

Programs and Systems Audits

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AUDIT OF USAID'S COMPLIANCE WITH THE  
LOBBYING RESTRICTION REQUIREMENTS IN  
31 U.S.C. 1352

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Report No. 9-000-95-006  
February 3, 1995



U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

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***USAID needs to: (1) better focus contracting officers' attention on obtaining lobbying certifications from recipients before making awards and (2) ensure that all offices with award authority are queried when compiling lobbying disclosure statements for the Agency's semi-annual report to Congress.***

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U.S. AGENCY FOR  
INTERNATIONAL  
DEVELOPMENT

February 3, 1995

**MEMORANDUM FOR DAA/M, Michael D. Sherwin**

**FROM:** IG/A/PSA, Toby L. Jarman *Toby L. Jarman*  
**SUBJECT:** Audit of USAID's Compliance with the Lobbying  
Restriction Requirements in 31 U.S.C. 1352  
(Audit Report No. 9-000-95-006)

In meeting our legislatively mandated reporting requirements, our office is issuing this report on USAID's compliance with the lobbying restrictions in 31 U.S.C. 1352. The report makes two recommendations to help ensure that the Agency fully complies with these restrictions.

We reviewed Bureau comments (see Appendix II) to an earlier draft and considered them in finalizing this report. Based on this review, both of the report's recommendations are considered resolved.

Please respond to this report within 30 days, describing all actions your office has taken or plans to take to implement the recommendations. I appreciate the cooperation and courtesies extended to my staff during the audit.

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**Background**

In fiscal year 1990, the Congress amended Title 31 of the United States Code by adding Section 1352 entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions". This amendment established a pre-award filing requirement designed to deter persons from using appropriated funds to lobby for Federal awards and to identify those instances where they use their own funds for such lobbying purposes.

Before obtaining certain Federal awards, persons<sup>1</sup> must, according to the law, file a certification stating that:

- no payments have been or will be made with appropriated funds to any person for influencing or attempting to influence certain government officials<sup>2</sup> in connection with Federal awards, and
- any payments that have been made or have been agreed to be made with other than appropriated funds for such purposes will be disclosed.

The law also provides for civil penalties ranging from \$10,000 to \$100,000 for persons who fail to file the pre-award certification or abide by the conditions contained in the law. The heads of each agency are required to compile and send disclosures received from awardees to the Congress semi-annually.

The USAID Procurement Executive is responsible for developing and maintaining policies, procedures, and standards for implementing the lobbying restriction provisions for contracts and for grants and cooperative agreements which are required to follow the Agency's Handbook 13 guidelines (Handbook 13 grants). Certain other bureaus have authority to make non-Handbook 13 grants, and loans and commitments to insure or guarantee loans. These individual bureaus develop their own procedures for implementing the law in their situations. USAID's Procurement Executive has designated the Bureau for Management's Office of Procurement, Policy Division (M/OP/P) as the Agency's focal point for receiving copies of all lobbying disclosure statements submitted by awardees. M/OP/P compiles any disclosure statements received and prepares the semi-annual report to the Congress.

Our audit testing was limited to awards made for the Bureau for Asia and the Near East and its field missions by USAID/Washington's Office of Procurement and the Regional Support Mission for East Asia, located in Bangkok, Thailand. Based on information in the Agency's automated Contract Information Management System, during fiscal year 1994 the Office of Procurement made 44 awards for the Bureau or its field missions which may have been subject to Section 1352 requirements. Additionally,

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<sup>1</sup> Includes an individual, corporation, company, association, authority, firm, partnership, society, State, and local government.

<sup>2</sup> 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.

the records of the Regional Support Mission showed that during the same period the Mission made 52 such awards on behalf of the field missions it services.

31 U.S.C. 1352 requires the Inspectors General of each agency to report annually to the Congress on their agencies' compliance with, and the effectiveness of, the lobbying restriction requirements. Accordingly, we are submitting this, our fifth annual report, in response to the law's requirement. The four previous audits<sup>3</sup> found that USAID had made substantial progress in issuing procedures for complying with the law, although there still existed instances of lack of awareness and misunderstanding of the requirements, and unintentional noncompliance.

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## **Audit Objectives**

The Office of Inspector General's Office of Programs and Systems Audits, in response to the requirements set by 31 U.S.C. 1352, designed and performed the audit to answer the following questions:

- Did USAID implement procedures to ensure Agency compliance with the certification and disclosure requirements of 31 U.S.C. 1352?
- Did USAID compile disclosure statements and report on them to the Congress as required by 31 U.S.C. 1352?

Given our extensive prior audit coverage of USAID's compliance with 31 U.S.C. 1352, and considering that the law requires continuing annual audits into the future, starting with the present audit we are adopting a strategy to review USAID's compliance with the law by testing one central or one geographical bureau and one mission from that bureau on a five-year cycle.

Therefore, in answering the above questions, our testing was limited to awards made for the Bureau for Asia and the Near East and its field missions by USAID/Washington's Office of Procurement and the Regional Support Mission for East Asia. Specifically, we tested whether these awarding offices followed applicable USAID internal control procedures and complied with certain provisions of applicable laws and regulations.

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<sup>3</sup> IG Audit Report Nos. 9-000-91-002, dated 2/1/91; 9-000-92-004, dated 2/14/92; 9-000-93-001, dated 3/10/93; and 9-000-94-003, dated 2/17/94.

The audit did not review awards that may have been made on behalf of the Bureau for Asia and the Near East or its field missions by other USAID bureaus (e.g. non- Handbook 13 grants from the Bureau for Humanitarian Response and commitments to insure or guarantee loans from the Bureau for Global Programs, Field Support and Research). Coverage of such awards will be included in future audits of the awarding bureaus.

Also, in regard to the first objective, the audit assessed only whether USAID implemented procedures to ensure that required certification statements were obtained prior to making an award. The audit did not attempt to determine if award recipients had violated the restriction against the use of appropriated funds for lobbying purposes or failed to disclose their use of non-appropriated funds for such lobbying purposes. The audit's scope and methodology are described in Appendix I.

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## **Audit Findings**

### **Did USAID implement procedures to ensure Agency compliance with the certification and disclosure requirements of 31 U.S.C. 1352?**

Although USAID has issued procedures to ensure Agency compliance with the requirements of 31 U.S.C. 1352, we noted a continued significant degree of noncompliance with the law's requirements due to contract and grant personnel being unaware of, misunderstanding, or simply overlooking the requirements.

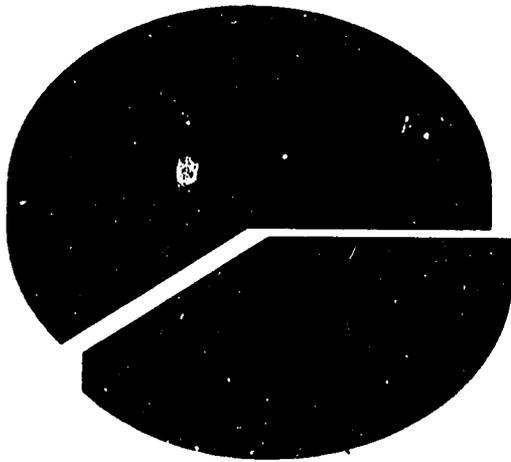
Since the effective date of 31 U.S.C. 1352 in December 1989, the Federal Acquisition Regulation and USAID's Handbook 13 have been modified to include provisions to implement the law's requirements. Additionally, in response to our prior audits, USAID's Procurement Executive issued two Contract Information Bulletins and, separately, M/OP/P issued a memorandum clarifying and reiterating certain aspects of the requirements. These internal policies addressed the continuing significant rates of noncompliance noted by prior audits.

As shown in the chart on the following page, for the present audit our judgmental sample of awards reviewed in USAID/Washington and the Regional Support Mission for East Asia (RSM/EA) showed that the files for 11 of 28 awards reviewed in USAID/Washington (39 percent) and 6 of 30 awards reviewed at RSM/EA (20 percent) did not contain evidence that lobbying certifications were obtained.

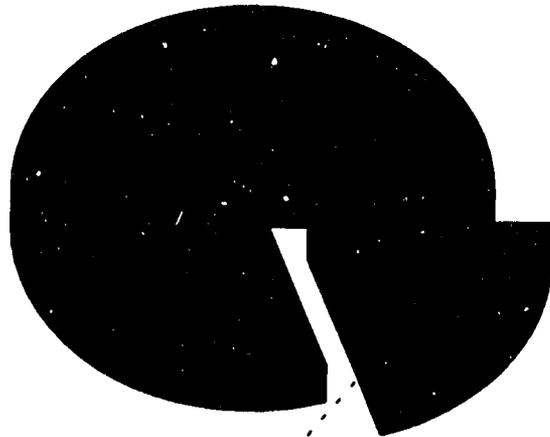
# USAID/Washington and the Regional Support Mission for East Asia

## Files Which Lacked Awardee Certification Regarding Lobbying

USAID/Washington



Regional Support Mission  
for East Asia  
(Thailand)



Lacking Awardee Certification

For 15 of 17 cases where the files lacked the required certification regarding lobbying, we determined that contract and grant personnel had been unaware of, misunderstood, or simply overlooked the requirement. The remaining two cases lacked sufficient documentation for us to assess whether the required certification had been obtained.

For USAID/Washington we attribute part of the problem to a large influx of new personnel during fiscal year 1994. However, more basically, at each location we noted a lack of a checklist-type of system to focus the attention of contract and grant personnel at the appropriate points in the procurement process on the need to consider lobbying requirements. At the conclusion of our audit fieldwork the Bureau for Management's Office of Procurement was putting into operation an automated "prompt and response" contract and Handbook 13 grant writing system (the Document Generation System) which could be tailored to better focus attention on lobbying restriction requirements.

**Certification Statements Were Not Always Obtained When Required**

Federal law (31 U.S.C. 1352) requires that persons requesting contract, grant, cooperative agreement and loan awards exceeding specified dollar thresholds to file certifications that no appropriated funds have or will be used in lobbying for the awards and that lobbying paid with the awardees' own funds will be disclosed. Further, regulations implementing this law make the submission of the certification by prospective recipients a prerequisite to making an award. While USAID requires that the law and regulations be followed, and has issued specific internal policy in response to our annual audits, its procurement personnel continue to make a significant number of awards without obtaining the required certifications from awardees. The apparent reason for this situation is that in the press of their business procurement personnel often overlook the requirement or mistakenly believe the requirement does not apply to the award they are processing. As a result, USAID had reduced assurance that recipients were complying with the lobbying requirements of 31 U.S.C. 1352. We believe that USAID should address this problem by ensuring that an automated contract and grant writing system that it was fielding at the close of our audit includes provisions to focus the attention of procurement personnel on lobbying restriction requirements.

**Recommendation No. 1: We recommend that the Bureau for Management's Office of Procurement include provisions in the automated contract and grant writing system (the Document Generation System) which alert procurement personnel to the need to include lobbying restrictions. These provisions should be included in applicable pre- and final award documents for the full array of award situations these personnel deal with.**

Federal law (31 U.S.C. 1352) requires persons who request or receive a Federal contract, grant or cooperative agreement in excess of \$100,000 or

a loan or a commitment to guarantee or insure a loan in excess of \$150,000 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 Congress or an agency in connection with any Federal action<sup>4</sup> described in the Law, and

a statement setting forth whether such persons have made or have agreed to make a payment, using **other than appropriated** funds, to influence or attempt to influence Congress or an agency in making that specific award<sup>5</sup>.

The Office of Management and Budget issued guidance on implementing the law which led to a revision of the Federal Acquisition Regulation (FAR), applicable to contracts, and the Code of Federal Regulations, applicable to awards not subject to the FAR. Additionally, as a result of the significant rates of noncompliance noted by our second and third annual audits<sup>6</sup> of USAID's compliance with the law, USAID's Procurement Executive issued Contract Information Bulletins (CIBs) 92-10 of April 20, 1992 and 93-12 of May 5, 1993<sup>7</sup> explaining the law's requirements and specifying certain implementation procedures to be followed within USAID. Further, in response to last year's audit<sup>8</sup>, which again noted a significant noncompliance rate, M/OP/P issued a memorandum dated April 22, 1994 reiterating certain aspects of CIB 93-12.

Despite the above-mentioned guidance, however, our present audit found a continuing significant rate of noncompliance by USAID contract and grant personnel to obtain required lobbying certifications prior to making awards. In USAID/Washington, 11 of 28 award files reviewed were missing the required certification statement, while at RSM/EA the statements were

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<sup>4</sup>Federal actions include the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the modification of any Federal contract, grant, loan or cooperative agreement.

<sup>5</sup>Title 31 U.S.C. 1352 requires award recipients to file subsequent disclosure statements if events occur that materially effect the accuracy of the information contained in previous statements. Disclosures are to be reported on Standard Form - LLL "Disclosures of Lobbying Activities".

<sup>6</sup>IG Audit Report Nos. 9-000-92-004, dated 2/14/92, and 9-000-93-001, dated 3/10/93.

<sup>7</sup>On June 30, 1993, the Procurement Executive issued Contract Information Bulletin 93-12 (Supplement) as an amendment and clarification to CIB 93-12.

<sup>8</sup>IG Audit Report 9-000-94-003, dated 2/17/94.

missing for 6 of 30 award files reviewed. As detailed below, we interviewed the contract/grant personnel involved to determine why they had not obtained the required certifications.

For 9 of the 11 noncompliance cases in USAID/Washington, procurement personnel indicated they did not obtain the certification statements from awardees due to:

1. incorrectly believing that the requirement did not apply to their awards (2 cases),
2. lack of knowledge of the requirement (3 cases),
3. overlooking the requirement (2 cases), and
4. failing to communicate the requirement formally to the awardee and subsequently neglecting to verify receipt of a certification (2 cases).

The remaining two USAID/Washington cases involved a lack of sufficient evidence for us to assess whether the certification statements had been obtained. In one case the contracting person stated she had obtained the required certification but she did not provide adequate evidence. In the other case we were unable to contact the person who had processed the award and the file was incomplete.

As for RSM/EA, contracting personnel there stated they had overlooked the requirement.

During fiscal year 1994 the Bureau for Management's Office of Procurement (M/OP) hired a large number of new contract negotiators which would partially explain the high rate of noncompliance noted for USAID/Washington. However, beyond this some negotiators indicated that they receive a constant flow of guidance additions and changes regarding the various types of awards that they might be required to process and that, under the pressure to process the volume of work that needs to be done, it is easy not to take the time to research the guidance that applies. They further stated that they do not use checklists and indicated that the ones that exist are out of date.

We concluded that the primary problem that has led to the continuing significant rate of failure of contract and grant personnel to obtain required lobbying certifications is the lack of a mechanism to focus their attention at the appropriate points in the procurement process on the need to obtain these certifications. In other words, a checklist system appeared necessary.

At the end of our audit fieldwork, USAID was in fact fielding an automated "prompt and response" contract and grant writing system (the Document Generation System) which was intended to be implemented in USAID/Washington and the field to standardize USAID contracts and Handbook 13 grants. During our prior year's audit the management of M/OP had expressed to us that the new system would serve as a mechanical checklist to ensure lobbying restriction requirements were met.

However, our review of the system being fielded disclosed that, while it still has not been finalized, the system does not address all the situations where contract and grant personnel need to focus on lobbying requirements. For instance, the system did not include one of the contract clauses required by the FAR in both the solicitation and final award documents. Also, the Handbook 13 provisions for lobbying restrictions were not included evidently because the system keys in only on Handbook 13's standard provisions and the lobbying provisions are not included in the standard provisions. Also, still under development according to the system manager are modules to deal with solicited and unsolicited grant proposals. Hence, it was too soon to evaluate whether these modules will adequately address lobbying restriction requirements.

We believe the automated contract and grant writing system offers the potential to focus the attention of contract and grant personnel at the appropriate points in the procurement process to include required provisions in pre- and final award documents and thus to reduce or eliminate the number of instances where USAID fails to obtain the required lobbying certifications. Further, as the system also lends itself to the inclusion of minor explanatory notes, we envision that this capability could be used to counteract the tendency of some procurement personnel to misunderstand the extent of the law's applicability.

For instance, a common misconception is that no new certification needs to be obtained for an amendment, modification or delivery order to a basic award which met the lobbying requirements. To counteract this misconception, a note could be added:

The law applies to all awards exceeding the dollar thresholds. Amendments, modifications and delivery orders to basic awards (with the sole exception of an incremental funding amendment which does not change the scope of the agreement) are considered to be separate awards and require separate lobbying certification statements.

The system could also be used to implement desirable controls over subawards, such as explicitly stating in grant award letters that the lobbying restriction provisions are to be included in subawards and to require that the certifications of proposed subawardees be submitted as part of the prime awardee's proposal.

In summary, the audit noted a continued significant rate of noncompliance similar to what was found on prior audits, and for generally the same reasons. We are not recommending that USAID issue further guidance to correct the problem since the existing guidance appears adequate. However, we do recommend that the automated contract and grant writing system, that was being fielded as of January 1995, include provisions to:

1. focus the attention of procurement personnel on the need to include lobbying restriction provisions in applicable pre- and final award documents,
2. reduce potential misunderstandings of the law's applicability through the use of explanatory notes, and
3. explicitly state in awards that lobbying restriction provisions are to be included in subawards, and solicit proposed awardees to submit the certifications of their proposed subawardees as part of their proposals.

### **Management Comments and Our Evaluation**

Management agreed with the recommendation stating that the Document Generation System (DGS) system administrator has highlighted the lobbying requirement as one that needs to be included in both the system's procurement and assistance instrument modules (see Appendix II). Based on management's agreement, we consider Recommendation No. 1 to be resolved.

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### **Did USAID compile disclosure statements and report on them to the Congress as required by 31 U.S.C. 1352?**

USAID compiled disclosure statements for fiscal year 1994 and reported semi-annually to the Congress as required by 31 U.S.C. 1352, except that one of the two reports was submitted after the date specified in the law. Also, not all USAID/Washington offices that have award authority subject

to the law were queried to determine whether they had disclosure statements to report and not all of the USAID/Washington offices and field missions that were queried responded.

The responsibility for collecting and reporting lobbying disclosure statements submitted by award recipients is assigned to the Bureau for Management's Office of Procurement, Policy Division (M/OP/P). USAID's semi-annual reports for fiscal year 1994, which according to the law are due on May 31 and November 30, were sent to the Congress on May 12 and December 21, 1994. Included in these reports were two disclosure statements for the current period and 23 disclosures from prior periods. The old disclosure statements were submitted by USAID's Office of American Schools and Hospitals Abroad (ASHA). (In our audit last year<sup>9</sup>, we reported that ASHA had been receiving lobbying disclosure statements from certain of its awardees but had not been notified that it was required to send the statements to M/OP/P for the semi-annual report to Congress.)

However, as discussed below, we considered the controls exercised by M/OP/P in querying USAID offices and field missions whether they had received any disclosure statements to be less than satisfactory.

#### **The Procedure Followed in Compiling Disclosure Statements Was Not Comprehensive**

The law (31 U.S.C. 1352) requires agencies to submit to Congress on a semi-annual basis copies of any lobbying disclosure statements received. As part of its responsibility to compile disclosure statements received by the Agency for the reports to Congress, M/OP/P sent a message to all contracting officers and negotiators to have them send to it copies of any disclosure forms which they might have received but not yet forwarded. A negative response was requested in case no disclosure statements had been received. However, the files that we reviewed did not provide evidence that all of the intended contracting personnel responded. Also, the message was not sent to other USAID offices that have award authority but do not use contracting officers to make the awards. As a result, USAID had less than satisfactory assurance that the nonreporting offices and missions in fact had nothing to report.

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<sup>9</sup>IG Audit Report No. 9-000-94-003, dated 2/17/94.

**Recommendation No. 2: We recommend that the Bureau for Management's Office of Procurement, Policy Division (M/OP/P) develop a procedure which ensures that all Agency offices having authority to make awards subject to the law's requirements are queried regarding any lobbying disclosure statements received. Such procedure should ensure and document that all such offices have received the message and are followed up on at least once by M/OP/P if they do not respond.**

Title 31 U.S.C. 1352 Subsection (b)(6)(A) states that the head of each agency shall collect and compile the disclosure statements, and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure statements received during the six-month period ending on March 31 or September 30, respectively, of that year.

In Contract Information Bulletin 92-10, USAID's Procurement Executive established policy directing all the Agency's contracting officers and negotiators to submit to M/OP/P copies of all disclosure statements received from awardees. M/OP/P compiles any disclosure statements received and prepares the semi-annual report to the Congress.

We reviewed the procedure used by M/OP/P in compiling the disclosure statements for the reporting period ending September 30, 1994 and noted that M/OP/P sent a message to all USAID contracting officers and negotiators requesting them to send to M/OP/P any disclosures received but not previously forwarded, so that M/OP/P could meet its reporting date to Congress. Negative replies were requested if no disclosures had been received.

File documentation, however, did not provide evidence of who the message was sent to or a confirmation that it was received. Also, there was no evidence in the files that all contracting offices responded to the message. Additionally, we noted that since the message was addressed only to contracting officers and negotiators, it would not have gone to bureau offices that make non-Handbook 13 grants and loans and commitments to insure or guarantee loans. These latter award authorities, which are concentrated in USAID's Bureau for Humanitarian Response and its Bureau for Global Programs, Field Support and Research, are also subject to the provisions of 31 U.S.C. 1352.

The above apparently happened because M/OP/P exercised weak control over its message to all USAID contracting offices and their responses.

Additionally, from our discussions with M/OP/P personnel it was evident that they considered their responsibility was limited to contract and Handbook 13 matters and that they were not aware of which offices within the Agency had authority to make other types of awards not made by contracting officers but nevertheless subject to the law.

As a result, M/OP/P had insufficient assurance that all disclosure statements received by the Agency were sent to it and therefore included in the Agency's report to the Congress. While we do not see a need to redo the Agency's report to Congress for the six-month period ending September 30, 1994, we believe that, in advance of the next report to Congress, M/OP/P needs to identify and contact all the offices within the Agency that have the authority to make awards subject to the law's provisions so as to inform these other offices of the applicability of the authority and the need to submit any disclosure statements received to M/OP/P. Also, for future messages to USAID/Washington offices and field missions asking them to submit any disclosure statements received, we believe that M/OP/P should document the receipt of the messages by the intended parties, the applicable response, and follow-up efforts by M/OP/P in the cases where there has been no response.

#### **Management Comments and Our Evaluation**

Management stated that Recommendation No. 2 will be implemented when the next semi-annual report to Congress is due (see Appendix II). Therefore we consider Recommendation No. 2 to be resolved.

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