

SIGAR

**Special Inspector General for
Afghanistan Reconstruction**

SIGAR 22-41 Audit Report

Contracting in Afghanistan: USAID Generally Met Requirements for Noncompetitive Awards, But Did Not Complete or Did Not Maintain Some Required Documents



SEPTEMBER
2022

SIGAR

Special Inspector General for Afghanistan Reconstruction

WHAT SIGAR REVIEWED

From February 2002 through April 2022, the U.S. Agency for International Development (USAID) obligated \$21.16 billion to support Afghanistan's reconstruction. USAID provided assistance through various award types, including contracts, grants, cooperative agreements, and interagency agreements.

The United States Code, Federal Acquisition Regulation (FAR), and USAID policies direct that the processes for awarding assistance funds should use full and open competition to the maximum extent possible. According to the FAR, competition in contracting fosters an impartial and comprehensive evaluation of offers' proposals, leading to selection of the proposal representing the best value to the government. However, federal regulations and USAID policies recognize that full and open competition is not always feasible and they permit contracting without it in certain circumstances.

This audit examined the extent to which USAID, from January 1, 2017, through December 31, 2020, followed applicable federal and internal guidance when awarding noncompetitive contracts, grants, cooperative agreements, and other assistance agreements for Afghanistan reconstruction.

The objectives of this audit were to (1) identify the type and number of contracts, grants, cooperative agreements, and other assistance or acquisition agreements that USAID awarded without full and open competition; and (2) determine the extent to which USAID adhered to the FAR and other requirements in the award and implementation of contracts, cooperative agreements, or other assistance agreements for Afghanistan reconstruction activities without full and open competition.

September 2022

Contracting in Afghanistan: USAID Generally Met Requirements for Noncompetitive Awards, But Did Not Complete or Did Not Maintain Some Required Documents

SIGAR 22-41-AR AUDIT REPORT

WHAT SIGAR FOUND

SIGAR found that USAID followed federal regulations promoting the use of full and open competition and used competitive processes for the majority of its awards for reconstruction activities in Afghanistan during the 4-year period covered in this audit. Specifically, from January 1, 2017, through December 31, 2020, USAID awarded 58 contracts, grants, and cooperative and other types of agreements, valued at \$1.1 billion, for Afghanistan reconstruction activities. SIGAR found that USAID made 43 awards (74 percent), valued at \$921.1 million, using full and open competition, and 15 awards (26 percent), valued at \$216.7 million, without full and open competition. USAID primarily used contracts and cooperative agreements for its Afghanistan reconstruction activities, together accounting for 52 of the 58 awards.

USAID made 15 noncompetitive awards involving four contracts, five interagency agreements, and six cooperative agreements. SIGAR found that USAID complied with the FAR data element publishing requirements for each of the four noncompetitive contracts. Specifically, SIGAR found that, as required, USAID accurately logged each contract into the Federal Procurement Data System-Next Generation system, a computer-based system for collecting and disseminating procurement data. USAID and Office of Management and Budget (OMB) policies also require USAID to synopses and post grants and cooperative agreements opportunities on the Grants.gov website. In addition to the synopsis, USAID is required to publish information on the amount of funding available, expected number of awards, eligibility criteria, and other data points. SIGAR found that USAID met these requirements.

However, USAID either did not complete or did not properly maintain all required documentation for the awards it made without full and open competition. For example, USAID did not complete or properly maintain the documents required to justify the decision not to compete two of the awards, the action memorandum for one interagency agreement, transmittal letters for three interagency agreements, and selection instrument justifications for one contract and one cooperative agreement.

As a result of incomplete or missing documents, USAID does not have complete and accurate records for all of its award activities. Adhering to federal regulations and internal guidance for providing award documents is important because without those documents, USAID is not certain that it is obtaining the necessary commodities and services at the lowest possible price or at the best value to the government.

In response to a May 2022 SIGAR report, the Director of the Office of Acquisition and Assistance for USAID Afghanistan issued an administrative notice reminding staff the importance of properly complying with the internal controls related to the completion and storage of award files, and of the importance of proper document filing. The administrative notice reiterated a 2019 requirement that required award documentation to be uploaded in the Agency Secure Image and Storage Tracking System, USAID's official electronic repository for all acquisition and assistance award documentation. The administrative notice also reminded all Acquisition and Assistance staff that they must file all documentation relating to an award, from pre-solicitation through close-out, in the Agency Secure Image and Storage Tracking System. The May 2022 administrative notice reiterated that adherence to procedures may prevent the future occurrence of missing files in the award documents.

WHAT SIGAR RECOMMENDS

SIGAR is not making any recommendations in this report because in response to a May 2022 SIGAR report, USAID issued an administrative notice to address the documentation completion and retention issues identified in this report.

SIGAR provided a draft of this report to USAID for review and comment. SIGAR received written comments from the USAID/Afghanistan Mission Director, which are reproduced in appendix II. In those comments, the Mission Director said that USAID/Afghanistan is committed to fully complying with applicable guidance when awarding noncompetitive contracts, grants, cooperative agreements, and other assistance or acquisition instruments for Afghanistan reconstruction, including the integration of full and open competition in the procurement process when appropriate.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

September 16, 2022

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

Mr. Sean E. Callahan
USAID Mission Director for Afghanistan

This report discusses the results of SIGAR's audit of the U.S. Agency for International Development's (USAID) award and implementation of contracts, cooperative agreements, grants, and interagency agreements without full and open competition from January 1, 2017, through December 31, 2020. During this period, USAID awarded 58 contracts, grants, and cooperative and other acquisition agreements.¹ We announced this audit in March 2021, prior to the collapse of the Afghan government in August 2021. This report does not examine the contracts, grants, or other agreements awarded after August 2021. However, because USAID is still making awards for assistance to the Afghan people, we believe that this report and its concerns continue to be relevant.

We determined that USAID generally followed federal regulations and internal policy promoting the use of full and open competition and competed the majority of the awards—43 of 58 awards, about 74 percent—that it made for reconstruction activities in Afghanistan during the 4-year period covered in our audit. We also determined that USAID generally met requirements for the 15 awards it made without full and open competition. However, we found that USAID either did not complete or did not properly maintain all required documentation for these 15 awards.

We are not making any recommendations in this report because in April 2022, USAID issued an administrative notice to address the documentation completion and retention issues identified in this report.² We received written comments on a draft of this report from the USAID/Afghanistan Mission Director. USAID/Afghanistan said it is committed to fully complying with applicable guidance when awarding noncompetitive contracts, grants, cooperative agreements, and other assistance or acquisition instruments for Afghanistan reconstruction, including the integration of full and open competition in the procurement process when appropriate.

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

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

¹ USAID made additional two awards, valued at about \$19 million, which involved grants to public international organizations (PIOs). Since USAID guidance does not require that grants to PIOs be competed, we did not include them in this report.

² In April 2022, in response to a recommendation in a draft of our report on contract terminations, USAID issued an administrative notice to address the documentation completion and retention issues we identified. See, SIGAR, *Contracting in Afghanistan: USAID Did Not Complete or Did Not Maintain Required Documentation for 8 of its 11 Terminated Awards*, SIGAR 22-21-AR, May 9, 2022.

TABLE OF CONTENTS

Background	2
USAID Awarded 15 of 58 Contracts and Agreements Totaling \$216.17 Million Without Full and Open Competition For Reconstruction Activities in Afghanistan from 2017 through 2020	3
USAID Reported Required Data for Noncompetitive Awards in Two Government Databases, But Either Did Not Complete or Did Not Maintain Other Required Documentation	6
Conclusion	10
Recommendations	10
Agency Comments	11
Appendix I - Scope and Methodology	12
Appendix II - Comments from the U.S. Agency for International Development	13
Appendix III - Acknowledgements	14

TABLES

Table 1 - USAID/Afghanistan Assistance or Acquisition Instruments	3
Table 2 - USAID Competitive and Noncompetitive Awards for January 2017, through December 2020	4
Table 3 - Information on USAID's Awards Made between January 1, 2017, and December 31, 2020 Without Full and Open Competition	5
Table 4 - Missing Documents for Awards Without Full and Open Competition	7

ABBREVIATIONS

ADS	Automated Directives System
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System–Next Generation
GAO	U.S. Government Accountability Office
OMB	Office of Management and Budget
USAID	U.S. Agency for International Development
PIO	public international organization

The U.S. Agency for International Development (USAID) has a long-standing history of entering into agreements for providing supplies and services worldwide. As of March 2022, USAID obligated \$21.16 billion of the Economic Support Fund to support Afghanistan's reconstruction. USAID provided assistance through contracts, grants, cooperative agreements, and interagency agreements. Even after the Afghan government's collapse and the Taliban's takeover of the country in August 2021, USAID continued providing assistance to support and benefit the Afghan people. The United States Code, Federal Acquisition Regulation (FAR), and USAID policies generally direct that the processes for awarding assistance funds should use full and open competition to the maximum extent possible. According to the FAR, competition in contracting fosters an impartial and comprehensive evaluation of proposals, leading to selection of the proposal representing the best value to the government.³ However, federal regulations recognize that full and open competition is not always feasible and it is not required in certain cases.⁴

In March 2014, the U.S. Government Accountability Office (GAO) reported that USAID used some justifications for limiting competition that did not meet all FAR requirements.⁵ Further, GAO stated that USAID extended some contracts awarded noncompetitively under the "unusual and compelling urgency" justification beyond 1 year, even though the FAR states that contracts awarded under this justification cannot exceed 1 year in duration unless the USAID Administrator determines that exceptional circumstances apply.⁶ GAO also reported that USAID and other agencies awarded noncompetitive contracts that were not logged consistently and correctly into the Federal Procurement Data System–Next Generation (FPDS-NG), creating potential data reliability concerns in a system used to inform the public about procurement policy decisions and facilitate congressional oversight.⁷

Our audit follows up on the GAO report and examined the extent to which USAID, from January 1, 2017, through December 31, 2020, followed applicable guidance when awarding noncompetitive contracts, grants, cooperative agreements, and other assistance or acquisition instruments for Afghanistan reconstruction. Specifically, our objectives were to (1) identify the type and number of contracts, grants, cooperative agreements, and other assistance or acquisition agreements that USAID awarded without full and open competition; and (2) determine the extent to which USAID adhered to the FAR and other requirements in the award and implementation of contracts, cooperative agreements, or other assistance agreements for Afghanistan reconstruction activities without full and open competition.⁸

To accomplish our objectives, we reviewed USAID pre-award documentation related to contracts, grants, cooperative agreements, interagency agreements, and public international organization (PIO) agreements.⁹ In addition, we reviewed the FAR, USAID's Automated Directives System (ADS), USAID's Acquisition Regulation, FPDS-NG, Afghanistan Information Database, and Grants.gov. We also reviewed relevant USAID Office of Inspector General and GAO reports, and other relevant policies, regulations, and procedures. We interviewed USAID officials responsible for overseeing and managing contracts and assistance agreements that did not involve full and open competition. We performed our work in Arlington, Virginia, from May 2021 through

³ FAR 15.002.

⁴ See, e.g., FAR 6.3.

⁵ GAO, *Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight*, GAO-14-304, March 26, 2014.

⁶ FAR 6.302-2.

⁷ GAO reported that USAID erred in extending some contracts awarded noncompetitively using the "unusual and compelling urgency" justification beyond 1 year, even though contracts awarded under this justification may not exceed 1 year unless the USAID Administrator determines that exceptional circumstances apply. USAID did not award any contracts using the unusual and compelling urgency justification from January 2017 through December 31, 2020. FPDS-NG is the federal government's database used to disseminate information on procurements to the Congress, executive branch, and private sector. The FAR requires that agencies like USAID collect and report the data.

⁸ For purposes of this report, we did not examine awards that included activities both inside and outside of Afghanistan (e.g. worldwide awards).

⁹ PIOs are public international organizations such as the UN, the Asian Development Bank, and the World Bank.

September 2022, in accordance with generally accepted government auditing standards. Appendix I contains a detailed discussion of our scope and methodology.

BACKGROUND

The Foreign Assistance Act of 1961, Pub. L. No. 87-195, provides the most common authority for USAID's foreign assistance programs and activities.¹⁰ When awarding procurement contracts, USAID is responsible for following the Competition in Contracting Act of 1984, Pub. L. No. 98-369, Title VII, as amended, which established the foundation for the contracting competition standards set forth in the FAR and ADS. The Competition in Contracting Act aims to promote and generally require agencies to use full and open competition, in awarding contracts. USAID is also required to comply with the Federal Grant and Cooperative Agreement Act of 1977, the purpose of which was to, among other things, "promote increased discipline in selecting and using procurement contracts, grant agreements, and cooperative agreements, maximize competition in making procurement contracts, and encourage competition in making grants and cooperative agreements."¹¹ These requirements are implemented by USAID through ADS 304.

According to USAID's internal directives, integrating full and open competition in the procurement process helps ensure that the agency obtains the necessary commodities and services for the best value to the government. Although federal laws and policies encourage full and open competition, the FAR authorizes the use of other than full and open competition when

- an agency's supplies or services are available from only one responsible source, and no other type of supplies or services will satisfy agency requirements;
- an agency's need for the supplies or services is of such an unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;
- an agency needs to award the contract to a particular source or sources to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization; to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution, or a federally funded research and development center; or to acquire the services of an expert or neutral person for any current or anticipated litigation or dispute;
- an award is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government;
- a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or
- disclosure of the agency's needs would compromise national security; or
- an agency head determines that competition is not in the public interest unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or
- when the agency head determines that it is not in the public interest in the particular acquisition concerned.¹²

¹⁰ See ADS 101.3.1 for a detailed explanation of USAID's creation and authorities.

¹¹ Pub. L. No. 95-224, 92 Stat. 3 (1978), codified as amended at 31 U.S.C. §§ 6301–6308.

¹² FAR 6.302.

In addition to following FAR requirements, USAID's ADS also provides guidance for noncompetitive awards.¹³ The ADS specifies guidance for contracts in ADS 302, grants and cooperative agreements in ADS 303, interagency agreements in ADS 306, and PIO awards in ADS 308. Although the competition requirements differ for each type of assistance or acquisition instrument, the ADS generally requires USAID officials to provide a written justification explaining their rationale when seeking to limit competition or eligibility to apply for an award. In addition, ADS 304 requires that USAID create a Selection of Instrument or Choice of Instrument memorandum by using a mandatory template and explaining the rationale for using a contract, grant, cooperative agreement, interagency agreement, or other assistance or assistance instrument in support of its programming. Furthermore, the ADS and FAR require that award documents be retained for 6 years from the final contracting action, including documents related to pre-award activities.¹⁴ USAID's definition of the assistance and acquisition instruments that it used and the ADS chapter that applies to each instrument are listed in table 1.

Table 1 - USAID/Afghanistan Assistance or Acquisition Instruments

Assistance/ Acquisition Instrument	Definition	Applicable ADS Chapter
Contract	A mutually binding legal relationship obligating the seller (contractor) to furnish supplies or services and the buyer (USAID) to pay for them.	302
Grant/Cooperative Agreement	A legal instrument used where the principal purpose is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by federal statute, and where substantial involvement by USAID is not anticipated.	303
Interagency Agreement	Any agreement between two federal agencies with one agency buying goods or services from the other, including but not limited to an agreement under the authority of Foreign Assistance Act section 632(b), the Economy Act, the Government Management Reform Act, or similar legislation.	306
PIO Awards	PIOs include the UN, the Asian Development Bank, and the World Bank. Awards can include cost-type agreements, project contributions, general contributions, and other types of award mechanisms through which PIOs are provided funding. An award to a PIO does not have to be competed.	308

Source: SIGAR analysis of USAID's ADS.

USAID AWARDED 15 OF 58 CONTRACTS AND AGREEMENTS TOTALING \$216.17 MILLION WITHOUT FULL AND OPEN COMPETITION FOR RECONSTRUCTION ACTIVITIES IN AFGHANISTAN FROM 2017 THROUGH 2020

From January 1, 2017, through December 31, 2020, USAID awarded 58 contracts, grants, or other types of agreements, valued at \$1.1 billion, for Afghanistan reconstruction activities.¹⁵ We found that USAID made 43

¹³ FAR 6.302.

¹⁴ ADS 502; FAR 4.805.

¹⁵ We did not include the seven basic ordering agreements that USAID awarded within our scope because they are considered written instruments of understanding, not contracts. Per FAR 16.703, a basic ordering agreement is a written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor, that contains (1) terms and clauses applying to future contracts (orders) between the parties during its term, (2) a description, as

awards, valued at \$921.1 million, using full and open competition, and 15 awards, valued at \$216.7 million, without full and open competition.¹⁶

USAID used a variety of acquisition and assistance instruments for the 58 awards, including contracts, grants, cooperative agreements, and interagency agreements. For each type of award, either the FAR, USAID internal guidance, and/or Office of Management and Budget (OMB) Circular A-76 established competition requirements. Specifically, the following sections applied:

- FAR Part 6 and USAID ADS 302 (“Direct Contracting”) require that contracting officers provide for full and open competition through competitive procedures for contracts, which include the use of sealed bids and competitive proposals. Contracts awarded without competitive procedures or with limited competition are referred to as “other than full and open competition.”
- USAID ADS 303 (“Grants and Cooperative Agreements”) encourages competition in the awarding of grants and cooperative agreements by identifying and funding programs to best achieve agency objectives.¹⁷ Competitive procedures for grants and cooperative agreements include notifying the public of funding opportunities and reviewing applications using merit-based criteria. Grants or cooperative agreements awarded without competitive procedures are referred to as “restricted eligibility.”
- OMB Circular A-76 requires competition, when applicable, between the cost of contracting with a private entity and the cost of buying from a federal agency. ADS 306 (“Interagency Agreements”) requires USAID to follow the competition standards of OMB Circular A-76, except when the other agency will perform inherently governmental functions or provide services to USAID under a statute that is an exception to OMB Circular A-76.¹⁸

We found that USAID primarily used contracts and cooperative agreements for its Afghanistan reconstruction activities awarded from January 1, 2017, through December 31, 2020. As seen in table 2, USAID awarded 58 contracts, cooperative agreements or grants, and interagency agreements, 43 of which it awarded competitively (74 percent) and 15 of which it awarded without full and open competition (26 percent). As noted earlier, federal regulations promote the use of full and open competition to the maximum extent possible but recognize that it is not always feasible. Table 2 shows USAID’s competitive and noncompetitive awards by assistance or acquisition instrument and respective award amounts.

Table 2 - USAID Competitive and Noncompetitive Awards for January 2017, through December 2020

Assistance or Acquisition Instrument	Competitive	Award Amount	Other than Full and Open Competition Awards	Award Amount
Contracts	33	\$563,142,499	4	\$8,769,444
Cooperative Agreements/Grants	10	\$358,018,889	6	\$116,736,950
Interagency Agreements	0	\$0	5	\$91,166,904
Totals	43	\$921,161,388	15	\$216,673,298

Source: SIGAR analysis of USAID award data.

specific as practicable, of supplies or services to be provided, and (3) methods for pricing, issuing, and delivering future orders under the basic ordering agreement.

¹⁶ USAID made two additional awards, valued at about \$19 million, which involved grants to PIOs. Since USAID guidance does not require that grants to PIOs be competed, we did not include them in this report.

¹⁷ USAID, “ADS Chapter 303 Grants and Cooperative Agreements to Non-Governmental Organizations,” ADS 303.3.6.

¹⁸ USAID, “ADS Chapter 306 Interagency Agreements,” ADS 306.3.1.1.

The 15 awards made without full and open competition included an interagency agreement for armored vehicles purchased by the Department of State for USAID, several cooperative agreements or grants intended to improve agriculture, support for Afghan elections, and contracts for road repair and assessments of transportation needs in two Afghan cities. Table 3 provides additional information on the awards that were made without full and open competition from January 1, 2017, through December 31, 2020.

Table 3 - Information on USAID's Awards Made between January 1, 2017, and December 31, 2020 Without Full and Open Competition

Award Type	Implementing Partner	Period of Performance	Award Amount	Summary Program Description
Contract	Barikab Durani Construction Company	07/09/17–09/20/18	\$138,531.14	Emergency road operations & maintenance
Contract	DAI Global LLC	08/27/18–01/31/19	\$952,250.00	Transportation sector assessments
Contract	Clifton Larson Allen LLP	08/06/20–01/05/21	\$101,024.96	Survey of American University in Afghanistan management capabilities
Contract	RSI Consulting	02/21/17–01/20/21	\$7,577,638.00	Develop baseline and survey tool of PROMOTE scholarship recipients
Cooperative Agreement	Texas A&M AgriLife Research –A&M University System	09/27/18–09/26/23	\$50,000,000.00	Promote scholarship endowment for qualified Afghan women
Cooperative Agreement	Virginia Polytechnic Institute and State University (Virginia Tech)	05/28/18–05/27/23	\$8,000,000.00	Catalyze innovation in agriculture
Cooperative Agreement	Consortium for Elections and Political Process Strengthening	08/09/18–08/08/21	\$18,253,000.00	Afghan election support
Cooperative Agreement	Roots of Peace	01/28/20–01/27/23	\$30,000,000.00	Link farmers with markets
Cooperative Agreement	Internews Network	03/29/17–03/28/20	\$9,000,000.00	Support Afghan media
Cooperative Agreement	Youth Health and Development Organization	01/10/18–01/09/20	\$1,483,950.00	Reduce trafficking and ending violence in Afghanistan
Interagency Agreement	Department of State, Bureau of Diplomatic Security	07/15/18–09/30/19	\$20,599,200.68	Armored vehicles for USAID
Interagency Agreement	Department of State, Regional Logistics Center	09/18/18–09/30/19	\$2,200,00.00	Delivery of armored vehicles
Interagency Agreement	Department of Commerce	02/7/18–09/30/24	\$29,990,258.00	Commercial law and economic policy reform

Interagency Agreement	U.S. Geological Survey	01/1/18–12/31/22	\$18,226,206.00	Technical support to the Afghan Ministry of Mines and Petroleum
Interagency Agreement	U.S. Army Corps of Engineers	03/7/18–06/27/22	\$20,151,240.00	Manage USAID power projects

Source: SIGAR analysis of USAID award data.

USAID REPORTED REQUIRED DATA FOR NONCOMPETITIVE AWARDS IN TWO GOVERNMENT DATABASES, BUT EITHER DID NOT COMPLETE OR DID NOT MAINTAIN OTHER REQUIRED DOCUMENTATION

The 15 awards USAID made without full and open competition for Afghanistan reconstruction activities between January 1, 2017, through December 31, 2020 included four contracts valued at about \$8.7 million, six cooperative agreements/grants valued at about \$116.7 million, and five interagency agreements valued at about \$91.1 million. We found that USAID uploaded information for each of the four contract awards into the FPDS-NG system, as required, and submitted contract data within the FAR-required timeframes.¹⁹ We also found that only one of the six cooperative agreements/grants awarded without full and open competition was required to be reported to the Grants.gov website, and USAID met requirements within the established timeframe. However, USAID either did not complete or did not maintain some required documents, such as the justification to restrict competition, for five non-competed awards—one contract, one cooperative agreement and three interagency agreements.

USAID Published Information for its Noncompetitive Awards as Required by the FAR and ADS

From January 1, 2017, to December 31, 2020, we found that USAID awarded four noncompetitive contracts and accurately logged each contract into the FPDS-NG system, a computer-based system for collecting and disseminating procurement data. FPDS-NG requires agencies to include hundreds of contract data elements points from pre-award to close-out, like the type of contract, period of performance, awarding agency, funding agency, labor clauses, legislative mandates, and principle places of performance. As we noted above, GAO reported in March 2014 that USAID awarded some noncompetitive contracts that were not logged consistently and correctly in the FPDS-NG.²⁰ We found that USAID/Afghanistan complied with the FAR requirements for publishing contract award data for each of the four noncompetitive contracts in the scope of our audit.

ADS 303 requires USAID to synopsise and post most grants and cooperative agreements opportunities on the Grants.gov website.²¹ In addition to the synopsis, USAID is required to publish information on the amount of funding available, the expected number of awards, eligibility criteria, and other information. We found that USAID was only required to post one of the six cooperative agreements awarded with less than full and open

¹⁹ Federal Acquisition Regulations, *Contract Reporting*, FAR 4.604.

²⁰ GAO, *Federal Contracting*, GAO-14-304, March 26, 2014.

²¹ The Grants.gov website was designed to provide potential grant applicants access to funding information to aid in their decision making processes, report on any federal assistance programs use of funds, and simplify financial assistance procedures for those organizations outside of the federal government. The five interagency agreement awards did not have to be included in either the Grants.gov database or FPDS-NG.

competition in the Grants.gov system because five were exempt from publication for various reasons.²² Our review of Grants.gov found that USAID published required information on the website, as required.²³

USAID Either Did Not Complete or Did Not Maintain All of the Required Documents for Its Noncompetitive Awards

USAID either did not complete or did not appropriately maintain all of the documents that the FAR and ADS require for five of the fifteen, or one-third, of the awards it made without full and open competition. Together, these five awards were missing seven required documents. Table 4 shows the number and type of required documents that were missing for each of the five awards.

Table 4 - Missing Documents for Awards Without Full and Open Competition

Assistance or Acquisition Instrument	Number of Instruments Missing Required Documents	Missing Justification and Approval Documents ^a (required for contracts)	Missing Action Memorandum	Missing Justification to Restrict Eligibility ^b (required for cooperative agreements)	Missing Interagency Agreement Transmittal Letters	Missing or Incomplete Selection Instrument Memoranda
Contracts	1	1	–	–	–	1
Cooperative Agreements and Grants	2	–	–	1	–	1
Interagency Agreements	3	–	1	–	3	–
Total	6	1	1	1	3	2

Source: SIGAR analysis of USAID award documents.

^a Noting justification and approval documents is only required for contracts.

^b Noting justification to restrict eligibility is only required for cooperative agreements.

USAID Did Not Provide Required Documentation to Justify Limited Competition for One Contract

According to the FAR, contracting officers are required in most circumstances to write justifications for contracts awarded without full and open competition.²⁴ USAID implements this requirement through the use of a document specifically titled, “Justification for other than full and open competition.”²⁵ Two of the four noncompetitive contracts issued from January 2017 through December 2020 required a justification and

²² The remaining five cooperative agreements and grants all had approved exceptions per ADS 303 that fell into one of three categories (1) programs that only publish funding opportunities in the Catalog of Federal Domestic Assistance, (2) announcements for awards less than \$25,000 and where all eligible applicants live outside the U.S., and (3) awards for which eligibility is restricted to a single source.

²³ This cooperative agreement is for the USAID program, Promote Scholarship Endowment, which USAID awarded to the Norman E. Borlaug Institute for International Agriculture and Development.

²⁴ FAR 6.302. Circumstances permitting other than full and open competition.

²⁵ FAR 6.303-2. Justifications. (Content requirements).

approval document for limiting competition.²⁶ USAID provided the required justification and approval document for one of the two contracts: the contract with RSI Consulting, but not for the contract with Clifton Larson Allen.²⁷ The contract with Clifton Larson Allen was for, among other things, a pre-award survey of the American University of Afghanistan to determine if the university had sufficient financial and managerial expertise to manage USAID provided funds in accordance with USAID requirements.

In the contract action report for Clifton Larson Allen that USAID uploaded to the FPDS-NG system, it cited FAR 6.302-1 as the basis for not seeking full and open competition. FAR 6.302-1 states, “When the supplies or services required by the agency are available from only one responsible source and no other supplies or services will satisfy agency requirements, full and open competition need not be provided for.” The FAR also states contracts awarded using this authority shall be supported by a written justification and approval document. In addition, USAID’s ADS 302 states that the only exception to the requirement for preparing and approving a justification and approval document is when contracting officers use the authority under the agency pilot program for limiting competition to local entities. USAID officials told us that Congress requested a 1-year noncompetitive award, and therefore a justification document was not required. However, USAID could not provide any evidence to support this assertion. As a result, USAID did not meet applicable sections of the FAR and ADS, and USAID cannot demonstrate that it appropriately limited competition and received the best possible value for this contract.

USAID Did Not Provide the Action Memorandum for One Interagency Agreement or the Transmittal Letters for Three Interagency Agreements

ADS Section 306 addresses interagency agreements between federal agencies, wherein one agency procures goods or services from the other, such as services that are considered inherently governmental or are procured under the authority of the Foreign Assistance Act of 1961.²⁸ The ADS requires the activity manager to develop an action memorandum providing background and information supporting the use of an interagency agreement. We reviewed the five interagency agreements that USAID awarded from January 2017 through December 2020. Three of the awards were for inherently governmental functions and two were awarded under section 632(b) of the Foreign Assistance Act of 1961, as amended.

Four of the five agreements that we reviewed had their required action memoranda. However, USAID’s file documenting its agreement with the U.S. Geological Survey for technical assistance to the Afghan Ministry of Mines did not contain an action memorandum. ADS 306.3.2.9 required USAID officials to obtain a signed clearance document to include approval from its Activity Design Office, Director of Technical Office Program/Budget/Controller Office, and General Counsel before presenting the interagency agreement for signature to the agency providing the services. However, USAID could not provide documentation showing that those officials reviewed and cleared the interagency agreement, or that the agreement officer approved it prior to sending the award to the U.S. Geological Survey for signature.

²⁶ USAID awarded four noncompetitive contracts; however, two contracts did not require a justification and approval document. The task order award to the Barikab Durani Construction Company was awarded under a basic ordering agreement that utilized the Pilot Authority for Limiting Competition to Local Entities (Section 7077), USAID’s FY 2012 Appropriations Act provided authority for a pilot program that allows Contracting Officers to limit competition to local entities if certain conditions are met. As a result, the competition requirements in FAR part 6 did not apply to the ordering process. The second was a task order to DAI Global LLC. The task order was awarded on a previously issued multi-award indefinite delivery indefinite quantity (IDIQ) contract awarded under FAR part 16.505. Part 16.505 requires that the contracting officer offer all contractors participating in the IDIQ contract a fair opportunity to submit an offer and have that offer fairly considered. As a result, a written FAR part 6 justification was not required. While both of the task orders were subject to competition, the competition was not full and open and so were included in the scope of this report.

²⁷ The contract with RSI Consulting, a U.S. company, was to develop and implement a rolling baseline and end line survey tool for collecting detailed information on the Promoting Gender Equity in the National Priority Programs (Promote) in Afghanistan.

²⁸ Foreign Assistance Act of 1961, section 632 (b).

The ADS also requires interagency agreement files to include a transmittal letter explaining the agreement to the agency providing the service.²⁹ However, USAID either did not complete or did not properly maintain a transmittal letter in the interagency agreement files for USAID's three of the five awards, together valued at \$68 million, with the U.S. Geological Survey, Army Corps of Engineers, or Department of Commerce. By not adhering to the requirements, USAID was not able to ensure consistency and fiscal accuracy prior to award.

USAID Did Not Meet the Requirements to Justify Selection Instruments for One Contract and One Cooperative Agreement

The majority of the award documentation for the four contracts and six cooperative agreements that we reviewed provided a rationale for the selection of a particular instrument. However, USAID either did not complete or did not properly maintain the Selection of Instrument memoranda for 2 of the 10 awards, totaling \$39 million.

ADS 304, *Selecting the Appropriate Acquisition and Assistance Instrument*, outlines requirements for protecting the integrity of the planning process, and USAID's responsibility to justify and document a clear and convincing basis for its instrument selection.³⁰ In addition, ADS 304 explains under what circumstances it is appropriate to use the various acquisition or assistance instruments (e.g. contracts, cooperative agreements, or grants). The type of instrument selected will ultimately determine the applicable statutory and regulatory criteria and agency policy that USAID officials are required to follow, as well as the extent to which competition is required. USAID's designated activity planner, in consultation with the contracting officer or agreement officer, is responsible for drafting and finalizing the initial Selection of Instrument recommendation memorandum prior to the final award using the ADS 304 mandatory template.

USAID awarded a follow-on grant for the Roots of Peace project without considering another type of instrument. In 2019, the USAID Administrator approved a noncompetitive grant to the Roots of Peace under ADS 303, which permits a restriction to eligibility for follow-on awards and extensions when continuing the assistance activity with the same recipient exceeds the benefits of the competitive process described in U.S. laws and USAID policy. However, ADS 304 states,

The planner and the Contracting Officer and Agreement Officer must determine and document the appropriate instrument type for each individual award based on applicable legal and policy criteria and on a fact-specific, case-by-case basis and should not be governed by the type of instrument used for any predecessor activity.

In addition, ADS 304 does not provide an exception to the requirement that the Selection of Instrument recommendation memorandum be completed for a follow-on award.

We also found that three of the four contracts USAID awarded without full and open competition required a Selection of Instrument memorandum during the planning phase of the acquisition process. However, USAID only provided Selection of Instrument memoranda for two of the three contracts.³¹ Specifically, USAID did not provide a Selection of Instrument memorandum for its contract with Clifton Larson Allen. USAID contracted with Clifton Larson Allen to complete a survey of the American University of Afghanistan to determine if the university had sufficient financial and managerial expertise to manage USAID-provided funds in accordance with USAID requirements, among other tasks. USAID officials told us that due to a congressional request for a 1-year noncompetitive award, a selection memorandum was not required. However, ADS 304 states that USAID officials are responsible for recommending the type of instrument, approving the final document, and storing the selection memorandum in their files. In addition, USAID did not provide any supporting evidence that

²⁹ ADS 306.3.13.2

³⁰ ADS 304.3.6 Selection of Instrument Documentation describes documentation requirements that are not applicable to PIOs and interagency agreements.

³¹ The two awards with Selection of Instrument documents included USAID's efforts with RSI Consulting to provide baseline and tracking services that would assist USAID in measuring results and tracking beneficiaries in USAID's gender equality and female empowerment program, and DAI Washington to develop two strategic transportation sector assessments.

Congress required a specific, noncompetitive instrument for this award. Consequently, USAID has no assurance that it selected the proper award instrument in each of these cases.

New USAID Guidance May Improve Contract Document Retention

Several reports from the USAID Office of Inspector General, GAO, and SIGAR have raised concern regarding USAID's completion and management of contract documents.³² For example, in May 2022, we issued a report examining USAID's process for terminating awards prior to completion. Similar to our findings in this report, we noted that USAID either did not complete or did not properly maintain all of the required termination documentation. In response to the two recommendations in our May 2022 report, the Director of the Office of Acquisition and Assistance for USAID/Afghanistan issued an administrative notice reminding staff of the importance of properly complying with the requirements related to the completion and storage of award files and of the importance of proper document filing. The administrative notice reiterated a 2019 requirement that award documentation be uploaded in the Agency Secure Image and Storage Tracking System, USAID's official electronic repository for all Acquisition and Assistance award documentation. The administrative notice also reminded all Acquisition and Assistance staff that they must file all documentation relating to an award, from pre-solicitation through to close-out in the Agency Secure Image and Storage Tracking System. The April 2022 administrative notice reiterated the proper procedures that may prevent the future occurrence of missing files in the award documents, as identified in this report.

CONCLUSION

Contracting and agreement officers, auditors, and other government officials need access to complete and accurate records to perform required oversight, understand decisions, ensure that the government received the best value, and prevent or identify fraud, waste, or abuse in the award of contracts and other agreements. Federal regulations and USAID directives require USAID officials to complete and maintain documentation throughout the award process from justifications for initial decisions related to award type and competition through contract close-out. Although USAID generally adhered to requirements in its awarding of contracts, cooperative agreements, and grants without full and open competition, the agency was unable to provide key documentation for some awards made without full and open competition. The missing documents indicate that contracting officers and agreement officers either did not complete or did not maintain documents required by the FAR and ADS requirements. Without the required documents, USAID lacks assurance that it is obtaining the necessary commodities and services at the best value to the government. The administrative notice issued in response to our May 2022 report reminding contracting officers and agreement officers to follow established agency procedures related to award documents should, if adhered to, address the issues identified in this report. USAID has also updated the Agency Secure Image and Storage Tracking System, which now helps ensure that critical documents such as the selection instrument are included in the system and are available to those who need them.

RECOMMENDATIONS

We are not making any recommendations in this report because, as discussed above, in response to a recommendation in a draft of our May 2022 report, USAID issued an administrative notice to address the documentation completion and retention issues identified in this report.³³

³² See for example, GAO, *Federal Contracting*, GAO-14-304, March 2014; USAID Office of Inspector General, *USAID's Award Oversight Is Insufficient to Hold Implementers Accountable for Achieving Results*, Audit Report 9-000-19-006-P, September 25, 2019; and SIGAR, *Contracting in Afghanistan*, SIGAR 22-21-AR, May 9, 2022.

³³ SIGAR, *Contracting in Afghanistan*, SIGAR 22-21-AR, May 9, 2022.

AGENCY COMMENTS

We received written comments on a draft of this report from the USAID/Afghanistan Mission Director, which we reproduced in appendix II. In its comments, USAID/Afghanistan said that it was committed to fully complying with applicable guidance when awarding noncompetitive contracts, grants, cooperative agreements, and other assistance or acquisition instruments for Afghanistan reconstruction, including the integration of full and open competition in the procurement process when appropriate.

APPENDIX I - SCOPE AND METHODOLOGY

This audit examined the extent to which the U.S. Agency for International Development (USAID), from January 1, 2017, through December 31, 2020, followed applicable guidance when awarding noncompetitive contracts, grants, cooperative agreements, and other assistance or acquisition instruments for Afghanistan reconstruction activities. Specifically, we reviewed 58 USAID awards, valued at \$1.1 billion, issued within our scope, 15 of which were awarded without full and open competition. The objectives of our audit were to (1) identify the type and number of contracts, grants, cooperative agreements, and other assistance or acquisition instruments that USAID awarded without full and open competition; and (2) determine the extent to which USAID adhered to the Federal Acquisition Regulation (FAR) and other requirements in the award and implementation of contracts, cooperative agreements, or other assistance agreements for Afghanistan reconstruction activities without full and open competition.

To address objective one, we reviewed the total number of awards USAID issued from January 1, 2017, through December 31, 2020, and noted which awards did not include full and open competition. USAID provided a spreadsheet documenting each award's technical office, award number, type, activity title, contractor, funding data, project time frame, status of completion, and justifications cited. We also searched and obtained information from multiple federal databases for USAID awards applicable to our scope, including the Federal Procurement Data System–Next Generation, System for Award Management, USAspending.gov, and Grant.gov websites.

To address objective two, we identified all applicable requirements in the FAR, USAID's Automated Directives System, USAID's Acquisition Regulations, and other guidance related to issuing and implementing awards without full and open competition. We requested USAID documentation for all awards within our scope that did not include full and open competition. We examined both the extent to which USAID provided the required documents and the adequacy of the documents' content. Specifically, we compared the relevant statutory and regulatory requirements against the documents and information that USAID officials provided and determined whether the evidence was satisfactory.

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

We used computer-processed data from USAID to determine how many awards the agency issued directly to support the reconstruction of Afghanistan, and how many of those awards they issued with full and open competition. USAID provided us with a spreadsheet listing all of the awards it implemented from January 1, 2017, through December 31, 2020. Within that listing, USAID also identified which of those awards did not include full and open competition, and its justifications. We assessed data reliability by reviewing SIGAR audit, inspection, and evaluation reports; USAID Office of the Inspector General audit reports, quarterly reports, and congressional letters and testimonial reports; USAID financial statement audit reports; and U.S. Government Accountability Office audit and testimonial reports, to see if those reports identified awards USAID issued within our scope. Additionally, we compared the data within the spreadsheet to previous data USAID provided SIGAR and against information within the pre-award documents USAID provided to SIGAR during this audit. We determined that the data USAID provided in the spreadsheet was sufficiently reliable for the purposes of this report.

We conducted our audit work in Arlington, Virginia, from March 2021 through September 2022, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. SIGAR performed this audit under the authority of Public Law No. 110-181, as amended, the Inspector General Act of 1978, and the Inspector General Reform Act of 2008.

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



MEMORANDUM

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

FROM: Sean Callahan, USAID/Afghanistan Mission Director [REDACTED]

DATE: September 2, 2022

SUBJECT: Management Comments to Respond to the Draft Performance Audit Report Produced by the SIGAR titled, *“Contracting in Afghanistan: USAID Generally Met Requirements for Noncompetitive Awards, But Did Not Complete or Did Not Maintain Some Required Documents”* (SIGAR 22-XX /SIGAR 148A)

The U.S. Agency for International Development (USAID) thanks the Special Inspector General for Afghanistan Reconstruction (SIGAR) for the opportunity to provide comments/feedback on the subject draft report, which has no recommendations. Please find below USAID’s management comments on the draft report.

USAID/Afghanistan is committed to fully complying with applicable guidance when awarding noncompetitive contracts, grants, cooperative agreements, and other assistance or acquisition instruments for Afghanistan reconstruction; including the integration of full and open competition in the procurement process, when appropriate.

We thank SIGAR for acknowledging USAID/Afghanistan’s issuance of an Administrative Notification that addressed SIGAR’s concerns related to USAID/Afghanistan’s documentation completion and retention.

APPENDIX III - ACKNOWLEDGEMENTS

Carole Coffey, Senior Audit Manager

Elaine Jennings, Auditor-in-Charge

Evan Ward, Senior Analyst

This performance audit was conducted
under project code SIGAR-148A.

SIGAR's Mission

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

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

Obtaining Copies of SIGAR Reports and Testimonies

To obtain copies of SIGAR documents at no cost, go to SIGAR's Web site (www.sigar.mil). SIGAR posts all publicly released reports, testimonies, and correspondence on its Web site.

To Report Fraud, Waste, and Abuse in Afghanistan Reconstruction Programs

To help prevent fraud, waste, and abuse by reporting allegations of fraud, waste, abuse, mismanagement, and reprisal, contact SIGAR's hotline:

- Web: www.sigar.mil/fraud
- Email: sigar.pentagon.inv.mbx.hotline@mail.mil
- Phone International: +1-866-329-8893
- Phone DSN International: 312-664-0378
- U.S. fax: +1-703-601-4065 c

Public Affairs

Public Affairs Officer

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