



USAID
FROM THE AMERICAN PEOPLE

OFFICE OF INSPECTOR GENERAL

AUDIT OF USAID'S CUBA PROGRAM

AUDIT REPORT NO. 9-516-07-009-P
SEPTEMBER 25, 2007

WASHINGTON, DC



USAID
FROM THE AMERICAN PEOPLE

Office of Inspector General

September 25, 2007

MEMORANDUM

TO: LAC/Cuba Program Director, David E. Mutchler
M/OAA/OD Director, Maureen A. Shauket
M/MPBP/POL Director, Subhi Mehdi

FROM: IG/A/PA Director, Steven H. Bernstein /s/

SUBJECT: Audit of USAID's Cuba Program (Report No. 9-516-07-009-P)

This memorandum transmits our final report on the subject audit. In finalizing the report, we considered your comments on the draft report and have included your comments in their entirety in Appendix II.

This report includes 12 recommendations to strengthen certain aspects of USAID's Cuba Program and related cognizant technical officer responsibilities, and USAID's process of identifying the audit universe of U.S.-based nonprofit organizations that meet the Single Audit Act requirements.

In your response to the draft report, you concurred, for the most part, with our findings and recommendations, and described actions planned and taken to address our concerns. Based on information provided in your response and further review of related documentation, we agreed to remove a finding and the related recommendation. To accommodate this revision, we renumbered the recommendations.

We determined that final action has been taken on Recommendation Nos. 4 and 6, and these recommendations are considered closed upon final report issuance. Furthermore, management decisions have been reached on Recommendation Nos. 2, 3, 5, 7, 8, 9, 11, and 12. Please coordinate final action on these recommendations with USAID's Audit, Performance, and Compliance Division (M/CFO/APC).

Management decisions were not reached on Recommendation Nos. 1 and 10 (as revised), as management's response did not fully address our concerns, as discussed on pages 18 and 19. To reach a management decision on Recommendation No. 1, you will need to provide us, within 30 days, with your plan to identify the annual audit universe of U.S.-based nonprofit organizations that meet the annual expenditure threshold amount. To reach a management decision on Recommendation No. 10, you will need to provide us, within 30 days, with a description of how cognizant technical officers will document their required reviews of letter of credit and periodic advance financial status reports.

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

CONTENTS

Summary of Results	1
Background	2
Audit Findings	4
Did USAID ensure that audits required for Cuba Program grantees under the Single Audit Act were conducted?	4
USAID Needs to Ensure That Required Audits Are Conducted.....	4
Single Audit Act Requirements Need to Be Clearly Articulated.....	7
Were responsibilities and authorities for implementing and monitoring USAID’s Cuba Program clearly defined, assigned, and performed?	9
USAID Needs to Determine Whether Awards Should Be Classified	9
Cognizant Technical Officer Should Be Certified.....	10
Periodic Advances and Letters of Credit Need Cognizant Technical Officer Review.....	13
Other Matters.....	14
USAID Needs to Determine Whether Grantees Should Be Vetted.....	15
Staffing Requirements Need to Be Formally Assessed.....	16
Evaluation of Management Comments	18
Appendix I – Scope and Methodology	20
Appendix II – Management Comments	23
Appendix III – Responsibilities and Authorities Tested	28

SUMMARY OF RESULTS

USAID awards grants and cooperative agreements to U.S. universities and other U.S. nongovernmental organizations to promote peaceful, nonviolent democratic change in Cuba. These awards are designed to help build civil society by increasing the flow of information on democracy, human rights, and free enterprise to, from, and within Cuba. Initiatives include advocacy, both within Cuba and internationally, for instituting a rule of law, protecting human rights—including freedom of press and information—and encouraging civic participation. According to unaudited information provided by its Cuba Program Office, USAID awarded approximately 40 grants and cooperative agreements, totaling nearly \$64 million, from the start of the program in 1996 through March 2007 (see page 2).

The Office of Inspector General conducted this audit to determine whether (1) USAID ensured that audits required for Cuba Program grantees under the Single Audit Act were conducted, and (2) responsibilities and authorities for implementing and monitoring USAID's Cuba Program were clearly defined, assigned, and performed (see page 3).

We determined that USAID did not ensure that audits required for Cuba Program grantees under the Single Audit Act were conducted (see page 4). In addition, responsibilities and authorities for implementing and monitoring USAID's Cuba Program were not clearly defined, assigned, and performed (see page 9).

Accordingly, this report includes recommendations that USAID develop a report to identify the annual audit universe of U.S.-based nonprofit organizations that meet the expenditure threshold amount; determine whether audits required for active Cuba Program awards were conducted, and if not, ensure that audits are conducted; clarify audit requirements in grants made to U.S. nonprofit organizations; clarify audit requirements in the Cuba Program Annual Program Statement; clarify audit requirements in the standard assistance cognizant technical officer (CTO) designation letter; determine whether Cuba Program awards should be classified; verify that CTO training and certification is up to date in the Bureau for Latin America and the Caribbean; revise Automated Directives System (ADS) 303 to incorporate CTO training and certification policies; revise ADS 202 to incorporate CTO training and certification policies; require CTOs to review financial status reports for recipients with periodic advances, and to evidence the review of letters of credit and periodic advances by initialing and dating the reports (see pages 7, 8, 9, 10, 12, and 14).

Additionally, this report includes two recommendations related to other matters noted during the audit. The first recommendation is that USAID should determine whether Cuba Program grantees and their personnel should be vetted; the second is that USAID should conduct analyses to identify Cuba Program Office staffing needs (see pages 16 and 17).

See page 18 for our evaluation of management comments.

BACKGROUND

The Cuban Democracy Act of 1992 and the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 authorized the President to provide assistance to individuals and independent nongovernmental organizations to promote peaceful, nonviolent democratic change in Cuba, through various types of democracy-building efforts. The Presidential Commission for Assistance to a Free Cuba issued reports in 2004 and 2006, articulating a strategy used by USAID to assist in hastening the peaceful transition to democracy in Cuba. To this end, USAID awards grants and cooperative agreements to U.S. universities and other U.S. nongovernmental organizations. These awards are designed to help build civil society, by increasing the flow of information on democracy, human rights, and free enterprise to, from, and within Cuba.

USAID's Washington-based Cuba Program is managed by a small office, under the auspices of the Bureau for Latin America and the Caribbean. Because USAID does not have staff or a mission in Cuba, USAID implements its assistance to Cuba through an interagency process.¹ USAID's Cuba Program Office staff has not been able to obtain Cuban visas since 2002.

According to unaudited information provided by the Cuba Program Office, USAID awarded approximately 40 grants and cooperative agreements totaling nearly \$64 million from the start of the program in 1996 through March 2007.² These grantees were U.S.-based organizations, most located in and around Miami or in Washington, D.C. USAID's program funding for fiscal year 2007 was \$6.8 million—with \$1 million programmed by USAID's Office of Transition Initiatives. Total funding for fiscal year 2008 is projected at \$45.7 million and will be allocated to USAID and the Department of State.

¹ In addition to USAID, these agencies include representatives from the Departments of State (State), Commerce, the Treasury, and the National Security Council. State determines USAID's annual Cuba Program budget, while the interagency working group, cochaired by USAID and State, reviews and clears unsolicited proposals submitted to USAID.

² These figures include awards and award modifications to approximately 30 different nonprofit organizations. Grants and cooperative agreements are awards by which USAID provides assistance to accomplish a specified program objective. A cooperative agreement involves substantial involvement by USAID after the assistance is provided, while a grant does not. For purposes of this report, nonprofit organizations awarded either a grant or cooperative agreement are referred to as "grantees."

AUDIT OBJECTIVES

The Office of Inspector General conducted this audit to answer the following questions:

- Did USAID ensure that audits required for Cuba Program grantees under the Single Audit Act were conducted?
- Were responsibilities and authorities for implementing and monitoring USAID's Cuba Program clearly defined, assigned, and performed?

Appendix I contains a discussion of the audit's scope and methodology.

AUDIT FINDINGS

Did USAID ensure that audits required for Cuba Program grantees under the Single Audit Act were conducted?

USAID did not ensure that audits required for Cuba Program grantees under the Single Audit Act were conducted.³ Although USAID has a process that is intended to identify the audit universe of U.S.-based nonprofit organizations that meet the annual audit requirement, the process needs to be strengthened to ensure that required audits for Cuba Program grantees are conducted.⁴ In addition, the Office of Management and Budget's (OMB) Circular No. A-133 audit requirements were not clearly articulated in the awards tested, in the Cuba Program Annual Program Statement (APS), or in the standard assistance cognizant technical officer (CTO) designation letter.⁵ These issues are discussed in the following sections.

USAID Needs to Ensure That Required Audits Are Conducted

Summary: Federal regulations require that agencies that provide awards directly to a grantee ensure that A-133 audits are completed and reports are received in a timely manner. However, USAID's process to identify the audit universe of U.S.-based nonprofit organizations that meet the annual audit requirement did not ensure that required A-133 audits were completed and received in a timely manner. This was due to confusion over roles and responsibilities, and the lack of information flow to responsible parties. As a result, USAID could not ensure that required audits for Cuba Program grantees were conducted, increasing the risk that USAID funds are not being spent in accordance with laws and regulations, and that USAID is not getting the full value from its awards.

³ The *Single Audit Act of 1984*, as amended, is intended to promote sound financial management for Federal awards administered by nonprofit organizations. This Act requires a single organization-wide audit upon which all Federal agencies rely, rather than grant-by-grant audits by each agency providing Federal funding. The "single audit" covers the organization's financial statements, compliance with laws and regulations, and internal control systems.

⁴ The Office of Management and Budget's (OMB) Circular No. A-133 established requirements and responsibilities for Federal agencies and nonprofit organizations under the Single Audit Act. Circular No. A-133 requires that nonprofit organizations expending Federal funds of \$500,000 (\$300,000 before January 1, 2004) or more in a year have the requisite audit. For purposes of this report, these audits are referred to by their commonly known name, *A-133 audits*.

⁵ USAID uses the term cognizant technical officer (CTO) in lieu of other commonly used U.S. Government terms, such as "contracting officer's technical representative," because CTOs are responsible for certain defined actions involving grants and cooperative agreements, as well as contracts.

Circular No. A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, states that Federal agencies providing an award directly to a grantee should ensure that audits are completed and reports are received in a timely manner. USAID's Automated Directives System (ADS) 591, *Financial Audits of USAID Contractors, Grantees, and Host Government Entities*, states that USAID's Bureau for Management, Office of Acquisition and Assistance (OAA), Contract Audit and Support Division (CAS) is responsible for identifying and maintaining the audit universe for U.S.-based organizations and ensuring that required audits are conducted.

USAID's process to identify the audit universe of U.S.-based nonprofit organizations that meet the annual audit requirement did not ensure that required A-133 audits were completed and received in a timely manner. CAS has a tracking system, called the Audit Tracking System (ATS), for those A-133 audit reports that it receives. CAS officials reported that it uses this database to identify its potential A-133 audit universe, and periodically reviews the database to determine whether A-133 audit reports have been submitted to the Federal Audit Clearinghouse (Clearinghouse).⁶ CAS officials further reported that if an audit has not been filed with the Clearinghouse, CAS sends letters to the grantees asking whether the grantee has expended \$500,000 or more in Federal funds during the fiscal year. However, CAS officials were not able to provide documentation that these reviews had been performed or copies of letters that had been sent to or received from Cuba Program grantees.⁷

Although exact grantee expenditure information was not readily available, we estimated that 15 of the approximately 30 Cuba Program grantees—all U.S.-based nonprofit organizations—met the A-133 audit threshold for various years from 2001 through 2006.⁸ These 15 grantees had estimated expenditures of more than \$40 million. Four of these grantees, with estimated expenditures of nearly \$12 million, submitted audit reports to the Clearinghouse for each year that we estimated met the A-133 threshold. Seven grantees, with estimated expenditures of nearly \$6.5 million, did not submit audit reports during these years. Of the remaining four grantees, with estimated expenditures of approximately \$22 million, two had submitted audit reports for some of the years in question, and two had not submitted reports for the years in question.

USAID was not able to ensure that its A-133 audit universe was complete and that required audits for Cuba Program grantees and other U.S.-based nonprofit organizations were conducted for two reasons: (1) confusion over roles and responsibilities and (2) lack of information flow to responsible parties. For example, OAA officials stated that responsibility for ensuring that A-133 audits were conducted rested with the grantees, not with USAID. Even though the ADS clearly assigns CAS the responsibility for identifying and maintaining the audit universe for U.S.-based organizations and ensuring that required audits are conducted, CAS officials stated that their A-133 responsibilities were limited to monitoring the ATS database, conducting audit resolution, and following

⁶ The Clearinghouse is the organization that the OMB designated to receive single audit reports from Federal award recipients and to maintain a Government-wide database of these submissions.

⁷ We are not making a related recommendation at this time, as our concerns related to lack of documentation will be addressed upon implementation of Recommendation No. 1.

⁸ See page 21 for the methodology used to arrive at this estimate.

up on any systemic issues identified in the A-133 reports. In addition, CAS officials stated that they enter grantees into the ATS database if a program office requests that CAS conduct an accounting system evaluation. CAS is not otherwise routinely informed of new awards or modifications increasing award amounts, and does not have a way of knowing how much U.S.-based grantees expend each fiscal year. CAS is, therefore, “left out of the loop” and cannot ensure that the U.S.-based nonprofit organization audit universe is complete.

As a result, USAID could not ensure that required audits for Cuba Program grantees were conducted, increasing the risk that USAID funds are not being spent in accordance with laws and regulations, and that USAID is not getting the full value from its awards. For example, CAS recently conducted a review of a Cuba Program grantee, which according to our initial estimate exceeded the A-133 threshold for 2005, and determined that the grantee’s accounting system was inadequate.⁹ CAS found, on a preliminary basis, more than \$800,000 in questioned labor and other direct costs, nearly 50 percent of the monies the grantee had expended to date. Additionally, CAS is questioning, on a preliminary basis, more than \$550,000 of the grantee’s cost share contributions.¹⁰ As discussed on page 13, USAID relies on A-133 audits in lieu of grantee documentation of expenditures, putting these funds at risk if required audits are not conducted.

USAID’s Cash Management and Payment (CMP) Division personnel indicated that a Phoenix report could be run each year by grantee, by beginning and end dates of the grantee’s fiscal year, and would display the dollar amounts disbursed by USAID during that time period.¹¹ This report could be used to construct the annual A-133 audit universe. Furthermore, with proper collaboration, as USAID moves to implement its new procurement system, the Global Acquisition System, the requirement to identify the annual A-133 audit universe could be built into this new system.

Because the ADS clearly assigns CAS the responsibility for identifying and maintaining

⁹ In response to our estimate that this grantee exceeded the 2005 A-133 threshold, USAID’s Cash Management and Payment Division ran a special report, using grantee expenditure information in Phoenix—USAID’s financial management system—showing that this grantee did not exceed the threshold. This report, which we did not audit, is comparable to the type of report described in footnote 11 below that we recommend USAID develop and use to identify the annual A-133 audit universe.

¹⁰ Cost sharing is used in certain grants and cooperative agreements, and requires grantees to pledge a set amount of cash or in-kind contributions from non-Federal sources to assist in achieving grant objectives.

¹¹ Although Phoenix includes grantee expenditures, according to CMP personnel, Phoenix accumulates grantee expenditure date information in a nonsortable field; therefore, exact grantee expenditure data by fiscal year are not currently available in a routinely produced report. Although the A-133 audit requirement is based on grantee expenditures, not on Federal agency disbursements to the grantee, this report, based on USAID disbursements, should be a reasonable approximation of grantee expenditures for the following reasons: (1) if the grantee is paid by monthly reimbursement, the grantee has already expended the funds, most likely within the last 30 days; (2) if the grantee is paid by periodic advance, the grantee is required to expend the funds within 30 days; (3) if the grantee is paid by letter of credit, the grantee is required to expend the funds within 7 days. Therefore, this report would provide a reasonable basis for USAID to determine whether an A-133 audit is required.

the audit universe for U.S.-based organizations and for ensuring that required audits are conducted, we are not making a recommendation to clarify CAS' roles and responsibilities. However, to address the lack of information flow and to ensure that required A-133 audits for Cuba Program grantees and other U.S.-based nonprofit organizations are conducted, we are making the following recommendations.¹²

Recommendation No. 1: We recommend that the Director of USAID's Office of Acquisition and Assistance, in collaboration with the Cash Management and Payment Division and other appropriate parties, develop a report that can be run for each grantee's fiscal year to identify the annual audit universe of U.S.-based nonprofit organizations that meet the annual expenditure threshold amount under the Single Audit Act.

Recommendation No. 2: We recommend that the Director of USAID's Office of Acquisition and Assistance determine, for all active Cuba Program awards as of April 30, 2007, whether audits required under the Single Audit Act were conducted for all years covered under these awards, and if not, ensure that the required audits, for these grantees with fiscal years ending before April 30, 2007, are conducted.

Single Audit Act Requirements Need to Be Clearly Articulated

Summary: USAID policy requires that awards made to U.S. nonprofit organizations include a provision requiring the organization to contract with an independent non-Federal auditor to perform financial audits in accordance with OMB Circular No. A-133. However, none of the six Cuba Program awards tested included this provision; instead, standardized award language indicated that all provisions of Title 22, Part 226 of the Code of Federal Regulations (22 CFR pt. 226) apply to the recipient. This was because USAID officials felt that pointing the grantee to the CFR was sufficient. In addition, A-133 audit requirements were not clearly articulated in the Cuba Program Annual Program Statement or in the standard assistance CTO designation letter. As a result, grantees may not have been aware of or understood the A-133 audit requirement, increasing the risk of misuse of program funds.

ADS 591 requires that awards made to U.S. nonprofit organizations include a provision requiring the organization to contract with an independent non-Federal auditor to perform financial audits in accordance with OMB Circular No. A-133.

However, none of the six Cuba Program awards tested included this provision. Instead, the awards included standard provisions for U.S. nonprofit organizations, one of which stated that all provisions of 22 CFR pt. 226 apply to the recipient. The CFR is the codification of rules published in the Federal Register by U.S. Government agencies; Part 226 concerns rules governing grants and cooperative agreements and includes approximately 60 subparts—Section 226.26 covers non-Federal audits.

¹² For Recommendation No. 2, fiscal years ending before April 30, 2007 were selected to identify the fiscal years for which OAA needs to ensure that the required audits were conducted.

The audit provision was not included in the grant agreements because OAA staff felt that pointing the grantee to 22 CFR pt. 226 was sufficient and that it was impractical to cite every provision in the grant agreement. Although the Cuba Program Director stated that he has recently begun reviewing 22 CFR pt. 226 requirements with grantees, including the audit provision in the grant agreements—as required by ADS 591—would highlight the importance of this requirement. In addition, A-133 audit requirements were not clearly described in the following two documents:

The Annual Program Statement (APS) – A-133 audit requirements were not clearly articulated in the March 1, 2007 Cuba Program APS. An APS is used to generate competition for new awards, instead of relying on unsolicited proposals. According to ADS 303, *Grants and Cooperative Agreements to Non-Governmental Organizations*, an APS for U.S. nonprofit organizations must state that 22 CFR pt. 226, OMB Circulars, and USAID’s standard provisions will be applicable to the award. The APS included this statement, and also described the A-133 audit requirement for sub-grantees. The APS did not, however, state that primary grantees were subject to the A-133 audit requirement, adding to possible grantee confusion about this important requirement.

Standard Assistance CTO Designation Letter – A-133 audit requirements are also unclear in this letter. Although USAID’s standard assistance CTO designation letter describes CTO monitoring duties related to the audit requirement for non-U.S. organizations, it does not describe corresponding duties for U.S.-based nonprofit organizations. In addition, the letter incorrectly states that the audit requirement is based on the amount of the award, rather than on the amount expended (see footnote 4). This lack of clarity adds to the general confusion regarding A-133 audits and leads CTOs to believe that they are responsible for monitoring only non-U.S. organizations’ compliance with this requirement.

As a result, Cuba Program grantees and CTOs may not have been aware of or understood the A-133 audit requirement, increasing the likelihood that the required audits were not conducted and increasing the risk of misuse of program funds.

Therefore, to reduce confusion surrounding the A-133 requirement for Cuba Program grantees and other U.S.-based nonprofit organizations, we are making the following recommendations.¹³

Recommendation No. 3: We recommend that the Director of USAID’s Office of Acquisition and Assistance, for awards made to U.S. nonprofit organizations, revise the award language, as required by Automated Directives System 591.3.1.1, to include a provision requiring the organization to contract with an independent non-Federal auditor to perform financial audits in accordance with the Office of Management and Budget’s Circular No. A-133.

¹³ As stated on pages 2 and 5, Cuba Program grantees are U.S.-based nonprofit organizations. As OAA did not differentiate between Cuba Program grantees and other U.S.-based nonprofit organizations, Recommendation Nos. 3 and 5 apply to all U.S.-based nonprofit organizations.

Recommendation No. 4: We recommend that the Director of USAID's Office of Acquisition and Assistance revise the March 1, 2007 Annual Program Statement, USAID-Washington-GRO-LMA-07-001-APS, to clearly state that the Office of Management and Budget's Circular No. A-133 audit requirement pertains to primary grantees, as well as to sub-grantees.

Recommendation No. 5: We recommend that the Director of USAID's Office of Acquisition and Assistance revise the monitoring duties in the standard assistance cognizant technical officer designation letter to include the Office of Management and Budget's Circular No. A-133 audit requirement for U.S.-based nonprofit organizations, and to clearly state that the requirement is based on the amount expended each year rather than the amount of the award.

Were responsibilities and authorities for implementing and monitoring USAID's Cuba Program clearly defined, assigned, and performed?

Responsibilities and authorities for implementing and monitoring USAID's Cuba Program were not clearly defined, assigned, and performed. Six of 16 (approximately 37 percent) responsibilities and authorities tested were not, or were not always, clearly defined, assigned, or performed (see Appendix III). Although all the grantee reimbursement requests tested were administratively approved before payment, expenditures under periodic advances and letters of credit were not reviewed, and other responsibilities and authorities tested were not clearly defined, assigned, or performed. For example, there was confusion over responsibilities for classifying awards and for ensuring that the CTO was properly designated, trained, and certified. These issues are discussed in the following sections.

USAID Needs to Determine Whether Awards Should Be Classified

Executive Order 12356, *National Security Information*, states that information should be considered for classification if it concerns foreign government information, intelligence activities, foreign relations or foreign activities of the United States, or a confidential source. ADS 568, *National Security Information and Counterintelligence Security Program*, states that USAID's Director of Security has primary responsibility for carrying out related security duties. In addition, the ADS gave the Assistant Administrator of the Bureau for Latin America and the Caribbean (the Bureau) authority to classify information at the confidential and secret level.

Some of USAID's Cuba Program activities and assistance delivery methods are considered classified. For example, in May 2007, the Government Accountability Office (GAO) issued a classified version of its November 2006 audit report.¹⁴ This classified version of the report included detailed information about the methods used to deliver

¹⁴ U.S. Democracy Assistance for Cuba Needs Better Management and Oversight, Report No. GAO-07-147, dated November 15, 2006.

USAID assistance to Cuba, steps taken to reduce losses of assistance shipped to the island, and some of the recipients of assistance in Cuba. During the audit, USAID officials expressed concerns regarding the need to protect the identities of dissidents and recipients of assistance in Cuba. Because some of its activities are considered classified—and this information is in the hands of its grantees—USAID needs to determine whether the awards under which these activities are conducted should be classified. At the time of the audit, none of the Cuba Program awards were classified.

USAID had not considered classifying Cuba Program awards because of confusion over classification responsibilities and concern that classification would delay or halt program activities. For example, in its formal written response to GAO's draft audit report, USAID stated that, "due to the nature of the program, detailed grantee narrative reports could contain sensitive information which the Cuba Program Office (the Office) does not have the authority to classify." As mentioned above, however, the Assistant Administrator of the Bureau, to whom the Deputy Assistant Administrator responsible for the Office reports, has authority to classify information at the confidential and secret levels. When asked whether the activities and awards should be classified, the Cuba Program Director stated that someone at a higher grade level would need to make that determination. He also stated that at the beginning of the program, USAID had decided that the program and its activities would not be classified. In addition, he expressed concern that it could "take years" for some grantees to obtain the security clearances required if the awards were classified.

As a result, information that may need to be protected is at risk of inappropriate disclosure. Therefore, to reduce this risk, we are making the following recommendation.

Recommendation No. 6: We recommend that the Cuba Program Director, in collaboration with the Deputy Assistant Administrator of the Bureau for Latin America and the Caribbean and the Director of the Office of Security, make a written determination whether the Cuba Program awards should be classified.

Cognizant Technical Officer Should Be Certified

Summary: USAID policy requires that CTOs be designated using a standardized designation letter and be certified within 1 year of designation. However, the Cuba Program CTO was not properly designated, had not received CTO training, and was not certified. This was due to confusion over duties and to lack of communication among responsible offices. As a result, Cuba Program grantees were not monitored sufficiently and USAID did not receive full value from all its awards.

ADS 303, *Grants and Cooperative Agreements*, states that the agreement officer should designate the CTO for each grant or cooperative agreement using the standard designation letter.¹⁵ In addition, General Policy Notice 05-13, *CTO Training and Certification Program*, requires that all individuals appointed as CTOs meet the Agency's

¹⁵ The requirement to designate CTOs using a standard designation letter became effective on August 26, 2004, when USAID issued Acquisition and Assistance Policy Directive 04-10.

mandatory training and certification program requirements, either (1) before the issuance of their CTO appointment letter, (2) within 1 year of issuance of the appointment letter, or (3) by the effective date of the Notice, September 25, 2005, whichever comes later. This General Policy Notice requires that bureaus to which CTOs are assigned maintain up-to-date master lists of their CTOs to ensure that individuals requiring training receive it on a timely basis. The Notice requires bureaus to verify with the CTO training coordinator in USAID's Training and Education Division that their CTOs' training and certification status is up to date.

As a practical matter, agreement officers do not have sufficient technical expertise or time to ensure successful administration and completion of all aspects of each award. Therefore, they rely on CTOs to act for them with respect to certain critical administrative actions and technical issues arising under these awards. It is the CTOs' responsibility to ensure, through liaison with grantees, that the technical and financial aspects of the awards are realized. For that reason, agreement officers are required to delegate these critical tasks by designating a properly trained individual to serve as the CTO for each award.

The Cuba Program Director was the designated CTO for all Cuba Program awards since the program's inception in 1996. Although USAID policy requires that CTOs be trained and certified within a year of designation, the designated CTO had not received CTO training and was not certified. In addition, the CTO was still being designated in the award itself—by title rather than by name—rather than by the required designation letter. The designation letters are important because they delineate CTO responsibilities, such as monitoring the grantee's progress toward program objectives and various financial management duties, and the limits of the CTO authority. The letters also describe standards of conduct and conflicts of interest.

The designated CTO did not have the required CTO training and was not certified because of confusion over duties and lack of communication among the offices responsible for overseeing CTO certification. For example, because the Cuba Program Director was listed in OAA's computerized procurement system, called the New Management System (NMS), the agreement officer assumed the Program Director was a certified CTO. Because the Program Director was on OAA's NMS list and had 35 years of USAID experience, both he and the agreement officer assumed that he was "grandfathered in" as a certified CTO. Additionally, the Bureau relied on OAA, did not monitor the CTO certification process, and did not verify with the CTO Training Coordinator in USAID's Training and Education Division whether the designated CTO's training and certification status was up to date. Therefore, the fact that the designated CTO was not certified "fell through the cracks."

As a result, Cuba Program grantees were not monitored sufficiently, and USAID did not receive full value from all its Cuba Program awards. For example, because the CTO did not understand the full scope of his duties, monitoring and oversight of Cuba Program grants did not provide adequate assurance that funds were used properly or that grants were implemented properly, as GAO stated in its recent report (see footnote 14). A more specific example is the recent cost share waiver for a Cuba Program grantee, amounting to approximately \$129,000. One of the justifications for the waiver was that USAID did not verify the grantee's cost share contributions. Verifying that the grantee's activities, such as cost sharing, conform to the terms and conditions of the award is an essential CTO duty described in the CTO letter.

Part of the confusion over issuing CTO letters, training, and certification may result from the fact that policies established in Acquisition and Assistance Policy Directive 04-10 and several General Policy Notices have not been consistently incorporated into USAID's ADS. For example, ADS 202, *Achieving*, has not been updated to reflect the requirement that agreement officers should designate the CTO for each grant or cooperative agreement using the standard CTO designation letter. Although ADS 303 was revised to include the standard designation letter requirement, it does not specify training and certification requirements.

USAID, along with all other executive branch agencies, is currently implementing a Web-based, Government-wide system, called the Acquisition Career Management Information System (ACMIS), which is designed to track the training of USAID's acquisition workforce. USAID now requires its CTOs to register in ACMIS. USAID officials believe that this system will improve its monitoring of CTO training and certification.

To reduce confusion over critical CTO duties and to ensure that CTOs have the required training and are certified, we are making the following recommendations.

Recommendation No. 7: We recommend that the Director of USAID's Office of Acquisition and Assistance, in collaboration with the Director of the Executive Management Team for the Bureau for Latin America and the Caribbean, appoint an individual to periodically verify that Bureau cognizant technical officers register in the Acquisition Career Management Information System, and appoint an individual to periodically verify with USAID's Training and Education Division that cognizant technical officer training and certification status is up to date, as required by USAID's General Policy Notice 05-13.

Recommendation No. 8: We recommend that the Director of USAID's Office of Acquisition and Assistance revise Automated Directive System 303 and other relevant Automated Directive System chapters, to incorporate Acquisition and Assistance Policy Directive 04-10, General Policy Notice 05-13, and other related cognizant technical officer policies.

Recommendation No. 9: We recommend that the Director of USAID's Office of Management Policy, Budget, and Performance, in collaboration with USAID's Office of Acquisition and Assistance, revise Automated Directive System 202, to incorporate Acquisition and Assistance Policy Directive 04-10, General Policy Notice 05-13, and other related cognizant technical officer policies.

Periodic Advances and Letters of Credit Need Cognizant Technical Officer Review

Summary: Federal regulations require that grantees be paid in advance if certain conditions are met, or paid by reimbursement if those conditions cannot be met. USAID policy requires that CTOs administratively approve grantee reimbursement requests and review financial status reports for U.S. organizations with letters of credit; however, there is no requirement that the CTO approve or review USAID or grantee disbursements made under periodic advances. Although the CTO administratively approved all reimbursement requests tested, the CTO did not review financial status reports for grantees with letters of credit or periodic advances. The CTO stated that he felt reviewing the status of advances and payments during site visits was sufficient. As a result, USAID does not have an appropriate level of assurance that funds have been expended in accordance with the terms and conditions of the award.

OMB Circular No. A-110 requires that grantees be paid in advance if certain conditions are met, or paid by reimbursement if those conditions cannot be met. ADS 630, *Payables Management*, requires CTOs to administratively approve grantees' requests for reimbursement.¹⁶ USAID uses this administrative approval as an alternative to a receiving report and as evidence that grant work is proceeding satisfactorily. The ADS also states that CTOs should not routinely request all the supporting documentation backing up a payment request because annual audits provide reasonable assurance that reimbursement is only claimed for eligible, supported costs.

ADS 630 states that payments made under letters of credit and periodic advances do not require CTO administrative approval. However, the standard assistance CTO designation letter requires CTOs to review—but not approve—financial status reports (standard form 269) for U.S. organizations with letters of credit. There is no similar requirement for CTOs to review USAID or grantee disbursements under periodic advances.

USAID funded its Cuba Program grantees through three basic methods: monthly reimbursements, periodic advances, or letters of credit. For the 11 awards on which we performed limited payment test work:

- Two awards were funded by monthly reimbursements for the entire award.
- Two awards were funded by monthly reimbursement, switching to periodic advances after the first payment.
- One award was funded by periodic advances for the entire award.
- Six awards were funded by letters of credit.

¹⁶ Grantees under the reimbursement method send a form, called *Monthly Requests for Advance or Reimbursement* (standard form 270), to USAID's Cash Management and Payment Division. A staff member in this division attaches the administrative approval form to the grantee's request and forwards it to the CTO for administrative approval before payment to the grantee is made.

Monthly reimbursements for the two awards tested, totaling nearly \$1.6 million, were administratively approved by the CTO before payment. However, none of the periodic advances tested, for awards totaling more than \$16 million, showed evidence of CTO review. Similarly, none of the letters of credit tested, for awards totaling more than \$21 million, showed evidence of CTO review. Although financial status reports for letters of credit and periodic advances were included in the CTO's files on a hit-or-miss basis, none of them showed evidence of CTO review. Reimbursements, typically used for smaller awards, received more scrutiny than payments made by either letter of credit or periodic advance, typically reserved for larger awards. Therefore, in this case, \$1.6 million of expenditures were reviewed by the CTO, but approximately \$37 million of expenditures were not routinely reviewed.

The CTO said that he did not receive copies of periodic advance requests or payments under letters of credit. He said that, instead, when he conducted site visits to grantees with letters of credit, he reviewed the status of advances and payments and examined a sample of bills paid with USAID funds. GAO pointed out in its recent report that grantees said that USAID officials generally examined only a limited number of invoices during their visits, and a Cuba Program staff member said that he typically spent about an hour during site visits meeting with grantees and reviewing records. However, the CTO reported that he spent more time with larger grantees and spent as much time as he could reviewing grantee expenditures and operations.

Because of the absence of systematic and routine reviews of financial status reports for letters of credit and periodic advances, USAID does not have an appropriate level of assurance that funds expended under these mechanisms have been spent in accordance with the terms and conditions of the award. Furthermore, this lack of assurance is exacerbated by the fact that USAID was not able to ensure that audits required for Cuba Program grantees under the Single Audit Act were conducted (see page 4). Annual audits are an important internal control and help provide assurance that payments are made only for eligible, supported costs. Routine review, at least for reasonableness, would increase USAID's ability to identify and correct inappropriate grantee expenditures.

Therefore, we are making the following recommendation.

Recommendation No. 10: We recommend that the Director of USAID's Office of Acquisition and Assistance revise the monitoring duties in the standard assistance cognizant technical officer designation letter to require cognizant technical officers to review financial status reports for recipients with periodic advances, and to evidence the review of letters of credit and periodic advances by initialing and dating the financial status reports.

Other Matters

During the audit, we noted two other matters that need to be addressed, one related to determining whether Cuba Program grantees should be vetted and the other related to formally assessing Cuba Program Office staffing requirements. These matters are discussed in the following sections.

USAID Needs to Determine Whether Grantees Should Be Vetted

Although USAID does not have policies or procedures requiring vetting of Cuba Program grantees, an official of USAID's Office of Security stated that he believed Cuba Program grantees should be vetted through the Office of Security, because the Cuban intelligence service poses a significant threat to U.S. Government programs.¹⁷

According to USAID officials, Cuba Program grantees operate in an environment that has suffered infiltration by the Cuban government, and most Cuban dissident groups receiving assistance have been infiltrated by the Cuban government. For example, USAID officials reported that several grantee offices have been broken into; some of the break-ins were reported to the Federal Bureau of Investigation. In addition, recent media reports support this environment of Cuban-government infiltration involving U.S. Government grants. According to these sources:

- A U.S. Government grantee sent \$9,000 of U.S. Government funds (not USAID funds) to two women in Cuba, later learning that they were Cuban agents.¹⁸
- A professor at a Cuba Program grantee university recently admitted that he had been a Cuban spy for nearly 30 years; the professor said that he had gathered and transmitted information about Cuban exile groups to Cuban intelligence agents.¹⁹
- Cuba's intelligence service is stepping up activities in the United States because of the impending demise of Cuban leader Fidel Castro.²⁰

Despite the increased risk that Cuba Program grantees may be infiltrated by the Cuban government, awards have not been classified—which would have required grantees to receive security clearances—and grantees have not been vetted through USAID's Office of Security. This is because vetting was not required. As a result, people allied with the Cuban government could have access to sensitive information maintained by Cuba Program grantees, increasing the risk of inappropriate disclosure, and possibly putting recipients of USAID assistance at risk.

¹⁷ Vetting refers to performing background checks on individuals or entities before giving them an award. Vetting is less extensive in scope than the security clearance process required for grantees with access to classified information.

¹⁸ Reported in *The Miami Herald*, November 15, 2006. USAID policy prohibits the distribution of cash on the island of Cuba.

¹⁹ Reported on *CNN.com*, December 20, 2006. According to a Cuba Program official, the professor was not being funded by USAID grants and was not involved with USAID-funded programs.

²⁰ Reported in *The Washington Times*, April 6, 2007.

To address this risk, we are making the following recommendation.²¹

Recommendation No. 11: We recommend that, if USAID determines that the Cuba Program awards should not be classified, the Cuba Program Director, in collaboration with the Deputy Assistant Administrator of the Bureau for Latin America and the Caribbean and the Director of the Office of Security, make a written determination whether current and future Cuba Program grantees, and their personnel, should be vetted.

Staffing Requirements Need to Be Formally Assessed

In accordance with the Office of Personnel Management's Human Capital Assessment and Accountability Framework, USAID's Human Capital Strategic Plan states that it will identify and analyze human capital needs and competencies required to fulfill its mandate and goals. This includes realigning staff to support program objectives, identifying needed competencies and critical skill gaps, and rightsizing office staff. In addition, GAO's *Standards for Internal Control in the Federal Government* states that to effectively manage human capital, management should ensure that skill needs are continually assessed and that workforce skills match those necessary to achieve goals. These standards also state that risks need to be identified and analyzed to determine how these risks should be managed.

As GAO pointed out in its recent report (see footnote 14), the Cuba Program faces significant challenges, including a difficult operating environment and program-related managerial weaknesses. USAID's Cuba Program is a high-risk program in that it is, by necessity, managed out of Washington rather than through USAID's customary field-based mission model. Therefore, responsibilities generally performed by in-country mission staff must be conducted by the Washington-based office. Because of the lack of in-country presence, grantee internal control weaknesses pointed out by GAO, and USAID monitoring and oversight deficiencies also noted in the GAO report, the Cuba Program merits an augmented level of managerial oversight. Although the Office reported that it has taken conscientious steps to address GAO's concerns, USAID needs to ensure that the staffing structure supports sustained implementation of these positive actions.

The Office is a small unit run under the auspices of the Bureau for Latin America and the Caribbean. At the time of our audit, the Office was staffed by a Program Director, a part-time assistant, and a part-time political appointee. A personal services contractor had left just before the audit for an overseas assignment and, as of the end of audit fieldwork, had not been replaced. Additionally, the Program Director is retiring in the fall of 2007 and a replacement has been selected. Although the Office is experiencing a high level of personnel turnover, a formal assessment to identify and analyze its staffing needs has not been conducted.

²¹ As of the end of audit fieldwork, the Office of Inspector General is conducting an audit of the adequacy of USAID's antiterrorism vetting procedures. Because the subject of this Cuba audit report is focused on USAID's Cuba Program and is not related to antiterrorism, Recommendation No. 11 addresses vetting of Cuba Program grantees only.

Bureau officials reported that they were trying to quickly replace some of the personnel needed to carry on its Cuba program. As a result, a formal assessment was not performed, and the Office is at an increased risk of not being able to fulfill its program goals. As GAO indicated in its report, the Office had not provided adequate assurance that grant funds were being used properly or that grantees were in compliance with applicable laws and regulations. The current level of personnel turnover provides the Bureau an opportunity to identify and analyze Office staffing needs, reducing the risk of not being able to fulfill its program goals. Therefore, we are making the following recommendation.

Recommendation No. 12: We recommend that the Cuba Program Director, in collaboration with the Deputy Assistant Administrator of the Bureau for Latin America and the Caribbean (1) conduct analyses to identify Cuba Program Office staffing needs in terms of vulnerabilities, risk factors, and critical skill gaps, and (2) submit written recommendations regarding staffing needs to the Assistant Administrator of the Bureau for Latin America and the Caribbean.

EVALUATION OF MANAGEMENT COMMENTS

In their response to our draft report USAID officials, for the most part, concurred with our findings and recommendations, and described actions planned and taken to address our concerns. As a result, we determined that final action has been taken on two recommendations, while management decisions have been reached on eight recommendations. However, management decisions were not reached on two of the recommendations, as management's response did not fully address our concerns.

Based on further review of documentation and information provided in management's response to our draft report, we agreed to remove a finding and the related Recommendation No. 7 from our final report. To accommodate this revision, we renumbered the recommendations, as described below.

In its response to Recommendation No. 1, USAID's Office of Acquisition and Assistance (OAA) agreed that its process for determining whether grantees had conducted and submitted audits required under the Single Audit Act (A-133) could be improved. However, its planned actions did not address our concerns related to identifying the annual audit universe of U.S.-based nonprofit organizations that meet the annual expenditure threshold amount. Therefore, a management decision has not been reached on Recommendation No. 1. To reach a management decision, OAA needs to provide us with its plans to identify the annual audit universe of U.S.-based nonprofit organizations that meet the annual expenditure threshold amount.

To address Recommendation No. 2, OAA plans to work with the Cuba Program cognizant technical officer (CTO) to ensure that required A-133 audits were completed, and expects to complete this action by April 2008. Accordingly, a management decision has been reached for this recommendation.

To address Recommendation No. 3, OAA plans to add the required provision to its standard grant provisions by March 31, 2008. Accordingly, a management decision has been reached for this recommendation.

To address Recommendation No. 4, OAA revised USAID-Washington-GRO-LMA-07-001-APS to clearly state that the A-133 audit requirement pertains to primary recipients as well as to subrecipients. Accordingly, final action has been taken on this recommendation.

To address Recommendation No. 5, OAA plans to revise the standard assistance CTO designation letter by March 31, 2008. Accordingly, a management decision has been reached for this recommendation.

To address Recommendation No. 6, USAID has made a written determination that the current Cuba Program awards should not be classified. Accordingly, final action has been taken on this recommendation.

To address Recommendation No. 7 (No. 8 in Management Comments), OAA will put a verification plan into place by March 31, 2008. Accordingly, a management decision has been reached for this recommendation.

To address Recommendation Nos. 8 and 9 (Nos. 9 and 10 in Management Comments), USAID will revise ADS 303 and ADS 202 to include CTO policies, and expects to complete these revisions by December 31, 2007. Accordingly, management decisions have been reached for these recommendations.

In its response to Recommendation No. 10 (No. 11 in Management Comments), OAA agreed to revise the standard assistance CTO designation letter to require the review of financial status reports for recipients with periodic advances, and to make this revision by March 31, 2008. However, OAA did not agree that CTOs should be required to evidence their review by initialing and dating the reports. Instead, OAA feels that the current documentation expectation in the CTO letter is sufficient. The current expectation states that, "At a minimum, a reasonable individual would be expected to document and provide justification for the action. Documentation does not need to be formal or extensive, but should be easily understood by an auditor or other third party individual reviewing it." This documentation expectation is neither required nor clear. Therefore, a management decision has not been reached on Recommendation No. 10. To reach a management decision, OAA needs to provide us with a description of how CTOs will document their required reviews of these reports.

To address Recommendation No. 11 (No. 12 in Management Comments), USAID agreed to follow standard USAID vetting policy, when the vetting policy becomes operational. The target date for completion is September 2008. Accordingly, a management decision has been reached for this recommendation.

To address Recommendation No. 12 (No. 13 in Management Comments), Bureau for Latin America and the Caribbean (LAC) officials will submit a comprehensive staffing plan and budget for the Cuba Program to LAC's Assistant Administrator by December 31, 2007. Accordingly, a management decision has been reached for this recommendation.

SCOPE AND METHODOLOGY

Scope

The Office of Inspector General's Performance Audits Division conducted this audit in accordance with generally accepted government auditing standards. The audit was designed to answer the following questions:

- Did USAID ensure that audits required for Cuba Program grantees under the Single Audit Act were conducted?
- Were responsibilities and authorities for implementing and monitoring USAID's Cuba Program clearly defined, assigned, and performed?

This report summarizes the results of audit work conducted at USAID/Washington from February 15 to July 12, 2007. In planning and performing the audit, we assessed the effectiveness of internal controls related to the audit objectives. For the first objective, we looked for controls related to the completeness of USAID's Office of Management and Budget's (OMB) A-133 audit universe for U.S. nonprofit organizations, and controls to ensure that required A-133 audits were conducted. For the second objective, we assessed the effectiveness of Cuba Program controls related to selected cognizant technical officer (CTO) functions, such as those related to (1) training, (2) certification, and (3) review of grantee monthly reimbursements, periodic advances, and letters of credit. We assessed the effectiveness of controls related to selected Cuba Program agreement officer functions, such as those related to CTO designation and award language associated with the A-133 requirement.

We identified the following relevant criteria: the Cuban Democracy Act of 1992, the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, the OMB's Circular No. A-133, and various USAID policies. We also reviewed the Government Accountability Office's (GAO) audit report *U.S. Democracy Assistance for Cuba Needs Better Management and Oversight* (Report No. GAO-07-147, dated November 15, 2006), which informed the development of the audit scope. Additionally, several findings and Recommendation No. 1 from the OIG audit report, *Audit of USAID's Training, Use and Accountability of Cognizant Technical Officers*, directly affected CTO-related areas reviewed in this audit.²²

The audit scope for the first objective included determining whether USAID ensured that Cuba Program grantees meeting the OMB Circular No. A-133 audit threshold amounts between the years 2001 and 2006 had the required audits. The audit scope for the second objective included determining whether selected Cuba Program responsibilities and authorities for the CTO and agreement officer functions were defined, assigned, and performed. In addition, the scope for the second objective included responsibilities related to classifying awards and vetting Cuba Program grantees.

According to unaudited information provided by the Cuba Program Office, USAID awarded approximately 40 grants and cooperative agreements totaling nearly \$64

²² Audit Report No. 9-000-04-003-P, dated March 31, 2004.

million (including modifications) from the start of the program in 1996 through March 2007. The judgmental sample of six award agreements selected for detailed testing represented 15 percent of the total number of agreements and nearly 40 percent of the total dollar amount of Cuba Program awards. We also conducted testing limited to the CTO's review of financial status reports for grantees with letters of credit for five additional agreements, totaling a little over \$14 million.

Methodology

We conducted interviews with USAID officials in the Office of Acquisition and Assistance, the Bureau for Legislative and Public Affairs, the Office of Security, the Office of the General Counsel, and the Cuba Program Office to obtain information related to the Cuba Program's funding sources, legislative history, activities, grantees, and awards. In addition, we coordinated with GAO audit staff responsible for the November 2006 audit report previously mentioned, and with the OIG's Investigations Division. We also reviewed GAO's classified report issued in May 2007.

To answer the first objective, we used an *Obligations by Contract* report, dated February 20, 2007, generated by *Phoenix*, USAID's financial management system, which showed liquidated obligations by award, and accumulated these amounts for each Cuba Program grantee by fiscal year. We then determined whether those grantees exceeding the A-133 threshold in a fiscal year, based on the date the obligated funds were liquidated, had submitted an A-133 audit package to the Federal Audit Clearinghouse by the cutoff date of May 9, 2007.²³ We reviewed a judgmentally-selected sample of award agreements, USAID's standard assistance CTO letter, and the Cuba Program's current Annual Program Statement, to determine whether these documents included language regarding the A-133 audit requirement. We also interviewed officials in USAID's Office of Acquisition and Assistance and the Cash Management and Payment Division.

To answer the second objective, we selected a judgmental sample of 21 CTO and agreement officer responsibilities and authorities, using USAID's Automated Directives System 303, *Grants and Cooperative Agreements*, as the primary source. We tested the selected responsibilities and authorities against source documents in a judgmentally-selected sample of award agreements and related CTO administrative files. We also tested the sampled awards to determine whether expenditures for grantees under the reimbursement method were administratively approved before payment, and whether the CTO reviewed financial status reports for grantees operating under letters of credit and periodic advances. We also interviewed USAID officials to determine how CTO and agreement officer responsibilities and authorities for implementing and monitoring the Cuba Program were defined, assigned, and performed.

We established the following parameters to answer the second objective:

- "Clearly defined" meant there was a written policy, procedure, or job description for the task.
- "Clearly assigned" meant there was documentation supporting delegation of the task.

²³ Because USAID did not have a routinely produced report detailing expenditures for U.S.-based nonprofit organizations, we used the method described above to estimate grantee expenditures by fiscal year.

- “Clearly performed” meant there was documentation demonstrating that the task had been executed.

A task was considered designed, assigned, or performed if most of the awards tested met the definitions above. A task was considered generally designed, assigned, or performed if most of the awards tested met the definitions above, but with qualifications or exceptions. A task was considered not designed, assigned, or performed if most of the awards tested did not meet the definitions above. A task was considered not always designed, assigned, or performed if some of the awards tested met the definitions above, but with qualifications or exceptions.

We established the following materiality thresholds for the second objective:

- If at least 90 percent of the responsibilities and authorities tested were—or were generally—designed, assigned, or performed, the answer to the audit objective would be positive.
- If at least 80 percent, but less than 90 percent, of the responsibilities and authorities tested were—or were generally—designed, assigned, or performed, the answer to the audit objective would be qualified.
- If less than 80 percent of the responsibilities and authorities tested were—or were generally—designed, assigned, or performed, the answer to the audit objective would be negative.

We did not determine a materiality threshold for the first objective, because it was not appropriate to this objective.



MEMORANDUM

TO: IG/A/PA Director, Steven H. Bernstein

FROM: LAC/Cuba Program Director, David E. Mutchler /s/
M/OAA/OD Director, Michael F. Walsh /s/
M/MPBP/POL Senior Policy Advisor, Subhi Mehdi /s/

SUBJECT: Agency Response to the Draft Report of the Office of Inspector General (OIG) Audit of USAID's Cuba Program (Report No. 9-516-07-00X-P)

This memorandum transmits our response to the subject draft audit report, as requested in your memorandum of August 10, 2007. Please consider the information we have provided, which includes the responses from the Cuba Office of the Latin America and the Caribbean Bureau and the Office of Acquisition and Assistance (M/OAA) and the Office of Management Policy, Budget and Performance (M/MPB/POL) of the Management Bureau, in finalizing your report and in closing out a number of the recommendations you have made. We greatly appreciate your staff's efforts to improve this extremely important program.

Recommendation 1

M/OAA concurs with the OIG that its process for determining whether USAID's assistance recipients have filed an OMB Circular A-133 ("A-133") audit, as appropriate, can be improved. As we discussed with the OIG, every year the Contract Audit and Support Division (CAS) sends letters to each assistance recipient that has not sent an A-133 audit to the Agency. The letters ask each recipient to send its A-133 audit to USAID, and the recipient replies by either submitting the required audit or stating that it did not need an audit because it did not meet the Federal expenditure threshold that would require such an audit. CAS plans to improve this process to meet the OIG's concern by (1) keeping as records the letters sent to recipients and subsequent responses for later reference and (2) following up with respondents that indicate that they do not meet the threshold for A-133 audits with additional requests for information (such as copies of the recipient's ledgers showing annual expenditures), as appropriate, to support the respondents' statements and documenting the results. CAS expects to complete these actions by February 2008.

As mentioned in the OIG draft report, the *Phoenix* system does not readily provide exact recipient expenditure information. CAS believes that its process improvements will provide a more accurate record of recipients' annual expenditures.

Recommendation 2

M/OAA concurs with this recommendation and will work with the Cognizant Technical Officer (CTO) to determine, with respect to funds awarded by USAID, whether active Cuba Program grant recipients should have filed an A-133 audit for each of the years

covered by their assistance agreements, and if so, that they file A-133 audits for the appropriate years. These actions are expected to be completed by April 2008.

Recommendation 3

While M/OAA maintains that incorporating the A-133 audit requirements by reference to 22 CFR 226 in its standard grant provisions satisfies the requirements of ADS 591.3.1.1, and remains concerned about making its grant agreements unwieldy by including additional clauses that are otherwise found in 22 CFR 226, M/OAA agrees with the OIG that highlighting this important provision will improve USAID grants. Therefore, M/OAA will draft and include a provision in its standard grant provisions that will require a recipient to contract with an independent non-Federal auditor to perform financial audits in accordance with A-133, as appropriate. M/OAA expects to complete this by March 31, 2008.

Recommendation 4

M/OAA concurs with this recommendation. On July 10, 2007, M/OAA revised the annual program statement USAID-Washington-GRO-LMA-07-001-APS to clearly state that the A-133 audit requirement pertains to primary recipients as well as to subrecipients. A copy of the revised language was previously provided to OIG. We request that this recommendation be considered closed.

Recommendation 5

M/OAA concurs with this recommendation and has provided to OIG a copy of the draft change to the standard assistance cognizant technical officer designation letter. The change is expected to be published by March 31, 2008.

Recommendation 6

Pursuant to this recommendation, the Cuba Program Director, in collaboration with the Deputy Assistant Administrator for Latin America and the Caribbean (LAC) and the Director of the Office of Security, has made a written determination that the current Cuba Program awards should not be classified. This determination has been provided to OIG. We request that this recommendation be considered closed.

Recommendation 7

M/OAA disagrees with the findings made by the OIG with regard to Recommendation 7 and therefore does not concur with that recommendation. The Draft Report states "...costs have not been questioned and USAID has not determined if it received full value from its award." Furthermore, the Draft Report states, "...consulting fees paid to officers of one grantee appear excessive and were set by way of less-than-arms-length transactions."¹ However, after reviewing the award files in question and the applicable regulations, we have found that in fact the Agreement Officer made a determination that the consultant fees were fair and reasonable. Therefore, we believe that an audit to determine whether compensation paid under subcontracts was reasonable, allocable, and allowable is unjustified.

¹ Draft Report, p. 10.

According to USAID procedure, prior to the award of a grant or cooperative agreement, the Agreement Officer conducts a cost analysis of a grantee's proposal and determines whether particular costs in the proposed budget are reasonable.² In the case of the grantee in question, the Agreement Officer determined that the consultancy rates were reasonable and documented this determination in the negotiation memoranda.³ The negotiation memoranda also indicate that the Agreement Officer was aware of the identity of the particular consultants and therefore was aware of the less-than-arms-length nature of the proposed contracts.⁴ Still, the Agreement Officer determined that the proposed budget was reasonable. Because the Agreement Officer makes the ultimate determination as to whether a particular rate is reasonable or not, an audit would not change this decision. Therefore, M/OAA does not concur with this recommendation.

The Draft Report states, "Annual compensation scheduled to be paid to each officer ranged from \$18,000 in 1999 to \$30,000 in 2006, totaling nearly \$500,000 paid to the three officers in total from 1999-2006. The \$150 per hour rate amounts to an annualized salary of \$312,000. This would significantly exceed the average salary for a non-profit executive director—which ranged from approximately \$82,000 in 1999 to almost \$105,000 in 2006—typically used to determine reasonable compensation. Using this comparison point, the officers were paid at an hourly rate nearly 4 times what would have been considered reasonable in 1999, and nearly 3 times what would have been considered reasonable in 2006."

M/OAA insists that the inclusion of the figure of \$312,000 annualized salary is misleading. In fact, each consultant was only scheduled to be paid between \$18,000 and \$30,000 annually from 1999-2006. In addition, a full time salaried employee is compensated in a substantially different manner than a paid consultant. Annualizing a consultant's hourly rate miscorrelates reasonable compensation for a salaried full-time non-profit executive. Therefore, the statement that the consultants were paid at an hourly rate nearly 4 times what would have been considered reasonable is misleading as well.

The Draft Report states that "although these hours and hourly rates are mentioned in the new contracts, the contracts in the award file at the time of our audit stated that the consultants would be paid \$3,000 monthly, rather than an hourly rate times the actual hours worked."⁵ However, in fact the Agreement Officer's subcontract approval letter

² See ADS 303.3.12(a).

³ We reviewed the following negotiation memoranda from the agreement files:
For LAG-A-00-99-00023,

1. Signed on August 20, 1999 by [REDACTED], Agreement Officer
2. Signed on July 18, 2000 by [REDACTED], Agreement Office
3. Signed on August 30, 2001 by [REDACTED], Agreement Office
4. Signed on September 30, 2002 by [REDACTED], Agreement Officer.

For RLA-A-00-07-00009, Negotiation Memorandum signed on January 18, 2007 by [REDACTED], Agreement Officer.

⁴ See, e.g., Memorandum of Negotiation, dated August 20, 1999, p. 4 ("Three of the key personnel are contracted out under this agreement, including the editor. Each of these individuals are being compensated at \$18,000 for the period of performance. Resumes were submitted with their proposal and are part of the agreement file.")

⁵ *Id.*

dated February 12, 2007 clearly states the hourly rate, monthly rate, not to exceed rate for the period of the contract and the number of hours per month.⁶

Separate and apart from the OIG's discussion of the amounts paid to these consultants, the OIG also identified a possible issue regarding the grantee's filings with the Internal Revenue Service. Under normal practice, if the LAC Bureau or M/OAA were to discover information that may provide reasonable grounds to believe that a grantee has committed a crime, the OIG investigators (IG/I) would be notified.⁷ After conducting its investigation, IGI would then be able to determine whether there is reasonable evidence to suggest that criminal laws have been violated. If such evidence was present, IGI would then be required to notify the Department of Justice in accordance with the Inspector General Act.⁸ We recommend the OIG take whatever action the OIG believes is warranted to notify the Department of Justice.

Finally, M/OAA has identified two statements in this section that would benefit from additional elaboration:

a. The Draft Report states, "The officers considered themselves to be independent contractors and stated in an email in the award file that they do not prepare time sheets or activity reports".⁹ However, upon learning that the grantees consultants had not kept time sheets, the grantee was informed that the consultants should keep a record of the time devoted to the project. M/OAA asks that the Final Report reflect the action that was taken.

b. The Draft Report states, "Because we did not conduct an audit of this grantee and its subcontracts we could not definitively determine that amount of compensation that could be considered as a questioned cost."¹⁰ However, we recommend that the Final Report reflect the fact that M/OAA/CAS conducted a pre-award audit in 1999 of this grantee and determined that the grantee had adequate accounting and personnel policies and an adequate chart of accounts. CAS recommended that M/OAA ensure that the grantee had properly implemented its accounting system through a follow up accounting system review, and a follow-up audit conducted by M/OAA/CAS determined that the recommendation identified in the pre award audit would be closed.

Recommendation 8

M/OAA, the LAC Bureau, and the Training and Education Division of the Office of Human Resources (HR) recognize the OIG concerns identified in this section of the report. Consequently, the Director of M/OAA will clarify M/OAA's responsibilities in relation to this recommendation, working with HR and the LAC Bureau Executive Management Team, and will work with those organizations to implement this recommendation by putting in place a verification plan no later than March 31, 2008.

⁶ See Subcontract Approval Letter dated February 12, 2007 for Agreement RLA-A-00-07-0009-00.

⁷ See by analogy, ADS 625.3.4.7.

⁸ See Inspector General Act of 1978, sec. 4(d). See also ADS 101.3.1.10(b).

⁹ Draft Report, p. 10.

¹⁰ Draft Report, p. 11.

Recommendation 9

M/OAA concurs with this recommendation. M/OAA will revise ADS 303 to incorporate Acquisition and Assistance Policy Directive 04-10, General Policy Notice 05-13 and other pertinent CTO policies. M/OAA expects to complete this action no later than December 31, 2007.

Recommendation 10

M/MPB/POL concurs with this recommendation and will revise ADS 202 with the text previously provided to OIG. It is expected that ADS 202 will be amended by December 31, 2007.

Recommendation 11

M/OAA concurs with the first part of the recommendation, and requests that, after reconsideration by OIG, the second part of the recommendation be either removed or closed. The Assistance CTO designation letter (in Section I.C.) requires, among other things, that CTOs review the recipients' financial reports, monitor the financial status awards on a regular basis and review the "financial status reports for U.S. organizations with letters of credit..." "Letters of credit" are specifically mentioned in the CTO letter; "periodic advances" are not specified in the letter. Therefore, M/OAA accepts the audit recommendation to add "periodic advances" and will revise the CTO assistance letter to include "periodic advances" no later than March 31, 2008.

The second part of the audit recommendation requests that the CTO letter be revised to require the CTO to "evidence the review of credit and periodic advances by initialing and dating the financial status reports." There is language currently in the Assistance CTO letter (see the top of page 2) that states that the CTO is expected to take reasonable steps to assure that the recipient has submitted all required financial reports "and document and provide justification for the action. (The documentation need not be formal or extensive, but it should be easily understood by an auditor or other third part individual reviewing it.)" M/OAA requests that the OIG consider the existing documentation requirement in the CTO letter to be adequate to address the audit recommendation's concern for "evidence" of the review of the periodic reports, and to remove the second part of the audit recommendation or consider it closed.

Recommendation 12

LAC concurs with this recommendation and will follow standard USAID policy on vetting once that policy has been put into operation. The target date for completion is September 2008.

Recommendation 13

LAC concurs with this recommendation. LAC will review the Government Accountability Office and OIG audit findings, as well as the LAC Financial Managers' Financial Integrity Act vulnerability assessments, and will then list the principal tasks that the Cuba Program needs to undertake during the next two years. Based on that analysis, by December 31, 2007, LAC will draft, review and submit to AA/LAC for approval a comprehensive staffing plan and budget for the USAID Cuba Program.

RESPONSIBILITIES AND AUTHORITIES TESTED¹

Test	Responsibility or Authority Tested	Defined	Assigned	Performed	Comments
1	Was there certification in the contract file that proposal was unsolicited?	n/a	n/a	n/a	We determined that the certifications were not necessary.
2	Did the award file contain justification for an exception to competition?	n/a	n/a	Performed	
3	Did the award file contain certification that the proposal was unique, innovative, or proprietary?	n/a	n/a	n/a	We determined that the certifications were not necessary.
4	If the grant/cooperative agreement was awarded without competition, did proposal meet minimum requirements?	n/a	n/a	Performed	
5	When a new or increased award was negotiated, was there documentation that the agreement officer requested the most recent A-133 audits from the recipient? Or was there evidence to show that the A-133 audit was reviewed?	n/a	n/a	Generally Performed	
6	During the close-out process, was there documentation showing that the agreement officer requested the most recent A-133 audits from the recipient? Or was there evidence to show that the A-133 audit was reviewed during closeout?	n/a	n/a	n/a	None of the awards tested were in close-out.
7	Were there questioned costs for a recipient that received a new award or cost modification?	n/a	n/a	Generally Performed	
8	Was there documentation showing a competitive process for recent awards?	n/a	n/a	Performed	
9	Did grant/cooperative agreement contain language precluding use of National Endowment for Democracy (NED) funds for cost share?	n/a	n/a	n/a	Awards did not include language regarding NED funds. However, such language was not required.
10	Was there supporting documentation for cost share?	n/a	n/a	Generally Performed	
11	Was there documentation verifying that the recipient met the minimum cost share before receiving a new or increased award?	n/a	n/a	Generally Performed	
12	Was cost share waived or was a waiver pending?	n/a	n/a	Not Performed	See Recommendation No. 7.
13	Did the award include language regarding necessity of A-133 audits?	Not Defined	n/a	n/a	See Recommendation No. 3.
14	Did the award include an audit rights clause?	n/a	n/a	n/a	USAID policy does not specifically require audit rights language in awards.
15	Was the award classified?	n/a	Not Assigned	Not Performed	See Recommendation No. 6.

¹ See pages 21 and 22 for the guidelines used to determine how the test results were evaluated.

Test	Responsibility or Authority Tested	Defined	Assigned	Performed	Comments
16	Did the award file include the standard cognizant technical officer designation letter?	Not Defined	Not Assigned	Not Performed	See Recommendation Nos. 7, 8, and 9.
17	Did the agreement officer conduct a survey to help make the responsibility determination that the recipient has the necessary management competence to plan and carry out an assistance program?	n/a	n/a	Generally Performed	
18	If there was uncertainty as to the applicant's capacity to perform, did the agreement officer establish a formal survey team to help make the responsibility determination?	n/a	n/a	Generally Performed	
19	Did the agreement officer make a written determination of the applicant's responsibility in the memorandum of negotiation?	n/a	n/a	Performed	
20	Did the agreement officer take actions to minimize the risk that a high-risk recipient presents to USAID?	n/a	n/a	Not Always Performed	Minimal actions specified, but actions not always performed.
21	Were expenditures by monthly reimbursement administratively approved? Were letters of credit and periodic advances reviewed?	Not Always Defined	Not Always Assigned	Not Always Performed	See Recommendation No. 10.
SUMMARY					
Performed or Generally Performed			10	62.5%	
Not or Not Always Defined, Assigned, or Performed			6	37.5%	
			<hr/>	<hr/>	
Responsibilities and authorities not applicable to the awards tested			16	100%	
			5	--	
			<hr/>	<hr/>	
			21	100%	

U.S. Agency for International Development
Office of Inspector General
1300 Pennsylvania Ave, NW
Washington, DC 20523
Tel: (202) 712-1150
Fax: (202) 216-3047
www.usaid.gov/oig