

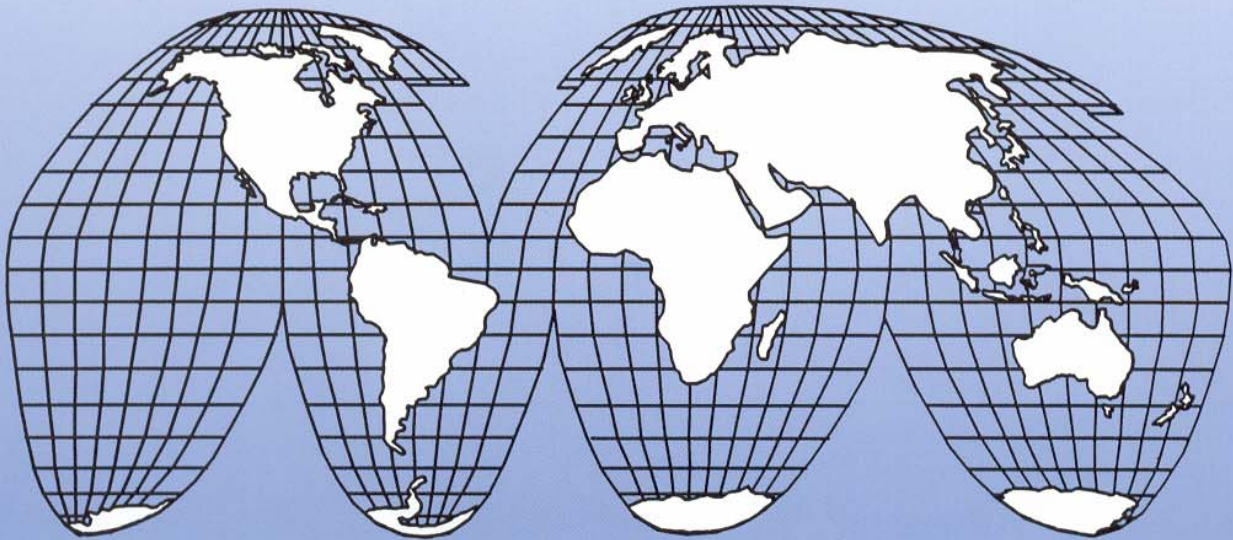
USAID

OFFICE OF INSPECTOR GENERAL

Audit of USAID Missions' Management of U.S. Personal Services Contractors

Audit Report Number 9-000-04-006-P

September 16, 2004



Washington, D.C.

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September 16, 2004

To: M/OAA/OD, Timothy T. Beans

From: IG/A/PA Director, Nathan S. Lokos /s/

Subject: Audit of USAID Missions' Management of U.S. Personal Services Contractors
(Report No. 9-000-04-006-P)

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

The report includes one recommendation to strengthen USAID's management of U.S. personal services contracts. In your written comments, you concurred with the recommendation and have identified actions to address our concerns. Therefore, we consider that a management decision has been reached and that final action is pending on the recommendation. Information related to your final action on the recommendation should be provided to USAID's Office of Management Planning and Innovation.

I want to express my sincere appreciation for the cooperation and courtesies extended to my staff during the audit.

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Summary of Results

This worldwide audit was conducted to determine whether (1) USAID missions had established their requirements for U.S. personal services contractors (USPSCs) in accordance with USAID policies and procedures and (2) USAID missions awarded U.S. personal services contracts in accordance with selected USAID policies and procedures. This audit report summarizes the results of audits of eight USAID missions. (See Appendix III for a summary of audit recommendations and Appendix IV for a list of audit reports issued.) The audit showed USAID missions had determined their USPSC staffing requirements in accordance with USAID policies and procedures (see page 6). Also, except for isolated exceptions, USAID missions had awarded their U.S. personal services contracts in accordance with selected USAID policies and procedures (see pages 8 and 9).

The audit concluded that USAID's policies on contract extensions and renewals need additional clarification for consistency in application at all USAID missions. We recommended that the Office of Acquisition and Assistance issue interim guidance that requires 1) contracts (including extensions/renewals) with personal services contractors be limited to 5 years and 2) contracts with personal services contractors be re-competed if major changes have been made in the associated position description—even if such changes occur prior to the fifth year of the contract (see page 11).

Management concurred with the recommendation and plans to issue an Acquisition and Assistance Policy Directive (AAPD) to clarify the above issues before December 31, 2004. The AAPD constitutes interim guidance pending planned revisions to the USAID Acquisition Regulation (AIDAR) Appendices D and J and issuance of a new Automated Directives System (ADS) Chapter on personal services contractors' policy and procedures (see page 12).

Background

USAID's core workforce consists of four distinct groups: (1) U.S. foreign service direct hire; (2) U.S. civil service direct hire; (3) U.S. personal services contractors (USPSCs); and (4) foreign service nationals and third country nationals¹—which can be either direct hires or personal services contractors.

Of these groups, USPSCs have become an increasingly important element of USAID's workforce. Because of downsizing and a reduction-in-force in 1996, the number of U.S. direct hires declined from 3,262 at September 30, 1990 to 2,152 at March 31, 2004—a 34 percent reduction. As a result, USAID has relied more and

¹ Foreign service nationals are hired in their country of citizenship through the local USAID mission. Third country nationals are hired from a third country.

more on USPSCs to supplement its workforce. At March 31, 2004, USAID's 594 USPSCs made up 7.6 percent of its workforce.

USPSCs are recruited either locally or internationally, based on the required skill level and availability.

Locally Recruited USPSCs

USPSCs recruited locally offer skills and experience that are not available in the local labor force or that would be expensive to import. Locally recruited USPSCs often provide services that are short term in nature, such as administrative management, secretarial functions, and project management. These individuals receive limited benefits and allowances.

Internationally Recruited USPSCs

USPSCs recruited internationally often possess specialized technical skills. These individuals are often recruited under long term contracts and receive benefits and allowances that are similar to those of a U.S. direct hire employee.

Personal services contracts are employment contracts and USPSCs, for most purposes, are considered employees of the U.S. government. Consequently, when determining its needs for USPSCs and in employing them, USAID missions must comply with certain USAID policies and procedures.

Audit Objectives

The Office of Inspector General's Performance Audits Division conducted this worldwide audit as part of its annual audit plan to answer the following audit objectives:

Did USAID missions determine their requirements for U.S. personal services contractors in accordance with USAID policies and procedures?

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

Appendix I contains a complete discussion of the scope and methodology for the audit.

Audit Findings

Did USAID missions determine their requirements for U.S. personal services contractors in accordance with USAID policies and procedures?

USAID missions determined their requirements for USPSCs in accordance with USAID policies and procedures.

Those policies and procedures are contained in USAID's Automated Directives System (ADS) in the form of a USAID General Notice addressing the "Appropriate Use and Funding of USAID's Non-Direct Hire Workforce."² This notice provides USAID managers with information and guidance on the appropriate roles, responsibilities, and employment mechanisms for the various types of personnel working with USAID. For example, among other things, the notice states that:

- Direct hire U.S. citizens shall perform the basic work of USAID.
- The first option for filling a position that must be filled by a U.S. citizen is the assignment of a direct hire employee.
- A USPSC should only be considered when the staffing requirement is clearly temporary, when the local recruitment of U.S. citizens is uniquely suitable, or when all alternatives for utilizing direct hires have been exhausted.

According to mission officials, USAID overseas missions are allocated a set number of USDH positions based on a variety of factors, including, but not limited to, the complexity of the program, the level of funding, and whether the mission provides regional services. Missions have used these limited direct hire positions to staff the basic functions of the mission, such as those performed by the director, the controller, and contracting officer. This limited availability of USDHs necessarily impacts how a mission is able to fill other positions requiring U.S. citizens. When mission management is not successful in petitioning USAID/Washington for additional USDHs, it looks to other mechanisms to fill positions that do not absolutely require direct hire authorities.³

For example, this was the case with the deputy team leader positions for both the USAID/Dominican Republic's economic growth and democracy teams. For a variety of reasons, such as the need for broad international expertise and the greater credibility given to Americans by host country counterparts when discussing government policy, Mission officials felt it was important to fill the positions with U.S. citizens. Given the lack of available USDH positions, the Mission filled these jobs with USPSCs. Similarly, when USAID/Dominican Republic's executive officer and program officer positions were temporarily

² ADS 400 Series Updates, Part I, 1995 #2.

³ USAID Acquisition Regulation Appendix D, Section 4.b.3, indicates that personal services contractors cannot (1) supervise USDH or other U.S. government employees, (2) be designated as contracting officers or delegated authority to sign obligating or sub-obligating documents, (3) communicate a final USAID policy, planning or budget decision unless that communication has been cleared by a USDH, and (4) make a final decision on personnel selection. The Assistant Administrator for Management must approve exceptions to these limitations.

vacant, the Mission filled the positions with USPSCs. Both of these positions were ultimately filled by USDHs.

Similarly, USAID/Indonesia also used its limited direct hire positions to staff the basic functions of the mission such as those performed by the director and deputy director, the controller and deputy controller, executive officer, program officer, contracting officers, and legal advisor. In addition, the Mission identified three USPSC positions—senior public finance advisor, senior economics governance advisor, and senior trade and investment advisor—for its economic growth strategic objective that required unique skills and experience. The Mission believed these positions had to be filled with American candidates with broad, long-term, international experience who would be viewed as having greater credibility by host country counterparts.

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

USAID missions awarded U.S. personal services contracts in accordance with selected USAID policies and procedures, including those for full and open competition⁴, establishing starting salaries, and setting fringe benefits. However, USAID needs to clarify its policy on extending USPSC contracts beyond five years. This is a cross-cutting issue that could affect many USAID missions, and should be addressed by USAID/Washington. This issue—and a related audit recommendation—is discussed in detail later in this report.

Using Full and Open Competition

According to the Federal Acquisition Regulation (FAR), Subpart 6.1 - Full and Open Competition, contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts. However, Contract Information Bulletin⁵ (CIB) No. 97-16 states that full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid. A justification for other than full and open competition can be authorized as long as two conditions are met: (1) offers are requested from as many potential sources as is

⁴ Full and open competition means all responsible sources are permitted to compete for a contract under specifically prescribed procedures, such as sealed bids and competitive proposals.

⁵ Through the year 2001, CIBs have provided information of significance to contracting personnel such as advance notification of changes in acquisition and assistance regulations. Also, CIBs have been used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations. As of January 2002, Acquisition and Assistance Policy Directives (AAPDs) replaced the CIB format but continue to perform the same function.

practicable under the circumstances, and (2) justification supporting less than full and open competition is prepared.

Our tests indicated that—except for isolated exceptions⁶—USAID missions complied with policies and procedures for full and open competition in selecting USPSCs. For example, prior to awarding four USPSC contracts at USAID/Peru, each position was advertised on the USAID external internet; the candidates were scored and ranked; and the selection methodology was documented in the contract files. For six other contracts awarded under other than full and open competition, the contract files indicated that offers were requested from as many potential sources as was practicable under the circumstances, and that authorizations for other than full and open competition for personal services contracts with U.S. citizens contracted locally of \$250,000 or less were documented. In addition, our tests of six contracts at USAID/Kenya found that several applications had been received for each position.

Establishing Starting Salaries

AIDAR Appendix D provides two distinct methods for establishing USPSC salaries: method 1 and method 2. Under method 1, a market value (or salary range equal to a given GS grade salary range) is established based upon the scope of work for the position to be solicited. This method avoids using a candidate's salary history, which may be in excess of the market value for the position, as a basis for salary negotiations. It also requires concurrence by USAID's Office of Human Resources, Personnel Operations Division (M/HR/POD) for market values set at greater than the GS-13 salary range. Method 2, on the other hand, permits using a candidate's salary history as a basis for salary negotiations. Missions are required to use method 1 unless a written justification is provided by the Mission Director or the cognizant Assistant Administrator for using method 2.

Our tests indicated that—except for isolated exceptions⁷—USAID missions complied with policies and procedures in establishing starting salaries for USPSCs. For example, USAID/Indonesia established salaries for 13 USPSCs using method 1 and established starting salaries for two others using method 2. Also, tests of 19 USPSC contracts at USAID Regional Economic Development Services Office for East and Southern Africa found no problems with establishing starting salaries.

⁶ Recommendations addressing these exceptions were made in the reports issued to the individual missions audited. Those recommendations are summarized in Appendix III.

⁷ Ibid.

Setting Fringe Benefits

According to AIDAR Appendix D, USPSCs are not eligible to participate in any programs based on laws administered by the Federal Office of Personnel Management (such as incentive awards, retirement, and insurance programs). Other than the above exceptions, fringe benefits granted to internationally recruited USPSCs are essentially the same as those granted to USDHs⁸ (but do not apply to locally hired USPSCs in most instances). For example, internationally recruited USPSCs are entitled to:

- Home leave
- Rest and recuperation travel
- Post differential
- Living quarters allowance
- Temporary lodging allowance
- Post allowance
- Payments during evacuation
- Education allowance
- Education travel
- Separate maintenance allowance
- Travel and transportation

Our tests indicated that—except for isolated exceptions⁹—USAID missions complied with policies and procedures in setting fringe benefits for USPSCs. Based on interviews with USAID/Indonesia contracting office personnel and review of contract files and payroll records, all 15 USPSCs—three were locally recruited and 12 were internationally recruited—received only those fringe benefits allowed to them. At USAID/Peru, all ten USPSCs—three were locally

⁸ An international hire, as opposed to a resident hire, is a U.S. citizen who, at the time of recruitment and hire as a USPSC, was a resident of a country other than the host country.

⁹ Recommendations addressing these exceptions were made in the reports issued to the individual missions audited. Those recommendations are summarized in Appendix III.

recruited and seven were internationally recruited—received only those benefits and allowances allowed to them.

USAID Guidance on USPSC Contract Extensions Should Be Clarified

Having clear, unambiguous guidance is critical to a decentralized organization such as USAID. This is especially true in the area of procurement, where USAID contracting officers around the world make decisions that determine which of many competing offerors receive awards worth many thousands—if not millions—of dollars. Clear guidance can help ensure that these contracting officers address similar situations in a consistent manner and, as a result, that awards are made on a fair and equitable basis.

During the audit, we determined that CIB No. 01-07, which provides guidance on the extension/renewal policy for personal services contracts, was not sufficiently clear. This CIB states that extensions or renewals with the same individual for the same services do not need to be publicized. While on the surface this appears clear, it can be interpreted in different ways. For example, at one of the missions audited, procurement officials believed they had the authority to execute indefinite extensions to personal services contracts without further competition. Accordingly, they extended the length of two USPSC contracts, one from 5 to 16 years and another from 2 to 6.5 years, without further competition—resulting in the exclusion of potential candidates. To further complicate matters, the major duties of these USPSC positions were expanded, which would ordinarily constitute a change of scope that would signal the need to re-compete the positions.

In contrast, the Chief of USAID’s Office of Acquisition and Assistance, Policy and Evaluation Division (M/OAA/PE) opined that—based on the FAR—no USPSC contracts should be extended beyond five years. Instead, the wording in the CIB should be interpreted to mean that if the same person will be performing the same services, a USPSC contract may be extended non-competitively only up to the five-year limit.

We believe that the wording used in the CIB was probably clear to its author. However, in practice, its ambiguity has led to different interpretations and inconsistent procurement of USPSC services. While we understand that the Office of Acquisition and Assistance is in the process of revising its existing USPSC policies, we believe USAID should take immediate action to address this issue and to provide its missions with interim guidance. Accordingly, we are making the following recommendation.

Recommendation No. 1: We recommend that the Office of Acquisition and Assistance issue interim guidance that

requires 1) contracts (including extensions/renewals) with personal services contractors be limited to 5 years and 2) contracts with personal services contractors be re-competed if major changes have been made in the associated position description—even if such changes occur prior to the fifth year of the contract.

**Evaluation of
Management
Comments**

In response to our draft report, management concurred with the recommendation and plans to issue an Acquisition and Assistance Policy Directive (AAPD) to clarify the above issues before December 31, 2004. The AAPD constitutes interim guidance pending planned revisions to the USAID Acquisition Regulation Appendices D and J and issuance of a new Automated Directives System Chapter on personal services contractors' policy and procedures. When fully implemented, these actions should significantly improve USAID's management of its U.S. personal service contractor workforce.

Scope and Methodology**Scope**

The Office of Inspector General's (OIG's) Performance Audits Division conducted a worldwide audit of missions' management of U.S. personal services contractors. The audit was conducted in accordance with generally accepted government auditing standards.

This report summarizes the results of audit work conducted at selected overseas USAID missions (see Appendix IV for the list of audit reports issued). In addition, this report addresses one Agency-wide issue identified in the course of these audits. Audit fieldwork was performed at following locations:

- USAID/Dominican Republic from September 9 through September 26, 2003.
- USAID/Egypt from November 19, 2003 through January 8, 2004.
- USAID/Kenya from November 13 through November 25, 2003.
- USAID/Indonesia from November 4-24, 2003 and from December 15-19, 2003.
- USAID/Nigeria from January 15 through February 4, 2004.
- USAID/Peru from November 3 through November 13, 2003.
- The Regional Mission for Ukraine, Belarus and Moldova from October 6 through November 26, 2003.
- The Regional Economic Development Services Office for East and Southern Africa from November 13 through November 25, 2003.

We conducted interviews with mission officials as well as U.S. personal services contractors. In addition, we reviewed procurement documentation including personal services contracts to determine compliance with USAID policies and procedures.

This audit included an examination of internal controls, including those associated with determining missions staffing needs and the missions' competitive procurement of, setting of salaries for, and awarding of fringe benefits to U.S. personal services contractors (USPSCs). These controls included the missions' strategic plans, annual reports, and activities-approval documents

for their strategic objectives that address the allocation of foreign service nationals, U.S. direct hires (USDHs), and USPSCs. Internal controls over USPSCs include guidance contained in the USAID Acquisition Regulation Chapter 7, Appendix D, various contract information bulletins, and acquisition and assistance policy directives. In planning the audit, we considered prior relevant audit findings.

Methodology

In performing the audit, we examined pertinent documentation and discussed audit-related issues with responsible officials in USAID's Office of Human Resources, the Office of Procurement in Washington, D.C. and at the above mentioned selected missions. The audit work in USAID/Washington focused on guidance provided to missions on manpower requirements and policies and procedures on competition, setting salaries, and benefits provided to USPSCs. The audit work at selected missions focused on efforts to determine manpower requirements; the "mix" of labor (e.g., USPSCs, USDHs, foreign service nationals); and the implementation of competition, salary setting, and benefits aspects of U.S. personal services contracting. Our audit included a review and analysis of (1) information included in the mission's active USPSC personnel files, (2) the mission's five-year strategic plan, (3) the mission annual report, and (4) activities-approval documents. This audit did not assess the overall economy and efficiency of the selected missions' personal services contracting process.

**Management
Comments**

SEP 9, 2004

MEMORANDUM

To: IG/A/PA Acting Director, Michael W. Clinebell

From: M/OAA, Timothy T. Beans /s/

Subject: Draft Report on Audit of USAID Missions' Management of U.S. Personal Services Contractors (Report No. 9-000-04-00x-P)

Thank you for the opportunity to comment on the referenced DRAFT report. The Offices of Acquisition and Assistance (M/OAA) offers the following in response to your DRAFT recommendation.

Recommendation No. 1: We recommend that the Office of Acquisition and Assistance issue interim guidance that requires 1) contracts with personal services contractors be limited to 5 years and 2) contracts with personal services contractors be re-competed if major changes have been made in the associated position descriptions—even if such changes occur prior to the fifth year of the contract.

M/OAA concurs with this Recommendation and plans to issue an Acquisition and Assistance Policy Directive (AAPD) to clarify the above issues before December 31, 2004. The AAPD constitutes interim guidance pending planned revisions to the USAID Acquisition Regulation (AIDAR) Appendices D and J and issuance of a new Automated Directives System (ADS) Chapter on PSC policy and procedures.

Draft Report on Audit of Missions' Management of U.S. Personal Services Contractors Utilization Practices (Report No. 9-000-04-00x-P)

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SUMMARY OF AUDIT RECOMMENDATIONS

Recommendations	DOMINICAN REPUBLIC	EGYPT	INDONESIA	KENYA	NIGERIA	PERU	UKRAINE, BELARUS & MOLDOVA	REDSO EAST & SOUTHERN AFRICA
Audit Objective One (Staffing)								
Consider locally recruited PSCs		X						
Document compliance with USAID policy							X	
Audit Objective Two (Contracting)								
Document selection of lower-ranked applicant	X							
Revise written instructions to selection panels	X							
Reclassify position to General Schedule	X							
Establish controls for negotiation memorandum		X						
Institute checklist for contract files		X						
Establish standard budget format for contracts		X						
Justify contract extensions beyond five years		X						
Determine how two contracts will be managed		X						
Conduct and document grade level reviews in contract files				X				X
Justify and document deviations from mission policy on selection panels					X			
Document the market value of contractor positions					X			
Classify medical evacuation insurance allowance as a benefit for internationally-recruited USPSCs					X			
Adjust one USPSC salary						X		
Establish procedures for annual leave payments							X	
Maintain certified statements of past salary history							X	

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**Worldwide
Audit Reports
Issued**

Eight reports were issued as part of the worldwide audit of U.S. personal services contractors, as follows:

Report No. 1-527-04-004-P, “Audit of USAID/Peru’s Management of U.S. Personal Services Contractors,” January 14, 2004

Report No. 9-517-04-001-P, “Audit of USAID/Dominican Republic’s Management of U.S. Personal Services Contractors,” January 23, 2004 (this report represents the pilot audit)

Report No. 4-615-04-004-P, “Audit of USAID/Kenya’s Management of U.S. Personal Services Contractors,” March 15, 2004

Report No. 4-623-04-005-P, “Audit of USAID/REDSO/ESA’s Management of U.S. Personal Services Contractors,” March 15, 2004

Report No. B-121-04-003-P, “Audit of USAID Mission for Ukraine, Belarus and Moldova’s Management of U.S. Personal Services Contractors,” March 17, 2004

Report No. 5-497-04-003-P, “Audit of USAID/Indonesia’s Management of U.S. Personal Services Contractors,” April 6, 2004

Report No. 7-620-04-004-P, “Audit of USAID/Nigeria’s Management of U.S. Personal Services Contractors,” April 23, 2004

Report No. 6-263-04-005-P, “Audit of USAID/Egypt’s Management of U.S. Personal Services Contractors,” May 19, 2004