

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ALAN GROSS

and

JUDITH GROSS,

Plaintiffs,

v.

DEVELOPMENT ALTERNATIVES, INC.

and

THE UNITED STATES OF AMERICA,

Defendants.

Case No. 12-cv-1860-JEB

**DECLARATION OF JOHN HENRY MCCARTHY**

John Henry McCarthy provides this declaration in accordance with 28 U.S.C. § 1746:

1. I am over the age of 18 years and make this declaration on the basis of my own personal knowledge.

2. I make this Declaration in support of Defendant Development Alternatives, Inc.'s ("DAI") motion to dismiss for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted in the above-referenced case.

3. I am currently employed by DAI as a Global Practice Leader and have worked for DAI since 2002.

4. From August 2008 to March 2011, I was DAI's Chief of Party for the implementation of DAI's Task Order No. DFD-I-00-03-00250-00 the ("Cuba Program Task Order") under the United States Agency for International Development's ("USAID") Cuba Democracy and Contingency Planning Program ("Cuba Program").

5. I have reviewed DAI's motion to dismiss, memorandum in support of the motion, and all of the Exhibits attached thereto.

6. The following documents identified as Exhibits to DAI's Memorandum of Points and Authorities in Support of its Motion to Dismiss are true and correct copies of those

documents. (DAI has redacted certain proprietary information that is not relevant to the proposition being supported, and has redacted the names of individuals to protect their identities.)

- a. Exhibit 1: Congressional Research Service, *Cuba: Issues for the 110th Congress* (Sept. 24, 2008);
- b. Exhibit 2: U.S. Government Accountability Office, *Continued Efforts Needed to Strengthen USAID's Oversight of U.S. Democracy Assistance for Cuba* (November 2008);
- c. Exhibit 3: Cuba Program RFTOP;
- d. Exhibit 4: Cuba Program Task Order (confidential portions redacted);
- e. Exhibit 5: Modification 6 to Cuba Program Task Order (confidential portions redacted);
- f. Exhibit 6: Cuba Program Start-Up Meeting Notes from September 26–27, 2008 (confidential portions redacted);
- g. Exhibit 8: Preliminary Grantee Vetting (confidential portions redacted);
- h. Exhibit 9: USAID Q&A for U.S. Senate;
- i. Exhibit 10: January 28, 2009 USAID Consent to Subcontract (confidential portions redacted);
- j. Exhibit 11: DAI-JBDC Subcontract (confidential portions redacted);
- k. Exhibit 12: Request for JBDC Follow-On Work (confidential portions redacted);
- l. Exhibit 13: October 8, 2009 Consent for Mod. of JBDC Subcontract (confidential portions redacted) ;
- m. Exhibit 14: Subcontract Modification No. 5 (confidential portions redacted);
- n. Exhibit 15: Judgment of Popular Provincial Court, Havana, No. 2-2011;
- o. Exhibit 16: DBA Policy Number AID 0413852927, issued by The Continental Insurance Company, effective December 1, 2009;
- p. Exhibit 17: October 28, 2010 LS-202, Employer's First Report of Injury or Occupational Illness (confidential portions redacted);
- q. Exhibit 18: April 30, 2012 Letter from Ivan J. Snyder to Richard Robilotti;

- r. Exhibit 19: June 20, 2012 DOL Findings of Fact; and
- s. Exhibit 20: August 21, 2012 Letter from R. Robilotti,

7. USAID directed, supervised, and closely managed DAI's performance of the Cuba Program Task Order through its Contracting Officer's Technical Representatives. DAI's team was not allowed to act without USAID's approval.

8. The Cuba Program Task Order required DAI to engage in an extensive vetting process with USAID before contacting potential grantees and subcontractors. DAI was required to develop a list of possible partner organizations, and review that list with USAID as part of extensive discussions on prospective grantees and subcontractors, and perform due diligence.

9. USAID had its own list of acceptable grantees and subcontractors. In some cases, USAID directed issuance of grants to certain organizations outside of the list DAI had created, where such applicants and their proposals met pre-established criteria.

10. During the initial meeting between USAID and DAI following award of the Cuba Program Task Order, USAID officials emphasized that implementing the Cuba Program Task Order was far from risk-free, particularly in terms of building the required network of democracy and human rights advocates in Cuba.

11. DAI participated in weekly status meetings with USAID officials, usually at DAI's headquarters in Bethesda, Maryland, that DAI employees contemporaneously memorialized in written notes and memoranda to file, which, in normal course of business, were made available to USAID.

12. During the weekly status meetings, the DAI project team would inform USAID in detail about the progress of task order implementation—everything from basic project administration, getting invoices paid, concepts under consideration for potential grants and subcontracts, discussions with potential partner organizations, and activities being implemented, as well as travel to Cuba, or elsewhere, by subcontractors and/or grantees.

13. The Cuba Program Task Order required DAI to request and obtain USAID Contracting Officer and/or Contracting Officer's Technical Representatives approval for all aspects of program implementation. In considering each of DAI's requests for approval, USAID exercised its discretion.

14. Specific to travel, per established practice, DAI and USAID would discuss all anticipated, planned, and completed travel, including travel to Cuba. USAID would approve or disapprove planned travel. DAI and USAID also discussed a summary of all significant events that occurred during ongoing or recently concluded travel.

15. USAID had final decision-making authority with respect to travel, and DAI was required to discuss and obtain USAID approval on all travel. On multiple occasions, USAID refused to grant travel requests for a variety of reasons, including safety considerations.

16. DAI understands from discussions with USAID Contracting Officer's Technical Representatives that the USAID Cuba Program Office participated in a Federal inter-agency working group on Cuba that included the Department of State, the Department of Commerce, the Department of the Treasury, the National Security Council, and other U.S. Government agencies.

17. The contents of the JBDC, LLC, proposal are subject to a non-disclosure agreement to protect the parties' business interests and also to protect on-Island beneficiaries from harm.

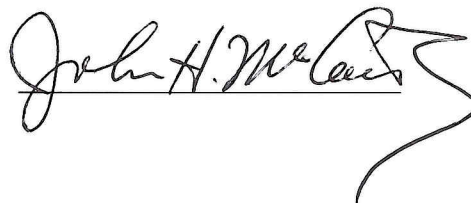
18. JBDC, LLC, satisfied the requirements of Subcontract No. 5835-001-05S-010-01 (the "Subcontract") with DAI, including four trips to Cuba by Mr. Gross and reports summarizing the results of those trips.

19. JBDC, LLC, was paid by DAI the full amount due under the Subcontract for completed deliverables. USAID subsequently reimbursed DAI for amounts paid to JBDC pursuant to the cost-reimbursable Cuba Program Task Order.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 15, 2013

Signature:

A handwritten signature in black ink, appearing to read "John H. McCarty", written over a horizontal line. The signature is stylized and includes a long, sweeping flourish extending to the right.