
AUDIT OF A.I.D.'S COMPLIANCE WITH THE LOBBYING RESTRICTIONS IN 31 U.S.C. 1352

Report No. 9-000-92-004
February 14, 1992



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With the Lobbying Restrictions
in 31 U.S.C. 1352**

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A.I.D. issued procedures for obtaining certifications and disclosure statements required in 31 U.S.C. 1352, but these procedures did not ensure full compliance with these requirements in fiscal year 1991.

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

ASSISTANT INSPECTOR GENERAL
FOR AUDIT

FEB 14 1992

MEMORANDUM FOR AA/FA, Richard A. Ames

FROM: *for* | AIG/A, John P. Competello *Richard B. Teohet*

SUBJECT: Draft Audit Report of A.I.D.'s Compliance With the Lobbying
Restrictions in 31 U.S.C. 1352

This is our report on the Audit of A.I.D.'s Compliance With the Lobbying Restrictions in 31 U.S.C. 1352. We have considered your comments on the draft report and have included them as Appendix II to this report. The report's one recommendation is resolved and will be closed upon evidence that agreed to actions have been completed. I appreciate the cooperation and assistance provided to the auditors on this assignment and the prompt action taken to resolve the recommendation.

Please respond within 30 days, indicating any additional actions taken to close the recommendation.

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."

Section 1352 prohibits a recipient of a federal contract, grant or cooperative agreement in excess of \$100,000, or loan in excess of \$150,000, from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.

Section 1352 requires recipients of these federal actions to certify at the time federal funds are requested or when received:

- **that no payment has been or will be made with appropriated funds to influence or attempt to influence Congress or an agency to make an award; and**
- **to disclose payments that have been or have been agreed to be made with nonappropriated funds for such purposes.**

Recipients that make a prohibited expenditure or fail to make required disclosures are subject to a civil penalty of not less than \$10,000 and not more than \$100,000. Agency heads are required to compile and send disclosure information to the Congress semi-annually.

The Directorate for Finance and Administration's Office of Procurement (FA/OP) and A.I.D. contracting officers have the primary responsibility for ensuring that persons requesting or receiving covered awards, except loans, are aware of Section 1352's prohibitions and of its certification and disclosure filing requirements. The Bureau for Private Enterprise has the same responsibility for loans¹. The Directorate's Procurement Policy and Evaluation Staff (FA/PPE) is responsible for compiling disclosure statements and reporting this information to the Congress.

In fiscal year 1991, A.I.D. reported that it awarded a total of 1,934 contracts, grants, and cooperative agreements with a total value of nearly \$1.8 billion and 4 loans with a value of \$8.5 million subject to Section 1352 requirements.

Section 1352 also requires each Inspector General to report annually to the Congress on their agencies' compliance with and effectiveness of the lobbying restriction requirements. Accordingly, this is the second report submitted by A.I.D.'s Office of Inspector General. The first report contained no recommendations.

¹An official in A.I.D.'s Office of Financial Management stated that A.I.D. has stopped authorizing direct loans since 1989 except for Private Enterprise loans.

Audit Objectives

The audit was performed to determine whether A.I.D. had implemented procedures to ensure compliance with the legislative lobbying restriction requirements. Specifically, the audit was designed to address the following two objectives:

1. Did A.I.D. issue procedures to ensure compliance with the certification and disclosure requirements of 31 U.S.C. 1352?
2. Did A.I.D. compile disclosure statements and report on them to the Congress as required by 31 U.S.C. 1352?

The audit did not attempt to determine if any prohibited payments actually had been made. Rather, the audit was limited to reviewing A.I.D.'s compliance with two requirements in Section 1352; (1) obtaining certifications and disclosure statements, and (2) reporting disclosure information to the Congress.

We selected a sample of fiscal year 1991 covered award actions to test A.I.D.'s compliance with the first requirement. The audit included only limited testing of covered federal actions executed at the five locations covered by the audit. As a result of this limited approach, the report's findings are considered true only in relation to the awards tested. When our tests identified potential problems, we performed additional work to confirm the existence of a problem, identify the cause and effect of the problem, and make recommendations to correct the cause of the problem. No test of award actions was necessary for assessing A.I.D.'s compliance with the second requirement.

The audit's scope and methodology is described in Appendix I.

Audit Findings

Did A.I.D. Issue Procedures to Ensure Compliance With the Certification and Disclosure Requirements of 31 U.S.C. 1352?

A.I.D. issued procedures for obtaining certifications and disclosure statements required in 31 U.S.C. 1352, but in the majority of the cases tested did not implement them. These procedures did not ensure full compliance with these requirements for

contracts, grants, and cooperative agreements executed in fiscal year 1991. We did not find this to be a problem with the four loans that we selected for review.

A.I.D.'s Office of Procurement issued Administrative Memorandum 90-6 (July 2, 1990) to all contracting and support staff which provided a sample of the certification required from recipients of covered federal actions. Also, the Directorate for Finance and Administration's Acting Procurement Executive issued Contract Information Bulletin 90-22 (October 12, 1990) to all contracting officers and negotiators which provided instructions on the submission of disclosure forms. This Bulletin also designated the Chief, Procurement Planning and Evaluation as A.I.D.'s focal point for the collection of the disclosure forms.

Nevertheless, these procedures did not ensure that contracting officers always notified contract, grant, and cooperative agreement recipients of the required certification and disclosure statements. A discussion of this problem follows.

A.I.D. Did Not Always Notify Award Recipients of the Certification and Disclosure Requirements

More than half of the covered award recipients included in our test did not satisfy the certification and disclosure requirements of Section 1352 because A.I.D. contracting officers did not make these requirements known to them through the solicitation and award processes. As a result, the certification and disclosure requirements were rendered ineffective in these cases.

Recommendation No. 1: We recommend that the Associate Administrator for Finance and Administration develop and implement a checklist or similar procedure to assist contracting officers and negotiators in ensuring that applicable solicitations and final award documents include 31 U.S.C. 1352 certification and disclosure provisions.

The Office of Management and Budget (OMB) has issued guidance to federal agencies for implementing Section 1352. The Federal Acquisition Regulation (FAR) has been revised to incorporate the lobbying restriction requirements. Paragraph 3.808 of the FAR states that 31 U.S.C. 1352 certification and disclosure provisions

should be included in the solicitation for contracts as well as the final contract and also in each applicable grant, cooperative agreement, and loan.

Including these provisions in the solicitation and final award document is important because when a recipient signs the document, the recipient accepts responsibility for these provisions.

From the reported 1,934 covered federal actions executed in fiscal year 1991, 107 were tested for compliance with the certification and disclosure requirements, and 61 of the 107 or 57 percent were in noncompliance as follows:

| <u>Location</u> | <u>Sample</u> | <u>No Certification*</u> | |
|-------------------------------|---------------|--------------------------|----------------|
| | | <u>Number</u> | <u>Percent</u> |
| Office of Procurement | 46 | 19 | 41 |
| Bureau for Private Enterprise | 4 | 0 | 0 |
| USAID/Egypt | 21 | 15 | 71 |
| USAID/Senegal | 11 | 8 | 73 |
| USAID/Honduras | <u>25</u> | <u>19</u> | <u>76</u> |
| Total | <u>107</u> | <u>61</u> | <u>57</u> |

In each of the 61 cases showing noncompliance, A.I.D. contracting officers had not included the certification provisions in the contract solicitation or in the final contract, grant, or cooperative agreement. We did not find this omission with the four loans covered by the audit. A discussion of the reasons given for not inserting the required certification provisions in contracts, grants, and cooperative agreements follows:

- For the 19 contracts in noncompliance at A.I.D./Washington, procurement officials cited inadequate and outdated contract checklists.

* Includes the two certification provisions; namely, to certify not to make prohibited payments and to make required disclosures.

- For the 6 contracts, 6 grants, and 3 cooperative agreements in noncompliance at USAID/Egypt, officials did not give a reason for the contracts but stated they did not believe Section 1352 requirements applied to grants and cooperative agreements.
- For the 2 contracts, 5 grants, and 1 cooperative agreement in noncompliance at USAID/Senegal, officials stated that guidance on this issue was confusing and incomplete and that in their opinion Section 1352 requirements only applied to contracts.
- For the 13 contracts and 6 grants in noncompliance at USAID/Honduras, officials stated the Mission had been late in receiving the revised FAR and had not received Administrative Memo 90-6. The officials were also of the opinion that Section 1352 requirements did not apply to grants and cooperative agreements.

We disagree with the field offices' positions that Section 1352 certification requirements only applies to contracts. Both the FAR and OMB guidance provide that all federal actions - contracts, grants, cooperative agreements, and loans meeting the dollar limitations - are subject to the certification provisions in Section 1352.

The failure to include the provisions in solicitations and awards resulted in A.I.D. not obtaining the assurances and information intended by Section 1352. In effect, the omission of these provisions in solicitations and awards rendered the certification requirements ineffective.

Subsequent to our audit test period of fiscal year 1991, A.I.D. issued revised Handbook 13 which incorporates the requirements of Section 1352 and defines federal actions to include applicable contracts, grants, cooperative agreements, and loans. This guidance should correct the problem noted in the field as to what type of covered federal action was subject to the certification requirements. As a result, we are not including a recommendation on this specific problem.

Did A.I.D. Compile Disclosure Statements and Report on Them to the Congress as Required by 31 U.S.C. 1352?

A.I.D. did not compile disclosure statements covering the use of nonappropriated fund for restricted lobbying activities because they did not receive any from covered award recipients for fiscal year 1991. A.I.D. indicated that it had not received any disclosure statements for the period October 1, 1990 to September 30, 1991 and provided to the Congress negative reports, as required by the OMB guidance.

Management Comments and Our Evaluation

A.I.D.'s Procurement Policy and Evaluation Staff concurred with the report's finding and recommendation. Therefore, we consider the recommendation resolved and will close it upon evidence that A.I.D. has implemented the recommended action. Procurement Policy and Evaluation Staff's comments are presented in Appendix II.

SCOPE AND METHODOLOGY

Scope

The audit was made in accordance with generally accepted government auditing standards, except that we did not design the audit to provide reasonable assurance of detecting abuse and illegal acts for all covered awards made in fiscal year 1991. Our audit procedures were sufficient to detect abuse and illegal acts that could significantly affect the audit objectives for the 107 covered awards we reviewed.

At the beginning of our audit, the total universe for contracts, grants, and cooperative agreements (1,934), valued at nearly \$1.8 billion for fiscal year 1991 was not readily available. As a result, the audit did not include a statistically valid sample of A.I.D.'s universe of covered awards. Instead, as shown in Table 1 in the methodology section, we selected a sample of 107 awards totaling \$143.4 million or 8 percent of the universe that were subject to Section 1352 requirements and awarded by five A.I.D. organizational units during fiscal year 1991. We judgementally selected the five locations based on their proximity to Inspector General audit offices.

We performed the audit from October 22, 1991 through January 31, 1992 at A.I.D.'s Office of Procurement, the Bureau for Private Enterprise's Office of Investment, USAID/Egypt, USAID/Senegal, and USAID/Honduras. To achieve the assignments' first objective, we relied on computer-processed data contained in A.I.D.'s Contract Information Management System (CIMS) database to define the audit universe for each location and as the basis for sampling. We did not assess the reliability of the CIMS database because of the audit's time limitation and to do so would have required performing a separate audit. As a result, we are unable to provide projections, conclusions, or recommendations based on this data. Except as noted above, our work was conducted in accordance with generally accepted government auditing standards. We interviewed responsible officials and examined selected

contracts, grants, cooperative agreements, and loans, and their files at each location covered by this audit. We reviewed the audit report on A.I.D.'s Compliance with Requirements for Consulting Services, Audit Report No. 9-000-91-002 and determined if any alleged violations of the Lobbying Act had been reported to the A.I.D.'s Office of Inspector General. We also reviewed the fiscal year 1991 internal control certification prepared by the Procurement Policy and Evaluation Staff. The audit also did not test to determine whether recipients of federal awards had actually made any prohibited payments or whether they should have filed disclosure statements.

Methodology

The methodology for each audit objective is described below.

Audit Objective One

To determine if A.I.D. implemented procedures to ensure compliance with the certification and disclosure requirements of 31 U.S.C. 1352, we researched applicable legislation, Federal Acquisition Regulation, Office of Management and Budget's guidance, and A.I.D. Acquisition Regulation (AIDAR) to identify and document lobbying restriction requirements, procedures and controls.

We interviewed A.I.D. officials in Washington and at the three field missions covered by this audit, and reviewed internal documents to determine if A.I.D. had established procedures and controls to comply with the regulatory lobbying restriction requirements. To test whether A.I.D. had complied with the requirements, we selected a sample of awards at each location as shown in Table 1.

Table 1
Amount Tested by Location
(Amount in Millions)

| Awards | No. | Totals Amount | A.I.D./WASHINGTON | | EGYPT | | SENEGAL | | HONDURAS | | | |
|---------------------------|------------|------------------|-------------------|---------------|--------------|--------------|-----------|---------------|-----------|---------------|-----------|---------------|
| | | | FA/OP No. | Amount | B/PRE No. | Amount | No. | Amount | No. | Amount | No. | Amount |
| Contracts | 59 | \$103.2 | 24 | \$42.7 | - | \$- | 12 | \$40.7 | 4 | \$10.4 | 19 | \$9.3 |
| Grant | 29 | 18.0 | 11 | 4.0 | - | - | 6 | 3.3 | 6 | 2.0 | 6 | 8.7 |
| Cooperative Agreements | 15 | 13.7 | 11 | 11.7 | - | - | 3 | 2.0 | 1 | .1 | - | - |
| Loans | 4 | 8.5 | - | - | 4 | 8.5 | - | - | - | - | - | - |
| Totals | 107 | \$143.4 | 46 | \$58.4 | 4 | \$8.5 | 21 | \$46.0 | 11 | \$12.5 | 25 | \$18.0 |

At A.I.D.'s Office of Procurement, we took a random sample of 76 contracts, grants, and cooperative agreements from the 1,178 awards executed in A.I.D./Washington's Office of Procurement. This random sample provided a confidence level of 90 percent that our sample findings would be representative of the Office of Procurement's universe for each attribute tested, with precision of plus or minus 4 percent. Included in this sample were 30 awards initiated in fiscal year 1991 which were amendments, modifications, continuations, and extensions to federal awards originated prior to December 23, 1989. According to OMB guidance of June 15, 1990, these 30 awards did not need certification and disclosure statements because they were not modified or amended beyond the scope of the award. Thus the results of audit testing for A.I.D.'s Office of Procurement relates only to the remaining 46 awards worth \$58.4 million made after December 23, 1989.

At USAID/Egypt, we tested 21 of 22 awards (\$46.0) in excess of \$100,000 made by the Mission in fiscal year 1991; the one award not reviewed was a Participating Agency Service Agreement which was not subject to 31 U.S.C. 1352.

At USAID/Senegal, we tested all 11 awards (\$12.5) in excess of \$100,000 made by the Mission in fiscal year 1991.

At USAID/Honduras, the audit identified 39 federal awards (\$18 million) in excess of \$100,000 made by the Mission in fiscal year 1991. This included 19 contracts and 20 grants of which we tested all 19 contracts and 6 grants. The remaining 14 grants

were not tested because the grant officer stated they had not applied the lobbying restriction requirements in 31 U.S.C. 1352 to grants.

The audit did not identify any loans awarded by the Office of Procurement or any of the three field missions covered by this audit. At A.I.D.'s Bureau for Private Enterprise/Office of Investment, we tested all four loans in excess of \$150,000 awarded in fiscal year 1991.

We examined award files to determine if certification and disclosure provisions were included in solicitations and awards, and to determine whether recipients provided to A.I.D. the required certifications and disclosures.

Audit Objective Two

The second objective was to determine whether A.I.D. compiled and reported lobbying disclosures to the Congress. We interviewed the Procurement Policy and Evaluation Staff's Policy Branch Chief and obtained the semi-annual reports on disclosures for the reporting periods ended March and September 1991.



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

FEF 12 1992

MEMORANDUM

TO: IG/PSA, Mr. Coinage N. Gothard, Jr.
FROM: FA/PPE, *James D. Murphy*
SUBJECT: Draft Audit of AID's Compliance With
Lobbying Restrictions

Since my office will be preparing the response to the final version of the audit of AID's compliance with lobbying restrictions on behalf of AA/FA, Mr. Ames asked us to give you our comments on the draft report.

We appreciate the opportunity to review the subject audit in draft. We agree with the findings and recommendations in the draft and have no comments or suggestions.

cc: FA/AMS, Linda Cope

REPORT ON INTERNAL CONTROLS

This section provides a summary of our assessment of internal controls for the two audit objectives.

Scope of Our Internal Control Assessment

We performed our work according to generally accepted government auditing standards, except that we did not design the audit to provide reasonable assurance of detecting abuse and illegal acts for all covered awards made in fiscal year 1991. Our audit procedures were sufficient to detect abuse and illegal acts that could significantly affect the audit objectives for the 107 covered awards we reviewed. Government auditing standards require that we:

- assess the applicable internal controls when necessary to answer the audit objectives, and
- report on the controls assessed, the scope of our work and any significant weaknesses found during the audit.

We limited our assessment of internal controls to those controls applicable to each of the audit objectives and not to provide assurance on A.I.D.'s overall internal control structure.

We classified significant internal control policies and procedures applicable to each audit objective by category. For each category, we obtained an understanding of the design of relevant policies and procedures and determined whether they have been placed in operation, and we assessed control risk. We have reported these categories as well as any significant weaknesses under the applicable section heading for each audit objective.

General Background on Internal Controls

A.I.D. management is responsible, under the Federal Managers' Financial Integrity Act and OMB's implementing policies, for establishing and maintaining internal controls to provide reasonable--but not absolute--assurance that resources are used in accordance with applicable laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data is obtained, maintained, and fairly disclosed in reports. The U.S. General Accounting Office has issued standards for internal controls in the Federal Government for federal agencies to use in establishing and maintaining internal controls. Because of inherent limitations in any internal control structure, errors or irregularities may occur and not be detected. Moreover, it is difficult to project whether an internal control system will work effectively in the future because (1) changes in conditions may require changes in internal control policies and procedures, or (2) compliance with internal control policies and procedures may deteriorate.

Conclusion for Audit Objective One

The purpose of this objective was to determine whether A.I.D. had implemented procedures to ensure compliance with the certification and disclosure requirements of Section 1352.

We assessed internal controls related to including lobbying certification and disclosure provisions in applicable solicitations and awards. Within this category, the audit assessed the following two key controls:

- notifying recipients of certification and disclosure requirements;
and
- keeping contracting officers and negotiators current on lobbying restriction requirements.

Our assessment showed that the agency had established controls but they were not fully effective. As a result of these control weaknesses:

- 61 of 107, or 57 percent of the solicitations tested did not contain appropriate certification and disclosure provisions.

These control weaknesses were not included in the Agency's last annual internal control assessment required by OMB Circular A-123. However, A.I.D.'s assessment

did identify two areas as significant concerns which have a direct impact on implementation of lobbying restriction requirements. These were: (1) insufficient professional procurement staff, and (2) little or no contract administration.

Conclusion for Audit Objective Two

The second objective was to determine if A.I.D. compiled and reported lobbying disclosure forms to the Congress as required by 31 U.S.C. 1352. We assessed internal controls that were established to ensure that disclosure information was summarized and reported to the Congress. The specific controls assessed were:

- assignment of a focal point for compiling and reporting disclosure information to the Congress; and
- maintenance of an information system for summarizing and reporting lobbying disclosure information to the Congress.

Our assessment showed that these two controls existed, but they had not been fully tested since A.I.D. had not received any disclosure forms for fiscal year 1991. Therefore, we only verified that A.I.D. reported to the Congress that it had not received any disclosure statements covering restricted lobbying activities for this period. The audit found no reportable conditions.

REPORT ON COMPLIANCE

This section summarizes our conclusions on A.I.D.'s compliance with applicable laws and regulations for lobbying restriction requirements.

Scope of Our Compliance Assessment

We conducted our audit in accordance with generally accepted government auditing standards, except that we did not design the audit to provide reasonable assurance of detecting abuse and illegal acts for all covered awards made in fiscal year 1991. Our audit procedures were sufficient to detect abuse and illegal acts that could significantly affect the audit objectives for the 107 covered awards we reviewed. Government auditing standards require that we:

- assess compliance with applicable requirements of laws and regulations when necessary to satisfy the audit objectives; and
- report all significant instances of noncompliance and abuse and all indications or instances of illegal acts that could result in criminal prosecution that were found during or in connection with the audit.

We tested A.I.D. contracting officers' compliance with certain lobbying restriction requirements in 31 U.S.C. 1352 and FAR subpart 3.8. These requirements were: (1) including lobbying certification and disclosure provisions in applicable solicitations and awards, and (2) collecting and reporting lobbying disclosure information to the Congress. However, our objective was not to provide an opinion on the Office of Procurement's and A.I.D. contracting officers' overall compliance with such provisions.

General Background on Compliance

Noncompliance is a failure to follow requirements, or a violation of prohibitions, contained in statutes, regulations, contracts, grants, and binding policies and procedures governing an organization's conduct. Noncompliance constitutes an illegal act when there is a failure to follow requirements of laws or implementing regulations, including intentional and unintentional noncompliance and criminal acts. Not following internal control policies and procedures in the A.I.D. Handbooks generally does not fit into this definition of noncompliance.

Abuse is distinguished from noncompliance in that abusive conditions may not directly violate laws or regulations. Abusive activities may be within the letter of the laws and regulations but violate either their spirit or the more general standards of impartial and ethical behavior.

Compliance with the aforementioned 31 U.S.C. 1352 and FAR requirements applicable to lobbying restriction requirements is the overall responsibility of the Office of Procurement, contracting officers and contract negotiators.

Conclusions on Compliance

A.I.D. did not fully comply with the lobbying restriction requirements of including lobbying certification and disclosure provisions in solicitations and awards. The audit found that contracting officers did not comply with the following requirement:

- 31 U.S.C. 1352 and FAR paragraph 3.808 require that each solicitation and award contain certification and disclosure provisions such as prescribed in FAR 52.203-11 and 52.203-12.

Except for the previous instances, A.I.D. complied with the law and regulations for the items tested.