

Strategic Objective Agreement (SOA)

USAID Agreement No. 121-0002

MILLENNIUM CHALLENGE ACCOUNT THRESHOLD PROGRAM

STRATEGIC OBJECTIVE AGREEMENT

BETWEEN

THE GOVERNMENT OF

THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF UKRAINE

FOR THE PROGRAM TO

REDUCE CORRUPTION IN THE PUBLIC SECTOR

Millennium Challenge Account Threshold Program

STRATEGIC OBJECTIVE AGREEMENT

Between

The Government of the United States of America, acting through the United States Agency for International Development ("USAID")
and

The Government of Ukraine, acting through the Ministry of Economy of Ukraine
(hereinafter referred to as the "GoU" or "Grantee")

Article 1: Purpose.

The purpose of this Strategic Objective Agreement ("Agreement") is to set out the understanding of the parties named above (the "Parties") about the Strategic Objective described below. This Agreement is concluded within the framework of the Agreement between the Government of the United States of America and the Government of Ukraine regarding Humanitarian and Technical Economic Cooperation dated May 7, 1992 ("1992 Bilateral Agreement").

Article 2: Strategic Objective and Results.

Section 2.1: Strategic Objective. The Strategic Objective ("Objective") is to reduce corruption in the public sector through strengthening civil society's monitoring and exposure of corruption, judicial reform, strengthening government monitoring and enforcement of ethical and administrative standards, streamlining and enforcing regulations and combating corruption in higher education.

Section 2.2: Annex 1, Amplified Description. Annex 1, attached, amplifies the above Objective, describes the Program to Reduce Corruption in the Public Sector (the "Program"), and the expected Results. Within the limits of the above definition of the Objective in Section 2.1, Annex 1 may be changed by written agreement of the authorized representatives of the Parties, without formal amendment of this Agreement.

Article 3: Contributions of the Parties.

Section 3.1: USAID Contribution.

- (a) The Grant. To help achieve the Objective, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, and Section 616 of the Millennium Challenge Act of 2003, hereby grants to the GoU, under the terms of this Agreement, not to exceed Thirteen Million Eight Hundred and Twenty Thousand United States ("U.S.") Dollars (\$13,820,000) (the "Grant"). The Grant is made on a gratuitous and non-returnable basis, except as required by the 1992 Bilateral Agreement or by Annex 2 to this Agreement.

- (b) Total Estimated USAID Contribution. USAID's total estimated contribution to achievement of the Objective will be U.S. \$44,970,000, which will be provided in increments. Subsequent increments will be subject to the availability of funds to USAID for this purpose, the conditions precedent stated in Section 5.2, and the mutual agreement of the Parties, at the time of each subsequent increment, to proceed.

Section 3.2: Government of Ukraine Contribution.

The GoU agrees to provide or cause to be provided all funds approved in the State Budget of Ukraine for each year during the Program, in addition to those provided by USAID and any other donor identified in Annex 1, and all other resources required to complete, on or before the Completion Date, all activities necessary to achieve the Results. The GoU agrees to propose inclusion of funds sufficient to carry out the Program in annual draft laws on the State Budget of Ukraine, and to use its best efforts to advocate and secure approval of such funds by the Verhovna Rada.

Article 4: Completion Date.

- (a) The Completion Date, which is January 31, 2009, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all the activities necessary to achieve the Objective and Results will be completed.
- (b) Except as USAID may otherwise agree to in writing, USAID will not issue or approve documentation which would authorize disbursement of the Grant for services performed or goods furnished after the Completion Date.
- (c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, are to be received by USAID no later than nine (9) months following the Completion Date, or such other period as USAID agrees to in writing before or after such period. After such period USAID, at any time or times, may give notice in writing to the GoU and reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, were not received before the expiration of such period.

Article 5: Conditions Precedent

Section 5.1: First Disbursement. Prior to the first disbursement under the Grant, or to the issuance by USAID of documentation pursuant to which disbursement will be made for activities other than those of Component 1 of the Program, the GoU will, except as the Parties may otherwise agree in writing, furnish to USAID in form and substance satisfactory to USAID:

- (a) An opinion of counsel, or other official document acceptable to USAID stating that this Agreement has been duly authorized or ratified by, and executed on behalf of the GoU, and that it constitutes a valid and legally binding obligation of the Government of Ukraine in accordance with all of its terms;

- (b) A statement of the name of the Authorized Representative of the Grantee specified in Section 8.2, and of any Additional Representatives of the Grantee, as provided in Section 8.2, for the management and implementation of Components 2 through 5 of the Program, as described in Annex 1, together with a specimen signature of each person specified in such statement;
- (c) Documents demonstrating that an MCC Threshold Program Board of the GoU (the "Board") has been established, detailing the membership of the Board, the officials primarily responsible for overseeing implementation of Components 2 through 5 of the Program, the powers and responsibilities of the Chairman and other primary officials of the Board, and demonstrating that an appropriate person has been appointed as Chairman of the Board;
- (d) A general plan for coordination by the GoU of implementation of Components 2 through 5 of the Program, that assigns implementation responsibilities for each Component among the central and other bodies of executive power of the Grantee and that explains arrangements for coordination of Program implementation activities by the Board with the Cabinet of Ministers, the Presidential Secretariat, the Judicial Branch, and the Verhovna Rada; and
- (e) A statement of the laws that the GoU needs to propose to the Verhovna Rada for enactment or amendment, and of the regulations that the GoU needs to issue or amend in order to attain the Results expected under each Component of the Program, and to accomplish the Objective.

Section 5.2. Disbursement for Components 2, 3, 4 or 5 of the Program. Prior to Disbursement under the Grant in excess of \$1 000,000 for any of Components 2, 3, 4 or 5 of the Program, or to the issuance by USAID of documentation pursuant to which such disbursement will be made the GoU will, except as the Parties may otherwise agree in writing, furnish to USAID, in form and substance satisfactory to USAID, an implementation plan for such Component, demonstrating how activities will be implemented in order to attain the Results and accomplish the Objective, with timetables for implementation of activities within each such Component, including timing of the enactment or amendment of the laws and the issuance or amendment of the regulations necessary to do so.

Section 5.3: Notification. USAID will promptly notify the Grantee in writing when USAID has determined that the conditions precedent in Section 5.1 or Section 5.2 have been met, respectively.

Section 5.4: Terminal Dates for Conditions Precedent. The terminal date for meeting the conditions specified in Section 5.1 and Section 5.2 is 90 days from the effective date of this Agreement or such later date as USAID may agree to in writing before or after the above terminal date. If the conditions precedents in Section 5.1 and Section 5.2 have not been met by the above terminal date, USAID, at any time, may terminate this Agreement in whole or in part by written notice to the Grantee.

Article 6: Covenants Regarding Program Implementation.

The Parties recognize that successful implementation of the Program in order to achieve the Results and accomplish the Objective will require the continual political will to accomplish the Objective, coordination and cooperation among many agencies of both

governments and their grantees and contractors, and the drafting and enactment of many new or amended laws and regulations.

- (a) Successful accomplishment of the Strategic Objective, and achievement of the Results expected by implementation of the five Components of the Program will require the GoU to develop and propose for enactment several new or amended laws, and to develop and issue many new or amended regulations or procedures concerning the operations of agencies of the GoU and concerning economic activities and legal rights and responsibilities of citizens. The GoU promises to develop and propose such new or amended laws to the Verhovna Rada for debate and enactment, and to use its best efforts to advocate and secure the enactment of such laws by the Verhovna Rada. The GoU further promises to develop and issue appropriate regulations and procedures, and to effectively and impartially implement such laws and regulations, in order to promote and accelerate the accomplishment of the Strategic Objective, the reduction of corruption in the public sector, and achievement of the expected Results, as described in this Agreement.
- (b) For each of Components 2 through 5, consistent with Section 5.2 above, the Parties will develop and approve an implementation plan that includes a statement of the major laws and regulations that must be enacted, issued or amended, in order to ensure the achievement of the expected Results, and the accomplishment of the Strategic Objective, with an estimated timetable for enactment or issuance. If USAID determines that the accomplishment of the Results expected for a Component, or the accomplishment of the Strategic Objective overall is improbable because of failure of the GoU to draft new or amended laws and advocate their enactment by the Verhovna Rada, or to issue or amend regulations necessary to achievement of the Results and accomplishment of the Strategic Objective in a timely manner, then USAID may utilize the procedures stated in Annex 2, Section E.1. to suspend or terminate assistance for the Component or for specified activities within the Component that are affected by the lack of enactment of appropriate laws, or issuance of appropriate regulations, until such time as such laws are enacted or regulations issued.
- (c) The GoU will appoint, hire or assign sufficient and appropriate staff to the Secretariat of its Board, including appropriate personnel of senior rank who have access to senior decision-makers in the Cabinet of Ministers, the Presidential Secretariat, the Judicial Branch, and to members of the Verhovna Rada, so that the Board and its Secretariat will be able to actively coordinate activities of the GoU to implement Components 2 through 5 of the Program in order to attain the Results and accomplish the Objective.

Article 7: Procurement and Grant-Making Procedures.

- (a) Unless the Parties agree otherwise in writing, USAID shall commit and subobligate all Grant funds under USAID procedures for grants and contracts for the activities and Results described in Annex 1, the Amplified Description of the Program, through U.S. Government procedures for awarding grants and contracts. The provisions of the 1992 Bilateral Agreement, and the provisions of the Memorandum of Understanding between the United States Agency for International Development and the National Agency of Ukraine for Development and European Integration on Procedures for Cooperation on Technical Assistance dated December 7, 1999 ("1999 Memorandum"), shall apply to

activities and to implementing organizations funded through this Agreement. For the purposes of this Agreement “implementing organization” shall mean any legal entity (resident or non-resident of Ukraine) that has legal responsibility for implementing the Program, described in Annex 1, in whole or in part, and has a written agreement with USAID.

- (b) GoU officials or other individuals designated by the GoU will participate in the processes of solicitation for and awarding of grants and contracts to implement the Program, and in monitoring and evaluating the performance and progress of implementing organizations selected to assist the Parties to implement the Program. Details of cooperation between the Parties on procurement and grant-making procedures are provided in Annex 1, and may be further agreed by Implementation Letter, as provided in the Standard Provisions, Annex 2.
- (c) The Parties agree that, in addition to Ukrainian public bodies and private organizations, several U.S. or other international implementing organizations may work under contracts or grants with USAID to provide technical assistance in order to implement the Program under the 1992 Bilateral Agreement. The Program will be registered with the GoU, and the U.S. or other international implementing organizations will be accredited with the GoU, as provided in the 1999 Memorandum.

Article 8: Miscellaneous.

Section 8.1: Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telefax, and will be deemed duly given or sent when delivered to such Party at the following address:

To USAID:

Mail Address:

Director,
United States Agency for International Development (USAID)
Regional Mission for Ukraine, Belarus and Moldova
19 Nyzhny Val
04071 Kyiv, Ukraine

Telephone: (380-44) 537-4600

Telefax: (380-44) 537-4684

To the Grantee:

Mail Address:

Minister,
Ministry of Economy of Ukraine
12/2 M. Hrushevskoho
01008 Kyiv, Ukraine

Telephone/Telefax: (380-44) 253-0683
Telephone: (380 44) 253 -1233

All such communications will be in English and in Ukrainian, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

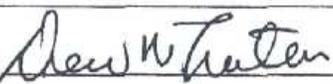
Section 8.2: Authorized and Additional Representatives.

For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding the position or acting as Minister of Economy of Ukraine and USAID will be represented by the individual holding or acting in the Office of Director, USAID Regional Mission to Ukraine, Belarus and Moldova (the "Authorized Representatives" of the Parties) each of whom, by written notice, may designate additional representatives for specific purposes other than signing formal amendments to the Agreement or exercising the power under Section 2.2 to revise Annex 1 ("Additional Representatives"). The names of the Representatives of the Grantee, with specimen signatures, will be provided to USAID, which may accept as duly authorized any instrument signed by such Representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

Section 8.4: Language of Agreement.

This Agreement is prepared in both English and Ukrainian, both texts being equally authentic.

IN WITNESS WHEREOF, the Government of United States of America and the Government of Ukraine, each acting through its duly authorized representatives, have caused this Agreement to be signed in their names and delivered in Washington, D.C, as of this 4 day of December 2006. This Agreement shall enter into force upon signature by both Parties.

GOVERNMENT OF UNITED STATES OF AMERICA	GOVERNMENT OF UKRAINE
By: 	By: 
Name: Drew W. Luten	Name: Volodymyr Makukha
Title: Acting Assistant Administrator Bureau For Europe and Eurasia United States Agency for International Development	Title: Minister of Economy of Ukraine

SOA No. 121-0002 Annex 1

Amplified Description of the Program to Reduce Corruption in the Public Sector in Ukraine

This Annex describes the activities to be undertaken by the Parties, and the Results expected to be achieved with the funds obligated under this Agreement. Nothing in this Annex 1 shall be construed as amending any of the definitions or terms of the Agreement.

I. Background:

The Government of Ukraine has recently made some reforms in such areas as the police force, customs service, and tax administration. International organizations and experts have repeatedly highlighted the targeted areas as significantly contributing to corruption in Ukraine, constraining economic investment and growth and limiting access to fair and equal opportunity and justice for the Ukrainian people. Initial steps for introducing reform in these four areas have already been taken – including passage of the Concept of Judicial Reform, deregulation at the national and oblast levels, and passage and initial implementation of the Permit System Law. The Government of Ukraine and the Government of the United States of America signed a separate Strategic Objective Agreement for the Program to Combat Corruption and Strengthen the Rule of Law on June 6, 2006 (“the Agreement of June 6, 2006”).

The Government of Ukraine proposed a larger Threshold Country Plan with a single Strategic Objective - the Reduction of Corruption in the Public Sector. The Millennium Challenge Corporation (MCC) of the U.S. Government agreed to provide funds to assist in the implementation of the Plan as set forth in this Agreement, described herein as the Program. The Program is an aggressive, multifaceted undertaking that will build upon lessons learned and initiate necessary steps to invigorate ongoing efforts to attack public sector corruption. The Program funded by this Agreement, and activities funded by the Agreement of June 6, 2006, will be implemented in a complementary and coordinated manner.

II. Strategic Objective: The Strategic Objective of the Program is to reduce corruption in the public sector through strengthening civil society’s monitoring and exposure of corruption, judicial reform, strengthening government monitoring and enforcement of ethical and administrative standards, streamlining and enforcing regulations and combating corruption in higher education.

III. Program Components – Results and Proposed Activities:

The Program consists of five components to reduce corruption in the public sector. These are:

1. Strengthening Civil Society’s Monitoring and Exposure of Corruption
2. Judicial Reform
3. Strengthening Government of Ukraine Monitoring and Enforcement of Ethical and Administrative Standards
4. Streamlining and Enforcing Regulations
5. Combating Corruption in Higher Education

Component 1. Strengthening Civil Society’s Monitoring and Exposure of Corruption: Thousands of Ukrainian nongovernmental organizations (NGOs) actively

represent the interests of their constituencies, promote public policies, monitor government performance, and successfully advocate for reforms. Furthermore, the mass media enjoy fundamental press freedoms and offer the public a range of sources of professional news and information. Despite the substantial progress of recent years, Ukrainian civil society and media are not meeting their full potential as effective monitors of government and advocates for reform.

Result: Reduce opportunities for corruption by enabling civil society to be more effective monitors of government and advocates for reform.

Proposed Activities:

- A. Design, conduct and publicize surveys to provide a more detailed, targeted, and timely measure of the Government of Ukraine's anti-corruption efforts.
- B. Implement a grants program to support the work of NGOs that monitor government performance and/or advocate for improvements in higher education, asset declaration, the judicial system, customs, government procurement, land and property ownership, the permit systems for construction, land use, municipal services or other areas where corruption issues emerge.
- C. Improve investigative journalism, improve access to information by journalists and NGOs and strengthen other media anti-corruption efforts through training and capacity building in order to increase exposure of corruption by the media, increase the number of anti-corruption investigations and increase sanctions for corruption as a result of media reports.

Component 2. Judicial Reform: Critical to efforts to fight corruption is increasing the level of transparency in the delivery of justice by introducing permanent improvements in key legislative, procedural and institutional arrangements. The proposed activities will also contribute to fostering a more professional cadre of administrative judges, court personnel, and notaries.

Result: Increase transparency in the judicial sector.

Proposed Activities

- A. Establish a unified registry of court decisions and implement computerized random case assignment by administrative personnel.
- B. Implement an effective, transparent and competitive process of judicial appointment and an adequate and transparent disciplinary procedures for judges.
- C. Improve the system of enforcing judicial decisions based on international best practices.
- D. Train administrative judges and establish an electronic network for administrative courts.
- E. Eliminate corruption opportunities in the notary system by improving the legal and regulatory framework for regulation of notaries.

Component 3. Strengthening Government Monitoring and Enforcement of Ethical and Administrative Standards: Currently Ukraine has no general conflict of interest legislation for government officials except for certain provisions that limit business opportunities for family members of officials. Additionally, although there are requirements that candidates for public office and civil servants declare their assets, the methodology has flaws and omissions, and submitted declarations are rarely checked and even more rarely are sanctions imposed for falsification.

Result: Create systems to strengthen accountability among government officials and enable the Government of Ukraine to better monitor and enforce ethical and administrative standards.

Proposed Activities

- A. Introduce transparency and accountability in government agencies through the establishment of Internal Investigation Units and adoption of conflict of interest legislation and ethics standards for government officials consistent with international best practices.
- B. Improve the system for government declaration of assets and monitoring of expenses.

Component 4. Streamlining and Enforcing Regulations: Complicated, confusing and overlapping systems providing construction permits, delivery of municipal services, land and property ownership and usage are sources of significant corruption. Both private individuals and legal entities must complete an enormous number of steps to start any construction activity. The processes are neither transparent, nor defined in time, and there is clear evidence of corruption at all steps.

Result: Improve the legislative and regulatory framework for property transactions, reform the permit system, and streamline lines of responsibilities and procedures in order to reduce corruption in these areas.

Proposed Activities

- A. Implement regulatory reform in transborder transportation and create a single integrated database for cross-border shipments to effectively eliminate the opportunity to either enter false data or change data, reducing the opportunity for bribery for such services and significantly reducing shadow shipments.
- B. Introduce a one-stop shop approach to obtaining construction permits, municipal services and inspections.
- C. Streamline land usage and property ownership rights and consolidate all soil and water environmental protection functions in one government agency.

Component 5. Combating Corruption in Higher Education: Recognizing the importance of reducing corruption within the educational system, a national testing center, the Ukrainian Center of Evaluation of Education (UCEE), has been established. Assistance is required, however, to fully implement the external testing system as well as to ensure its integrity.

Result: Reduce corruption in higher education by establishing a legal framework requiring a minimum test score for admission to universities; developing a functioning security system for test results; and ensuring that 100 percent of students are tested and the test centers are fully operational.

Proposed Activities:

- A. Assist the UCEE in drafting and ensuring passage of legislation to codify requirements for university entry that will be based on the results of external testing, address the issues of sustainable funding of this system, and responsibilities for violations and sanctions.
- B. Assist the UCEE in developing a system of ensuring security of the process of external testing.

- C. Procure the necessary equipment for full operation of nine regional testing centers, including printing equipment for confidential printing, packaging and scanning equipment.

IV. Highlights of Expected Results:

1. Reduce the perceived level of corruption in all areas by 10 percent.
2. Reduce experiential corruption in all areas by 20 percent.
3. 30 percent of NGO advocacy campaigns result in government reforms.
4. Reduce the number of cases brought to the European Court of Justice by 30 percent.
5. Increase the number of notary violation findings that result in sanctions or prosecutions by 30 percent.
6. Increase compliance with procedures in ministries with an Internal Investigative Unit (target to be determined upon establishment of the Internal Investigative Unit).
7. Reduce the number of users who indicate that they made unofficial payments in areas of customs, transportation, construction, land ownership, land usage, and municipal services by 20 percent.
8. Increase to 100 percent the percentage of students tested for university admission.

The Government of Ukraine will also use additional indicators on corruption drawn from MCC's "Control of Corruption" indicator to measure program effectiveness.

V. Government of Ukraine Implementation Arrangements: In order to ensure accountability and high efficiency of the government management system, the GoU will establish within itself the Board for the Program. The Board will be established by a decree of the President of Ukraine and will include mostly government officials. The Board will meet on a monthly basis. Its main functions will include: (1) concurring in work plans for implementing organizations; (2) concurring in amendments to the work plans; (3) confirming the key personnel to be hired by the implementing organizations; (4) making recommendations on the changes in key personnel (if necessary); (5) reviewing monthly reports of implementing organizations and providing feedback; and (6) ensuring implementation by the Grantee of accepted recommendations provided by implementing organizations.

To ensure effective work of the Board, the GoU will establish the position of Executive Director of the MCC Threshold Program. The Executive Director will be a member of the Board and will be aided by the Secretariat of the Board (consisting of six people, one of whom will be an expatriate, three newly-hired local experts, including a liaison for nongovernmental organizations, and two delegated Ukrainian civil servants). In addition, as the need arises, the Executive Director will hire limited short-term assistance. The functions of the Executive Director and the Secretariat of the Board will include: (1) preparation of arrangements and documents for monthly meetings of the Board; (2) liaison with U.S. government implementing agencies; (3) analysis of work plans and reports and provision of comments and feedback to the Board; and (4) ensuring consistency and unity of the Program.

The GoU will actively manage this Program, so that there will be national ownership of the reform process through a clearly established system of responsibility for accomplishing the results of the Program. However, in order to avoid a conflict of interest and ensure independent evaluation of the impact of the Program, Component 1, Civil Society Monitoring and Exposure of Corruption, will be implemented outside of the GoU's management system. Even though civil society organizations will not be members of the

Board, the Board shall afford ample opportunity for civil society to engage with the Board and provide input throughout the course of the Program. To this end, the Secretariat shall organize at least monthly events that provide an opportunity for dialogue between representatives of civil society and the Board. The Secretariat will ensure that the civil society interlocutors represent a cross-section of civil society and have solicited the opinions of their constituents. Furthermore, to accommodate a larger number of participants from civil society, at least twice within the first year of the Program, the Secretariat will arrange for a public hearing at which Board members will discuss Program issues and activities with interested members of the public.

VI. U.S. Government Implementation Arrangements: For the Government of the United States of America, MCC has charged USAID with responsibility for administering and overseeing the overall implementation of this Agreement under MCC principles of country ownership, accountability and emphasis on results. USAID, the U.S. Department of Justice, the U.S. Department of State and the United States Embassy in Kiev will play key roles in implementation of the Program and liaison with the GoU.

VII. Other Donors: The GoU and USAID have carefully considered past and ongoing donor efforts while developing this Program. Activities conducted by the Organization for Security and Cooperation in Europe, European Commission, Council of Europe, the International Renaissance Foundation, World Bank, International Finance Corporation, and USAID were specifically reviewed and taken into account. The GoU and USAID are confident that this Program will complement current reform activities supported by other donors. The Parties will continue to consult with other donors in order to assure the success of this Program and related activities of the other donors.

VII. Program Budget: [budget estimates redacted]