

**Regional Inspector General for Audit  
Cairo, Egypt**

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**Audit of USAID/Egypt's Compliance with  
Lobbying Restrictions in U.S.C. 1352**

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Report No. 6-263-93-06  
May 11, 1993



INSPECTOR  
GENERAL

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT



**UNITED STATES OF AMERICA  
AGENCY FOR INTERNATIONAL DEVELOPMENT  
OFFICE OF THE REGIONAL INSPECTOR GENERAL/AUDIT**

May 11, 1993

**MEMORANDUM FOR D/USAID/Egypt, Henry H. Bassford**

**FROM :** RIG/A/C, *Philippe L. Darcy*

**SUBJECT:** Report on Audit of USAID/Egypt's Compliance With the Lobbying Restrictions in 31 U.S.C. 1352 (Report No. 6-263-93-06)

This is the final report of our audit of USAID/Egypt's Compliance With Lobbying Restrictions. In preparing this report we considered your written comments (included in Appendix II of this report) concerning the draft report. This final report includes one procedural recommendation which, based on your comments, we consider to be resolved and closed. I appreciate the cooperation and courtesies extended to my staff during the audit.

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## **Background**

Title 31 of the United States Code was amended on October 23, 1989 by adding Section 1352, entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions," which prohibits the use of federally appropriated funds for lobbying activities. This amendment established a pre-award filing requirement to attempt to deter recipients of federal awards from using appropriated funds for the purpose of lobbying for federal awards, and to get recipients to disclose those instances when they use non-appropriated funds for such lobbying purposes.

As a condition to obtaining certain federal awards, the law requires recipients to file a declaration basically stating that:

- no payment has been or will be made with appropriated funds to pay any person for influencing or attempting to influence certain government officials in connection with federal awards; and

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- payments that have been made or have been agreed to be made with other than appropriated funds for such purposes will be disclosed.

The Federal Acquisition Regulations (FAR) were updated in January 1990 to reflect this new law. The revised regulations state that federal contracting officers should obtain the required certifications and disclosures prior to making covered awards exceeding \$100,000. They also provide for civil penalties from \$10,000 to \$100,000 for persons who fail to file the pre-award declaration or abide by the conditions contained therein.

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## **Audit Objective**

The objective of this audit was to determine whether USAID/Egypt implemented procedures to ensure compliance with the certification and disclosure requirements of 31 U.S.C. 1352. To answer this objective we tested all contracts, grants, and cooperative agreements above \$100,000 awarded by USAID/Egypt during fiscal year 1992. This objective was included in the Inspector General's annual audit plan for fiscal year 1993 as part of a worldwide audit to be centrally directed by the Office of Program and Systems Audits.

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## **Audit Findings**

Our answer to the audit objective is qualified to the extent of the effect of not having received a completely adequate representation letter from USAID/Egypt's management. (See complete discussion of this issue in the Scope and Methodology Section of this report.)

### **Did USAID/Egypt Implement Procedures to Ensure Compliance with the Certification and Disclosure Requirements of 31 U.S.C. 1352?**

USAID/Egypt's records indicate that they did implement procedures to ensure that the certification and disclosure declarations were obtained from recipients of awards for which 31 U.S.C. 1352 applied. However, USAID/Egypt needs to better ensure that the certification and disclosure declarations are received **prior** to granting awards for grants and cooperative agreements.

Section 1352 of Title 31 of the United States Code requires Federal agencies to ensure that recipients of Federal contracts, grants, cooperative agreements, and loans file a declaration consisting of a certification and disclosure declaration as defined in Federal Acquisition Regulation (FAR) 52.203. USAID/Egypt made 18 awards totaling about \$27 million during fiscal year 1992 for which this regulation applied. USAID/Egypt's files

included the required declaration for all 18 of the applicable awards. This finding indicates a very notable improvement when compared to the results of a similar audit which we conducted last year (Audit Report No. 6-263-92-06 dated March 26, 1992). That audit found that during fiscal year 1991 USAID/Egypt obtained declarations for only six of 21 applicable awards.

Although USAID/Egypt obtained declarations for all 18 applicable awards made during fiscal year 1992, declarations for four of those 18 awards were signed by the recipients one to six months after the awards were made. Following are details regarding this problem.

**USAID/Egypt Made Four Awards Without First Receiving Required Certifications**

Federal law requires that specific lobbying declaration filing requirements be met as a prerequisite to an Agency awarding contracts, grants, and cooperative agreements in excess of \$100,000. USAID/Egypt made four of 18 applicable awards during fiscal year 1992 without first obtaining a declaration from award recipients certifying that they agreed to abide by the lobbying restrictions identified in 31 U.S.C. 1352. Three of the awards were grants and one was a cooperative agreement. We believe this occurred because the cognizant contracting officer had interpreted the requirements incorrectly, or had overlooked them. Consequently, USAID/Egypt's ability to ensure that those four recipients complied with the lobbying restrictions in 31 U.S.C. 1352 was made less effective than if USAID/Egypt had obtained the required declarations prior to making the awards.

**Recommendation No. 1: We recommend that USAID/Egypt implement a procedure to ensure that contracting officers solicit and obtain signed certifications required by 31 U.S.C. 1352 from prospective recipients prior to awarding future grants or cooperative agreements above \$100,000.**

Section 1352 of United States Code, Title 31, entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions," bars the use of federally appropriated funds for lobbying activities. This law requires persons who request or receive a federal contract, grant, or cooperative agreement in excess of \$100,000 to file a written declaration containing:

- a certification that the person making the declaration has not made, and will not make, any payment with appropriated funds to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any federal action including the awarding of any federal contract, grant, loan, or cooperative agreement, and

- a statement setting forth whether such person has made or agreed to make a payment, using other than appropriated funds, to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in making a federal award.

These requirements are also contained in a provision in FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a clause in FAR 52.203-12, Limitations on Payments to Influence Certain Federal Transactions. According to FAR 3.804, a contracting officer should obtain the required certifications and disclosures **prior** to the award of any contract exceeding \$100,000.

The Office of Management and Budget (OMB) issued guidance to federal agencies for implementing 31 U.S.C. 1352. To facilitate compliance with the declaration filing requirement, OMB developed a standard declaration entitled "Certification Regarding Lobbying". This standard declaration includes the statement:

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.I.D.'s Office of Procurement included this standard declaration in Administrative Memorandum 90-6, an informational copy of which was sent to all A.I.D. contracting officers in July 1990. In October 1991, the standard declaration was incorporated into A.I.D. Handbook 13, chapter 3.

During Fiscal Year 1992, USAID/Egypt made 18 awards totalling about \$27 million for which these regulations applied. The 18 awards included ten contracts, five cooperative agreements, and three grants. We reviewed all 18 awards and found that although USAID/Egypt had obtained required lobbying certifications from all 18 award recipients, the certifications for four of the awards were signed by the recipients one to six months **after** the awards were made (see table on following page). These four awards consisted of three grants and one cooperative agreement--totaling over \$3.1 million.

The cognizant contracting officer for the three grants and the cooperative agreement indicated that he believed that the recipients' countersignature on the awarding document, which mentioned the lobbying restrictions by reference, qualified as a certification. Therefore, he did not obtain a separate signed standard declaration prior to making the awards. He further stated that because grants and cooperative agreements were, by nature, unsolicited unilateral actions, there was no opportunity to include the certifications in a solicitation document. Nevertheless, he eventually obtained signed standard declarations from recipients of all four awards one to six months after the awards were made.

Failure to obtain the appropriate lobbying declaration before making the awards resulted in USAID/Egypt not obtaining the assurances and possibly the information intended by 31 U.S.C. 1352 prior to granting the use of federally appropriated funds. Consequently, USAID/Egypt's ability to ensure that recipients of those four awards would abide by the lobbying restrictions in 31 U.S.C. 1352 was less effective than it would have been had USAID/Egypt obtained the declarations prior to making the awards.

<b>USAID/Egypt Awards &gt; \$100,000 Made During Fiscal Year 1992</b>			
	<b>Award Number / Type</b>	<b>Declaration Filed Prior To Award?</b>	<b>Amount of Award US\$</b>
1	0101-C-2028 / Contract	Yes	138,746
2	0182-C-2013 / Contract	Yes	603,896
3	0000-C-2233 / Contract	Yes	997,093
4	0000-C-2022 / Contract	Yes	186,415
5	0177-C-2024 / Contract	Yes	928,609
6	0215-C-2019 / Contract	Yes	4,969,511
7	0203-C-2220 / Contract	Yes	207,166
8	0800-C-2203 / Contract	Yes	247,335
9	0125-C-2230 / Contract	Yes	488,476
10	0249-S-2221 / Contract	Yes	198,847
11	0226-A-2027 / Coop Agreement	Yes	2,955,528
12	0228-A-2026 / Coop Agreement	Yes	2,767,039
13	0220-A-2017 / Coop Agreement	Yes	8,870,000
14	0144-A-2044 / Coop Agreement	Yes	332,538
15	0152-A-2207 / Coop Agreement	No	1,715,921
16	0202-G-2212 / Grant	No	152,334
17	0152-G-2231 / Grant	No	1,025,514
18	0152-G-2049 / Grant	No	226,900
<b>TOTAL</b>		<b>Yes=14, No=4</b>	<b>27,011,868</b>

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## **Management Comments and Our Evaluation**

Management's comments on the draft audit report indicated that the Mission had taken action to address the single procedural audit recommendation by developing and issuing a Checklist for Grant/Agreement File. Attached was a copy of this checklist which included a reminder to obtain a grant recipient's signed certification on lobbying. (See Attachment II for copy of management's complete comments.)

Based on those comments and the evidence of actions already taken, we consider the single recommendation to be resolved and closed.

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## SCOPE AND METHODOLOGY

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### Scope

We audited USAID/Egypt's compliance with Section 1352 of Title 31 of the United States Code (31 U.S.C. 1352) in accordance with generally accepted government auditing standards, except as discussed below with regard to the extent of representations made by Mission officials. We conducted the audit during the period November through December 1992 using as our criteria guidance provided by the Office of Management and Budget (OMB), A.I.D. Handbook 13, 31 U.S.C. 1352, and Federal Acquisition Regulation subparts 3.8 and 52. The audit covered all applicable federal transactions over \$100,000 awarded by USAID/Egypt during Fiscal Year 1992. The audit was conducted in USAID/Egypt's Office of Contracts Services.

Government auditing standards require auditors to obtain representation letters when the auditors deem it useful. The Office of the Inspector General has deemed that representation letters are necessary to support potentially positive findings. We received such a letter from USAID/Egypt's management with regard to this audit. However, the letter was signed only by the Mission Director and not the manager directly responsible for the area being audited. Therefore, our positive answer to the audit objective is qualified to the extent of the effect of not having received such a signature.

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## Methodology

This audit was designed as part of a worldwide audit to be centrally directed by the Inspector General's Office of Program and Systems Audits (IG/A/PSA) in Washington, D.C. IG/A/PSA developed an audit program for participating audit offices. We followed that audit program which included the following methodology.

To accomplish the audit objective we interviewed cognizant contracting officers, including the Director of USAID/Egypt's Office of Contracts Services. We obtained a list from USAID/Egypt's Contract Information Management System (CIMS) of all federal awards made by USAID/Egypt during fiscal year 1992. We found that USAID/Egypt had made 18 awards greater than \$100,000 during fiscal year 1992, for which 31 U.S.C. 1352 would apply. They consisted of ten contracts, three grants, and five cooperative agreements.

In order to obtain a high level of assurance that our findings were accurate, we decided to include all 18 applicable awards in our audit sample. We assessed the internal controls relating to obtaining the required We reviewed USAID/Egypt's files for all 18 awards to determine whether or not the required declarations had been obtained prior to making the awards. We discussed the results of our review with cognizant USAID/Egypt officials. These results were submitted in summary to the Inspector General's Office of Program and Systems Audits for inclusion in a Congressionally mandated worldwide audit centrally directed by that office.



CAIRO, EGYPT

MAY 04 1993

M E M O R A N D U M

TO: Philippe L. Darcy, RIG/A/C

FROM: Christopher D. Crowley, D/DIR *CD*

SUBJECT: Audit of USAID/Egypt's Compliance with Lobbying  
Restrictions in U.S.C. 1352 - Draft Report

Following is the Mission's response to Recommendation No. 1 under  
the subject audit report:

Recommendation No. 1:

We recommend that USAID/Egypt implement a procedures to ensure  
that contracting officers solicit and obtain signed certification  
required by 31 U.S.C. 1352 from prospective recipients prior to  
awarding future grants and cooperative agreements above \$100,000.

Mission Response:

Attached is a copy of a grant/cooperative agreement checklist  
issued to all the Contract/Grant Officers, which has as one of  
its various items, a reminder about the lobbying certification.  
Based on this action, Mission requests that this recommendation  
be closed upon issuance of the final report.

Thank you for your cooperation

Att: a/s

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UNITED STATES AGENCY for INTERNATIONAL DEVELOPMENT

CAIRO, EGYPT

MEMORANDUM

To: D. Franklin, AD/FM  
From: *[Signature]* Dunlap, OD/DIR/CS  
Date: April 22, 1993

Subject: Audit of USAID/Egypt's Compliance with Lobbying  
Restrictions in U.S.C. 1352 - Draft Report

Thank you for the copy of the draft Lobbying audit report. My suggestion is that we try to have the RIG issue a final with the recommendation both resolved (as the report now says) and closed. The basis for doing so would be that we issued this week to our staff a grant/cooperative agreement checklist which has as one of its (many) items a reminder about the lobbying certification. Attached as verification is a copy of my memo to the staff and the checklist. Please advise...thanks.

Attachment: A/S

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CAIRO, EGYPT

**MEMORANDUM**

To: All COs and Negotiators  
From: J. Dunlap, OD/DIR/CS  
Date: April 22, 1993

Subject: Checklist for Grants and Cooperative Agreements

Attached is the checklist we will hereafter use for all new actions. While not mandatory, you may well find it useful to use the checklist for amendments.

Kudos to Beth for her work on this.

Suggestions for improvement or needed updates, please give me as and when appropriate. Thanks.

Attachment: A/S

4/22/93

Checklist for Grant/Agreement File

Grantee: \_\_\_\_\_

Grant/CA No. \_\_\_\_\_

- \_\_\_\_\_ Approved Project Paper, if applicable.
- \_\_\_\_\_ Approved PIO/T.
- \_\_\_\_\_ Documentation for recipient selection as required by Chapter 2 of HB 13.
- \_\_\_\_\_ Justification for Noncompetitive Award, if applicable. (prepared by technical office, based on HB 13, Ch.2,B4).
- \_\_\_\_\_ Documentation obtained from recipient for preaward survey.
- \_\_\_\_\_ Preaward survey team evaluation report, if appropriate.
- \_\_\_\_\_ Memorandum of Negotiation, to include (as a minimum):
  - \_\_\_\_\_ Rationale for choice of instrument.
  - \_\_\_\_\_ Brief description of the purpose of the grant or agreement.
  - \_\_\_\_\_ The total Amount of the Agreement.
  - \_\_\_\_\_ The Duration of the Agreement.
  - \_\_\_\_\_ A cost breakdown with a justification of all cost elements.
  - \_\_\_\_\_ Discussion of any unusual features of the grant/agreement.
  - \_\_\_\_\_ Rationale for choice of standard provisions.
  - \_\_\_\_\_ Discussion of recipient's management responsibility, policies, etc. Rationale for determination of responsibility. (HB13,Ch.4,F5b(3))
  - \_\_\_\_\_ Statement that AID's Consolidated List of Debarred, Suspended, and Ineligible Awardees has been reviewed and the recipient's name was not included on the list.
  - \_\_\_\_\_ Review/approval of recipient's procurement system (HB13, 1U) (If over 50% of total cost or over \$250,000 then see HB 13 re performing audit of recipient's procurement system).
- \_\_\_\_\_ Recipient's Signed Certifications:
  - \_\_\_\_\_ Assurance of Compliance (HB13,3E2)
  - \_\_\_\_\_ Lobbying Certification (HB13,3D)
  - \_\_\_\_\_ Certification Regarding Debarred, Suspended... (HB13,3B)
  - \_\_\_\_\_ Drug-Free Workplace Certification (HB13, 3C)
- \_\_\_\_\_ Technical Office Clearance

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\_\_\_\_\_ Legal Clearance, if required.

\_\_\_\_\_ FM's clearance on advance methods of payment.

\_\_\_\_\_ Deviation Authorizations, if required.

\_\_\_\_\_ Waivers, if required:

\_\_\_\_\_ Cost sharing (matching)

\_\_\_\_\_ Source and Origin

\_\_\_\_\_ Salary

\_\_\_\_\_ Other \_\_\_\_\_

\_\_\_\_\_ Reporting, Evaluation and Review Schedule.

\_\_\_\_\_ Full text of all mandatory and optional provisions included with grant/agreement.

\_\_\_\_\_ Copy of latest Negotiated Indirect Cost Rate Agreement (NICRA).

\_\_\_\_\_ Biographical Data Sheets. (Not required by HB13; however, these are useful in determining cost reasonableness and in assisting with monitoring excessive salary increases. Per HB13,1B2b(2) AID is obligated to exercise prudent management of public funds.)

\_\_\_\_\_ Discussion of logistic support supplied by USAID or Host Country, and supporting documentation, if required.

\_\_\_\_\_ List of Recipient contracts, grants, CA's involving similar or related programs over the past 3 years.

\_\_\_\_\_ Recipient's Personnel Policies and Procedures.

\_\_\_\_\_ Recipient's proposal.

\_\_\_\_\_ LEG Notice prepared.

\_\_\_\_\_ Copy of A-122 and/or A-110 given to Grantee/Recipient (recipient acknowledged receipt?).

\_\_\_\_\_ Mission Order 19-8 requirements met (see pg. 9 of M.O. - refers to audit requirements).

\_\_\_\_\_ If over \$25,000, identify grantee/recipient for inclusion in audit universe.

\_\_\_\_\_ Copy of OMB Circular A-133 given to recipient.

Signed \_\_\_\_\_

Date \_\_\_\_\_



UNITED STATES AGENCY for INTERNATIONAL DEVELOPMENT

CAIRO, EGYPT

APR 14 1993

Mr. Philippe L. Darcy  
Regional Inspector General  
for Audits  
Cairo, Egypt

RECEIVED  
14 APR 1993

Dear Mr. Darcy:

This Representation Letter is being issued in accordance with Agency guidance in response to the audit of "USAID/Egypt's Compliance with Lobbying Restrictions".

Based upon discussions with Mission Staff, and taking into account identified staffing constraints and vulnerabilities as expressed in Mission ICAs, to the best of my knowledge and belief, I confirm that all appropriate financial records in the possession and under the control of USAID/Cairo relating to the function being audited have been available to you. To the best of my knowledge and belief, the records made available to you are accurate and complete, and they fairly represent the status of USAID/Egypt's Compliance with Lobbying Restrictions within the Mission. To the best of my knowledge and belief, as a layman and not as a lawyer, in conjunction with A, B, C and D below, USAID/Egypt has reported all known instances pertaining to USAID/Egypt's compliance with Lobbying Restrictions, which, in the Mission's judgement, would evidence material irregularities or non-compliance with AID policies, or violations of U.S. laws and regulations. Specifically I represent that:

- (A) USAID/Egypt is responsible for the internal control system, for the fairness and accuracy of accounting and management information for the function under audit. USAID/Egypt to the best of my knowledge and belief exercises its best efforts to ascertain and follow applicable U.S. laws and AID regulations and AID interpretations of those laws and regulations.
- (B) To the best of my knowledge and belief, and based on discussions and verbal representations by others in the Mission, USAID/Egypt has made available to you or

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otherwise provided you at your request all financial and management information related to the audit objectives.

- (C) To the best of my knowledge and belief, except for any findings or other matters included in the audit report, USAID/Egypt is unaware of any material instances associated with the function being audited where financial or management information has not been properly and accurately recorded/reported.
- (D) To the best of my knowledge and belief, USAID/Egypt has complied with all contractual agreements, to the extent there are such agreements, which could have any material effect on USAID/Egypt's Compliance with Lobbying Restrictions.

Upon review of your draft report and following further discussion with my staff, I know of no events subsequent to the date of your draft report, (other than those which were included in our response to that report), which to the best of my knowledge and belief would materially alter the statements in (A) thru (D) above.

All representations made herein by me are made in light of my experience since my arrival at post.

I request that this Representation Letter be included as a part of the official management comments on the draft report and that it be published therewith as an Annex to the report.

Sincerely yours,



Henry H. Bassford  
Director

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