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Regional Inspector General for Audit
Nairobi, Kenya

Audit of REDSO/ESA Regional Contracts Division's Compliance with the Lobbying Restrictions in 31 U.S.C. 1352

Report No. 3-623-93-04
March 17, 1993

INSPECTOR GENERAL

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Audit of the REDSO/ESA Regional Contracts Division's Compliance with the Lobbying Restrictions in 31 U.S.C. 1352

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USAID

U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

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Regional Inspector General for Audit/Nairobi

MEMORANDUM

TO: REDSO/ESA Chief of the Regional Contracts Division, Richard J. Womack

FROM: RIG/A/Nairobi, Everette B. Orr

SUBJECT: Audit of REDSO/ESA Regional Contracts Division's Compliance with the Lobbying Restrictions in 31 U.S.C. 1352

Enclosed are five copies of the subject report. In preparing this report, we reviewed your comments on the draft report and included them as an appendix to this report.

The report contains one recommendation for your action. Specifically, we recommend that you obtain certification and disclosure statements from recipients of contracts, cooperative agreements, and grants which were awarded in Fiscal Year 1992. Based on your comments, the recommendation is unresolved. It can be resolved upon notification of your agreement and plan of action. It can be closed when appropriate action has been completed. Please respond to this report within 30 days indicating any actions planned or already taken to implement the recommendation.

This report is part of the congressionally mandated annual audit conducted by the A.I.D./OIG. Our Office of Programs and Systems Audits in Washington (IG/A/PSA) will issue a report which will contain the results of the audit work performed in Washington and by RIG/A's. This report contains the results of the audit work performed by RIG/A/Nairobi. The audit was conducted between October 1992 and January 1993.

The audit found that the Contracts Division of the Regional Economic Development Services Office for East and Southern Africa (REDSO/ESA) did not comply with Section 3.804 of the Federal Acquisition Regulations (FAR) which requires certification and disclosure of lobbying activities in all solicitations, proposals, and awards. The Regional Contracts Division did comply with Contract Information Bulletin (CIB) 92-10 which requires contracting officers to report lobbying activities to A.I.D./Washington.

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I want to thank you for the cooperation and assistance provided to the auditors on this assignment.

Background

Section 1352 of Title 31 of the United States Code (U.S.C.) restricts the use of appropriated funds for lobbying activities. The general provisions of this law prohibits recipients 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 any 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 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 non-appropriated funds for such purposes at the time of the award and at any time thereafter when such payments are made.

The provisions of 31 U.S.C. 1352 are implemented through the Federal Acquisition Regulations (FAR) and are explained in A.I.D. Handbooks and Contract Information Bulletin (CIB) 92-10. The A.I.D. Office of the Inspector General (OIG) is required to report to the Congress each year on A.I.D.'s compliance with the lobbying restriction of 31 U.S.C. 1352. In order to meet this requirement the Inspector General's Office of Program and Systems Audits in Washington conducted a review of A.I.D. awards to recipients in Fiscal Year 1992. In addition to work performed in Washington, audit work was also performed by OIG regional offices in Cairo, Nairobi, Singapore, and Tegucigalpa. This report contains the results of the audit work performed by RIG/A/Nairobi.

Audit Objectives

The following three audit objectives were established by IG/A/PSA and formed the basis for our audit work.

1. Did A.I.D. implement 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?

3. What actions not specifically required by 31 U.S.C. 1352 has A.I.D. taken or could A.I.D. take to improve the Law's effectiveness?

We performed tests and audit steps as directed by IG/A/PSA to answer the above objectives. The audit report issued by IG/A/PSA will include these three objectives. In order to report on the results of our audit work performed at REDSO/ESA in Nairobi, we revised the first two objectives established by IG/A/PSA in order to match the audit objectives more closely to the responsibilities and authority of the Regional Contracts Division at the REDSO. Therefore, the audit objectives for this audit report are:

1. Did the Regional Contracts Division of the Regional Economic Development Services Office for East and Southern Africa comply with Section 3.804 of the Federal Acquisition Regulations which requires certification and disclosure of lobbying activities?

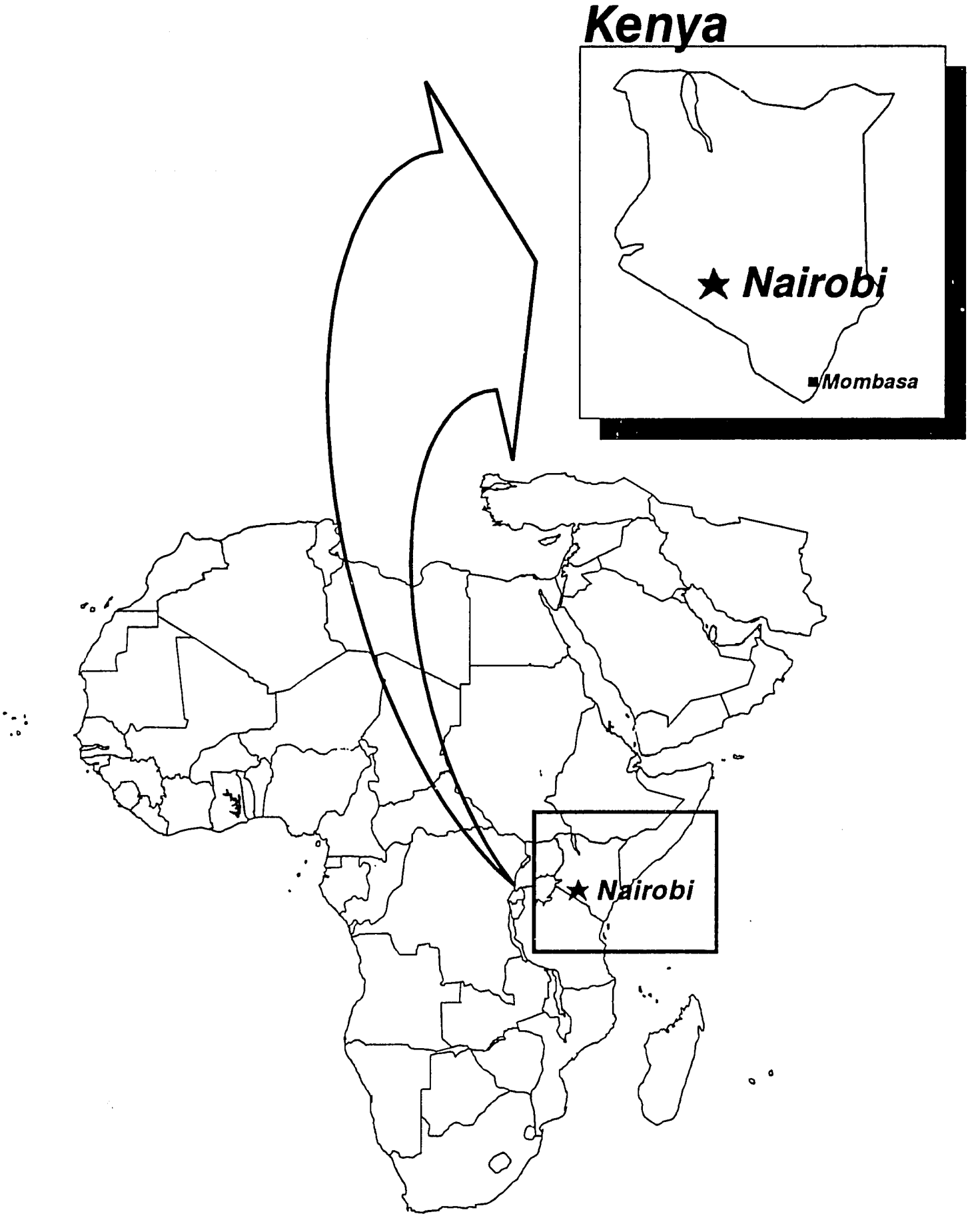
2. Did the Regional Contracts Division of the Regional Economic Development Services Office for East and Southern Africa comply with Contract Information Bulletin 92-10 which requires contracting officers to report lobbying activities to A.I.D./Washington?

We did not include IG/A/PSA objective no. 3, since it was not applicable to the Regional Contracts Division. Accordingly it is not included in this report.

In answering these audit objectives, we tested whether the Regional Contracts Division (1) followed applicable internal control procedures and (2) complied with certain provisions of regulations and policies. Our tests were designed to provide reasonable assurance that the Regional Contracts Division followed applicable procedures related to each audit objective and complied with certain provisions of laws and regulations. Our tests were sufficient to provide reasonable -- but not absolute -- assurance of detecting abuse or illegal acts that could significantly affect the audit objectives. When we found problem areas, we performed additional work to

- conclusively determine that the Regional Contracts Division was not following a procedure or not complying with a legal requirement,
- identify the cause and effect of the problems, and
- make recommendations to correct the condition and cause of the problems.

A discussion of the scope and methodology for this audit is in Appendix I, and the reports on internal controls and on compliance are in Appendix III and IV, respectively.


Kenya
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Nairobi

Audit Findings

Did the REDSO/ESA Regional Contracts Division comply with Section 3.804 of the Federal Acquisition Regulations which requires certification and disclosure of lobbying activities?

The Regional Contracts Division did not comply with Section 3.804 of the Federal Acquisition Regulations (FAR) which requires certification and disclosure of lobbying activities.

Certification and disclosure statements were not included in 14 (48%) of the 29 awards made by the Regional Contracts Division in Fiscal Year 1992 where required by Section 3.804 of the FAR and as prescribed in Section 52.203-11 of the FAR. This problem is discussed below.

Lobbying Statements not Received From Required Recipients

Certification and disclosure statements are required for all solicitations, proposals and awards of contracts, cooperative agreements, and grants in excess of $100,000. For Fiscal Year 1992 14 (48%) of 29 awards in excess of $100,000 did not contain certification and disclosure statements. The 14 exceptions included 8 personal service contracts, 4 grants and 2 cooperative agreements.

The Regional Contracts Division did not believe that personal service contractors were required to submit certification and disclosure statements since these awards were made to individuals who performed services similar to an A.I.D. direct hire employee. Furthermore the Regional Contracts Division followed the guidance provided in Appendix D of Handbook 14 which lists the FAR clauses which are applicable to personal services contracts. FAR 52.203-11, the lobbying restriction provision is cited but is misidentified as the drug free workplace clause. Consequently, the Regional Contracts Division included the clause for the drug free workplace and did not include the clause for lobbying restrictions. A.I.D./W/PPE stated that they will be revising Appendix D to include the correct clauses. Although the Regional Contracts Division is not responsible for this error, it should take action to correct it.

The Regional Contracts Division also did not require certification and disclosure statements for four grants and two cooperative agreements. The four grants were made to three grantees and the agreement was with an organization whose administrative offices were located outside of the United States. Management has interpreted A.I.D. Handbook 13, Chapter 5 guidance on this subject to mean that Public International Organizations (PIO's) are exempted from the lobbying certification and disclosure statement. The reason the Regional Contracts Division did not require the three grantees to submit certification and disclosure statements was that it believed that these organizations were PIOs. However, the files do not contain the necessary documentation to support his decision. While the decision of the Regional Contracts Division may have merit, it does not technically comply with the requirements of A.I.D. Handbook 13, Chapter 5.

The last exception was an agreement which was signed before the Regional Contracts Division received current guidance concerning the lobbying restriction requirement. The Regional Contracts Division was not responsible for this error; however, it should take action to correct it.

Although the absence of the certification and disclosure statements does not in itself indicate a significant problem, it may affect the accuracy of the annual report A.I.D. must make to Congress regarding lobbying activities.

Recommendation No. 1: We recommend that the REDSO/ESA Regional Contracts Division

1.1 obtain certification and disclosure statements of lobbying activities from the eight personal services contractors listed in Exhibit A;

1.2 obtain certification and disclosure statements of lobbying activities from the two cooperative agreement recipients listed in Exhibit A; and

1.3 obtain documentation to support the classification of the three grantees listed in Exhibit A as public international organizations or their certification and disclosure statements of lobbying activities.

Management Comments and Our Evaluation

The Chief of the Regional Contracts Division REDSO/ESA reviewed the draft report and offered no objections or corrections. The full text of his response is included in Appendix II.

Did the REDSO/ESA Regional Contracts Division comply with Contracting Information Bulletin 92-10 which requires contracting officers to report lobbying activities to A.I.D./Washington?

The Regional Contracts Division complied with the Contracting Information Bulletin (CIB) 92-10 which requires contracting officers to report lobbying activities to A.I.D./Washington when contractors report such activities. The Regional Contracts Division did not report any lobbying activities to A.I.D./Washington because there were none to report. For Fiscal Year 1992 the Regional Contracts Division did not receive any SF-LLL forms which are used by A.I.D. recipients to disclose lobbying activities. Since the Regional Contracts Division did not receive any disclosures of lobbying activities, the Regional Contracts Division was not required to send any to A.I.D./Washington. Furthermore, all 12 recipients who responded to our inquiries confirmed that they had not engaged in lobbying activities.

Management Comments and Our Evaluation

The Chief of the Regional Contracts Division REDSO/ESA reviewed the draft report and offered no objections or corrections. The full text of his response is included in Appendix II.

EXHIBIT A

List of Awards Which Did Not Contain Certification and Disclosure Statements

AWARD NUMBER	NAME	DATE	AMOUNT
Contracts:			
663-0000-S-00-2003	Eileen Beck	11/27/92	$ 100,000
623-0007-S-00-2043	J. Stephen Morrison	06/12/92	507,667
623-0464-S-00-2032	Ruth Buckley-Hughes	04/29/92	320,000
623-0464-S-00-2042	Satish Mishra	07/24/92	200,000
623-0464-S-00-2091	Roy Thompson	09/17/92	505,000
623-0173-S-00-2024	Dr. F.M. Mburu	03/18/92	260,832
623-0128-C-00-2028	Arnold Lessard	04/22/92	515,000
623-0230-S-00-2002	Roxana Rogers De Sol	10/25/91	350,000
Cooperative Agreements:			
615-0254-A-00-2007	John Snow, Inc.	12/30/91	9,575,000
623-0463-A-00-2018	Federation of Kenya Employers	02/10/92	215,890
Grants:			
623-0001-G-00-2070	Medicins Du Monde	08/18/92	113,000
663-0004-G-00-0001	Christian Relief Development Assoc.	09/25/92	100,000
623-0229-G-00-2090	CIMMYT	09/04/92	100,000
623-0463-G-00-2089	CIMMYT	09/08/92	200,000

SCOPE AND METHODOLOGY

Scope

The office of the Regional Inspector General for Audit in Nairobi audited the Regional Contracts Division of the Regional Economic Development Services Office for East and Southern Africa (REDSO/ESA) in accordance with generally accepted government auditing standards. We conducted this audit from October 30, 1992 to January 22, 1993. We conducted our field work in the Regional Contracts Division of the REDSO/ESA in Nairobi, Kenya. The RIG/A/Nairobi requested and received written management representations from the Regional Contracts Division of the REDSO/ESA that they have provided the OIG with all the information essential to fully answer the audit objectives.

In Fiscal Year 1992 the Regional Contracts Division of the REDSO/ESA made 29 awards in excess of $100,000. These awards constituted both the universe of awards to be audited as well as the sample awards that were audited. These 29 awards obligated $38,515,357 and consisted of 21 contracts obligating $27,514,614, 5 grants obligating $690,163, and 3 cooperative agreements obligating $10,310,580. Our audit work consisted of examining the award files to determine that the lobbying restriction provisions of certification and disclosure were included in the solicitation and the award.

In performing the audit we obtained documentary and testimonial evidence from the Chief of the Regional Contracts Division, assessed internal controls related to each audit objective, reviewed the prior year's audit report regarding lobbying restrictions and verified evidence through examination of supporting documentation. Following is a discussion of our methodology for answering each audit objective.

Methodology

The methodology for each audit objective follows:

Audit Objective One

The first audit objective was to determine whether the Regional Contracts Division complied with Section 3.804 of the Federal Acquisition Regulations which requires certification and disclosure of lobbying activities.

To accomplish this we examined the files for 29 awards made by the Regional Contracts Division in Fiscal Year 1992. We examined the files to determine if the Regional Contracts Division included the request for certification and disclosure in the request for proposal and if the proposal and award included the certification and disclosure if required.

Audit Objective Two

The second objective was to determine if the Regional Contracts Division complied with Contract Information Bulletin 92-10 which requires that all lobbying activities be reported to A.I.D. Washington.

To accomplish this we sent confirmation requests directly to 19 of the award recipients in our sample of awards. We did not send confirmation requests to 10 award recipients: 8 personal services contractors, 2 contract awards (to the same contractor) and 2 grants (to the same grantee). The confirmation requested the recipients to respond directly to the OIG regarding any lobbying activity. We received responses from 12 of the award recipients; none of the recipients stated that they had engaged in lobbying activities. We also interviewed the Chief of the Regional Contracts Division to determine if any disclosure of lobbying activities had been received.

UNITED STATES OF AMERICA

AGENCY FOR INTERNATIONAL DEVELOPMENT

REGIONAL ECONOMIC DEVELOPMENT SERVICES OFFICE
FOR EAST AND SOUTHERN AFRICA (REDSO/ESA)

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U.S.A.I.D. REDSO/ESA
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POST OFFICE BOX 30261
NAIROBI, KENYA

February 10, 1993

Mr. Everette B. Orr
Regional Inspector General
P. O. Box 30261
Nairobi, Kenya

Subject: Draft Report - Audit of REDSO/ESA Regional Contracts Division's Compliance with the Lobbying Restrictions in 31 U.S.C. 1352

Dear Mr. Orr:

Thank you for your January 29, 1993 remittance of the above mentioned draft audit report for our comments.

We have reviewed the same and have no comments, objections or corrections to make at this time.

Regarding the single recommendation the auditors make for action, we look forward to receiving your audit and having the opportunity to formally respond.

Thank you.

Sincerely,

Richard J. Womack

Richard J. Womack
Chief, Regional Contracts Division
REDSO/ESA

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REPORT ON INTERNAL CONTROLS

This section provides a summary of our assessment of internal controls for the audit objectives in our audit of the REDSO/ESA Regional Contracts Division's compliance with lobbying restrictions.

Scope of Our Internal Control Assessment

We conducted our audit in accordance with generally accepted government auditing standards, which require that we (1) assess the applicable internal controls when necessary to satisfy the audit objectives and (2) 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 applicable to the audit's objectives and not to provide assurance on the auditee's overall internal control structure.

We have classified significant internal control policies and procedures applicable to the audit objective by categories. 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

Recognizing the need to re-emphasize the importance of internal controls in the Federal Government, Congress enacted the Federal Mangers' Financial Integrity Act (the Integrity Act) in September 1982. Under this Act and the Office of Management and Budget's (OMB) implementing policies, the management of A.I.D. is responsible for establishing and maintaining adequate internal controls. Also, the General Accounting Office (GAO) has issued Standards for Internal Controls in the Federal Government to be used by agencies in establishing and maintaining such controls.

The objectives of internal controls and procedures for Federal foreign assistance are to provide management with reasonable -- but not absolute -- assurance that resource use is consistent with laws, regulations, and policies; resources are safeguarded against waste, loss, and misuse; and reliable data is obtained, maintained, and fairly disclosed in reports.

Because of inherent limitations in any internal control structure, errors or irregularities may occur and not be detected. Moreover, predicting whether a system will work in the future is risky because (1) changes in conditions may require additional procedures or (2) the effectiveness of the design and operation of policies and procedures may deteriorate.

Conclusions for Audit Objective One

The audit objective relates to the Regional Contracts Division's controls over the requirement of recipients of A.I.D. funds to certify and disclose lobbying activities. In planning and performing our audit, we considered the applicable internal control policies and procedures cited in A.I.D. Handbook 13, Appendix 3B and the GAO's Standards for Internal Controls in the Federal Government. For the purpose of this audit we classified policies and procedures into the following categories: proposal requirements and award requirements.

We reviewed the Regional Contracts Division's controls relating to applicable aspects of proposal requirements and award requirements and our tests showed that controls were logically and consistently applied. However, the requirements as contained in Handbook 14 were not correct as noted on page 6. For the purposes of our audit we limited our tests to determining whether the required documentation was included in proposals and awards.

Conclusions for Audit Objective Two

The audit objective relates to the Regional Contracts Division's controls over notification of lobbying activities to A.I.D./Washington. In planning and performing our audit, we considered the applicable internal control policies cited in A.I.D. Handbook 13, Appendix 3B and the GAO's Standards for Internal Controls in the Federal Government. For the purposes of this audit we classified policies and procedures into the following category: compilation and transmission of disclosures.

We reviewed the Regional Contracts Division's internal controls relating to the applicable aspects of the compilation and transmission of disclosures and our tests showed that controls were logically and consistently applied.

REPORT ON COMPLIANCE

This section provides a summary of our conclusions on REDSO/ESA Regional Contracts Division's compliance with applicable laws and regulations dealing with lobbying restrictions.

Scope of Our Compliance Assessment

We conducted our audit in accordance with generally accepted government auditing standards, which require that we (1) assess compliance with applicable requirements of laws and regulations when necessary to satisfy the audit objectives (which includes designing the audit to provide reasonable assurance of detecting abuse or illegal acts that could significantly affect the audit objective) and (2) 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.

For this audit we tested compliance with Section 3.804 of the Federal Acquisition Regulations and Contract Information Bulletins 92-10 to the extent that they relate to our audit objectives. However, our objective was not to provide an opinion on overall compliance with those regulations or bulletins.

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 and is included in our report on internal controls. 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 Section 3.804 of the Federal Acquisition Regulations and Contracts Information Bulletin 92-10 is the overall responsibility of the Chief of the Regional Contracts Division.

Conclusion on Compliance

The results of our tests of compliance showed that the Regional Contracts Division did not comply with Section 3.804 of the Federal Acquisition Regulations and did comply with Contracts Information Bulletin 92-10. Our report recommends that the Regional Contracts Division obtain from the eight personal services contractors, two cooperative agreement recipients and three grantees certification and disclosure statements of lobbying activities (see page 6).

APPENDIX V

REPORT DISTRIBUTION

U.S. Ambassador to Kenya	1
REDSO/Chief of the Regional Contracts Division	5
AA/AFR	1
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XA/PR	1
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POL/CDIE/DI	1
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REDSO/ESA	1
REDSO/RFMC	1
REDSO/Library	1
IG	1
AIG/A	1
IG/A/PSA	1
IG/A/FA	1
IG/A/PPO	3
IG/LC	1
IG/RM	12
AIG/I&S	1
IG/I/NFO	1
RIG/A/B	1
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RIG/A/D	1
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