

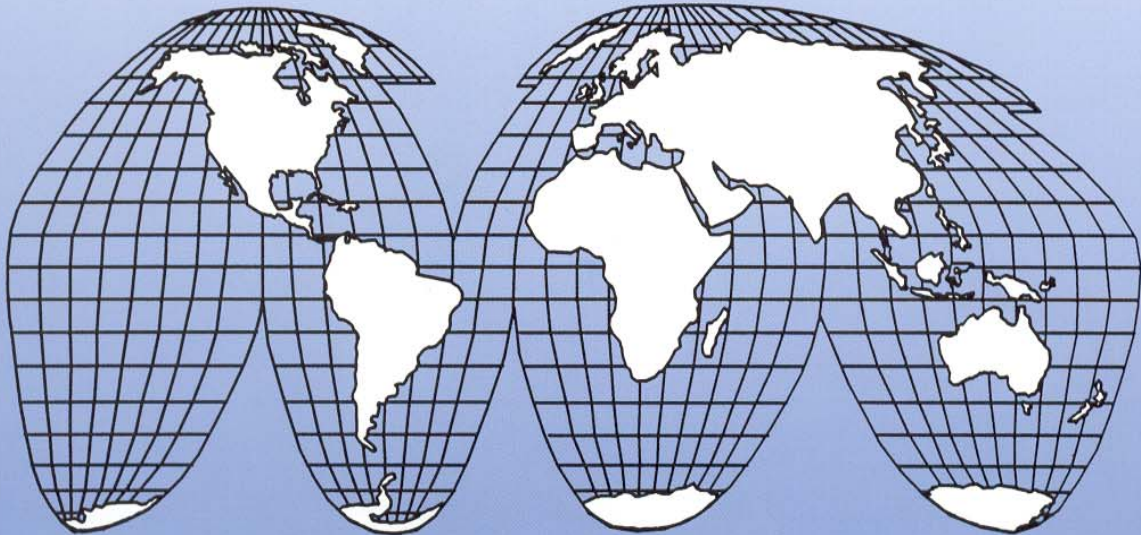
USAID

OFFICE OF INSPECTOR GENERAL

Audit of USAID/Kenya's Management of U.S. Personal Services Contractors

Audit Report No. 4-615-04-004-P

March 15, 2004



PRETORIA, SOUTH AFRICA



March 15, 2004

MEMORANDUM

FOR: USAID/Kenya Mission Director, Kiertisak Toh

FROM: Regional Inspector General/Pretoria, Jay Rollins /s/

SUBJECT: Audit of USAID/Kenya's Management of U.S. Personal Services Contractors (Report No. 4-615-04-004-P)

This memorandum is our report on the subject audit. In finalizing this report, we considered management comments on the draft report and have included those comments, in their entirety, as Appendix II in this report.

This report has one recommendation. In response to the draft report, USAID/Kenya concurred with the recommendation and approved and implemented a corrective action plan to address our concerns. Therefore, we consider that final action has been taken on the recommendation.

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

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Summary of Results

The Regional Inspector General/Pretoria conducted this audit to determine whether USAID/Kenya (1) determined its requirements for U.S. personal services contractors in accordance with USAID policies and procedures, and (2) awarded U.S. personal services contracts in accordance with selected USAID policies and procedures. (See pages 6-7.)

The Mission has determined its requirements for U.S. personal services contractors (USPSCs) in accordance with USAID policies and procedures. USAID/Kenya has used USPSCs as an integral part of its workforce to supplement its limited number of U.S. direct hires, as well as to meet the Mission's increased responsibilities. USPSCs have been used to fill positions that require technical skills along with experience. In fact, the Mission has used USPSCs to fill important positions, including that of the Controller. When possible, the Mission tries to use locally hired USPSCs because they cost less than internationally recruited USPSCs. (See pages 7-9.)

This audit found that USAID/Kenya awarded its U.S. personal services contracts in accordance with selected USAID policies and procedures for ensuring full and open competition and establishing salaries and fringe benefits. However, the Mission had not taken action to ensure that the required grade-level reviews were performed for all USPSC positions and that the results of the reviews were included in the USPSC files. (See pages 9-11.)

This report contains one recommendation to help USAID/Kenya improve its management of USPSCs. (See page 11.)

In response to the draft report, USAID/Kenya concurred with the recommendation. In addition, the Mission recently approved and implemented a process to grade, classify, and set the market value of personal services contractor positions. Therefore, we consider that a management decision has been reached and that final action has been taken. (See page 12).

Background

The USAID/Kenya Mission is co-located with USAID's Regional Economic Development Services Office for East and Southern Africa (USAID/REDSO/ESA) in Nairobi, Kenya. The overall goal of the Mission is to build a democratic and economically prosperous Kenya. This goal is addressed through four objectives:

- improving the balance of power among the institutions of governance,
- promoting sustainable use of natural resources,
- improving rural incomes by increasing agricultural and rural enterprise opportunities, and

-
- improving health conditions.

In May 2003, during the Triennial Review of USAID/Kenya's Integrated Strategic Plan 2001-2005, it was agreed that USAID/Kenya should develop a special objective in trade and investment as well as a strategic objective in education.

In order to accomplish its objectives, USAID/Kenya uses several workforce categories. As of September 30, 2003, USAID/Kenya reported that its staffing of 141 individuals included the following workforce categories:

- 126 foreign service national personal services contractors.
- 6 U.S. personal services contractors (USPSCs)—this included 5 USPSCs hired internationally and 1 USPSC hired locally.
- 6 U.S. direct hires.
- 3 individuals in miscellaneous categories—including 1 U.S. Fellow, 1 employee under a Participating Agency Service Agreement, and 1 U.S. Technical Advisor in AIDS, Child Survival, and Population.

The risk associated with being located in Nairobi, Kenya, has been a challenge for USAID/Kenya. On May 16, 2003, the United States Department of State (DOS) issued a travel warning because of increased security concerns in Kenya based on indications of terrorist threats in the region aimed at American and western interests. DOS authorized the voluntary departure of family members and non-emergency personnel at the U.S. Embassy in Kenya. USAID/Kenya staff and their families were part of this authorized departure. On September 25, 2003, a DOS travel warning noted that the authorized departure of non-emergency employees and family members was rescinded even though the warning said that terrorist threats continue against Americans. Concerns of terrorist actions against Americans in Kenya are not new. On August 7, 1998, the United States Embassy in Nairobi was destroyed by terrorists resulting in a large number of human casualties.

This audit includes USPSCs with active contracts for the period of October 1, 2002 to November 25, 2003.

Audit Objectives

This audit was conducted at USAID/Kenya as part of a worldwide effort to review USAID's management of U.S. personal services contractors. The audit was designed to answer the following questions relating to the management of USPSCs.

- Did USAID/Kenya determine its requirements for U.S. personal services contractors in accordance with USAID policies and procedures?

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- Did USAID/Kenya award U.S. personal services contracts in accordance with selected USAID policies and procedures?

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

Audit Findings

Did USAID/Kenya determine its requirements for U.S. personal services contractors in accordance with USAID policies and procedures?

The audit found that USAID/Kenya determined its requirements for U.S. personal services contractors (USPSCs) in accordance with USAID policies and procedures.

USAID's Automated Directives System (ADS) Series 400 Interim Update #2, provides USAID managers guidance on the appropriate roles and responsibilities of USPSCs and other employment mechanisms.¹ This guidance states that when a position must be filled by a U.S. citizen, the first option for filling it should be through the assignment of a direct hire employee. The responsibility for managing the core business areas and basic work of USAID lies with U.S. direct hire (USDH) employees. The guidance recognizes that to augment and facilitate the efforts of the USDH workforce in meeting the objectives of the Agency, duties and responsibilities need to be assigned and authorities delegated to other types of employees. The guidance provides for using USPSCs when USDHs or re-employed annuitants are not available to fulfill a permanent staffing requirement.²

USAID/Kenya is allocated a set number of USDH positions by USAID/Washington. Mission management has used these USDHs to staff important positions in the Mission, such as the Mission Director, Supervisory Program Officer in the Director's Office, group leader program positions, and Executive Officers.³ USAID/Kenya's USDH staff level has declined by 50 percent since 1995—from 12 USDHs to 6. According to a senior Mission official, the Mission is at a "bare bone" level for USDHs.

Faced with a limited number of USDHs and increasing Mission responsibilities, Mission officials have used USPSCs to supplement their workforce.⁴ According to a Mission official, each organizational office and strategic objective team should have a USDH in charge. This official acknowledged that this is not always possible. Thus, USPSCs are used to supplement the workforce when

¹This is entitled, "Appropriate Use and Funding of USAID's Non-Direct Hire Workforce," dated September 18, 1995.

²Re-employed annuitants are Agency retirees who have limited direct hire appointments.

³USAID/Kenya's Executive Officers are responsible for contract duties related to locally recruited USPSCs for USAID's Regional Economic Development Services Office for East and Southern Africa (USAID/REDSO/ESA), as well as other services because USAID/REDSO/ESA does not have its own Executive Officer. In turn, USAID/REDSO/ESA provides contracting services for internationally recruited USPSC positions for USAID/Kenya.

⁴ Foreign service nationals have also been used to supplement the decrease of USDHs.

USDHs are not available. More recently, this situation occurred in May 2003. During that time, a USAID/Kenya Triennial Review of the Mission's Integrated Strategic Plan was conducted, which involved several USAID/Washington offices. As a result of the Triennial Review, the Mission was given additional responsibilities in the areas of trade and investment, and education. However, additional USDHs were not allotted to the Mission to oversee these program areas. According to the cable that reported on the Triennial Review, "while participants at the review recognized the need for additional staff to oversee new program areas, direct-hire staff are not available, but PSCs could fill these positions." In November 2003, a senior Mission official said that they had received approval from USAID/Washington to increase its USDH staff by two, in order to address these new areas. However, Ambassadorial approval would be needed to increase the size of the Mission's staff.

According to a senior Mission official, having fewer USDHs at the Mission has resulted in USPSCs having more responsibilities.⁵ The Mission places USPSCs in positions where (1) financial and managerial risks need to be minimized and (2) technical skills and experience are needed. When a USPSC is needed, the Mission will try to hire a local USPSC because the cost is substantially less than hiring an international USPSC. There is also a talent base of Americans who reside in Kenya. However, the determining factor for using a USPSC international hire is if the position requires technical skills that are not available locally.

Below are two examples of important positions at USAID/Kenya that are being filled by USPSCs. The Mission requested, in its fiscal year 2003 Annual Report Part II, that a USDH Controller be considered as well as a USDH Democracy and Governance Officer. Because the Mission has a limited number of USDHs, it staffs these two important positions with USPSCs.

- The Controller position is staffed by a retired Foreign Service Officer who previously worked for USAID as a Controller. Given the complexity and scope of the Mission's programs, the Mission wanted a U.S. citizen who was an experienced controller in order to reduce any potential vulnerability.⁶
- The Democracy and Governance Officer position is staffed by an attorney who has much experience in this area and serves as the Office Chief. This position requires working closely with the Embassy and high-ranking

⁵According to USAID's Acquisition Regulation, Appendix D, section 4.b.3, USPSCs may not (1) supervise USDHs or U.S. government employees, (2) be designated as contracting officers or delegated authority to sign obligating or sub-obligating documents, (3) communicate a final policy, planning or budget decision of the Agency unless that communication has been cleared by a USDH, and (4) be delegated the authority to make a final decision on personnel selections.

⁶It was noted that responsibilities associated with this position which can only be carried out by a USDH are carried out by the Mission Director.

Kenyan government officials and, because sensitive political issues are encountered in this position, a U.S. citizen was required.

Concerns of terrorism in Kenya are constraining the Mission's ability to staff positions with U.S. citizens. According to a Mission official, there is much pressure being exerted by the U.S. Embassy in Nairobi not to increase the number of Americans working in Kenya for U.S. agencies, including the Mission. As stated previously, the Mission has received approval from USAID/Washington for two additional USDH positions. However, the Mission will need to obtain approval from the Ambassador to add the two positions to its staffing level.

The audit found that USAID/Kenya determined its requirements for USPSCs in accordance with USAID policies and procedures. Nevertheless, the Mission's ability to continue using USPSCs to supplement its USDH workforce in the future is in question. The Mission is experiencing the effects of working in a country where terrorism continues to be a major concern. USAID/Kenya may find itself in the difficult position of trying to grapple with increasing responsibilities with fewer U.S. direct hires and USPSCs.

Did USAID/Kenya award U.S. personal services contracts in accordance with selected USAID policies and procedures?

USAID/Kenya awarded its U.S. personal services contracts in accordance with selected USAID policies and procedures such as those for full and open competition and for establishing salaries and fringe benefits. However, our review of the contract files for all USPSC positions found that documentation could not be located that showed that the required grade-level reviews were conducted.

USAID/Kenya followed USAID policies and procedures for establishing full and open competition, salaries, and fringe benefits. Our review of the documentation in the contract files indicated all USPSCs were hired under full and open competition. Our review of USPSC contract files found documentation of several applications received for each position which identified the number of qualified candidates. From this group, a minimum number of three candidates were interviewed (if possible). We also found that the USPSC position salaries were established in accordance with USAID policy, and the files contained historical salary information on the USPSCs. Finally, the audit found that the five USPSC international hires and the one USPSC local hire received the correct benefits to which they were entitled.⁷

In spite of adhering to proper contracting practices for USPSCs, USAID/Kenya still needs to take corrective action to strengthen its contracting of USPSCs. The Mission's actions did not ensure that all USPSC contracts were supported with

⁷USPSC local hires receive limited benefits. USPSC international hires receive benefits similar to USDHs.

evidence that the required grade-level reviews were conducted. Thus, we are making a recommendation, provided in the following section, that will address this problem.

All USPSC Files Need to Contain Evidence of Grade-level Reviews

USAID's Acquisition Regulation (AIDAR) and its Contract Information Bulletin (CIB) 96-8 require that correct market values be established for USPSC positions that are to be filled through a market analysis or grade-level review. This action is further defined by the CIB, which requires that all contract files be documented to indicate that a grade-level review was performed. The audit found that one-third of the USPSC contract files reviewed for USAID/Kenya lacked documentation that grade-level reviews had been conducted. The USPSC contract files without documentation for grade-level reviews were for international hires contracted for the Mission by USAID's Regional Economic Development Services Office for East and Southern Africa (USAID/REDSO/ESA). USAID/REDSO/ESA has a process to conduct the reviews and to document this action in the files. REDSO officials could not explain why some of the files lacked documentation, since the contracting staff who worked on the contracts in question no longer work at the Mission. However, USAID/Kenya did not ensure that the required grade-level reviews were performed for all of its USPSC positions and that the results of reviews were in the contract files. Without documentation in the contract files, there exists a risk that USPSC positions are being established at unrealistic and unreasonable market values.

The Federal Acquisition Regulation and AIDAR govern contracts awarded by USAID. AIDAR, Appendix D, Section 4 states that salaries for USPSCs shall be based on the market value of the position in the United States. This requires the Contracting Officer, in coordination with the Technical Officer, to determine the correct market value (a salary range) for the position being filled. The market value of the position then becomes the basis, along with the applicant's certified salary history, for salary negotiations by the Contracting Officer. Any position which is determined to be above the General Schedule (GS)-13 equivalent and which exceeds six months in duration must be classified by USAID's Bureau for Management, Office of Human Resources/Personnel Operations Division (M/HR/POD). The intent of this requirement is to establish a realistic and reasonable market value for the position. The final determination regarding the reasonableness of a salary level rests with the Contracting Officer. Paying salaries using this method avoids "rank in person" salaries which are in excess of the value of the position contracted. USAID's CIB 96-8 states that "the GS grade represents the market value of the work to be performed; the GS salary range represents agreement within the US Government as to approximately what USAID should be paying to have that work accomplished. All contract files must be documented to indicate that a grade-level review was performed, and the results of that review."

The audit found that two of six USPSC contract files (33 percent of the population) which were active during the scope of the audit, lacked documentation that grade-level reviews were performed. Both of these USPSC contracts were for GS-14 positions that would have required an M/HR/POD classification review. One of these contracts was for the Controller position.

Because these two GS-14 positions were USPSC international hires, USAID/REDSO/ESA was responsible for contracting for these positions, as well as for ensuring that M/HR/POD conducted a position classification. USAID/REDSO/ESA contracting officials have a process, which is not written, to obtain grade-level reviews or classification reviews for all USPSCs and to document this action in the files. However, they could not explain why some of the files lacked documentation, since the contracting staff who worked on the contracts in question no longer work at the Mission. When the audit team requested the missing documentation for the two USPSC contracts, the Mission was unable to provide the documents or produce evidence that, in those cases, it had obtained a classification from M/HR/POD. The audit team noted that the USAID/REDSO/ESA contract files contained a checklist of many important documents to be kept in the contracting files, but it did not require documentation for a grade-level review or position classification. Finally, USAID/Kenya had not taken action to ensure that the required grade-level reviews were performed by USAID/REDSO/ESA and that these results were included in the USPSC files.

Without documentation that position grade-level reviews have been conducted for all USPSC positions, there exists a risk that USPSC positions are being established at unrealistic and unreasonable market values. The intent of AIDAR Appendix D is to avoid paying “rank in person salaries” which would be in excess of the value of the job that is being contracted.

Although USAID/Kenya has a process in place to ensure that contracts for its USPSCs are in compliance with Federal and USAID contracting requirements, this one area needs improvement. The grade-level review is important because it establishes the basis for USPSC salaries. In this case, the Mission needs to ensure that the contracting actions that USAID/REDSO/ESA makes on its behalf follow contracting requirements. Therefore, we are making the following recommendation.

Recommendation No. 1: We recommend that USAID/Kenya develop and implement a system to ensure that its U.S. personal services contracts, which are to be executed by USAID/REDSO/ESA’s contracting officers, are executed only after a grade-level review has been conducted and documented in the contract file. As part of the system, we suggest that USAID/Kenya modify the checklist found in USAID/REDSO/ESA’s U.S. personal services contracts files to help achieve this purpose.

**Management
Comments
and Our
Evaluation**

In response to our draft report, USAID/Kenya management concurred with Recommendation No. 1. The Mission also approved and implemented a corrective action plan to address the recommendation. Therefore, we consider that a management decision has been reached and that final action has been taken.

**Scope and
Methodology**

Scope

The Regional Inspector General/Pretoria conducted this audit in accordance with generally accepted government auditing standards. This audit is part of a worldwide audit led by the Office of Inspector General's Performance Audits Division in Washington, D.C. The audit was designed to answer the following questions:

1. Did USAID/Kenya determine its requirements for U.S. personal services contractors in accordance with USAID policies and procedures?
2. Did USAID/Kenya award U.S. personal services contracts in accordance with selected USAID policies and procedures?

The audit included U.S. personal services contractors (USPSCs) contracts that were active during the period of October 1, 2002, through November 25, 2003. In planning and performing the audit, we tested and assessed significant management controls related to the Mission's awarding of USPSC contracts. In this effort, we tested for full and open competition for all six USPSC contracts that had been awarded. Further, we assessed the management controls used to establish salaries and benefits. Finally, we determined whether subsequent annual salary increases were in accordance with the contracts. The contracting officer is the significant management control in overseeing these three areas

The types of evidence examined during the audit included—but were not limited to—the Mission's Annual Report, Strategic Plan, staffing pattern, and relevant documents contained in the USPSC contract files. We also interviewed Mission officials from USAID/Kenya and contracting officials from USAID's Regional Economic Development Services Office for East and Southern Africa (USAID/REDSO/ESA). The audit was conducted at USAID/Kenya in Nairobi, Kenya, from November 13, 2003 to November 25, 2003.

Methodology

In order to answer the first objective, we reviewed USAID/Kenya's Strategic Plan 2001-2005. We also reviewed the Mission's Annual Report for Fiscal Year 2003. In addition, we analyzed the Mission's staffing pattern as of September 30, 2003. Finally, interviews were conducted with USAID/Kenya's officials, including both senior management and program managers, to determine how staffing decisions were made for USPSCs and the basis for using this workforce category.

To answer the second objective, we reviewed the USPSC contracting files to determine if they included sufficient documentation to indicate compliance with USAID policies and procedures. The files included negotiation memos, contracts,

solicitations, and the Technical Evaluation Memorandum which showed full and open competition in awarding the contracts, salary histories, benefits, and the basis for establishing salaries. In reviewing annual salary increases, we established a materiality threshold of 1 percent (plus or minus) for variances that occurred between the General Schedule Salary Table and the USPSCs' pay increases. When variances occurred, we met with an official from the Controller's office to identify why the variances occurred. Finally, when important documents could not be found in the USPSC contract files, we notified Mission staff from both USAID/Kenya and USAID/REDSO/ESA, and requested that they locate the missing documentation and provide it to us.

Management
Comments



UNITED STATES OF AMERICA
AGENCY FOR INTERNATIONAL DEVELOPMENT
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MEMORANDUM

DATE: March 08, 2003
TO: Jay Rollins RIG/Pretoria
FROM: Kiertisak Toh, Mission Director, USAID/Kenya /s/
SUBJECT: Audit of USAID/Kenya's Management of U.S. PSCs

The purpose of this memo is to communicate USAID/Kenya's management comments regarding the recommendation appended below per the subject report:

Recommendation No. 1 states "We recommend that USAID/Kenya develop and implement a system to ensure that its U.S. Personal Services Contracts, which are to be executed by USAID/REDSO/ESA's contracting officers, are executed only after a grade-level review has been conducted and documented in the contract file. As part of the system, we suggest that USAID/Kenya modify the checklist found in USAID/REDSO/ESA's U.S. Personal Services files to help achieve this purpose".

Management Comments: The Director, Regional Acquisition and Assistance Officer, USAID/REDSO/ESA has established a process to ensure that the required grade level reviews or position classifications are performed for all personal services contract positions and are included in the contract files. This process includes the establishment of clear procedures for grading, classifying and setting the market value of Personal Services Contracts.

As the USAID/Kenya Mission Director, I have reviewed and approved this process for immediate implementation in executing U.S. Personal Services Contracts. (Copy of the approved process attached).

I therefore request that the above recommendation be resolved.



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ACTION MEMORANDUM FOR THE "HEAD OF THE CONTRACTING ACTIVITY"

From: Gary Juste, Director, Regional Acquisition and Assistance Office, USAID/REDSO/ESA
/s/

Subject: Grade Review and Position Classification process for all Personal Services Contracts

Date: February 13, 2004

Action: Approval of the process to ensure the required grade level reviews or position classifications are performed for all Personal Services Contract positions and are included in the contract files.

Discussion: The process shall include the establishment of clear procedures for grading, classifying and setting the market value of PSC positions.

1. Once an office determines a need for a PSC position, it will prepare a position description/statement of work (SOW) and make a recommendation for a grade based on the duties of the incumbent.
2. The position description/SOW will be provided to the Human Resources Section/ Executive Office for classification and final determination of the appropriate grade. The grade will provide the salary range which then constitutes the position's market value.
3. The determination will be attached to the MAARD and submitted to Acquisition and Assistance office to be contracted.
4. Upon selection of a candidate, the Contracting Officer will negotiate a salary based on salary history within the range of the grade of the classified position.
5. The documentation for the above process will be included in all PSC contract files.

Recommendation

It is recommended that you approve this process

Approved: Kiertisak Toh, Mission Director /s/
Date: March 4, 2004

Clearances:
Executive Officer, Tom Ray /s/
Controller, Rashmi Amin /s/