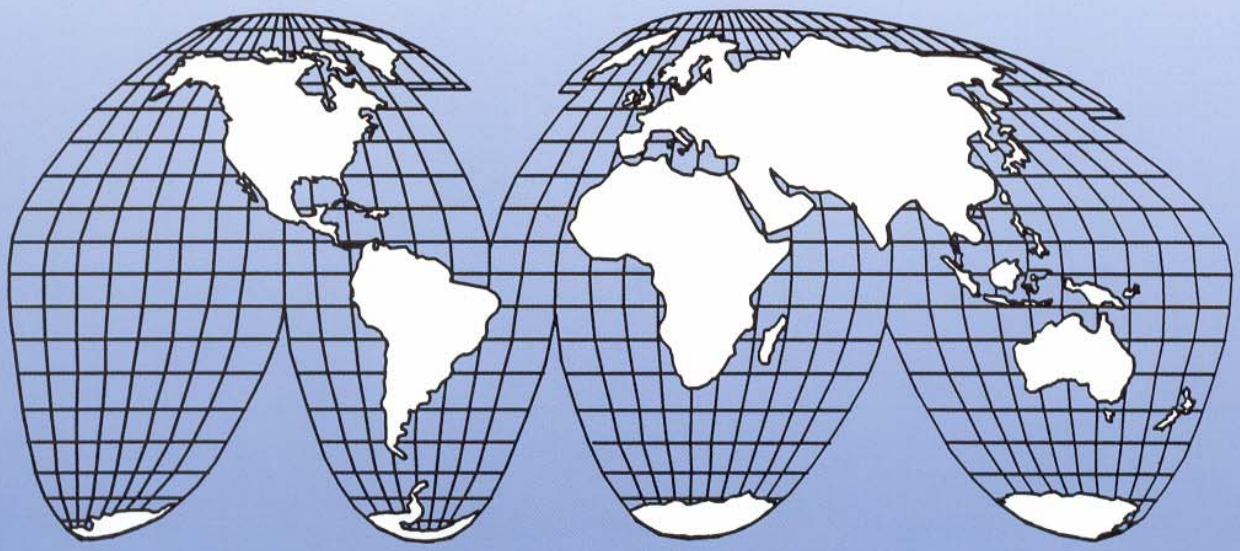
# USAID

## OFFICE OF INSPECTOR GENERAL

# Audit of Potential Conflicts of Interest in USAID/Ghana's Contracting and Managing of USAID-Financed Activities

**7-641-03-002-P**
**February 28, 2003**



**Dakar, Senegal**

February 28, 2003

**MEMORANDUM**

**TO:** Sharon Cromer, Director, USAID/Ghana

**FROM:** Lee Jewell III, RIG/Dakar /s/

**SUBJECT:** Audit of Potential Conflicts of Interest in USAID/Ghana's Contracting and Managing of USAID-Financed Activities (Report No. 7-641-03-002-P)

This memorandum is our report on the subject audit. In finalizing this report, we considered management's comments on our draft report. We have included those comments, in their entirety, as Appendix II to this report.

The report contains two recommendations. Based on your response to the draft report, we consider that management decisions have been reached and appropriate action taken by the Mission on both recommendations. Both recommendations are therefore considered closed upon issuance of this report. No further action is required of the Mission.

I appreciate the cooperation and courtesies extended to my staff during the audit.

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## Summary of Results

U.S. government employees are strictly prohibited from participating in activities involving conflicts of interest and are required to avoid even the appearance of conflicts of interest when serving in an official government capacity. The issue of conflicts of interest has become increasingly important for USAID as the Agency relies more and more on contractors to implement, design, and evaluate USAID financed projects. (See pages 5-6)

The Regional Inspector General, Dakar conducted this audit to determine if USAID/Ghana's files and other records reflect any potential conflicts of interest in the contracting and managing of its programs. To answer this audit objective, we identified and examined the controls that the Mission uses to reduce the risk of actual or potential conflicts of interest and reviewed documentation relating to a sample of USAID recipients to determine whether any improper personal or familial relationships existed. (See pages 6-7)

We found that USAID/Ghana's files and other records did not reflect any potential or actual conflicts of interest in contracting or managing its programs. Nevertheless, we noted weaknesses in the controls that the Mission uses to avoid or mitigate the risk of potential situations of conflicts of interest. We recommend that the Mission obtain signed conflict of interest certifications for all members serving on technical evaluation committees as required by its internal policies and USAID regulations. We also recommend that the Mission document and maintain up-to-date records of its ethics and other training relating to conflicts of interest. (See pages 7-9)

## Background

One of the most sensitive and high-risk areas of fraud within USAID programs is collusion for personal gain between USAID employees and USAID recipients including vendors, grantees, and contractors. This high-risk area has become increasingly important over recent years as USAID relies more and more on contractors, not only to implement projects, but also to design, evaluate and audit them. This mounting reliance on contractors has led to issues of conflicts of interest or the appearance of such conflicts. The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by U.S. government employees is essential to assure the proper performance of the U.S. government business and the maintenance of confidence in U.S. supported activities.

The Office of Government Ethics requires annual ethics training for federal employees. At USAID, U.S. direct hires and personal service contractors must attend the training if they are 1) presidential appointees, 2) persons who file either

a Public Financial Disclosure or a Confidential Financial Disclosure form or 3) contracting and procurement officials. It is strongly suggested that all USAID employees participate in the training. At USAID/Ghana, the regional legal advisor from USAID/Senegal is responsible for conducting the annual training sessions.

## Audit Objective

The Regional Inspector General, Dakar (RIG/Dakar) conducted this audit, as part of its annual audit plan for fiscal year 2002, to answer the following audit objective:

**Do USAID/Ghana's files and other records reflect any potential conflicts of interest in the contracting and managing of USAID/Ghana's programs?**

Relating to this objective and to mitigate situations of potential conflicts of interest, USAID directives require contracting officers to: (1) take reasonable action to avoid conflicts of interest on the part of technical evaluation team members, or their spouses or dependents; and (2) refer any potential problems to the cognizant Regional Legal Advisor. Additionally, USAID's Automated Directives System states that the agreement officer, the individual legally responsible for the award, shall take steps to ensure that members of the evaluation committee, both USAID staff and outside evaluators, do not have any conflicts of interest with regard to the organizations whose applications they will be reviewing.

The scope and methodology used to conduct this audit is included in Appendix I of the report.

## Audit Findings

**Do USAID/Ghana's files and other records reflect any potential conflicts of interest in the contracting and managing of USAID/Ghana's programs?**

USAID/Ghana's files and other records do not reflect any potential or actual conflicts of interest in contracting or managing its programs. However, we noted weaknesses in the controls, associated with the audit objective, that the Mission uses to avoid or mitigate the risk of potential situations of conflicts of interest.

As a result of our analyses, we found no instances in which Mission employees were related to USAID grantees, contractors, or vendors. Based on interviews with Mission staff, it appeared that USAID/Ghana employees understood the importance of remaining vigilant in guarding against conflicts of interest when serving in an official Mission capacity.

The *Standards of Ethical Conduct for Employees of the Executive Branch* contain general provisions prohibiting any action by a federal employee that would create even the appearance of using public office for private gain or loss of impartiality.

USAID's Automated Directives System (ADS) 303.5.5C specifically states that any individual, whether federal employee or non-federal employee, who reviews and evaluates any assistance application in conjunction with USAID-financed programs shall not have a conflict of interest. ADS 302.5.13 (b) further requires Contracting Officers to: (1) take reasonable action to avoid conflicts of interest on the part of technical evaluation committee (TEC) members, or their spouses or dependents; and (2) refer any potential problems to the cognizant Regional Legal Advisor (RLA). Additionally, ADS guidance states that the agreement officer, the individual legally responsible for the award, shall take steps to ensure that members of the evaluation committee, both USAID staff and outside evaluators, do not have any conflicts of interest with regard to the organizations whose applications they will be reviewing.

In addition to federal and USAID regulations governing organizational conflicts of interest, criminal statute Title 18 of the U.S. Code Section 208 prohibits employees from participating "personally and substantially"[1] in any particular financial matter(s) in which they have financial interests. For the purpose of this legal statute, financial interest is considered to be the same as that of the employee, for the following:

- Employee's spouse and minor children.
- The employee's general partner.
- An organization or entity in which the employee serves as an officer, director, trustee, general partner, or employee.
- A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

The Mission managed conflicts of interest primarily by (1) providing ethics information and training to its employees and (2) requiring certifications from employees serving on technical evaluation committees for procurement activities. The Mission also provided employees with copies of the booklet *Standards of Ethical Conduct for Employees of the Executive Branch,* which described in detail the components of what constitute conflicts of interest.

However, we noted weaknesses in the control areas relating to conflicts of interest certifications and training. First, the Mission's files did not include conflict of interest certifications for all TEC members who reviewed contract proposals as required by its own internal policy and procedures. Secondly, the Mission could not provide documentation evidencing the completion of training relating to conflicts of interest. These weaknesses are detailed below.

[1] "Participating personally and substantially in a Federal agency procurement" means active and significant involvement of the individual in any of the activities relating to developing the statement of work, drafting of the solicitation, selection of the source, negotiations of contract terms, or approving the award of the contract (Federal Acquisition Regulation subpart 3.1).

**USAID/Ghana Needs To Obtain Conflict of**
**Interest Certifications to Ensure Compliance**

The procurement function is one of the areas in which the Mission faces the highest potential for conflicts of interest. The procurement function supports all of the Mission's strategic objective teams and procures technical services from various contractors to assist USAID/Ghana in achieving its development objectives. To control this risk in the procurement function, the Mission requires conflict of interest certifications.

For three of the five contracts that we selected, conflict of interest certification statements were not obtained and documented in the procurement contract files. Automated Directives System (ADS) E302.5.13 and USAID Acquisition Regulation 715.305 require the Mission to obtain certifications from non-government evaluators (NGE) who serve and review contract proposals on technical evaluation committees. These certifications state that the evaluator perceives no actual or potential conflicts of interest. We found that the Mission's internal guidance, USAID/Ghana's *Guidelines for Technical Evaluations*, requires NGEs, as well as its own employees, to sign such a certification when they participate on technical evaluation committees to review contract proposals. Extending the use of the certification beyond NGEs is a positive and proactive step taken by the Mission, which reaffirms its commitment to avoiding conflict of interest situations.

Nevertheless, the Mission did not obtain signed conflict of interest certifications for NGEs and Mission employees serving on technical evaluation committees. This situation occurred because the Mission did not follow its own internal policies and procedures and USAID regulations, which require certifications for all TEC members. In order for controls to be effective and guard against potential or actual situations of conflict of interest, they must be adhered to and consistently implemented by the Mission. The Mission cannot be certain that all members serving on evaluation committees have no potential or actual conflicts of interest when members do not certify in writing that no such conflicts of interest exist.

> **Recommendation No. 1: We recommend that USAID/Ghana implement procedures to obtain signed conflict of interest certifications for all members serving on technical evaluation committees.**

**USAID/Ghana Needs to Maintain Documentation**
**As Evidence for Ethics and Other Related Training**

Providing training and information relating to conflicts of interest and standards of conduct within the federal government is another important control used by the Mission to guard against potential or actual conflicts of interest. In accordance

with USAID/Ghana's *Mission Operations Manual, Chapter 1000: Personnel Management,* the Mission should maintain up-to-date records of all completed Mission personnel training. Despite this requirement, the Mission could not provide documentation evidencing the completion of the ethics and other related training.

The ethics training is required each year for employees and contractors who are presidential appointees, contracting and procurement officials, or those employees required to file one of the financial disclosure forms. The RLA from USAID/Senegal generally conducts the sessions at USAID/Ghana. In addition to submitting documentation to Washington evidencing the completion of the training, the Mission should also maintain such documentation in its files. During interviews with the RLA and Mission staff at USAID/Ghana, it was asserted that the staff had participated in ethics training. However, the Mission could not provide a list documenting the employees who attended the ethics training or other evidence, such as training certifications, to support the recent ethics training held at USAID/Ghana. A limited review of the personnel files revealed training certification for certain employees for 1998 only.

As part of the Cognizant Technical Officers (CTO) certification program, the Mission also provides training to staff that includes a segment on standards of conduct and conflicts of interest in contract management. This training is either held at USAID/Ghana or offsite at another location. During the audit, the Mission could not provide adequate documentation for the CTO training held at offsite locations. For such training, supporting evidence such as training certifications or an attendance sheet was not maintained in the Mission's files. Instead, the training records were updated through verbal or written confirmation from Mission employees. The Mission stated that employees were responsible for maintaining their own certifications for the CTO training. The Mission did, however, maintain supporting documentation such as the attendance list for the CTO training held at USAID/Ghana.

Mission staff participated in ethics and other related training. Nevertheless, the Mission could not always provide sufficient evidence such as an attendance list or copies of training certifications to support the completion of the training. This occurred because USAID/Ghana did not follow its internal policies and procedures, which required the Mission to document and maintain up-to-date records for Mission training. Without supporting documentation, we could not determine with certainty whether the training was held, when the training was held, or who attended.

**Recommendation No. 2: We recommend that USAID/Ghana enforce its internal policies and procedures by maintaining copies of training attendance lists and certifications to support completion of ethics and Cognizant Technical Officers training.**

## Management Comments and Our valuation

In response to the draft report, USAID/Ghana agreed with all of the findings and recommendations in the draft audit report. Based on appropriate action taken by the Mission, all recommendations are considered closed upon the issuance of the final report.

Recommendation No. 1 asks that the Mission implement procedures to obtain signed conflict of interest certifications for all members serving on technical evaluation committees (TEC). The Mission concurred with this recommendation and will instruct the Cognizant Contracting Officer to establish procedures to ensure that all TEC members sign the required Conflict of Interest Certification and the Procurement Integrity Statement when the TEC meets. Certifications will be obtained from the committee chairperson and included in the contract file. The *Guidelines for Technical Evaluation* for all future procurements will include the following statement: "The Chairperson will provide the Contracting Officer with a completed Conflict of Interest Statement, signed by each TEC member, prior to the evaluation of the proposal by the TEC." In addition, procedures will be established to ensure that copies of the required form, noted in USAID automated directives system E302.5.13, and the guidelines to facilitate the completion of certifications are provided to the TEC members prior to the first meeting.

Recommendation No. 2 asks that the Mission enforce its internal policies and procedures by maintaining copies of training attendance lists and certifications to support completion of ethics and Cognizant Technical Officers (CTO) training. The Mission concurred with the recommendation and has instructed the USAID/Ghana Personnel Office, under the direction of the Executive Officer, to maintain copies of all CTO and Ethics training attendance documents in the individual personnel files of each employee.

## Scope and Methodology

### Scope

The Regional Inspector General, Dakar (RIG/Dakar) conducted this audit in accordance with generally accepted government auditing standards at USAID/Ghana in Accra, Ghana from October 15 through 30, 2002. We performed this audit to identify potential conflicts of interest in USAID/Ghana's contracting and managing of USAID-financed activities. The audit covered USAID/Ghana fiscal year (FY) 2001 disbursements of approximately $52 million, for both program and operating expenditures, and advances of $3.6 million[2]. Our audit population included all vendor disbursement data from the Mission Accounting Control System (MACS) reports of USAID/Ghana for FY 2001. Collaborative vendor information was obtained from outside USAID/Ghana through visits to the Ghana Chamber of Commerce and the Registrar General's Office. The findings and conclusions drawn from this audit are limited to the responses of the actual individuals interviewed and the sample data tested.

### Methodology

Our audit procedures comprised of two major methodology segments − the internal controls assessment segment and the vendors/personnel data matching and review segment − to determine the potential for or existence of conflicts of interest situations.

In the first segment, we reviewed the Mission's internal control assessment reports to identify any material weaknesses with regard to the Mission's monitoring of conflicts of interest exposure. We interviewed selected key members of the Mission staff, including the Executive Officer, the Controller, the Regional Contracting Officer and the strategic objectives team leaders and their key assistants, some of which were Cognizant Technical Officers. These interviews were performed to assess their understanding of, and to verify and document the Mission's compliance with, USAID's regulations pertaining to the avoidance of situations involving conflicts of interest. We requested from the responsible Mission personnel evidence of staff ethics training and certifications signed by members of technical evaluation committees to indicate their freedom from conflicts of interest vis-à-vis the bidders they evaluated. Based on these procedures, we arrived at a conclusion regarding the adequacy of the Mission's internal controls surrounding potential conflicts of interest.

In segment two of our procedures, the primary methodology employed was comparing contractor, grantee, and vendor data against Mission employee data to disclose any situations that would point to possible employee conflicts of interest. To facilitate this comparison, we developed employee and vendor databases using

[2]The amounts for disbursements and advances were derived from MACS and are unaudited.

Mission and external sources. We then compared fields between the databases to identify any similarities.

For the vendor database, we obtained from the Controller's office all disbursements made by the Mission in fiscal year 2001 as recorded in MACS. With the help of the Controller's staff, we eliminated disbursements pertaining to U.S.-based organizations, employee salaries, personal service contracts, and recurring obligations such as utilities and other obvious non-local vendor payments. We then sorted this universe of local vendor database from the largest to the smallest cumulative annual disbursement. Upon completion of the fieldwork in Accra, we discovered that the disbursement data included trust funds recorded in local currencies instead of U.S. dollars. The Mission inadvertently failed to disclose to us during the fieldwork that trust funds were included in the total disbursements. We manually adjusted the trust funds figures to reflect U.S. dollar equivalent.

From this database totaling 225 vendors, we selected a sample of 30 comprised of the following vendors: (1) ten judgmentally selected and (2) 20 randomly selected, using IDEA software. Using the selected USAID vendor files and vendor profile information obtained from the Ghana Chamber of Commerce and the Registrar General's office, we created a vendor database, including the vendor name, principals, street addresses, post office box numbers, and telephone numbers.

In developing the employee database, we reviewed USAID/Ghana employee personnel files and extracted data, including employee name, address, post office box, telephone number, names of relatives, and their post office boxes and telephone numbers. Based on discussions with the Executive Officer and our review of job descriptions, we identified and eliminated certain employees, such as janitors and drivers, who would generally have a minimal role in USAID transactions with vendors.

Finally, we compared name, telephone number, street address and post office box fields in the two databases for matches, using IDEA software. For those similarities identified between the two databases, we performed additional audit work, including interviews.

Due to the difficult nature of detecting conflicts of interest, we judged the audit risk to be high. Given that conflict of interest is regulated by U.S. criminal statutes and even one instance of conflict of interest could have severe negative consequences on the Mission's ability to accomplish its development goals, we considered any conflict of interest situation to be a material weakness.

**Management Comments** **to Ghana**

**January 9, 2003**

**TO:** **Lee Jewell III, RIG/Dakar**

**FROM:** **Sharon Cromer, Mission Director /s/**
**USAID/Ghana**

**SUBJECT:** **Draft Audit of Potential Conflict of Interest in USAID/Ghana's Contracting and Managing of USAID-Financed Activities (Report No. 7-641-03-00X-P)**

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The purpose of this memorandum is to provide Mission comments on the two audit findings and recommendations stated in the draft subject audit.

**Recommendation No. 1** – "We recommend that USAID/ Ghana adhere to its internal policies and USAID regulations by issuing a memo or implementing procedures to ensure that signed conflict of interest certifications are obtained for all members serving on technical evaluation committees."

**Mission Response** – Mission concurs that a signed certification should be obtained and documented in all contract files for Technical Evaluation Committee (TEC) members. The cognizant Contracting Officer will establish procedures to ensure that all TEC members sign the required Conflict of Interest Certification and the Procurement Integrity Statement when the TEC committee meets. Certifications will be obtained from the committee chairperson and included in the contract file. The "Guidelines for Technical Evaluation" for all future procurements will include the following statement: "The Chairperson will provide the Contracting Officer with a completed Conflict of Interest Statement, signed by each TEC member, prior to the evaluation of the proposal by the TEC". In addition, procedures will be established to ensure that copies of the required form, noted in ADS E302.5.13, and the guidelines to facilitate the completion of certifications are provided to the TEC members prior to the first meeting.

**Recommendation No. 2** – "We recommend that USAID/Ghana enforce its internal policies and procedures by documenting with appropriate evidence and maintaining up-to-date records for its Ethics and Cognizant Technical Officers (CTO) Training."

**Mission Response** - Mission concurs with the recommendation that ethics and CTO training should be documented in accordance with established policies and procedures. USAID/Ghana has hosted a

number of CTO training courses and provides ethics training to staff on an annual basis. The USAID/Ghana personnel office, under the direction of the EXO, will maintain copies of all CTO and Ethics training attendance documents in the individual personnel files of each employee.