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To: Jody Olsen, Director
Anne Hughes, Chief Compliance Officer

From: Kathy A. Buller, Inspector General 

Subject: Management Advisory Report: Seed Global Health Services (IG-19-01-SR)

Date: October 25, 2018

The purpose of this management advisory report is to bring to the Peace Corps' attention concerns the Office of Inspector General (OIG) identified as a result of a series of media claims regarding favoritism and improper conduct involving Peace Corps officials and a nonprofit operated by the daughter of then-Secretary of State and former Chair of the Senate Foreign Relations Committee, John Kerry. Starting September 12, 2016, the series of press articles cited that more than \$9 million of Department of State funding was funneled through the Peace Corps to Seed Global Health (formerly named Global Health Service Corps and hereinafter referred to as "Seed") without competition.¹ OIG was not made aware of this claim prior to the publication of these articles. However, we subsequently initiated this review to assess the Peace Corps' actions in relation to the claims identified in the articles.²

In September 2012, the Peace Corps entered into a cooperative agreement with Seed. The objective of our review was to determine if the cooperative agreement was awarded in accordance with applicable laws and policies. As such, the scope of our review was limited to the actions of the Peace Corps.³

Our review found that the Peace Corps did not fully comply with applicable Federal requirements relating to cooperative agreements and lacked internal controls in making the award to Seed. Specifically, the Peace Corps did not have sufficient documentation to justify awarding the cooperative agreement without competition. The Peace Corps made itself vulnerable to the perception of favoritism by obligating a total of approximately \$7.5 million in Department of State funding to Seed through the award, modifications, and extensions of the agreement without proper controls. There was no segregation of duties for a senior agency official involved in the development, evaluation, awards, and oversight of the agreement with Seed. The Peace Corps lacked key policies governing cooperative agreements and, even after developing draft guidance, failed to properly implement it. Additionally, we identified other weaknesses in the cooperative agreement process including poor file management and lack of

¹ THE DAILY CALLER, *Exclusive: John Kerry's State Department Funneled Millions to His Daughter's Nonprofit*, September 12, 2016, available at: <http://dailycaller.com/2016/09/12/exclusive-john-kerrys-state-department-funneled-millions-to-his-daughters-nonprofit/> (last accessed August 21, 2018).

² Our review does not address the programmatic merits and success of the cooperative agreement, as such determination would be outside of the scope of this review.

³ Within the scope of our review, we did not identify any action taken by Secretary of State Kerry in relation to the awarding and funding of the cooperative agreement with Seed.

compliance with Federal laws and regulations. For example, the Peace Corps failed to obtain the necessary anti-lobbying certifications from Seed.

This report makes six recommendations to improve the agency's cooperative agreement process. The agency has 45 days from the issuance of the report to provide its response to these recommendations. Once we receive the response, the report will be updated to include it in Appendix A.

Background

The Department of State's Office of the U.S. Global AIDS Coordinator (OGAC) oversees and coordinates the U.S. global response to HIV/AIDS and reports directly to the Secretary of State. The Peace Corps has a memorandum of agreement (MOA) with OGAC to allocate U.S. President's Emergency Plan for AIDS Relief (PEPFAR)⁴ funds each fiscal year. The MOA is amended for all subsequent increases of the allocation of funds within that fiscal year. The Peace Corps uses those funds to support its efforts to meet the HIV/AIDS prevention, care, and treatment goals set forth in PEPFAR. According to the MOA, the Peace Corps is responsible for keeping full and complete records and for exercising due diligence in the use of funds provided under the MOA.

The Peace Corps, using the funds allocated under the MOA, established the Global Health Service Partnership (GHSP) by entering into a cooperative agreement⁵ with Seed in 2012. Seed is a non-profit organization established in 2011 with a mission to create sustainable solutions to strengthen health systems abroad by helping to address the vast shortages of health professionals in many resource-poor settings. The goal of the GHSP was to build stronger health sectors in developing countries. Through the cooperative agreement, GHSP placed U.S. health professionals alongside local medical and nursing faculty counterparts to meet the teaching needs identified at each partner institution. As of FY 2017, the program has placed a total of approximately 234 GHSP clinical educators in 5 countries.

The Office of Global Health and HIV (OGHH) provides agency-level guidance and overall leadership for the GHSP.⁶ The agreement officer representative (AOR) for the GHSP cooperative agreement works in OGHH and is designated in writing by the agreement officer (AO)⁷ to "assist in technical monitoring and administering certain aspects of the agreement." The Peace Corps' cooperative agreement with Seed requires the AOR to have substantial

⁴ PEPFAR is the U.S. Government initiative to help save the lives of those suffering from HIV/AIDS around the world. GHSP funding is passed from OGAC to the Peace Corps through the Headquarters Operational Plan as part of Technical Leadership and Support. The Headquarters Operational Plan captures costs associated with staff at agency headquarters working specifically on PEPFAR and activities implemented by headquarters in support of field programs. The primary role of agency headquarters operations is to support field staff and country-level efforts towards PEPFAR goals.

⁵ In OMB Uniform Guidance Section 200.24, the Office of Management and Budget (OMB) defines a cooperative agreement as a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity. A cooperative agreement provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity.

⁶ This role was initially provided by OGHH, then transitioned to the Office of Global Operations in 2013, to the Africa Region in 2014, and then finally back to OGHH in 2016.

⁷ The AO has legal responsibility for this agreement and takes action on behalf of Peace Corps. The AO is located in the Office of Chief Financial Officer/Acquisition and Contract Management (OCFO/ACM).

involvement in assisting Seed achieve its agreement objectives to help support the Peace Corps in the GHSP.

The funding for the GHSP cooperative agreement is substantial relative to most of the Peace Corps' procurements, including contracts, and the only other large grant or cooperative agreement.⁸ For example throughout the implementation period, Seed ranked among the top five agency awards. From the program's establishment to November 2017, the Peace Corps obligated over \$7.5 million in funding under the cooperative agreement for Seed.

Table 1: GHSP funding summary as of June 2018. Source: The Peace Corps' budget office.

| Description | Amount (USD) | % of Transfers |
|--|---------------------|----------------|
| Funding Obligated to Seed to implement GHSP | \$7,525,000 | 36% |
| Funding Allotted to Peace Corps to support GHSP ⁹ | \$13,509,698 | 64% |
| Total GHSP funding transferred from OGAC to Peace | \$21,034,698 | 100% |

As of April 2018, Peace Corps had disbursed \$6,305,329 to Seed under the cooperative agreement.¹⁰ Additionally, the Peace Corps allocated more than \$13.5 million in PEPFAR funds to support GHSP activities.

Table 2: A Summary of the Peace Corps' Cooperative Agreement and Modifications with Seed, Associated Obligated Amounts, and the Reason for the Agreement or Modification. Source: OCFO/ACM Cooperative Agreement File.

| Agreement Type | Agreement Date | Period of Performance | | Action Obligation | Reason for Agreement or Modification |
|----------------|----------------|-----------------------|-----------|-------------------|---|
| Base | 9/10/2012 | 9/10/2012 | 9/9/2015 | \$500,000 | 1st year obligation \$500,000; 2nd year \$650,000; and 3rd year \$850,000 |
| Mod 1 | 6/12/2013 | 9/10/2012 | 9/9/2015 | \$0.00 | Change name from Global Health Service Corps to Seed Global Health |
| Mod 2 | 8/21/2013 | 9/10/2012 | 9/9/2015 | \$150,000 | 1st year obligation \$650,000; 2nd year \$1,109,268 and 3rd year \$1,100,540 |
| Mod 3 | 1/13/2014 | 9/10/2012 | 9/9/2015 | \$1,109,268 | Obligated 2nd year agreement funds and included 1st year amount total \$1,759,268. |
| Mod 4 | 11/19/2014 | 9/10/2012 | 9/9/2015 | \$140,732 | 3rd year total obligation of \$1,900,000 |
| Mod 5 | 2/27/2015 | 9/10/2012 | 9/9/2015 | \$959,808 | 3rd year total obligation of \$2,859,808 |
| Mod 6 | 9/9/2015 | 9/16/2012 | 9/30/2015 | \$0.00 | Extend the end date to 9/30/2015 |
| Mod 7 | 9/22/2015 | 9/30/2015 | 9/30/2019 | \$400,000 | Extend agreement 4 additional years and obligate \$400,000 for 10/1/2015-12/31/2015 |
| Mod 8 | 3/1/2016 | 3/1/2016 | 9/30/2017 | \$2,870,000 | Fully fund 4 th and 5 th year with a total of \$2,780,000 |

⁸ OIG was able to identify one other cooperative agreement over \$500,000 - Grassroot Soccer, Inc., awarded on May 2, 2016 for an obligated amount of \$548,552 for 3 years.

⁹ This funding was spent on direct volunteer costs for GHSP volunteers in five posts (Tanzania, Uganda, Malawi, Liberia, and Swaziland) as well as support costs, including staff, supplies and equipment, and travel, etc. at all five posts and HQ.

¹⁰ Prior to entering into the cooperative agreement with Seed, Peace Corps also paid \$36,664 in travel related expenses for Seed employees or associates.

| | | | | | |
|---------------|------------|-----------|--------------------|-------------|---|
| Mod 9 | 8/28/2017 | 3/1/2016 | 9/30/2017 | \$0 | De-obligate \$400,000 from FY16-FY17 funding and obligate \$400,000 to replace the de-obligated funds |
| Mod 10 | 9/27/2017 | 3/1/2016 | 9/30/2018 | \$0 | Revised the period of performance to end on Sept. 30, 2018 |
| Mod 11 | 11/30/2017 | 10/1/2017 | 9/30/2018 | \$1,395,192 | De-obligate \$184,808, de-obligate \$300,000, obligate \$1,808,000 |
| Mod 12 | 12/7/2017 | 10/1/2017 | 9/30/2018 | \$0 | Correct typo in mod 11 to de-obligate 184,808 to reduce the amount to 775,000 |
| Mod 13 | 9/7/2018 | 10/1/2017 | 9/30/2018 [sic] | \$0 | Perform a no cost period of performance extension until 12/31/2018 |

Peace Corps decided in February 2018 to discontinue GHSP, citing changes in PEPFAR funding for centrally managed activities. Accordingly, the agency reported that GHSP Volunteer activities ceased as of September 30, 2018, and Seed is currently conducting close out activities.

Issues

There was a lack of segregation of duties for the former AOR/Director of OGHH during the cooperative agreement’s initial awarding process.

In 2011, the former Peace Corps Director (2009-2012) discussed an initiative to deploy medical professionals around the world with the founder of Seed. Subsequently, he asked the former Director of OGHH to become involved in developing a pilot program and to seek funding for it. The former Director of OGHH had been representing the Peace Corps at weekly OGAC meetings concerning the use of PEPFAR funding. One of the goals of PEPFAR was to train 140,000 health care workers. The Seed pilot program proposal was seen as a natural fit—to recruit doctors and nurses to serve as educators and to work side-by-side with host country national counterparts to increase the quality and capacity of their practice. After meeting with the former Peace Corps Director, the former Director of OGHH suggested there might be an intersection of interests between the proposed pilot program and the goals of PEPFAR. He knew the former Ambassador of OGAC from previous employment and discussed the idea and funding with the Ambassador. In addition to the agency’s role in securing funding, a review of Peace Corps documents demonstrates that agency officials, including the former Director of OGHH, were involved in helping formulate the Seed pilot project proposal.

Despite his involvement in developing the pilot program proposal and working to obtain the funding source, in March 2012, the former Director of OGHH was designated the chairperson for the Technical Evaluation Committee (TEC). The TEC typically evaluates multiple proposals to carry out an agreement during the award process, but, in this case, was involved in the vetting process of Seed as the sole source. As chairperson of TEC, he was responsible for the committee’s evaluation of the technical proposal submitted by Seed.¹¹ Essentially, the former Director of OGHH was evaluating a proposal that he had been involved in developing.

In September 2012, the cooperative agreement was signed designating the former Director of OGHH as the AOR. In the role of AOR, he was substantially involved in the management of

¹¹ According to the appointment memorandum, “The potential for conflict of interest for employees involved in the evaluation of proposals is a serious matter that at any time could call into question the entirety of the evaluation process. Even the appearance of a conflict of interest during the process may invite protests or litigation.”

Seed's agreement. Because of the active involvement in the development and implementation of Seed's agreement, we concluded this designation to manage the agreement created a lack of segregation of duties and a perception of favoritism.

The Government Accountability Office standards state that segregation of duties helps prevent fraud, waste, and abuse in the internal control system.¹² We determined that the former Director of OGHH should have recused himself from the TEC chairperson role and, under the circumstances, the AOR role to avoid the appearance of bias and favoritism.

Moreover, in 2012, the former Director of OGHH left the Peace Corps and began working for Seed in 2015.¹³ A criminal conflict of interest law permanently prohibited him from making an appearance before or communicating to Peace Corps regarding the cooperative agreement on behalf of Seed because of his personal and substantial involvement with the agreement.¹⁴ He was later criminally charged¹⁵ and entered into a deferred prosecution agreement with the U.S. Attorney's Office for the District of Columbia, which included paying a \$10,000 penalty.¹⁶

We concluded that there have not been any segregation of duties issues with the present AOR who was not involved in the commencement of this cooperative agreement. We found that the AOR consistently monitors the activity of the program and reports directly to the present Director of OGHH.

Agency policy on cooperative agreements was lacking and procedural guidance was untimely and insufficient.

At the time of the initial award, the agency lacked comprehensive policy regarding cooperative agreements. Further, for much of the period of performance the agency used a draft, unvetted guidance to govern the provision of funding to Seed through the cooperative agreement without competition. The draft document was initially drafted by the contracting specialist in May 2013, 8 months after the initial Seed agreement was awarded. The former Chief Acquisition Officer (CAO),¹⁷ who replaced the initial agreement officer, and the former contract specialist assigned to the cooperative agreement confirmed that the Peace Corps did not have a cooperative agreement policy at the time of the initial award.

¹² The Government Accountability Office's "Standards for Internal Control in the Federal Government" (GAO-14-704G) (Sept. 2014), Section 10.13. Section 3.08 further provides, "As part of delegating authority, management evaluates the delegation for proper segregation of duties within the unit and in the organizational structure. Segregation of duties helps prevent fraud, waste, and abuse in the entity by considering the need to separate authority, custody, and accounting in the organizational structure."

¹³ The former Director of OGHH was hired as the Director of Operations for Seed, tasked with overseeing and managing relationships, including contracts and agreements, Peace Corps and PEPFAR, as well as representing SEED in negotiations.

¹⁴ Title 18, United States Code Sections 207(a)(1).

¹⁵ United States of America v. Warren W. Buckingham, U.S. District Court for the District of Columbia, Criminal no. 18-CR-21 (RMC) (2018).

¹⁶ See Press Release, Peace Corps referral results in successful criminal prosecution, February 16, 2018.

¹⁷ The CAO from the Peace Corps Office of the Chief of Financial Officer/Acquisition and Contract Management (OCFO/ACM) is responsible for awarding and administering the agency's contracts and agreements. Throughout the cooperative agreement process Peace Corps had two CAOs (2011 - 2013 and 2014 - 2016) and 3 acting CAOs.

The Government Accountability Office guidance states that management should implement control activities through policies.¹⁸ The Peace Corps did not have a comprehensive policy on cooperative agreement awards. This likely contributed to the Peace Corps' failure to maximize competition when considering this agreement and to maintain sufficient documentation to support the noncompetition of the agreement, as detailed later in this report.

After the agreement was awarded, the former contract specialist stated that a draft policy was quickly developed when he recognized the need to have a policy in place. According to the contract policy specialist, USAID grant and cooperative agreement policy was used to model this draft guidance. Other documents reviewed by OIG confirm that, in the absence of an agency policy, the agency relied on the USAID grant and cooperative agreement policy as a best practice during the extension of the cooperative agreement.

Other Peace Corps officials acknowledged the timing of the issuance of the draft policy and confirmed it was never properly issued in final and, therefore, was not vetted by the Director or Senior Policy Committee as a procedure or a policy. Yet the former CAO (2014 – 2016) and staff stated Peace Corps OCFO/ACM has used the draft policy as a procedural guide for cooperative agreements since 2013.

Although the draft policy had not been made official agency policy, the former agreement officer referenced the draft policy in a 2015 official document justifying the Peace Corps' decision to extend the cooperative agreement for four additional years and to provide additional funding to Seed without competition. The Justification for Exception to Competition (JEC) memo stated, "This extension is requested under the Peace Corps draft Manual Section 735 exception to competition X.b.6 'Follow-on Awards and Extensions'." However, the Peace Corps Manual did not contain a section 735 and the draft language in question had not even been submitted to the Senior Policy Committee for consideration. The Senior Policy Committee did not vet and issue the draft policy as required under the Peace Corps Manual. This contributed to the agency's failure to implement adequate controls to identify weaknesses or gaps and ensure compliance with relevant regulations. Without a formal, transparent policy in place that governs how the Peace Corps engaged in cooperative agreements and disbursed multimillion dollar funding, the agency was made susceptible to perception of favoritism and bias.

Both the former CAO and the contracting staff indicated that the process of finalizing the draft policy document was not a priority in comparison to other duties since only two cooperative agreements had been issued. Immediately prior to the December 2016 departure of the former CAO, the former CAO issued a memorandum making the draft policy a procedure within ACM.

Moreover, this is not the first time OIG reported the need for the Peace Corps to develop policies and procedures for awarding cooperative agreements. In our 2012 audit of the Peace Corps' 50th Anniversary Program OIG recommended that the then Office of Acquisitions and Contract Management develop policies and procedures for awarding cooperative agreements, including appropriate uses, competition, and required documentation. OIG closed the recommendation in 2017 with the expectation that the guidance would be promptly issued as an agency policy and

¹⁸ The Government Accountability Office's "Standards for Internal Control in the Federal Government" (GAO-14-704G) (Sept. 2014), Section 12.01.

procedure. However, to date the agency has not issued a policy and procedure on cooperative agreements.

Lack of competition and unsupported sole source justification put the agency at risk.

The Federal Grant and Cooperative Agreement Act of 1977 encourages competition, where deemed appropriate, in awarding cooperative agreements.¹⁹ However, the Peace Corps did not compete the cooperative agreement. Instead, the former CAO (2011 - 2013), supported by the former contracting specialist, made a sole-source award based on an explicit, unsupported justification. The September 10, 2012 negotiation memorandum stated:

This requirement was not publicly competed because the Office of the Global AIDS Coordinator (OGAC) required that PEPFAR funding be solely awarded to Global Health Service Corps for the GHSP. Please see attached document for further details.

The “attached document” was an announcement stating the launch of a partnership between the Peace Corps and Seed that did not include any details about OGAC requiring the Peace Corps to sole-source the award. Further, the announcement of the partnership was dated March 13, 2012, almost 6 months in advance of when the cooperative agreement was awarded.²⁰ When instructed by the former CAO²¹ to prepare the agreement, the former contracting specialist received only the announcement as support for the justification to not compete the cooperative agreement.

OIG reviewed the relevant agreement files, agency documents, and media reports, as well as conducted interviews of current and former agency officials directly involved in negotiating and executing the cooperative agreement. Current and former agency officials could neither identify the source, nor confirm the details, of the OGAC requirement that the PEPFAR funding be solely awarded to Seed. After being shown the negotiation memorandum, the former Director of OGHH²² stated that no one at OGAC had issued such an explicit direction. He told OIG that the justification for not publicly competing the cooperative agreement - that OGAC required Peace Corps to solely award the cooperative agreement to Seed - was not accurately stated. Rather, the former Director of OGHH confirmed he approached OGAC with the request for funding. Essentially, OIG found no supporting evidence for the justification statement in the 2012 negotiation memorandum.

Additionally, key agency officials may have mistakenly believed that there was another basis for sole-sourcing the agreement and extensions. Agencies may generally award sole-source cooperative agreements, grants, or contracts pursuant to receiving an unsolicited proposal. For example, the USAID policy, which the agency relied on as a best practice, closely mirrors what eventually became Peace Corps guidance:

¹⁹ Pub. L. 95-224, 92 Stat. 3, (Feb. 3, 1978), as amended by Pub. L.97-258, 96 Stat 1004 (Sept. 13, 1982), codified in relevant part at 31 U.S.C. Chapter 63 “Using Procurement Contracts and Grant and Cooperative Agreements.”

²⁰ Although the announcement referred to the creation of a Public Private Partnership, a review of agency records of GHSP indicate that the engagement was treated as a type of non-contract procurement rather than a strategic partnership under MS 103.

²¹ Peace Corps OIG contacted the former CAO, since retired, to discuss the Seed cooperative agreement. The former CAO did not make herself available for an interview.

²² As previously mentioned, the former Director of OGHH signed a deferred prosecution agreement to truthfully cooperate with Peace Corps OIG.

Unsolicited applications

Unsolicited applications are those submitted to USAID for an award by an applicant solely on their initiative, without prior formal or informal solicitation by USAID.

USAID may make an award based on an unsolicited application when the application:

- Clearly demonstrates a unique, innovative, or proprietary program;
- Represents an appropriate use of USAID funds to support or stimulate a public purpose; and
- Fits within an existing Development Objective.

* * * * *

To use this exception to restrict eligibility, the Activity Manager must first certify that USAID did not solicit the application and that it was submitted by the applicant solely on the applicant's own initiative.²³

Though the agency did not have official policy on the matter at the time of the initial award,²⁴ the 2013 draft policy (issued December 12, 2016 as an official procedural document, but used as guidance since 2013) states the following regarding unsolicited proposals:

To use this exception to competition, the Program Office must certify that Peace Corps did not solicit the application and that it was submitted by the applicant solely on his or her own initiative.

The Program Office must submit a JEC that addresses how the following issues warrant acceptance of the application without competition:

- The way the application is unique, innovative, or proprietary;
- How funding the application is an appropriate use of Government funds to support or simulate a public purpose; and
- Describe how it fits within Peace Corps' mission and goals.²⁵

There may have been a misconception among key staff that the cooperative agreement resulted from an unsolicited proposal.²⁶ The former Director of OGHH told OIG that the cooperative agreement was deemed an unsolicited proposal and did not need to be competed. The former contracting specialist for the agreement also stated his belief that "it was an unsolicited proposal." However, this determination was not explicitly mentioned in the 2012 negotiation memorandum he prepared justifying the initial sole-source award.

The reference to an "unsolicited proposal" later appeared in official documents justifying the sole-source extensions. The 2015 JEC accompanying a sole-source extension of the cooperative agreement stated that the Seed Pilot project was "created as a result of an unsolicited proposal to the Peace Corps Director from Seed. . . ." However, the documentation OIG reviewed indicates that Peace Corps officials were involved in the development of the Seed Pilot project proposal from its inception, including in soliciting the PEPFAR funds. After informal discussions

²³ ADS Chapter 303.3.6.5, "Grants and Cooperative Agreements to Non-Governmental Organizations."

²⁴ OIG notes that Peace Corps MS 736 addresses unsolicited proposals in the context of procurements. Similarly, in that context, the definition excludes proposals that are in response to a formal or informal government request. Only proposals independently originated and developed by the offeror and prepared without government supervision qualify as unsolicited.

²⁵ See ADS Chapter 303.3.6.5, "Grants and Cooperative Agreements to Non-Governmental Organizations." Agency documents confirm the former Agreement Officer considered the USAID guidance as a best practice. Further, the former contracting specialist, who prepared the Seed agreement also prepared what would become the draft policy, stated that he used USAID's guidance when preparing the draft policy.

²⁶ Peace Corps currently does not have a manual section on unsolicited proposals for cooperative agreements.

occurred between the founder of Seed and the former Director of Peace Corps, the former Director of OGHH was asked to prepare background information in Spring 2011. While the 2012 negotiation memorandum noted that Seed submitted a concept paper on January 20, 2012, the Peace Corps was already paying travel expenses for Seed officials starting in November 2011. Additionally, OIG obtained meeting minutes dated back to 2011 between senior agency officials and Seed officials discussing the project's parameters. Regardless, the documentation for the initial award did not include information generally required for sole-source awards pursuant to unsolicited proposals, such as a description of how the origin of this initiative was submitted by the applicant solely on his or her own initiative or an analysis of the uniqueness of the program. Additionally, the Office of General Counsel (OGC) later confirmed during our review that the initial award was not pursuant to an unsolicited proposal.

When the agency was extending the cooperative agreement in 2015 and developing a new JEC for that extension, ACM reported that the 2013 draft policy was provided to contracting staff as guidance. The 2013 draft policy expressed an intent to adopt the principle of competition, stating that competition in the awarding of cooperative agreements is required to identify and fund the best projects to achieve program objectives. The 2013 draft policy included a requirement that each JEC, including for extensions, must contain sufficient facts and rationale. This requirement is consistent with other Federal agencies which mandate agreement files must contain proper justification for awarding grants or cooperative agreements without full and open competition.

The Peace Corps performed market research by reviewing several organizations it identified as possible competitors. The market research stated Peace Corps was unable to identify among the selected organizations any potential partners to satisfy its program needs, thus resulting in OCFO/ACM awarding a sole-source extension for 4 additional years.²⁷ Yet OCFO/ACM officials told OIG that the agreement was extended as sole-source because there was insufficient time to transition a new selectee into the program, and Seed had an outstanding performance record with the program. They also noted that poor planning impeded its ability to fully compete a new cooperative agreement. The former acting CAO (2016 - 2018) acknowledged challenges the Peace Corps has in ensuring contracts and agreements are competed. Nevertheless, under the 2013 draft guidance or best practices, improper planning is not considered justification for not maximizing competition. Peace Corps actions put the government at risk of not receiving the best program outcome by failing to compete the agreement. Moreover, the lack of competition and the unsupported justification at the time of the extension risked furthering the perception of favoritism.

The Peace Corps did not impose proper limitations on agreement extensions.

Section 10(c) of the Peace Corps Act, as amended, states an agreement which entails commitments for the expenditure of funds may extend at any time for not more than five years.²⁸ The agency has opined that this provision not only allows for cooperative agreements to extend for up to five years at a time, but that a cooperative agreement may be extended at any time for up to 5 years into the future. In effect, under Peace Corps' interpretation of Section 10(c), the

²⁷ As noted above, agency officials and Seed worked together to develop what would become the duties of the cooperative agreement recipient (i.e., Seed's duties) under the original agreement.

²⁸ Peace Corps Act Section 10(c), Pub. L. 87-293, 75 Stat. 414, 618 (Sept. 22, 1961); as amended by Pub. L. 103-236, title VI, §602 (Apr. 30, 1994); found at 22 U.S.C. § 2509(c).

agency, upon sole sourcing a cooperative agreement, may extend that agreement in perpetuity as long as no single extension goes more than five years into the future, absent other restriction.²⁹

The initial Seed agreement term was set for three years, beginning September 10, 2012 and ending on September 9, 2015. Agreement Modifications 006 and 007, effective September 9, 2015 and September 22, 2015, respectively, further extended the agreement through September 30, 2019 with funding awarded annually via modification. Modification 010, effective September 27, 2017, revised the period of performance to end on September 30, 2018. On September 7, 2018, Modification 013 extended the period of performance the agreement with Seed was extended, possibly for the last time,³⁰ until December 31, 2018.

As noted, the agency entered into the cooperative agreement without official guidance on the award and management of cooperative agreements. Further, as noted, the agency did not have proper, official guidance for the development or extension of sole-sourced cooperative agreements. Guidance was not formalized until December 2016, when it was issued by the CAO as a procedure to domestic contracting staff.³¹ The internal guidance had not been vetted by OGC or the Senior Policy Committee or promulgated as agency policy.³²

The Peace Corps draft policy differed in a material respect from the best practice guidance it identified. Under USAID policy, the unsolicited proposal exception to competition cannot be used to justify non-competitive extensions to existing cooperative agreements or grants. However, Peace Corps internal guidance says that, with respect to awards without competition, extensions of \$25,000 or more cannot extend beyond 7 years of the original award date.³³ The 7-year limitation exactly matches the number of years that the cooperative agreement with Seed was extended prior to the issuance of the internal guidance, and no further explanation has been provided as to why the agency decided that a 7-year limitation was appropriate.³⁴ Further, OIG reviewed internal correspondence in which the CAO asserted that there are no legal or regulatory limitations, internal or external, on the authority to extend cooperative agreements. She also noted that cooperative agreements may be written for “whatever period the agency deems appropriate.” The CAO’s assertions were made in response to an external inquiry and were provided one year after the 2015 Seed extension, and three months prior to issuing the internal procedure document. She did not discuss the internal 7-year limitation that would be included in the internal procedure document she issued three months later.

²⁹ Our review is not intended to address the legal position of the agency on Section 10(c) of the Peace Corps Act, as amended.

³⁰ The Director of OGHH sent an email on April 18, 2018 to all Peace Corps headquarter staff announcing the GHSP program will be discontinued due to changes to PEPFAR funding.

³¹ Three months after OIG raised concern of a lack of internal guidance on the repeated extension of this cooperative agreements the former CAO issued the 2016 internal guidance document to domestic contracting staff. The document as issued was labeled as a draft manual section and contains markings suggesting it was in draft form.

³² The issuing memorandum notes that the internal guidance document had not gone before the Senior Policy Committee for review, and that the latest draft of the document was being issued as a procedural document.

³³ The procedure discussing the 7-year limitation, as issued, expressly breaks out two categories of agreements – those valued (1) at \$25,000 - \$1,000,000 and (2) at above \$1,000,000 – though it provides the same 7-year limitation for both categories. No mention is made as to why the categories are considered separately despite having the same limitation.

³⁴ Additionally, former contracting officials stated that the 7-year limitation was initially included to reflect a potential change in law from the Kate Puzey Volunteer Protection Act of 2011. However, that law was enacted in November 2011, where the internal guidance was initially drafted over a year later in May 2013.

As the cooperative agreement was extended without proper sole source justification, the lack of competition increased the risk of favoritism and mismanagement of Federal funds, and the appearance thereof. Without a rational basis for setting the limitation for extending agreements at 7 years, the agency risks exacerbating the problem by being perceived as having written guidance simply to accommodate the Seed agreement as opposed to fully taking into account Federal requirements and the Peace Corps environment.

The Peace Corps did not post an appropriate notice in accordance with regulation.

The Catalog of Federal Domestic Assistance (CFDA) is the single, authoritative, government-wide, comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal government. It contains financial and nonfinancial assistance programs administered by departments and establishments of the Federal government to assist users in identifying programs that meet specific objectives of the potential applicant, and to obtain general information on Federal assistance programs. The content of any notice published in CFDA is the sole responsibility of the agency that has issued the program description. The former contracting officer explained that the Peace Corps published the GHSP information in CFDA in 2014 to meet the requirement change of 2 CFR Part 200.202.³⁵ To provide public notice of Federal financial assistance programs, that regulation states, in relevant part:

- (b) For each program that awards discretionary Federal awards, non-discretionary Federal awards ... or any other type of Federal financial assistance ... the Federal awarding agency must submit the following information to GSA:
 - (1) Program Description, Purpose, Goals and Measurement. A brief summary of the statutory or regulatory requirements of the program and its intended outcome...;
 - (2) Identification of whether the program makes Federal awards on a discretionary basis;
 - (3) Projected total amount of funds available for the program....;
 - (4) Anticipated Source of Available Funds...;
 - (5) General Eligibility Requirements....;
 - (6) Applicability of Single Audit Requirements....;

The Peace Corps' posting did not meet these requirements by excluding the following required information:

- (1) Program Description, Purpose, Goals and Measurement. A brief summary of statutory or regulatory requirements of the program and its intended outcome.
- (3) Projected total amount of funds available for the program...;
- (5) General Eligibility Requirements....

At the time of award, Peace Corps staff believed the CFDA information provided was adequate and met the GSA requirements. However, our analysis disclosed that the information did not fully comply with requirements.

The Peace Corps should take appropriate steps to ensure future compliance. Without proper reporting of Peace Corps cooperative agreements, the agency hinders the Federal Government's

³⁵ 2 CFR Part 200.202 was effective December 26, 2013.

effort to increase transparency. By making Federal spending data more accessible, searchable, and reliable, and joining this information with other third-party data sources, Federal agencies and taxpayers have an opportunity to better understand the impact of Federal funds and how they are spent.

Peace Corps agreement files were missing critical documentation.

The Peace Corps could not substantiate with documentation the requirement that the cooperative agreement be awarded to Seed without competition. MS 892 Records Management Section 6.2 states:

Peace Corps records shall be complete in order to facilitate action by an incumbent and his/her successor.

* * * * *

Peace Corps officials shall incorporate all essential information of their official actions into Agency records.

The Peace Corps attributed the missing documentation or file to a lack of continuity due to staff reassignment or termination of employment with the agency. Without the necessary documents, the Peace Corps could not substantiate the claim that it was justified in not seeking fair and open competition. Further, all agency personnel interviewed could not recall seeing first-hand documentation of the purported OGAC requirement that the cooperative agreement be awarded to Seed without competition. More importantly, the missing documentation or the fact that the sole source justification was processed without supporting documentation highlights the need for OCFO/ACM to implement a records management system that complies with requirements.

The Peace Corps did not request lobbying certification forms from Seed.

Title 31 U.S.C. § 1352, “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,” requires that requesters and recipients of a Federal contract, grant, loan, or cooperative agreement exceeding \$100,000 file a written certification containing either information regarding related payments to lobbyists or that the requester/recipient has not made, and will not make, any prohibited payment for lobbying activities. Any person³⁶ making a prohibited payment shall be subject to a civil penalty between \$10,000 and \$100,000 for each violation. Any person who fails to file or amend a declaration as required can be subject to a civil penalty between \$10,000 and \$100,000 for each failure. The statute requires that the head of each Federal agency “take such actions as are necessary to ensure that the provisions of this section are vigorously implemented and enforced in such agency.”³⁷

³⁶ “Person” is defined under the statute to include an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit,” and excludes Indian tribes, tribal organizations, or other Indian organization under certain circumstances. 31 U.S.C. § 1352(g)(3).

³⁷ 31 U.S.C. § 1352(f).

Peace Corps' regulations implementing the law state:³⁸

§ 311.100 Conditions on use of funds

Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification . . .

* * * * *

§ 311.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000 . . .

The Peace Corps did not request, nor did Seed submit, the signed certification at the time the proposal was submitted, at the time the initial agreement was signed, nor at any time the agreement was extended. The agency was unable to provide any subsequent required certification pre-dating our inquiry into the matter. Neither the AO nor the AOR could provide a reason for not obtaining the signed certification, stating they were not employed by the Peace Corps at the time of the initial agreement. By not providing the certification at the time of the agreement, Seed failed to comply with Federal regulations which could have resulted in a monetary penalty. After our request from OCFO/ACM for a copy of the certification, Seed signed and submitted a certification to the Peace Corps in January 2018, 5 years from the date of the awarding of the cooperative agreement. OIG did not extend this review to address other instances where the terms of the statute were met and in particular what actions OCFO/ACM took to ensure implementation. However, based on the lack of knowledge of OCFO/ACM contracting officials regarding this requirement, OIG is concerned that OCFO/ACM's past practices did not include collecting the certification documents and ensuring enforcement of this provision.

We recommend:

1. That the Director of the Peace Corps require the Chief Acquisition Officer to implement procedures and practices that ensure proper segregation of duties to avoid potential conflicts and appearances of favoritism in the cooperative agreement award process.
2. That the Director of the Peace Corps establish comprehensive agency policy and procedures on cooperative agreements with non-governmental entities. At minimum, such policy should address the need for competition, circumstances where competition is not required, justifications for noncompetitive awards, and appropriate limitations on cooperative agreement extensions.
3. That the Director of the Peace Corps require the Chief Acquisition Officer to implement a record management system for cooperative agreements, to include maintaining specific written documentation to justify all future non-

³⁸ Code of Federal Regulations Title 22 - Foreign Relations, Chapter III - PEACE CORPS Part 311 - New Restrictions on Lobbying.

competitive agreements in the agreement file that will assist other staff in substantiating decisions made by former staff.

4. That the Director of the Peace Corps require the Chief Acquisition Officer to submit to GSA's Catalog of Federal Domestic Assistance complete and accurate information regarding all grants and cooperative agreements with Peace Corps.
5. That the Director of the Peace Corps require the Chief Acquisition Officer to review relevant Peace Corps contracts, grants, and agreements to ascertain that each file contains the proper anti-lobbying certification, in compliance with applicable laws and regulations and report to OIG the failure of any entity to submit required certifications.


cc: Michelle Brooks, Chief of Staff
Maura Fulton, Senior Advisor to the Director
Carl Sosebee, Senior Advisor to the Director
Matthew McKinney, Deputy Chief of Staff/White House Liaison
Robert Shanks, General Counsel
Richard Swartz, Chief Financial Officer
Andrew Pierce, Deputy Chief Financial Officer
Sonja Truehart-McKinney, Acting Chief Acquisition Officer
Karen Becker, Associate Director, Office of Health Services
Marie McLeod, Director, Office of Global Health and HIV
Patrick Young, Associate Director, Office of Global Operations
Jeffrey Harrington, Associate Director, Office of Management
Darryl Byrd, Records Management Officer, Office of Management
Angela Kissel, Compliance Officer
Office of Inspector General Staff
IGChron

Appendix A: Agency Response to the Report



MEMORANDUM

To: Kathy Buller, Inspector General

From: Anne Hughes, Chief Compliance Officer 

Date: December 10, 2018

CC: Jody Olsen, Director
Michelle Brooks, Chief of Staff
Maura Fulton, Senior Advisor to the Director
Carl Sosebee, Senior Advisor to the Director
Matthew McKinney, Deputy Chief of Staff/White House Liaison
Robert Shanks, General Counsel
Richard Swartz, Chief Financial Officer
Andrew Pierce, Deputy Chief Financial Officer
Sonja Truehart-McKinney, Acting Chief Acquisition Officer
Karen Becker, Associate Director, Office of Health Services
Marie McLeod, Director, Office of Global Health and HIV
Patrick Young, Associate Director, Office of Global Operations
Jeffrey Harrington, Associate Director, Office of Management
Darryl Byrd, Records Management Officer, Office of Management
Angela Kissel, Compliance Officer

Subject: Agency Response to the Management Advisory Report: Seed Global Health Services (IG-19-01-SR)

The agency would like to thank the Office of Inspector General for their continued cooperation on this Management Advisory Report (MAR) and the five accompanying recommendations, all of which the agency is in concurrence. The agency's responses and planned corrective actions are outlined below.

Recommendation 1

That the Director of the Peace Corps require the Chief Acquisition Officer to implement procedures and practices that ensure proper segregation of duties to avoid potential conflicts and appearances of favoritism in the cooperative agreement award process.

Concur

Response: The Chief Acquisition Officer is developing agency policy and guidance that will ensure the proper segregation of duties in the cooperative agreement award process.

Documents to be Submitted:

- Agency policy and guidance on cooperative agreements

Status and Timeline for Completion: August 2019

Recommendation 2

That the Director of the Peace Corps establish comprehensive agency policy and procedures on cooperative agreements with non-governmental entities. At minimum, such policy should address the need for competition, circumstances where competition is not required, justifications for noncompetitive awards, and appropriate limitations on cooperative agreement extensions.

Concur

Response: The Chief Acquisition Officer is developing agency policy and guidance on cooperative agreements with non-governmental entities. These documents will address the competitive process and extensions for cooperative agreements.

Documents to be Submitted:

- Agency policy and guidance on cooperative agreements

Status and Timeline for Completion: August 2019

Recommendation 3

That the Director of the Peace Corps require the Chief Acquisition Officer to implement a record management system for cooperative agreements, to include maintaining specific written documentation to justify all future non-competitive agreements in the agreement file that will assist other staff in substantiating decisions made by former staff.

Concur

Response: The Chief Acquisition Officer is developing agency policy and guidance on cooperative agreements. These documents will put forth a record management system for cooperative agreements in line with the agency records schedule.

Documents to be Submitted:

- Agency policy and guidance on cooperative agreements

Status and Timeline for Completion: August 2019

Recommendation 4

That the Director of the Peace Corps require the Chief Acquisition Officer to submit to GSA's Catalog of Federal Domestic Assistance complete and accurate information regarding all grants and cooperative agreements with Peace Corps.

Concur

Response: The Chief Acquisition Officer is developing agency policy and guidance on cooperative agreements. These documents will include a requirement for the agency to submit to the GSA's Catalog of Federal Domestic Assistance complete and accurate information regarding all applicable grants and cooperative agreements.

Documents to be Submitted:

- Agency policy and guidance on cooperative agreements

Status and Timeline for Completion: August 2019

Recommendation 5

That the Director of the Peace Corps require the Chief Acquisition Officer to review relevant Peace Corps contracts, grants, and agreements to ascertain that each file contains the proper anti-lobbying certification, in compliance with applicable laws and regulations and report to OIG the failure of any entity to submit required certifications.

Concur

Response: The Chief Acquisition Officer will undertake a review of relevant Peace Corps files to ensure each contains the proper anti-lobbying certification and provide a report to the OIG upon completion. Additionally, the policy and guidance referenced above will include language on the development and maintenance of anti-lobbying certifications.

Documents to be Submitted:

- Report on Review of Contracts, Grants, and Agreements
- Agency policy and guidance on cooperative agreements

Status and Timeline for Completion: August 2019

Appendix B: OIG Comments

Management concurred with all five recommendations, which remain open. OIG will review and consider closing these recommendations when the documentation reflected in the agency's response is received. We wish to note that, in closing recommendations, we are not certifying that the agency has taken these actions or that we have reviewed their effect. Certifying compliance and verifying effectiveness are management's responsibilities. However, when we feel it is warranted, we may conduct a follow-up review to confirm that action has been taken and to evaluate the impact.