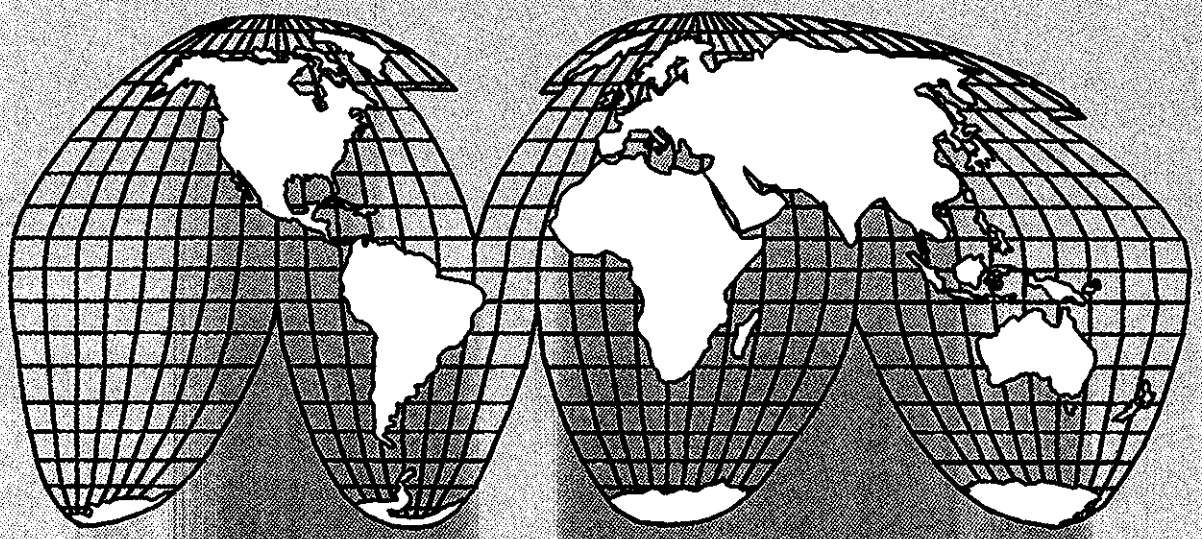
USAID

OFFICE OF INSPECTOR GENERAL

Audit of Non-USDH Personnel Performing Procurement Functions Within USAID

Audit Report Number 9-000-02-003-P

March 15, 2002



U.S. Agency for International Development

Washington, D.C.

U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

Performance Audit Division

March 15, 2002

MEMORANDUM

FOR: M/OP, Director, Mark Ward

FROM: IG/A/PA, Director, Dianne L. Rawl Roosevelt Holt for

SUBJECT: Audit of Non-USDH Personnel Performing Procurement Functions Within USAID (Report No. 9-000-02-003-P)

This memorandum is our report on the subject audit. Your comments on the draft report have been included in their entirety in Appendix II.

This report contains no recommendations for your action. I appreciate the cooperation and courtesy extended to my staff during the audit.

Summary of Results

The House Appropriations Committee's Subcommittee on Foreign Operations requested the Office of Inspector General to perform an audit of non-U.S. direct-hire (non-USDH) personnel performing procurement functions in USAID. In response to this request, the Office of Inspector General in Washington conducted an audit to determine (1) if USAID has the authority to delegate procurement functions to non-USDH personnel and (2) how many non-USDHs were performing procurement functions (see page 3).

We determined that USAID has the authority to delegate procurement functions to non-USDH personnel, including foreign and U.S. personal services contractors. Contracting and obligating authority may be delegated to non-USDHs with the approval of certain senior USAID officials; however, it is USAID's general policy to designate only USDH employees as contracting officers.

We determined that an estimated 230 overseas and 13 domestically based non-USDH employees were performing procurement-related functions for USAID. In addition, we found that four U.S. citizens, who were not USAID direct-hires, had been granted contracting warrants. Three of the four were former USAID direct-hire employees who already possessed significant USAID contracting experience and were working under personal services contracts. The fourth individual was a direct-hire employee of another U.S. Government agency temporarily assigned to USAID under a Participating Agency Service Agreement (PASA).

USAID officials concurred with the findings and conclusions in our report (see page 8). There were no recommendations requiring corrective action.

Background

USAID is charged with the design and implementation of humanitarian and economic assistance programs overseas. To accomplish this work and to supplement its direct-hire workforce, it obtains the services of U.S. citizens and foreign nationals under a variety of employment mechanisms.

USAID's core workforce has evolved over the years in response to reductions in operating expense funding (OE funds) and authorized ceilings for U.S. direct hire (USDH) employees. As a result of these ceilings, USAID managers have hired large numbers of foreign nationals and U.S. citizens under personal services contracts (PSCs) to perform management and administrative functions. Many non-USDH personnel perform procurement functions as well for USAID, both in Washington and at the overseas mission offices.

At USAID missions overseas, the mix of direct hire employees, contractors, and other non-direct hire staff varies from country to country. Many local factors -- such as the availability of commercial services, OE funds, personnel ceilings, and educated and experienced local job applicants -- contribute to the unique "personnel profile" of each USAID field unit. In Washington, as well, the different USAID bureaus do not all share the same approach in filling staff vacancies. USAID/Washington bureaus have been utilizing greater numbers of non-direct hire resources. Some USAID bureaus and offices have been granted special authority to use appropriated funds to employ personal service contractors and have exercised this authority to contract individuals to perform procurement activities.

Audit Objectives

In response to a request from the House Appropriations Committee's Subcommittee on Foreign Operations, the USAID Office of Inspector General conducted an audit to answer the following questions:

- **Does USAID have the authority to delegate procurement functions to non-USDH personnel?**
- **How many non-USDHs perform procurement functions and what are their employment classifications?**

Appendix I describes the audit scope and methodology.

Audit Findings

Does USAID have the authority to delegate procurement functions to non-USDH personnel?

USAID has the authority to delegate procurement functions to non-U.S. direct hire (USDH) personnel, including foreign and U.S. personal services contractors. For example, contracting and obligating authority may be delegated to non-USDHs with the approval of certain senior USAID officials. It is, however, USAID's general policy to designate only USDH employees as contracting officers.

USAID's authority to undertake procurement tasks and to delegate and redelegate that authority rests in State Department Delegation of Authority No. 145, as amended March 31, 1999. Under this authority, the Secretary of State delegated to the Administrator of USAID the functions to carry out, among other things, Part I of the Foreign Assistance Act of 1961. The Delegation of Authority defined "function" to include any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity. It also provided that these functions may, to the extent consistent with law, be redelegated and successively redelegated and that rules and regulations may be promulgated as necessary to

carry out the functions.

USAID rules governing the delegation of procurement functions to non-USDH personnel performing procurement functions are provided for in both the USAID Automated Directives System (ADS) and Acquisition Regulations (AIDAR).

ADS 103.3.1.1 (a), *Delegation to U.S. Citizen Personal Services Contractors (USPSCs) and Non-U.S. Citizen Employees*, provides the general policy:

> Notwithstanding any other provision of USAID directives, regulations, or delegations, U.S. citizen personal services contractors (USPSCs) and non-U.S. citizen employees (host country and third country Personal Services Contractors (PSCs) and direct-hire employees) may be delegated or assigned any authority, duty, or responsibility, delegable to U.S. citizen direct-hire employees (USDH employees) *except that... they may not be designated a contracting officer or delegated authority to sign obligations or sub-obligating documents. (Emphasis added.)*

However, ADS 103.3.1.1 (b) provides for exceptions to this limitation with approval from the Assistant Administrator for the Bureau for Management. It also states that USAID's Director of the Office of Procurement (M/OP) has been delegated the authority to issue contracting warrants to USPSCs. Pursuant to this authority, USAID's Director of the Office of Procurement issued a memorandum in August 1999 stating that, on an exceptional basis, missions may request that individuals serving as USPSC executive officers be granted warrants. However, this would be limited to only retired USDH executive officers who have completed the minimal requirements for a newly hired USDH executive officer and whose contracting competence was known through earlier M/OP assessments. Such exceptions would be considered when the USPSC executive officer is serving on a long-term assignment or is involved in the closeout of a mission.

This policy is also provided for in USAID's Acquisition Regulation, AIDAR 701.603-70, *Designation of Contracting Officers,* which states that because contracting officers represent the U.S. Government through the exercise of their delegated authority to negotiate, sign, and administer contracts on behalf of the U.S. Government, USAID contracting officers must be USDH employees. In addition, Appendices D and J of these regulations set forth the same limitations and exceptions found in ADS 103.3.1.1 regarding personal service contractors (PSCs).

In commenting on this requirement, USAID's Office of General Counsel advised that, "there is nothing in law or regulation that prohibits as a general

matter the delegation of functions to non-citizens and nothing specific on procurement functions. In other words, non-US citizen employees can be contracting officers." The General Counsel's Office, however, stated further that even though USAID has the authority to allow non-U.S. citizens to be contracting officers, it has chosen not to exercise this authority.

Based on our review of USAID's policies and regulations, the State Department Delegation of Authority No. 145, and conversations with USAID's Office of General Counsel, we believe that USAID has the authority to delegate procurement and contracting authority to non-USDH personnel with restrictions and proper approval.

How many non-U.S. direct hire personnel perform procurement functions and what are their employment classifications?

Non-USDH personnel in USAID performed a variety of procurement functions--from basic acquisition of office supplies, to routine clerical work, to more complex negotiation and contracting responsibilities. We identified an estimated 230 USPSCs, foreign national employees, and foreign national PSCs who were performing procurement-related functions at overseas missions and four U.S. citizens that had been granted contract warrants. In addition, we identified 13 non-USDHs performing procurement functions for USAID in Washington.

Non-USDHs Performing Procurement Functions Overseas – USAID's records showed that, as of September 30, 2001, an estimated 230 non-USDH employees of USAID were performing procurement related functions as a part of their duties in USAID missions overseas.

The following chart indicates the distribution of these individuals by employment category:

Non-USDH Personnel Performing Procurement Functions Overseas As of September 30, 2001 (Unaudited)	
Employment Category	**Number**
U.S. personal services contractors (PSCs)	14
USDH on detail from another federal agency	1
Third country national PSCs	14
Foreign national PSCs	191
Foreign national employees	10
Total	**230**

In addition, records showed that four U.S. citizens, who were not USAID direct-hires, had been granted contracting warrants. Three of the four were former USAID direct hire employees who already possessed significant USAID contracting experience and were working under personal services contracts, and the fourth individual was a direct-hire of another U.S. Government agency temporarily assigned to USAID under a Participating Agency Service Agreement.

Non-USDHs Performing Procurement Functions in USAID/Washington – Each USAID/Washington office and bureau determines its own non-USDH personnel workforce and controls the type, number, job title, and duties of these individuals. Individual bureaus reported that two PSCs, and four individuals working under purchase order arrangements were performing procurement-related activities in Washington. Furthermore, USAID Washington had also contracted with an institutional contractor that provided seven employees to prepare contracting documents to be sent to USAID's Office of Procurement for final approval. None of these 13 individuals had contracting warrants.

The following chart indicates the distribution of these thirteen individuals by employment category:

Non-USDH Personnel Performing Procurement Functions in Washington
As of September 30, 2001 (Unaudited)

Employment Category	Number
U.S. personal services contractors (PSCs)	2
U.S. citizens working under purchase orders	4
U.S. citizens working for institutional contractor	7
Total.....	**13**

In addition to these staff, USAID missions in the past have detailed foreign national employees and PSCs to the Office of Procurement to perform procurement-related functions when necessitated by heavy workloads in Washington.

Management Comments and Our Evaluation

USAID management concurred with the findings and conclusions of our audit. There were no recommendations requiring corrective action. Management comments are included in their entirety as Appendix II.

Scope and Methodology

Scope

The Performance Audit Division of the Office of Inspector General conducted an audit to determine: (1) USAID's authority to delegate contracting functions to non-US direct hire personnel and (2) how many non-US direct hire personnel were performing procurement functions in USAID as of September 30, 2001. Audit fieldwork was conducted at USAID/Washington from August 29, 2001 through October 24, 2001. The audit was conducted in accordance with generally accepted government auditing standards.

In answering the second audit objective involving the determination of the number of USAID personnel performing procurement-related activities, we relied on the data provided to us and did not test its reliability. Also, an unknown number of individuals might perform procurement-related functions on an ad hoc basis, which was not being tracked by the Office of Human Resources. Due to the nature and category of the audit objectives, we did not examine or assess any specific management controls.

Methodology

To answer the first audit objective, we reviewed applicable laws, Executive Orders, regulations and policies addressing the delegation of procurement authority to and within USAID. We reviewed the manner in which USAID interpreted the language of these documents and exercised its authority. Our analysis included discussions with USAID's Office of General Counsel and Office of Procurement personnel for clarification of various points of law and authorities granted to USAID.

To answer the second audit objective, we consolidated data from various sources and judgmentally made adjustments to the data based on discussions with personnel in the Office of Human Resources, and the USAID bureaus and offices.

Management Comments

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

MEMORANDUM

TO: IG/A/PA Director, Dianne L. Rawl

FROM: M/OP, Mark S. Ward

SUBJECT: Draft Report on Audit of Non-USDH Personnel Performing Procurement Functions Within USAID

Thank you for the opportunity to review the draft. I am pleased to see that the audit findings indicate that USAID has authority to delegate procurement functions to non-USDH personnel. The number and employment classification of these non-USDH personnel is consistent with our records in the Office of Procurement. To the extent that we continue to use non-USDH personnel for procurement functions, we will do so within the scope of our authority.

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