the liquidation process, at best, the liquidation process could take 17 months from the time the Cabinet ministers approve the liquidation proposal to final dissolution. The project is scheduled to end in October 2009, approximately 11 months from the time of audit fieldwork (November 2008). In the remaining 11 months of the project, assuming that the liquidation process proceeds under the most optimistic circumstances, USAID/Afghanistan will assist with releasing approximately 305,000 square meters out of the 3.6 million square meters of state-owned land associated with the organizations that the project is assisting. At the time the project comes to an end, assuming the best-case scenario, approximately 3.3 million square meters will not have been released and the liquidation process will not have been completed.

For a multitude of reasons, the project will not be able to assist with divesting all of the planned land by the end of the 5th year of the contract. Four of the more problematic issues are discussed in further detail below.

- (1) Absence of title documents – The complex history of Afghan state-owned enterprises has made it difficult to ascertain who owns the land and therefore who should be

³ The Afghanistan Compact, signed by the Islamic Republic of Afghanistan and the international community at the end of the London Conference on Afghanistan (January 31–February 1, 2006), set forth a framework for international cooperation.

compensated when the enterprise is divested. This uncertainty has posed significant problems for privatization. Many enterprises have been through several incarnations in terms of ownership, management, and relationship to the state, leaving the door open for numerous claims for compensation in any sale. These issues have slowed the preparation of the liquidation plan.

- (2) Investors' failure to make full payment for assets purchased – The liquidation procedures stipulate the payment procedures that buyers are to follow when purchasing state-owned enterprises. Despite the requirement that the payment transfer should be received no later than 10 days after the auction of the assets, buyers have not always adhered to the terms of the agreement. This delay has further prolonged final implementation of the liquidation plan because possession and ownership of an asset cannot be transferred to the buyer until the Liquidation Committee has received the full payment. For example, the auction of the headquarters building of Afghan Fertilizer was held on June 8, 2008. As of September 30, 2008, the buyers had yet to transfer the full payment of approximately \$1 million. Therefore, the land and assets remain on the Government of Afghanistan's books.
- (3) Lack of financial documents and property information necessary to value the enterprise's assets – The liquidation procedures state that within 30 days of its establishment, the Liquidation Committee of an enterprise shall complete a liquidation plan and a detailed inventory of assets and their estimated values. Liquidation Committees of some enterprises are slow to complete their plans because they lack financial documents and property information considered essential to quantify the value of the assets of the state-owned enterprises. For example, the Liquidation Committee of one enterprise has been working on the liquidation plan for approximately 21 months, exceeding the historical timeframe of 4–18 months for producing such a plan.
- (4) Legal issues arising from tenant leases of space on state-owned property – According to the liquidation proposal, the Liquidation Committee has the authority to terminate contracts or leases with the organizations operating at the state-owned enterprises. However, tenant leases can complicate liquidation. The Jangalak enterprise, for example, has 13 lease agreements in place with 11 gyms and 2 marble cutting plants. The Liquidation Committee has been unsuccessful at terminating the leases with these companies and has received no support from the police or the courts to evict these tenants. As of November 2008, the state-owned enterprise had received no support in its efforts to cancel the leases with these tenants or to have them evicted.

These issues prolong the liquidation process beyond the timeframe that the Ministry of Finance stipulated in the amendment to the state-owned enterprise law. As a result, 27 liquidation plans were outstanding as of September 30, 2008, at different stages in the process. Because of these complications, at the project's end date some liquidation plans will be only partially implemented, and the department will have to carry out moving the inventory of open liquidation plans to final dissolution.

USAID/Afghanistan's contract for implementing the project will end October 14, 2009, leaving insufficient time to bring each of the outstanding liquidation plans to final resolution. This audit makes the following recommendation:

Recommendation 1: We recommend that USAID/Afghanistan, in collaboration with the Emerging Markets Group, Limited, and the Ministry of Finance, develop a plan to redirect remaining resources toward achieving the most optimal results by the end of the contract. The plan should consider the complexity of the outstanding issues barring final resolution and an assessment of what realistically can be completed by the end of the contract.

State-Owned Enterprise Department Lacks the Capacity to Manage the Liquidation Process

Summary: During the second phase of the contract, USAID's Land Titling and Economic Restructuring Project planned to work toward strengthening the implementation capacity of the Ministry of Finance's State-Owned Enterprise Department. However, as of September 30, 2008, the project was not as successful as desired in transferring technical knowledge to the department. This lack of success was caused primarily by the newness of the department, which began operations in April 2008. The staff of the department has not had sufficient time to develop the technical capacity to manage the dissolution of a state-owned enterprise. As a result, the department depends on USAID to provide technical advisory and equipment services in order to manage the liquidation process for the state-owned assets.

During the second phase of the contract, the project planned to work toward strengthening the implementation capacity of the Ministry of Finance's State-Owned Enterprise Department. According to the liquidation procedures, the Ministry of Finance has the sole responsibility for implementing the decision to liquidate a state-owned enterprise through a liquidation committee. The department is expected to develop and implement the Government's state-owned enterprise policy, strategy, and regulations for divestment of approved state-owned enterprises as well as to provide financial management oversight. To meet the department's economic growth objectives, the Ministry of Finance planned to form a specialized privatization section that would be dedicated solely to privatizing the state-owned enterprises.

As of September 30, 2008, the project had not met all of its goals in transferring technical knowledge to the department. Members of the Liquidation Committee and officials from the Ministry of Finance stated repeatedly in interviews with project staff that department employees do not have the technical background to perform some of the analyses that the project team assists in producing. For example, one of the employees commented that the committee would have difficulty valuing the assets of the state-owned enterprise. Another employee commented that the USAID-funded project facilitated the entire liquidation process he was working on. He also said that the Liquidation Committee essentially shadows the project team. Ministry of Finance officials stated that they have to rely on the project team for everything, from access to reports to status updates on liquidation projects. Lastly, one of the directors with the Ministry of Finance commented that the department lacked computers and printers. All reports for state-owned enterprise projects are generated through the project team. Without the project's assistance, the department would not be able to perform its work adequately.

A main reason for the project's incomplete success is the newness of the department, which began operations in April 2008. The department staff have not had sufficient time to develop the technical capacity to manage the dissolution of a state-owned enterprise.

The department's restructuring was slowed by delays in approval of the new structure as well as in staffing new positions. The department now has project teams organized like those of the project, but the department's director commented that he does not feel that his employees have developed enough knowledge to work independently of the project.

As a result, the department still depends on USAID to provide technical assistance in order to manage the liquidation process for the state-owned assets. As discussed earlier, at the time that this project is expected to end, a significant number of liquidation plans will remain incomplete, and the department will have to assume full responsibility for the process. However, the department lacks the technical capacity and resources to produce work of the same quality and timeliness that the project team has produced. The lack of capacity at the Government level will severely limit the department's ability to bring each of the state-owned enterprises to final dissolution.

The project's current contract is expected to end October 14, 2009. With less than a year remaining in the project, it is critical that a process be established to transfer the knowledge of the liquidation process to department employees so that they can carry on the necessary roles and responsibilities of the project team. This audit makes the following recommendation:

Recommendation 2: We recommend that USAID/Afghanistan, in collaboration with the Emerging Markets Group, Limited, and the Ministry of Finance, develop and implement a training strategy to provide a core group of State-Owned Enterprise Department employees with sufficient knowledge to carry on the roles and responsibilities of the project team.

USAID Investment in Privatization Was Not Always Successful

Summary: USAID's Land Titling and Economic Restructuring Project has provided technical assistance to support the Government of Afghanistan's commitment to expanding the private sector through the efficient and rapid transfer of state-owned assets to the private sector. However, the project's resources have not always succeeded in meeting this commitment, despite the level of technical assistance dedicated to the process. Of \$17.2 million in state-owned assets that were auctioned and transferred to the private sector, \$6.6 million were transferred back to the public sector. The transfers occurred because the Government of Afghanistan, for unknown reasons, approved requests to transfer the assets to other ministries even though the Cabinet ministers had previously approved the liquidation of the state-owned enterprise. As a result, USAID/Afghanistan's technical assistance to the Government of Afghanistan in developing liquidation proposals, valuation reports, liquidation plans, and auction and marketing material for state-owned assets valued at \$6.6 million did not materialize in the efficient and rapid transfer of assets to the private sector.

According to the privatization policy adopted by the Cabinet of Ministers and reiterated in Afghanistan's National Development Strategy, the Government of Afghanistan seeks to promote the private sector as the engine of economic growth and the key to Afghanistan's long-term development and poverty reduction. The Government is committed to expanding the private sector through efficient and rapid transfer of state-owned assets to private sector ownership. Such transfers shall take place in an open, fair, and transparent manner and will balance the objective of maximizing sales revenue against the objectives of preserving and creating employment as well as encouraging investment and technological development.

The project has provided technical assistance and resources to assist in drafting liquidation plans for individual enterprises considered unprofitable or unviable. Before it drafts a liquidation plan, the Ministry of Finance will consult with relevant ministries to determine that the assets are not viable or profitable. The Cabinet of Ministers will approve the decision to liquidate and dissolve the enterprise in accordance with the law on state-owned enterprises. According to project officials, once the Cabinet of Ministers approves the liquidation, the process of liquidation could take 11 to 40 months—specifically, to prepare a detailed inventory of the assets, estimate the values of the assets, identify or estimate the list of debts, identify claims against the enterprise, and establish a timetable for the completion of the liquidation.

However, project resources have not always succeeded in transferring assets to the private sector, despite the level of technical services committed to the process. The Ministry of Finance, with the assistance of the project, has auctioned and transferred state-owned assets valued at approximately \$17.2 million. Of this total, state-owned assets valued at \$6.6 million were transferred back to the public sector. For example, technical services were spent on drafting and implementing the liquidation plan for a state-owned enterprise, Medical Plant Export. However, the assets valued at approximately \$1.5 million were not auctioned as planned but were transferred to the Ministry of Commerce instead.

The transfers back to the public sector occurred because the Government of Afghanistan approved requests to transfer the assets to other ministries even though the Cabinet of Ministers had previously approved the liquidation of the state-owned enterprises. The Government's approval was based on Article 102 of the Afghan procurement law, which states that the Ministry of Finance may sell or lease movable and immovable property in excess of an entity's needs, after verifying that the property is not needed by another entity, in accordance with written Government policies. Officials could not explain why these transfer decisions were not made prior to approval of the liquidation process.

In its efforts to support the Government of Afghanistan, USAID/Afghanistan has expended resources to provide technical assistance in developing liquidation proposals, valuation reports, liquidation plans, and auction and marketing material for state-owned assets valued at \$6.6 million. Instead of being sold to the private sector, these assets were transferred back to the public sector. To make the most effective use of USAID-funded resources in the future, the mission should not invest resources in the preparation and implementation of liquidation plans that will likely not be carried out. We are not making a separate recommendation for this finding but rather suggest that the mission consider this issue when responding to recommendation 1.

Land Titling Impact May Be Strengthened Through Collaboration With Other Donors

Summary: Building on the work of others is an essential element of sound development, according to USAID's planning policy. Plans for development projects should take into account the results of other work in related projects and the investments by host countries and other donors and organizations. USAID/Afghanistan could increase its impact in the land tenure formalization process by complementing these activities with parallel projects to work on upgrading the infrastructure in the informal settlements. The informal settlement community will not be able to fulfill its potential for private investment and equitable growth unless the lack of essential infrastructure is addressed.

Building on the work of others is an essential element of sound development, according to USAID's planning policy. Plans for development projects should take into account the results of other work in related projects and the investments by host countries and other donors and organizations. USAID/Afghanistan could increase its impact in the land tenure formalization process by complementing these activities with parallel projects to work on upgrading the infrastructure in the informal settlements.

Private investment in businesses and the resulting economic growth would help the residents of these settlements, but they are constrained from such investment and growth because their communities have no access to water, sewers, electricity, paved roads, and other infrastructure. The settlements lack these basic amenities because the municipalities do not have the financial resources to make the needed upgrades. Moreover, the upgrades are not part of this project's activities.

USAID's land tenure formalization process is intended to help the informal settlements obtain recognition by the municipal authorities of land tenure rights and incorporate unplanned areas into the formal city plans. These steps should allow residents to gain access to municipal services. In the short term, increased tenure security and improved services should encourage people to invest in upgrading their homes and businesses.

The land tenure formalization process could achieve a greater impact if infrastructure improvements were implemented in parallel with the land titling activities. Community leaders and municipality officials interviewed during the audit consistently affirmed that upgrading the informal settlements would be a positive and tangible impact of tenure formalization.

Through the project's land titling component, USAID seeks to improve land tenure security and, consequently, to stimulate private investment and equitable growth through the optimal use of land. The mission recognizes that the economic effects of land titling on growth are significant at the household level—land titling should increase tenure security, which over time will accelerate investment and produce higher incomes. As a result, public revenue and employment opportunities should increase, and market reforms should lead to a better use of assets. However the lack of essential infrastructure in these informal settlements will continue to prohibit the best use of the land and hamper the community's potential for private investment and equitable growth. This audit makes the following recommendation:

Recommendation 3: We recommend that USAID/Afghanistan assess the feasibility of coordinating with other donors to improve the infrastructure and quality of life within the informal settlements.

Reduction in Scopes of Work Was Not Properly Administered

Summary: According to the terms of USAID's contract with the Emerging Markets Group, Limited (the contractor), the contracting officer's technical representative⁴ (the technical representative) is not empowered to award, agree to, or sign any contract (including delivery or purchase orders) or modifications thereto, or in any way to obligate the payment of money by the U.S. Government. However, the technical representative directed the contractor to reduce sections of the statement of work without coordinating the change through the contracting office, which has the responsibility for making changes. According to USAID and project officials, the change was driven by budget reductions. As a result, tasks included in the officially approved statement of work were not completed during the original contract period or during the extension period.

According to the terms of USAID's contract with the contractor, the technical representative is not empowered to award, agree to, or sign any contract (including delivery or purchase orders) or modifications thereto, or in any way to obligate the payment of money by the U.S. Government. Further, the technical representative may not take any action that may affect the contract schedule, funds, scope, or rate of utilization of level of effort. All contractual agreements, commitments, or modifications that involve prices, quantities, quality, and schedules shall be made only by the contracting officer.

The technical representative directed the contractor to reduce sections of the statement of work without coordinating the change through the contracting office. The contract statement of work identified 18 discrete tasks composed of a varying number of subtasks that the contractor was to implement within the original contract period (October 2004–October 2007). At about the midpoint of the contract, the technical representative instructed the contractor, via an e-mail, to reduce its efforts on some of the tasks and to delete some completely. The audit concluded that the contractor did not commit resources to complete the following tasks as outlined in the contract statement of work:

⁴ Note that in January 2009, the term "cognizant technical officer" was replaced with "contracting officer's technical representative," and references to that position in this report will use the latter term, shortened to "technical representative."

Statement of Work	Task Description
Component 1—Task H	Develop a woman's [sic] legal defense program based on property rights in Islam
Component 2—Task E	Establish essential institutional infrastructure
Component 2—Task F	Design an enterprise support program for privatized and corporatized firms
Component 2—Task I	Ensure registration with appropriate Government ministries and agencies, such as licensing and tax identification number

According to the e-mail communications between the technical representative and the contractor, the change in the statement of work was driven by budget reductions. However, there was never a modification to reduce the budget or the corresponding work required per the contract. Nevertheless, during the course of implementation, the above-mentioned tasks were not completed during the original contract period or during the extension period. This audit makes the following recommendation:

Recommendation 4: We recommend that USAID/Afghanistan determine whether these unfinished tasks will have a negative impact on the project if left undone. If the mission believes the tasks should be completed as originally agreed upon, the Contracting Office should direct Emerging Markets Group, Limited, to complete the tasks or to formally modify the contract if warranted.

EVALUATION OF MANAGEMENT COMMENTS

On the basis of an evaluation of the mission's response to the draft report, this audit determined that final actions have been taken on recommendations 1, 3, and 4, while a management decision has been reached on recommendation 2.

For recommendation 2, the mission, in consultation with Afghan officials, developed a work and training plan. Under the plan, appropriate training in financial-related topics will be provided to Government of Afghanistan personnel who are involved with state-owned enterprises. The mission anticipates full closure of this recommendation by September 29, 2009. A determination of final action will be made by the Audit Performance and Compliance Division upon completion of the planned corrective actions.

The mission's written comments on the draft report are included in their entirety, without attachments, as appendix II to this report.

SCOPE AND METHODOLOGY

Scope

The Regional Inspector General/Manila 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 based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. The objective of this audit was to determine whether USAID/Afghanistan's Land Titling and Economic Restructuring in Afghanistan Project achieved planned results and what the impact has been.

In September 2004, USAID/Afghanistan awarded Emerging Markets Group, Limited (the contractor), a 3-year, \$29.2 million task order contract under the Support for Economic Growth and Institutional Reform Privatization II Indefinite Quantity Contract. In October 2007, after the initial 3-year project implementation, USAID extended the task order for an additional 2 years to 2009 and increased the estimated costs to \$56.3 million to further expand the project activities in 22 provinces. As of September 30, 2008, USAID had obligated about \$45.9 million and disbursed \$37.7 million on land titling and economic restructuring activities in Afghanistan.

The audit was performed in Afghanistan from October 29 to November 18, 2008, and covered the project activities implemented by the contractor from September 2004 to September 2008. In Kabul, fieldwork was conducted at USAID/Afghanistan and at the contractor's project office. We also conducted various meetings and interviews with the Ministry of Finance, Municipality of Kabul; Chief Justice of the Supreme Court, Kabul District Court Office; Ministry of Agriculture, Afghanistan Geodesy and Cartography Head Office; and community members of Kabul District 13.

Our meeting with Government of Afghanistan ministries included conducting walkthroughs and observing actual registration, digitization, and data entry of land deeds into the computer. We also conducted site visits to three state-owned enterprises: Industrial Development Bank; Jangalak Enterprise; and Samoon Dried Fruit. We observed the auction of Afghan Fertilizer, a state-owned enterprise. During the site visits of the selected state-owned enterprises, we met with the representatives of the Liquidation Committees to understand the liquidation process and the major challenges in conveying these state-owned enterprises to dissolution. We also toured the land and buildings at the enterprise sites. On our site visits to Emerging Markets Group/Kunduz and Emerging Markets Group/Mazar, we met and interviewed the staff, conducted walkthroughs of the offices, and met with municipality mayors, deputy mayors, and ministers of the Ministry of Urban Development.

As part of the audit, we assessed significant internal controls used by the contractor to monitor land titling and economic restructuring activities. The assessment included controls related to the contractor's staffing and financial procedures. Specifically, we conducted a random sampling of financial transactions to examine the reliability of the project's financial reporting. The assessment also included controls related to the contents of the contracting officer's technical representative's files to ensure project

oversight. We also conducted random sampling of vouchers to test for completeness and accuracy. Furthermore, we reviewed the mission's Federal Managers' Financial Integrity Act report for fiscal year 2008 for any issues related to the audit objective.

Methodology

To answer the audit objective, we reviewed and analyzed relevant documents at both the mission and the contractor's office. This documentation included the contract between USAID/Afghanistan and the contractor, trip reports and other monitoring reports, progress reports, and financial records.

The contractor maintains a Web-based (www.ltera.gov) repository of information that it developed during the implementation of its work. This Web site can be accessed only by authorized users. The contractor provided the auditors access to the Web site during the fieldwork stage in order to download documents supporting progress on the 18 established tasks and subtasks. Downloaded documents were reviewed and analyzed in drawing our conclusions.

For purposes of defining results, we assessed the accomplishments of each of the project tasks as follows:

- If the subtasks implemented under the task were sufficient to conclude that the task as a whole was completed, we expressed an opinion that the task was completed.
- If the subtasks completed under the task were not sufficiently completed, we expressed an opinion that the task was not completed.

MANAGEMENT COMMENTS



ACTION MEMORANDUM FOR THE MISSION DIRECTOR

TO: Bruce Boyer, Regional Inspector General/Manila

From: Michael J. Yates, PhD, Mission Director /s/

DATE: March 29, 2009

SUBJECT: Mission's Response to Draft Audit Report on the Audit of the Land Titling and Economic Restructuring in Afghanistan Project (LTERA) - Audit Report No. 5-306-09-00X-P

Re: Contract No. AFP-I-00-03-00029-00 with Emerging Markets Group (EMG)

Thank you for providing the Mission the opportunity to review the subject draft audit report. We would like to express our gratitude for the professionalism exhibited by the audit team during the performance of the field work. We are providing confirmation of the actions that have been taken or are planned to be taken to address the four audit recommendations.

MISSION RESPONSES TO AUDIT RECOMMENDATIONS

Recommendation No. 1: We recommend that USAID/Afghanistan in collaboration with the Emerging Markets Group, Limited and the Ministry of Finance, develop a plan to redirect remaining resources towards achieving the most optimal results by the end of the contract. The plan should consider the complexity of the outstanding issues barring final resolution and an assessment of what realistically can be completed by the end of the contract.

The Mission agrees with this recommendation.

Action Taken:

The Mission engaged privatization expert [Name redacted], USAID/EGAT/EG, who focused on this issue during his TDY to Kabul from January 30 to February 11, 2009. The results of [Name redacted]'s review are contained in Attachment 1. [Name redacted] met with key government stakeholders and discussed options with regards to Recommendations 1 and 2. His conclusions were also discussed with Chief of Staff of the Minister of Finance Mr. Seddiq, formerly Director of the State Owned Enterprise (SOE) Department, and Deputy Minister of Finance Mr. Samadi, responsible for

privatization, during meetings held on February 23, 2009. Based on this, LTERA developed a Work Plan from March to September 2009 (see Attachment 2), which was reviewed by MoF and endorsed by Deputy Minister of Finance Mr. Samadi. Please see Attachment 3.

The Mission is satisfied with the Work and Training Plan and the measures that have been undertaken by EMG in order to address the recommendation. The Contracting Officer's Technical Representative (COTR) will oversee LTERA's continued implementation of the Work and Training Plan until project completion on September 29, 2009. Based on this, the Mission requests that this audit recommendation be closed.

Recommendation No. 2: We recommend that USAID/Afghanistan in collaboration with the Emerging Markets Group, Limited and the Ministry of Finance, develop and implement a training strategy to provide a core group of state-owned enterprise department employees with sufficient knowledge so that they can carry out their roles and responsibilities of the project team.

The Mission agrees with this recommendation.

Action Taken:

As part of [Name redacted]'s mission and during further discussions between the COTR, LTERA and the new SOE Department Director Mr. Osman, a Work and Training Plan (Attachment 2) was formulated and discussed with the Ministry of Finance (MoF). Deputy Minister of Finance Mr. Samadi endorsed this plan (see Attachment 3). The plan includes on-going training with members of the MoF's SOE Department, representatives from the Economic Commission of Parliament, SOEs, relevant line ministries, and the Office of the Chief Economic Advisor to the President of Afghanistan. Once LTERA concludes its work in September, USAID will not implement a stand alone privatization program but will have the ability to provide targeted interventions with limited scope through its new Economic Governance and Growth Initiative (EGGI) program.

Planned Action:

According to the endorsed Plan for Training and Capacity Building, the first training session is scheduled to start on March 28, 2009, and the trainings will continue through August 27, 2009.

The Mission is satisfied with the Work and Training Plan and the measures that have been undertaken by EMG in order to address the recommendation. The COTR will oversee LTERA's continued implementation of the training plan of action until it is completed. Based on this, the Mission requests RIG/Manila concurrence that a management decision has been reached. The target completion date to fully close this recommendation is the project end date of September 29, 2009.

Recommendation No. 3: We recommend that USAID/Afghanistan assess the feasibility of coordinating with other donors to improve the infrastructure and quality of life within the informal settlements.

The Mission agrees with this recommendation.

Action Taken:

Since November 2008, LTERA has intensified its contacts with other donor-funded projects and agencies operating in the field of land tenure regularization as well as social issues and infrastructure upgrading within Afghan urban informal settlements. LTERA has now regular meetings with the Norwegian Refugee Council (NRC), UN-HABITAT, CHF International, the Aga Khan Foundation, CARE International and the World Bank-funded Kabul Urban Rehabilitation Project (KURP). Altogether, these projects and agencies implement informal settlement upgrading activities in Kabul, Mazar, Jalalabad and Kandahar totaling more than \$60 million. In particular, LTERA has been instrumental in establishing an Informal Settlements Upgrading Steering Committee chaired by the Minister of Urban Development, and aimed at coordinating and harmonizing strategies of urban regularization and upgrading throughout the country. This Steering Committee, which includes representatives of the above mentioned organizations, meets once a month.

However, LTERA has been actively advocating for tenure regularization solutions. It has also been reporting its findings to other donors that have shown an interest in supporting land reform, as well as promoting pro-poor policies. LTERA has met with representatives of the Australian Government Overseas Aid Program (AusAid), the Department For International Development (DFID) from the United Kingdom, the World Bank and the Japan International Cooperation Agency (JICA), which are the major donors funding the reconstruction of Afghanistan along with USAID.

LTERA has also initiated fruitful contacts with other USAID-funded projects which directly or indirectly facilitate the delivery of social and physical infrastructure within Afghan cities. In this respect, solid relations have been developed between LTERA and the Afghanistan Municipal Strengthening Program (AMSP), which is part of the USAID Democracy and Governance (ODG) portfolio, with a view to share practical experience in the field of urban planning.

Further consultations with other donors to improve infrastructure and the quality of life in the informal settlements are planned in conjunction with the Ministry of Urban Development (MoUD) in order to strengthen their ability to work with a range of donors on this issue. A consultation process will take place after a study tour that will highlight lessons learned in developing informal settlements in India. In addition to representatives from the MoUD, the Independent Directorate for Local Governance (IDLG), municipalities, and selected members of Parliament will also participate in the study tour. The COTR has developed the following action plan with the LTERA project:

- Support for study tour participants to compile and disseminate a report on “lessons learned” from the informal urban settlement upgrading study tour to India;
- Continued support to the MoUD steering committee on informal urban settlement upgrading policy formulation and implementation strategy;
- Complete a draft MoUD informal urban settlement upgrading policy;

- Recommend new or amended legislation and regulations for improving land tenure security and services for residents of informal urban settlements in accordance with the MoUD draft policy; and
- Conduct a stakeholder conference on the proposed MoUD informal urban settlement upgrading policy and implementation strategy. The conference will include all the donors that are active or planning activities in this field.

The Mission has agreed to the feasibility of coordination with other donors to improve the infrastructure and quality of life within the informal settlements. Specific actions have already been taken and an action plan is being implemented. The COTR will oversee LTERA's continued implementation of this plan of action until it is completed. Since the recommended feasibility has been incorporated into a plan of action that is now being implemented, the Mission requests that this audit recommendation be closed.

Recommendation No. 4: We recommend that USAID/Afghanistan determine if these unfinished tasks will have a negative impact on the project if left undone. If the mission believes the tasks should be completed as originally agreed to, the Contracting Office should direct Emerging Markets Group, Limited to complete the tasks, or formally modify the contract if warranted.

The Mission agrees with this recommendation.

Action Taken:

At the beginning of the project the Mission and project personnel mutually decided that a number of activities outlined in the Scope of Work (SoW) were not going to have a significant impact on the overall outcomes and that resources could be better directed. Those changes were not reflected in a modification at the time those decisions were made. On March 24, 2009 the Mission executed Modification #15 (Attachment 4) which results in a revised SoW that reflects the agreed-upon activities of the program. Based on this, the Mission requests that this audit recommendation be closed.

Attachments [not included in audit report]

- Attachment 1.** Report issued by USAID/EGAT/EG
- Attachment 2.** Work and Training Plans
- Attachment 3.** Ministry of Finance endorsement of the Work and Training Plans
- Attachment 4.** Contractual Modification of SoW

Table I. Tasks Outlined in Contract Statement of Work		
Task	Task Description	Status as of September 2008
<i>Component I—Land Titling and Registration</i>		
Task A	Working collaboratively with counterparts, assist in the establishment of procedures for simplifying the transfer of titles within a “one stop shop.”	Completed
Task B	Develop the capacity to map ownership and identify boundaries with a unique identifier, thus ensuring that the same property is not sold twice and that the land does not overlap with other properties	Completed
Task C	While working through Afghan nationals and developing local capacity, develop a data base system for recording titles, boundaries and the history of ownership.	Completed
Task D	Law consolidation	Completed
Task E	Hold conference on informal settlements in Kabul and evaluate how they can be brought into the formal registry system.	Completed
Task F	Establish at least one pilot titling project.	Completed
Task G	While fostering the development of indigenous conflict resolution skills, develop a pilot dispute resolution program that includes both voluntary conciliation methods and binding arbitration.	Completed
Task H	Develop a woman’s [sic] legal defense program based on property rights in Islam	Not Completed
Task I	Reorganization of property deed archives kept in Makhzans in Kabul, Kandahar, Herat, Mazar, and one or more regional centers, such as Shiberghan, Kunduz, and Jalalabad.	Completed
<i>Component II—Privatization of State-Owned Enterprises</i>		
Task A	Assist in the design a social safety net program.	Completed
Task B	Design a public outreach program to increase awareness and acceptability of disposition of state-owned enterprises.	Completed
Task C	Work closely with counterparts, and establish preparatory procedures for disposition of assets.	Completed
Task D	Work collaboratively with Government counterparts, private sector counterparts, and other stakeholders; assist in the development of a detailed strategy, implementation procedures, and methods of disposition for each class of state-owned enterprises.	Completed
Task E	Establish essential institutional infrastructure	Not Completed
Task F	Design an enterprise support program for privatized and corporatized firms.	Not Completed
Task G	Provide technical assistance and support, as called upon, to a team of local professionals who will work with planning and marketing of auctions.	Completed
Task H	Assist with tendering the auctions.	Completed
Task I	Ensure registration with appropriate Government ministries and agencies, such as licensing and tax identification number.	Not Completed

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