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USAID/Kenya Needs to Implement Agency Policy Related to An Orderly Closeout of Expired Contracts

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EXECUTIVE SUMMARY

The closeout of a procurement instrument is the last phase of the contracting process and ensures that (a) goods and services were received and accepted, (b) property assigned to contractors is accounted for and properly disposed of, (c) required audits were performed, and (d) a full account of all obligations is made. This review included four AID-direct and ten Borrower/Grantee contracts, totalling about $22.5 million, whicn expired between January 1, 1980 and October 31, 1984.

This audit was part of a world-wide effort by the Office of Inspector General to determine procedures used by the different USAID's to closeout AID-direct and Host Country contracts. Our objectives were to identify closeout problems, their causes, and the adverse effects, if any.

Our audit showed the following closeout problems:

(a) USAID/Kenya had not implemented prescribed policies on contract closeout (Page 4).

(b) USAID/Kenya did not have records which identified expired contracts (Page 5).

(c) Final audits were not requested for completed contracts (Page 5).

(d) Technical reports were not sent to AID/Washington as required (Page 6).

(e) Contractor Performance Evaluation Reports were not being prepared (Page 7).

(f) Contractors were not submitting the required "Final Release Forms" (Page 8).

(g) Certain unliquidated balances should be reviewed for deobligation (Page 8)

(h) Currency devaluations affected local currency funded contracts (Page 9).

The fundamental causes of most of the above conditions were due to: (a) shortage of personnel, (b) past practices of not documenting information, (c) lack of a system to identify contracts in need of closeout actions, (d) lack of a system to implement closeout policies and (e) USAID/Kenya's attitude regarding the importance of this final phase.

The report contains three recommendations which, when implemented, should correct the deficiencies noted during our review.

The draft report was reviewed by USAID/Kenya. Their comments are included in the report as considered necessary.

BACKGROUND

The closeout of a procurement instrument is the last phase of the contracting process. This final phase is designed to ensure that: (a) all goods and services contracted for were provided, received, and accepted, (b) all property assigned to the contractor was accounted for and proper disposition made, (c) required audits were performed to ensure propriety of expenditures and payments, and (d) a full and proper accounting of host country and U.S. Government obligations has been made. For these reasons, the Agency has established policies in AID Handbooks 11, 13 and 14 (Appendix G) for both AID-direct and Borrower/Grantee (B/G) contracts.

This report covers four AID-direct and ten B/G contracts, totalling about $22.5 million which expired between January 1, 1980 and October 31, 1984. These contracts are listed in Exhibit A.

The AID-direct contracts were for technical services related to (a) services for the rural enterprise extension services project; (b) a basic academic design and feasibility study for an agricultural institute at Kenya's coast; (c) an integrated project information system; and, (d) a baseline study of manpower needs at Egerton Agricultural College.

Two of the Borrower/Grantee (B/G) agreements were Cost-Plus-Fixed-Fee (CPFF) technical services contracts payable in U.S. Dollars. One contract provided engineering personnel for a bridging and culverting program on a rural roads project. The second contract was for a socio-economic evaluation of the same project.

The remaining eight were "Prime Cost" contracts and were payable in local currency (Kenya Shillings or KSH). These are really "Fixed Price contracts with economic price adjustment," as described in Chapter 16.203-1 (b) of the Federal Acquisition Regulations. The final cost is subject to cost variations resulting from approved design modifications and fluctuations of material or labor costs. These eight contracts were for different types of construction work at the Egerton Agricultural College in Njoro, Kenya. This construction included over 250 different houses, an administration building, a library, a kitchen/dining hall, three apartment complexes, sleeping dormitories for students, several laboratories, campus roads, and a waterworks system.

Several different contractors constructed the structures. An architect, supervised them and a quantity surveyor maintained the financial affairs of the contracts. The contracts provide for a "work completion date," not for an "expiration date." The approximate completion date is shown on the exhibit.

Since the contracts were signed, the GOK has devalued its currency from KSH 7.40 to KSH 15.00 per U.S. $1.00 (at our cut-off date). The effects of this devaluation on earmarked U.S. Dollars is discussed in a subsequent section of this report.

OBJECTIVES, SCOPE, AND METHODOLOGY

As part of a centrally directed audit effort, the objectives of the audit were to (a) identify various USAID/Kenya problems related with contract closeout procedures, (b) identify adverse effects for not properly closing out the contracts, (c) pin-point the breakdowns in AID's procedures and practices that failed to ensure the proper closeout of the contracts, and (d) provide recommendations to address any weakness. RIG/A/W prepared the audit program and we developed and used a questionnaire.

The audit was performed in accordance with General Accounting Office standards. It included tests of records and such other audit procedures considered necessary in the circumstances. We visited the construction site of eight contractors. We had discussions with officials of USAID/Kenya, Government of Kenya, Egerton Agricultural College, and the Mutiso Menezes International Engineering Supervisory Firm.

We did not examine closeout procedures for the contracts shown on Exhibit B because: (a) AID/W maintained all of the records related to Letters of Commitment, (b) USAID/Kenya had retired four of the contract files, and (c) the value of six of the contracts were considered to be insignificant.

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

USAID/Kenya Has Not Implemented Prescribed Policies On Contract Closeout.

AID Handbooks 11, 13 and 14 provide for the orderly closeout of expired or completed AID-direct and B/G contracts. Our review showed that USAID/Kenya had not changed its Mission Orders to incorporate these policies. Also, USAID had not evaluated and approved closeout procedures which the GOK should have used for its B/G contracts. Moreover, USAID/Kenya files, both at the Executive and Program Office, did not have an inventory of expired contracts, the required contract closeout checklists, or Contractor's Performance Evaluation Reports.

Mission Order No's 1-8, 1-8A, 1-10, 2-3, 5-8, 10-1, 10-2, and 10-4 showed that both the Project Office and Executive Office have certain responsibilities for contracts. However, only M.O. 10-1 provides any specific language for the Project Office to maintain records showing "...contract or PASA where applicable and amendments thereto,....Evaluation of Contractor Performance Reports, where applicable...." and "...contract closeout checklist where applicable..." The Mission Orders are silent on closeout procedures for B/G contracts and contracts of the Executive Office. In other words, the Mission Orders had not been changed to incorporate A.I.D. policies. There are different adverse effects resulting from this condition. They will be stated later in the report.

We found that closeout procedures used for local currency funded B/G contracts were adequate. But, USAID/Kenya had not reviewed and approved the closeout procedures which the GOK used for B/G contracts. As a consequence, USAID/Kenya had not issued the required project implementation letter approving closeout procedure for the four U.S. funded B/G contracts.

In addition, USAID/Kenya is not complying with procedures prescribed by Appendix G "Contract Closeout Procedures" of AID Handbook 14 and the contract closeout checklist is not being filled out and recorded.

CONCLUSION

USAID/Kenya does not presently have effective procedures to review, approve, and/or ensure the orderly closeout of expired or completed contracts.

USAID/Kenya Does Not Have Records Which Identify Expired Contracts.

USAID/Kenya does not have a system to identify contracts needing closeout actions. Therefore, it is difficult to know the exact number of contracts which need closeout actions. To obtain a list of contracts requiring closeout actions, we worked from three separate sources: (a) RIG/A/W provided computer run, (b) the Mission Accounting Control System (MACS), and (c) Host Country Contracts Data Sheet.

AID Handbook 14 prescribes certain guidelines, standards and time frames for closing out contracts in an orderly manner. For example, the closeout period for fixed price contracts is 4 months after completion. The period for cost reimbursement contracts is 21 months. To implement this policy, USAID/Kenya needs to designate a person(s) or office to identify contracts needing closeout action.

At present, USAID/Kenya does not have procedures or precise records to identify either completed or expired contracts which need closeout actions. Thus, we are uncertain whether the list shown on the exhibits reflects a complete inventory of expired or completed contracts.

CONCLUSION

USAID/Kenya needs to assign responsibility for systematically identifying and listing contracts requiring closeout actions.

Final Audits Are Not Being Requested For Completed Contracts.

USAID/Kenya is not requesting final contract audits or adjusting provisional overhead costs. As a result, provisional costs are not being adjusted and possible improper costs are not submitted to the contracts office for review.

Reimbursable (CPFF) contracts normally contain a standard clause requiring contractors to maintain books and records that will be subject to audit for a period of three years after contract completion. In addition, these contracts normally prescribe provisional overhead rates which should be adjusted either on a year to year basis or at least before the contract was closed out.

USAID/Kenya is making good desk reviews of reimbursement requests submitted by contractors. These reviews include an examination of supporting documents and a verification of mathematical computations. However, we found no evidence that

USAID/Kenya was routinely requesting final audits of contracts or requesting contractors to submit negotiated final overhead rates. Therefore, provisional overhead costs are not being adjusted. Four examples are:

(a) The PRC Harris Inc. contract (No. 615-0168-02-04) lasted from December 29, 1977 to February 29, 1984. The provisional overhead rate is 55% of labor costs. The final voucher showed that the contractor claimed and received the same provisional overhead rate. In other words, there was no overhead adjustment for seven years.

(b) Contracts with Devres Inc. (AFR-1529), Partnership for Productivity (AFR-G-1328), and Pacific Consultants (AFR-C-1614) included provisional overhead rates but there was no evidence of final adjustment.

In addition, the propriety of some costs were questionable. For example, the last PRC Harris technician to depart Kenya airlifted his household effects (HHE), on a foreign carrier (Air France), from Nairobi to Los Angeles, California at a cost of $9,745. Normally, HHE are flown to Antwerp, Belgium and shipped, by U.S. vessel, to the United States. Was there a violation of "Fly America Act?" Was this the most economical shipping mode? How many more shipments were made in similar manner? A final audit would normally address these questions and would identify costs either for disallowance or negotiation.

CONCLUSIONS

Provisional overhead costs are not being adjusted. In addition, the propriety of direct costs are not being thoroughly verified. USAID/Kenya needs to establish procedures which systematically request final contract audits and adjustments of provisional overhead rates.

Technical Reports Are Not Sent To AID/Washington.

Although required by regulation, USAID/Kenya is not sending the required technical reports to AID/Washington. The reason is that contracts do not include clauses that enforce this requirement.

New government-wide Federal Acquisition Regulations became effective on April 1, 1984. These regulations require reports, funded by AID, to be sent to a central office of the agency. The regulations state:

"Contractor shall submit two copies of each report required ....or any other report of a technical nature required by the schedule to the Development Information Utilization Service, Bureau for Science and Technology (S&T/DIU), Agency for International Development, Washington D. C. 20253. The title page of all reports forwarded to the AID Reference Center pursuant to this paragraph (d) shall include the contract number, project number and project title as set forth in the schedule of the contract..."

The Bureau of Program and Policy Coordination (PPC/CDIE/DI) is therefore responsible to coordinate this requirement. Types of reports to be sent to PPC are: feasibility studies, case studies, special studies, final reports, conference proceedings or papers, annual reports, evaluations, books, or articles in scientific/technical journals.

CONCLUSION

We believe that the main reason for this problem is that present contracts do not contain provisions requiring contract generated reports be sent to PPC/CDIE/DI. Active contracts need to be amended to comply with this new requirement. With or without a contract provision someone from USAID still needs to follow up to see that the reports are submitted.

The policy, however, is ambiguous in its applicability to construction contracts. For instance, numerous structures were constructed at Egerton Agricultural College. Whether engineering drawings and specifications need to be sent to PPC/CDIE/DI should be clarified.

Contractor Performance Evaluation Reports Are Not Being Prepared.

The contract closeout checklist (part I - technical office checklist) requires the submission of final "Contractor Performance Evaluation Reports" (AID Form 1420-43) for AID-direct contracts. We found no evidence that USAID/Kenya had prepared the required evaluations.

Unless these evaluations are prepared, deficient performances by contractors will be unrecorded and the agency could repeat identical mistakes in the future. A good example is the performance of contractor Pacific Consultants' Inc., which is discussed later in the report.

CONCLUSION

USAID/Kenya is not preparing the Contractor Evaluation Reports for AID-direct contracts.

Contractors Are Not Submitting Required "Final Release" Forms.

To protect the agency, AID Handbook 14 prescribes the inclusion of a contractual clause requiring contractors to submit a "Release and Assignment Form". USAID/Kenya and the GOK are not consistently obtaining contractors' final releases for either AID-direct or B/G contracts.

For instance, three of four contractors with AID-direct contracts had not submitted a final release. Three B/G contractors had submitted final releases, but two had not.

CONCLUSION

USAID/Kenya needs to consistently require final release forms. Otherwise, the agency is not protected by a release and could be legally liable for possible additional claims.

Certain Unliquidated Balances Should Be Reviewed For Deobligation Action.

Prompt contract closeouts help to assure the efficient use of host country and U.S. Government funds. They also facilitate timely payments to contractors for work performed. Thus, unneeded obligations should be promptly identified and deobligated. This is not taking place in a consistent manner. We found two examples:

(a) AID/W and the Pacific Consultant Inc. signed contract No. AID/AFR-c-1614 on December 25, 1979 for $253,306. Under this CPFF contract, the contractor produced a basic academic design and feasibility study on the construction of a new 660 student two-year agricultural institute. The required work was completed. However, the contractor became entangled in financial problems. Essentially, the contractor would not pay his sub-contractor or the chief-of-party and there were delays in releasing the final report. Also, the Internal Revenue Service placed a lien on the assets of the company. USAID/Kenya was requested to hold final payment. A total of $36,682 has been held as an unliquidated obligations since May 1981. USAID/Kenya had not made a follow-up since December 1982. Thus, the liability AID still owes is not known.

(b) AID/W and Partnership for Productivity signed CPFF contract no. AFR-G-1328 on June 8, 1977, which has a ceiling of $360,000. The contractor developed the rural enterprise extension service as a unique method for training and completed the work about March 1980. The contractor was paid $300,056. The contractor has not submitted his final voucher therefore what portion of the $59,944 unliquidated obligation that should be deobligated is unknown.

CONCLUSION

Unneeded obligations go undetected for excessive periods of time when prompt contract closeout procedures are not followed.

In the Pacific Consultant and Partnership for Productivity contracts, USAID/Kenya needs to coordinate with AID/W for possible deobligation actions.

Currency Devaluations Have Affected Local Currency Funded Contracts.

Since 1979, the value of the Kenya Shilling has declined from KSH 7.40 to 15.00 per U.S. $1.00. These devaluations have been beneficial in the case of local-currency funded fixed priced contracts because more construction was accomplished with less U.S. dollars.

We found:

Contract No. 615-0169-30-296 #5 between Egerton Agricultural College and Jinja Ramji & Co. was signed September 30, 1980. Under its terms, the contractor was to construct 21 student dormitories, 3 junior common rooms, 211 staff houses, 16 middle grade staff houses, and others. The "Prime Cost" or Fixed Price for all work was established at KSH 64.0 million. Of this amount, AID agreed to finance KSH 59.2 million and the GOK the remainder. When the contract became effective, the rate of exchange was about KSH 7.40 per dollar. As a result, USAID/Kenya earmarked about $8.0 million.

Construction was completed about September 1982. From the initial disbursement until the construction was completed the shilling went from 7.40 to 15.00 per dollar. We estimate that all construction was completed for $6.9 million and that $1.1 million was available for reprogramming.

Using the same formulas for the eight local currency contracts, we calculated that all construction was completed for $2.8 million less than originally planned. These funds were available for reprogramming. USAID/Kenya was aware of this problem and had taken steps to reprogram these obligations to fund additional construction needed at Egerton Agricultural College. This problem applies to all local currency funded activities. This is an area that needs constant surveillance so that funds are effectively used.

Conclusion

Effective contract closeout procedures will identify excess project funds for reprogramming or deobligation.

Summary of Conclusions and Recommendations

Our review of contract closeout procedures revealed: (a) non-implementation of prescribed policies; (b) incomplete and inaccurate records to identify expired contracts; (c) lack of requests for final audits; (d) lack of adjustments of provisional overhead rates; (e) technical reports not being sent to AID/Washington; (f) nonpreparation of Contractor Performance Evaluation Reports; (g) non submission of required Final Release Forms; (h) possible funds available for deobligation and, (i) excess funds as a result of currency devaluations.

The fundamental causes of most conditions are due to the following: (a) shortage of personnel, (b) past practice of not documenting information, (c) a lack of a system to identify contracts needing closeout actions, (d) lack of a system to implement closeout policies and (e) USAID/Kenya not giving the required importance to this area.

RECOMMENDATION NO. 1

USAID/Kenya establish a system, perhaps computerized, to control and assure implementation of all elements of contract closeout. Specifically USAID/Kenya: (a) assign contract closeout procedures to applicable USAID/Kenya personnel; (b) determine that the Government of Kenya closeout procedures are effective; and (c) develop a system to identify (1) contracts requiring closeout, (2) contracts requiring final audits, (3) contractor reports that must be submitted to the Bureau of Program and Policy Coordination, (4) when contractor performance evaluation reports are due, and (5) when release and assignment forms should be requested.

RECOMMENDATION NO. 2

USAID/Kenya request guidance from AID/W/PPC/CDIE/DI on whether engineering drawings, technical specifications and other documents related with construction contracts must be submitted in accordance with stated policy.

RECOMMENDATION NO. 3

USAID/Kenya in coordination with AID/W determine what funds should be deobligated on the Pacific Consultants Inc. and Partnership for Productivity contracts.

Exhibit A

USAID/KENYA
LIST OF KNOWN EXPIRED CONTRACTS INCLUDED IN OUR REVIEW
AS OF OCTOBER 31, 1984

Name of Contractor		Contract Type	Exp. Date	Obligated Amount
AID-Direct Contracts:				
Partners For Productivity		CPFF	3/31/80	$360,000
Pacific Consultants		CPFF	6/30/81	253,306
Practical Concepts		IQC	W.O. 6/30/83	51,967
Mid-America International		IQC	W.O. 7/31/83	64,576
Borrower Grantee Contracts:				
PRC Harris Inc.		CPFF	2/29/84	2,462,703
Devres Inc.		CPFF	5/1/84	230,930
W. H. Sayers & Co.	*	FP	1/17/82	362,377
W. H. Sayers & Co.	*	FP	1/31/81	609,437
Leitman Boreholes	*	FP	4/31/81	89,150
Capital Construction	*	FP	10/6/81	2,263,586
Jinja Ramji & Co.	*	FP	9/2//82	8,004,613
Indus Construction	*	FP	4/29/83	4,741,645
N. K. Brothers	*	FP	12/31/82	2,163,929
Ramji Ratna & Co.	*	FP	9/30/83	791,338
GRAND TOTAL				$ 22,449,557

Prime cost contracts payable in local currency

Exhibit B

USAID/KENYA
LIST OF CONTRACTS NOT INCLUDED IN REVIEW
AS OF OCTOBER 31, 1984

Name of Contractor	Contract Type	Approximate Dollar Amount
Records maintained by AID/W:		
PRC Harris Inc.,	L/Com No. 615-T-01005	1,008,432
PRC Harris Inc.	L/Com No. 615-0168-01103	107,100
International Harvester	L/Com No. 615-T-01005	486,087
AFRO-Am Purchase Center,	L/Coms No. 615-T-01101	2,540,396
AFRO-Am Purchase Center	L/Com No. 615-T-01001	9,035,525
U. S. Geological Survey	PASA--A/G/KEN-157-8-73	3,453,450
USAID/Kenya had retired or had no record of contracts shown on AID/W listing:		
Elsie B. Garfield	Unknown	Unknown
Coopers & Lybrand	Unknown	Unknown
Dekruiff, G.J	Unknown	Unknown
General Research & Co.	Unknown	11,325
Amounts of contracts not considered significant:		
Heng L. Thung	615-00013T	14,480
Michael Lee	615-RHUDO-00	6,400
Timm A. Harris	615-213T	22,372
Nyongo Amyang	698-0135	750
C. A. Liburd	615-188	12,000
Dreadgeknot Building Maint.	615-208	15,000

APPENDIX A

List of Report Recipients

	No. of Copies
Field Offices	
USAID/Kenya	5
REDSO/ESA	2
AID/Washington	
AA/M	2
AA/AFR	1
LEG	1
GC	1
AA/XA	1
AFR/EA	1
M/SER	1
M/FM/ASD	2
PPC/CDIE	3
Office of Inspector General	
IG	1
AIG/A	1
AIG/II	1
IG/EMS	12
RIG/A/C	1
RIG/A/D	1
RIG/A/K	1
RIG/A/M	1
RIG/A/T	1
RIG/A/W	1
RIG/II/N	1