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FROM THE AMERICAN PEOPLE

*Office of Inspector General*

March 30, 2005

**MEMORANDUM**

**TO:** Mission Director, USAID/West Bank and Gaza, James A. Bever

**FROM:** Regional Inspector General/Cairo, David H. Pritchard /s/

**SUBJECT:** Survey of USAID/West Bank and Gaza's Implementation of Executive Order 13224 – Blocking Property and Prohibiting Transactions With Persons who Commit, Threaten to Commit, or Support Terrorism (Report No. 6-294-05-004-S)

This memorandum transmits our final report on the subject survey. This is not an audit report, and the report includes one recommendation to develop and implement procedures to ensure that acquisition and assistance files contain all documentation that allows the Mission to better comply with Executive Order 13224. Based on the actions taken by the Mission to implement the recommendation, both a management decision and final action have been reached for Recommendation No. 1.

In finalizing our report, we considered your comments on the draft report and have included your response in its entirety in Appendix II.

I appreciate the cooperation and courtesy extended to our staff throughout the survey.

# BACKGROUND

Following the events of September 11, 2001, President Bush issued Executive Order 13224 - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism, of September 24, 2001. Executive Order 13224 designated certain individuals and entities that commit or pose a significant risk of committing terrorist acts. The Order also authorized both the Secretary of State and the Secretary of Treasury to designate additional individuals and entities. The Order prohibited transactions with, and provision of support for, individuals or entities listed in or subject to the Order.

USAID's Automated Directives System 313.5.2b, "Awards to Suspended or Debarred Contractors/Suppliers", prohibits contracts with any party on the U.S. General Services Administration's excluded parties list. This list includes the names of individuals and entities subject to Executive Order 13224.

USAID has issued five Acquisition & Assistance Policy Directives (AAPD) to implement Executive Order 13224. AAPD 02-04 (March 20, 2002) required USAID contracting officers to ensure that all USAID contractors and recipients are aware of Executive Order 13224 and the names of the individuals and entities designated thereunder. AAPD 03-04 (May 1, 2003) amended AAPD 02-04 to provide alternate language for grants issued to the United Nations or its agencies. AAPD 04-14<sup>1</sup> (September 24, 2004) required USAID agreement officers to obtain a certification from both U.S. and non-U.S. non-governmental organizations that the organization does not support terrorism, before receiving an award of a grant or cooperative agreement.

The Consolidated Appropriations Acts of 2003, 2004, and 2005 provided USAID's Office of Inspector General with funds to carry out audits to ensure, among other things, that USAID funds were not provided to or through any individual or entity that advocates, plans, sponsors, engages in, or has engaged in, terrorist activity. Allegations that USAID funds were going to terrorist organizations had engendered media and congressional interest.

The Office of Inspector General has implemented a program under which it annually audits USAID's contractors and recipients, and significant subcontractors and subrecipients, that are funded for the West Bank and Gaza program. These financial audits also specifically test for compliance with the prohibitions on terrorist funding.

## **SURVEY OBJECTIVE**

We conducted this survey as part of the Office of Inspector General's fiscal year 2004 audit plan to answer the following question:

- How has USAID/West Bank and Gaza implemented Executive Order 13224 on Terrorist Financing for assistance and acquisition activities funded by USAID/West Bank and Gaza as of June 30, 2004?

Appendix I contains a discussion of the survey's scope and methodology.

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<sup>1</sup> AAPD 04-14 superceded AAPD 02-19 (December 31, 2002) and AAPD 04-07 (March 24, 2004).

# DISCUSSION

USAID/West Bank and Gaza primarily<sup>2</sup> implemented Executive Order 13224 on terrorist financing through three mechanisms:

- Vetting—reviewing organizations and individuals by the U.S. Government to ensure that the organizations or individuals are not affiliated with terrorism.
- Certifications—requiring all organizations to certify that the organization does not provide material support or resources for terrorism, before being awarded a grant or cooperative agreement by USAID.
- Clauses—requiring a clause in all solicitations and awards for contracts, grants, and cooperative agreements which reminds contractors and recipients that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism.

In addition, as required by the Consolidated Appropriations Acts of 2003, 2004, and 2005, the Office of Inspector General oversees audits of USAID's contractors and recipients, and significant subcontractors and subrecipients, that are funded for the West Bank and Gaza program. The Office of Inspector General has coordinated these audits with USAID/West Bank and Gaza.

USAID/West Bank and Gaza provided funding to foreign contractors, foreign non-governmental organizations, U.S. contractors, U.S. non-governmental organizations, contractors funded under the Cash Transfer Grant Agreement to the Palestinian Authority, and public international organizations. For these entities, USAID/West Bank and Gaza used three mechanisms to implement Executive Order 13224. Its use of a specific implementation mechanism differed depending on the type of organization as shown in the following table.

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<sup>2</sup> USAID/West Bank and Gaza also employs other mechanisms, such as USAID staff scrutinizing various aspects of the recipient's operations as part of the standard due diligence and pre-award survey.

**Table 1: USAID/West Bank & Gaza Implementation Mechanisms for Executive Order 13224**

<b>Type of Organization funded by USAID</b>	<b>Vetting of Organizations and Individuals</b>	<b>Certifications by Organizations<sup>3</sup></b>	<b>Clauses in Contracts and Awards</b>
Foreign contractor	Yes	No	Yes
Foreign non-governmental organization	Yes	Yes	Yes
U.S. contractor	Yes	No	Yes
U.S. non-governmental organization	No	Yes	Yes
Contractor funded by the Cash Transfer Grant Agreement to the Palestinian Authority	Yes	No	No
Public international organization <sup>4</sup>	No	No	Yes/No <sup>5</sup>

### **Vetting of Organizations and Individuals**

USAID/West Bank and Gaza required foreign contractors (receiving over \$100,000 annually), foreign non-governmental organizations, U.S. contractors, and contractors funded under the Cash Transfer Grant Agreement to the Palestinian Authority to be tested, or vetted, for affiliation with terrorism. USAID/West Bank and Gaza did not vet public international organizations and U.S. non-governmental organizations. USAID/West Bank and Gaza performed the vetting by checking the names of organizations and individuals against U.S. government lists for terrorist affiliation.

On July 12, 2003, the Mission Director for USAID/West Bank and Gaza approved vetting procedures to ensure that the Mission's assistance program did not provide support to entities or individuals associated with terrorism. These procedures included the following provisions:

- With respect to organizations, vetting applied only to first-tier and second-tier recipients.

<sup>3</sup> USAID/West Bank and Gaza noted that the deciding factor for obtaining the certification is not based on the type of recipient/contractor but rather on the type of award. A cooperative agreement or grant requires the recipient to sign this certification. U.S. contractors are entitled to receive cooperative agreements provided that they forgo profit on these awards. In these cases they will be required to sign the certification.

<sup>4</sup> According to USAID's Automated Directives System 308.6, a public international organization is an organization composed principally of governments, in which the United States participates.

<sup>5</sup> Public international organizations are not required to have the clauses except for the United Nations and its agencies as later discussed in relation to the requirements of AAPD-03-04.

- Government officials were exempt from vetting with respect to assistance provided to them in their official capacities.
- If an organization had already been vetted, the Deputy Mission Director decided whether vetting was required for each of the organization's branches that received assistance.
- For contracts and grants under interagency agreements, the recipient agency was to implement appropriate review procedures to ensure compliance with Executive Order 13224 and related requirements.

### **Certifications by Organizations**

USAID/West Bank and Gaza required both U.S. and foreign non-governmental organizations to certify that the organization does not support terrorism, before receiving an award of a grant or cooperative agreement. USAID/West Bank and Gaza did not require U.S. contractors, foreign contractors, public international organizations, and contractors funded under the Cash Transfer Grant Agreement to the Palestinian Authority to provide certifications. However, USAID/West Bank and Gaza required the Palestinian Authority to provide a similar certification for contracts funded under the Cash Transfer Grant Agreement.

AAPD 04-14, "Certification Regarding Terrorist Financing", required USAID agreement officers to obtain a certification from U.S. and non-U.S. non-governmental organizations that the organization does not support terrorism. The purpose of the certification is to provide USAID with assurances that it is not entering into an assistance agreement with an organization that provides or has provided assistance to terrorists or for terrorist activity. The certification required the recipient organization to:

- state that it has not provided, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that engages in terrorist activity;
- implement reasonable monitoring and oversight procedures to safeguard against USAID assistance being used, either directly or indirectly, to provide material support or resources to individuals or entities that engage in terrorist activity;
- immediately notify USAID and immediately cease support or transactions or dealings with any individual or organization listed in or subject to the Order.

If USAID determined that a recipient organization had violated any term or condition of the certification, USAID could immediately and unilaterally terminate the assistance agreement with the recipient organization.

In addition, the July 16, 2003, Cash Transfer Grant Agreement between the U.S. and the Palestinian Authority required the Palestinian Authority to submit a statement that none of the grant proceeds are furnished to any individual or organization that advocates, plans, sponsors, engages in, or has engaged in armed hostilities or other acts of violence.

## **Clauses in Contracts and Awards**

USAID/West Bank and Gaza ensured that all USAID contractors and recipients, except public international organizations (other than the United Nations and its agencies) and the Palestinian Authority, were aware of Executive Order 13224 by requiring a clause in all awards. All awards were to have the same standard clause, except those awards funded under the Cash Transfer Grant Agreement to the Palestinian Authority. According to AAPD 02-04, "Implementation of E.O. 13224 -- Executive Order on Terrorist Financing"; solicitations, contracts, annual program statements, requests for applications, grants, cooperative agreements, or other comparable documents issued by USAID must contain the following language:

"The Contractor/Recipient is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the contractor/recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all subcontracts/subawards issued under this contract/agreement."

AAPD 03-04 "Terrorist Financing Clause for grants to the United Nations or UN Agencies" amended AAPD 02-04 to provide the following alternate language for grants issued to the United Nations or its agencies:

"Consistent with numerous United Nations Security Council resolutions, including S/RES/1269 (1999), S/RES/1368 (2001) and S/RES/1373 (2001), both USAID and the Recipient are firmly committed to the international fight against terrorism, and in particular, against the financing of terrorism. It is the policy of USAID to seek to ensure that none of its funds are used, directly or indirectly, to provide support to individuals or entities associated with terrorism. In accordance with this policy, the Recipient undertakes to use reasonable efforts to ensure that none of the USAID funds provided under this grant agreement are used to provide support to individuals or entities associated with terrorism."

The July 16, 2003, Cash Transfer Grant Agreement between the United States and the Palestinian Authority did not include similar language and, therefore, USAID/West Bank and Gaza did not require this clause in contracts funded under the Cash Transfer Grant Agreement.

## **Audits of Organizations**

USAID/West Bank and Gaza worked closely with USAID's Office of Inspector General's program of annual audits for USAID/West Bank and Gaza's contractors and grantees, as mandated by the Consolidated Appropriations Acts of 2003, 2004, and 2005. These audits specifically test for compliance with the prohibitions on terrorist funding.

# CONCLUSION

## Vetting of Organizations and Individuals

USAID/West Bank and Gaza maintained vetting documentation for U.S. contractors, foreign non-governmental organizations, and foreign contractors, including contractors funded under the Cash Transfer Grant Agreement to the Palestinian Authority<sup>6</sup>. We verified the existence of vetting documentation for:

- 6 of 6 U.S. contractors subject to vetting requirements
- 26 of 26 prime awards to foreign contractors, foreign non-governmental organizations, or U.S. contractors and U.S. non-governmental organizations with subawards to foreign contractors or foreign non-governmental organizations subject to vetting requirements.<sup>7</sup>

## Certifications by Organizations

USAID/West Bank and Gaza maintained certification documentation for U.S. and foreign non-governmental organizations. We verified the existence of certification documentation for:

- 2 of 2 non-governmental organizations subject to the certification requirements. We reviewed 16 other awards to non-governmental organizations. However, these awards occurred prior to the effective date of USAID's first applicable Acquisition and Assistance Policy Directive which imposed the certification requirement.

## Clauses in Contracts and Awards

USAID/West Bank and Gaza maintained clause documentation for foreign contractors, foreign non-governmental organizations, U.S. contractors, and U.S. non-governmental organizations. We verified the existence of clause documentation for:

- 23 of 27 contractors and organizations subject to clause documentation requirements. We were unable to find clause documentation for 4 of 27 contractors and organizations.

## Audits of Organizations

USAID/West Bank and Gaza worked closely with USAID's Office of Inspector General to implement a program of annual audits for all of USAID/West Bank and Gaza's contractors and grantees. For the audits completed as of February 28, 2005:

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<sup>6</sup> We did not review foreign contractors funded under the Cash Transfer Grant Agreement to the Palestinian Authority.

<sup>7</sup> USAID/West Bank and Gaza vetted 1,270 entities under these 26 prime contracts and grants.

- 30 of 30 audits reported no instances of noncompliance with certification requirements.
- 25 of 30 audits reported no instances of noncompliance with contract/grant clause requirements. In five instances, the prime contractor did not include the required clause in all subcontracts. We are not making a recommendation because the five financial audit reports each resulted in a recommendation to the Mission.

### **Recommendation**

The United States General Accounting Office issued in November 1999 the “Standards for Internal Control in the Federal Government.” The General Accounting Office Standards included examples of control activities to help ensure that management directives are carried out. One of these basic control activities is the “accurate and timely recording of transactions and events.” As noted above, we were unable to find clause documentation for 4 of 27 contractors and organizations.

*Recommendation No. 1: We recommend that the Director, USAID/West Bank and Gaza, develop and implement procedures to ensure that acquisition and assistance files contain all documentation that allows the Mission to comply with Executive Order 13224.*

# EVALUATION OF MANAGEMENT COMMENTS

In its response to the draft report, USAID/West Bank and Gaza agreed with the finding that four awards did not incorporate the required special provision (clauses) complying with Executive Order 13224. In response to the associated recommendation, the Mission noted that the specific four agreements/contracts have all expired. Therefore, modifying these instruments was inappropriate since these awards were completed. In regard to procedures, the Mission reminded staff of the requirement to incorporate the special provision “Prohibition Against Support for Terrorism” complying with Executive Order 13224 in all Acquisition and Assistance instruments. The Mission also noted that it is generating all solicitation and award documents using the PRODOC system. The Mission verified that the latest version of this system generates the required provisions. In addition, the Contracting Officer established procedures which will ensure that all future solicitations and award documents incorporate this special provision.

Based on the actions taken by the Mission to implement the recommendation, both a management decision and final action have been reached for Recommendation No. 1.

# SCOPE AND METHODOLOGY

## Scope

The Regional Inspector General/Cairo conducted this survey to determine how USAID/West Bank and Gaza implemented Executive Order 13224. Our survey was not an audit and covered assistance and acquisition activities as of June 30, 2004.

We interviewed Mission staff and examined U.S. Government, USAID, and Mission documents, including:

- Executive Order 13224 – “Blocking Property And Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism”
- Cash Transfer Grant Agreement between the U.S. and the Palestinian Authority, dated July 16, 2003
- U.S. General Services Administration “Prohibited Parties List”
- USAID Acquisition and Assistance Policy Directives
- USAID Automated Directives System
- USAID/West Bank and Gaza’s acquisition and assistance files
- USAID/West Bank and Gaza action memorandum
- USAID/West Bank and Gaza’s vetting files

We did not independently verify information obtained from the Mission, including certifications, vetting results, or the universe of active acquisition and assistance awards, as of June 30, 2004. We reviewed the internal controls related to implementing Executive Order 13224, but we did not assess the sufficiency of those internal controls. No prior audit findings affected the Mission’s implementation of Executive Order 13224.

The purpose of our survey was to determine how USAID/West Bank and Gaza implemented Executive Order 13224. We reviewed awards and contracts dated after and subject to the requirements of relevant USAID Acquisition and Policy Directives. Based on the Mission’s implementation, we did not review awards and contracts signed before the issuance of relevant Acquisition and Assistance Policy Directives but after the issuance of Executive Order 13224. We also did not review vetting for sub-recipients under the Cash Transfer Grant Agreement between the U.S. and the Palestinian Authority, dated July 16, 2003, because audits under this Agreement will test for vetting of contractors.

We conducted this survey at USAID/West Bank and Gaza in Tel Aviv, Israel. The fieldwork was performed from July 26, 2004, through October 10, 2004.

## Methodology

We interviewed Mission management, including the Legal Adviser, Contracting Officer, and Deputy Mission Director, and collected documents to gain an overview of the Mission’s implementation of Executive Order 13224.

We then asked the Mission for a list of all acquisition and assistance awards for which funds had been obligated but not expended, e.g. active awards. The Mission supplied a

list of 55 active awards which included foreign contractors, foreign non-governmental organizations, U.S. contractors, U.S. non-governmental organizations, and public international organizations. In addition, we included in this survey the Cash Transfer Grant Agreement between the U.S. and the Palestinian Authority, dated July 16, 2003. Of the 55 active awards, the files of 48 active awards were readily available for review. The 48 files were sufficient to review how the Mission implemented Executive Order 13224. Our methodology varied depending on the implementation mechanism (vetting, certifications, clauses) used by the Mission.

For vetting of organizations and individuals, we determined that 32 of the 48 active awards were of the type that were subject to vetting. Of these 32 awards, 6 were U.S. contractors and 26 were foreign contractors and foreign non-governmental organizations or U.S. contractors or grantees with subawards to foreign entities. For the 6 U.S. contractors, we reviewed the award file for documentation of vetting against the U.S. General Services Administration's excluded parties list. For the 26 prime awards with funds going to foreign contractors and foreign non-governmental organizations, we compared the list of these awards obtained from the Mission's Acquisition and Assistance Office against the list of vetted entities maintained by the Mission's Program and Project Development Office.

For certifications by organizations, we determined that 18 of the 48 active awards were of the type that were subject to certification requirements. Of these 18 awards, 16 occurred prior to the effective date of USAID's first applicable Acquisition and Assistance Policy Directive which imposed the certification requirement. For the remaining two awards, we reviewed the award files for documentation of the anti-terrorist certification.

For clauses in contracts and awards, we determined that 27 of the 48 active awards were of the type that were subject to clause requirements. For the 27 awards, we reviewed the award files for documentation of the mandatory clause on terrorism.

For audits of organizations, we summarized data from issued audit reports as of February 28, 2005.



### *Memorandum*

**TO:** David H. Pritchard, Regional Inspector General, Cairo

**FROM:** James A. Bever, Mission Director, USAID/West Bank and Gaza /s/

**SUBJECT:** *Draft Survey Report of USAID/West Bank and Gaza's implementation of Executive Order 13224-Blocking Property and Prohibition with persons who commit, threaten to commit, or support terrorism. Report No. 6-294-05-00x-S*

**DATE:** March 22, 2005

USAID West Bank and Gaza wishes to thank the Regional Inspector General/ Cairo for the review of the Mission's Acquisition and Assistance files to verify compliance with Executive Order 13224 . We have reviewed the draft survey report (*Attachment A, cover memo*), and the following are our comments regarding the recommendation suggested in your report as well other comments regarding this report.

#### **Recommendation No. 1:**

We recommend that the Director, USAID/West Bank and Gaza, develop and implement procedures to ensure that acquisition and assistance files contain all documentation that allows the Mission to comply with Executive Order 13224.

#### **Management Comments**

We agree with the auditor's finding that the following four awards did not incorporate the required special provision complying with Executive Order 13224:

<b>Contract/Agreement No.</b>	<b>Program</b>	<b>Contractor/Recipient</b>	<b>Completion Date</b>
294-C-00-02-00231-00	Camp-well construction pilot drill	Saqqa & Khoudary, Inc.	8/04
294-A-00-02-00214-00	Emergency Employment Generation	United Palestinian Appeal, Inc. (UPA)	7/04
294-C-00-03-00223-00	Pipe Purchase	Corcel Corp.	1/05
294-C-00-03-00222-00	Pipe Purchase	InterBuilmat, Inc.	11/04

As shown above, these Agreements/Contracts are no longer valid as they have expired. Therefore, the Contracting Officer determined that modifying these instruments at this time is inappropriate since these awards have already been completed.

The OCM staff was reminded on August 2, 2004 (*see Attachment B*) of the requirement to incorporate the special provision “Prohibition Against Support for Terrorism” complying with Executive Order 13224 in all Acquisition and Assistance instruments. Furthermore, it is worth noting that the OCM staff is generating all solicitation and award documents using the PRODOC system. We have verified that the latest version of this system generates the required provisions for the various actions. In addition, the Contracting Officer, has established procedures which will ensure that all future solicitations and award documents incorporate this special provision (*see Attachment C*).

Therefore, we consider that there are sufficient procedures in place to ensure that acquisition and assistance files contain all documentation that allows the Mission to comply with Executive Order 13224.

**Additional Comments:**

With regard to Table No. 1 on page 3 of your report, please note that the deciding factor for obtaining the Anti Terrorism Certification is not based on the type of Recipient/Contractor but rather on the type of award contemplated. Any award of a Cooperative Agreement or Grant requires the Recipient to sign this certification. U.S. Contractors are entitled to receive Cooperative Agreements provided that they forgo profit on these awards, and therefore, in these cases they will be required to sign the ATC certification.

On the first paragraph on page 4 “Vetting of Organizations and Individuals” refers to U.S. contractors as being required to be vetted. Please note that while the mission does not perform the vetting process using the same procedures outlined for non- U.S. Contractors/Recipients, the Contracting Officer verifies that any U.S. contractor is not debarred or suspended from receiving awards from the Federal Government.

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