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MEMORANDUM FOR DAA/LAC, Carl H. Leonard

FROM: RIG/A/San Salvador, Timothy E. Cox

SUBJECT: Audit of the Use of Nonpersonal Services Contracts by USAID Missions in Latin America and the Caribbean, Audit Report No. 1-598-99-005-P

This memorandum is our audit report on the use of nonpersonal services contracts by missions in Latin America and the Caribbean. The report does not contain any recommendations.

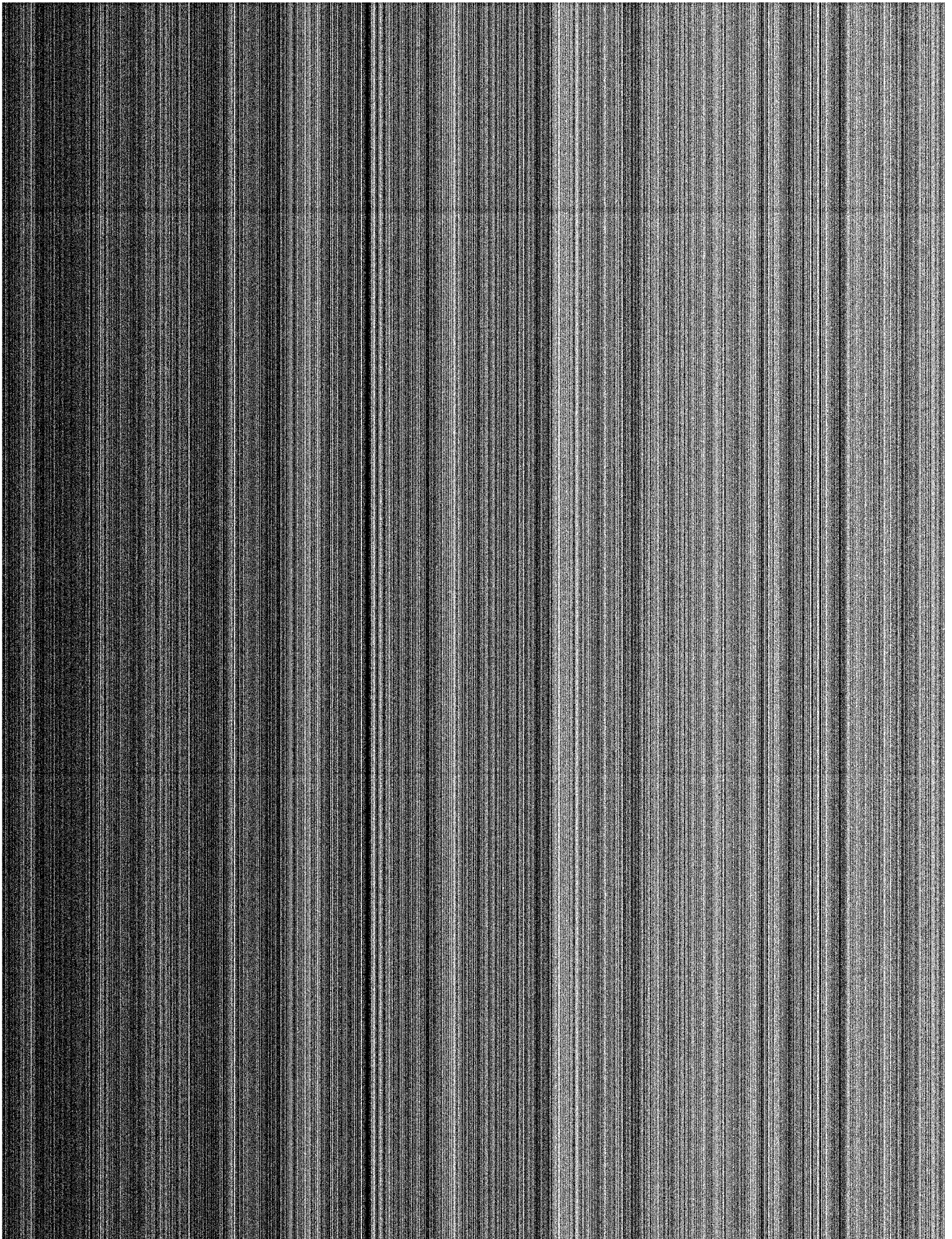
I appreciate the cooperation and courtesy extended to my staff during this audit.

Background

The Federal Acquisition Regulations define two principal categories of contracts for services: nonpersonal services contracts and personal services contracts. A nonpersonal services contract should be used when the individual(s) providing services will not be subject to the type of supervision and control usually prevailing in relationships between the U.S. Government and its employees. A personal services contract, on the other hand, should be used when the individual(s) providing services are subject to relatively continuous supervision and control by a U.S. Government official.¹

Because personal services contracts are characterized by an employer-employee relationship between the U.S. Government and the contracted individual(s), U.S. personal services contractors are counted in the personnel ceilings established for USAID overseas missions. Nonpersonal services contracts are not included in the personnel ceilings; therefore, care must be taken to see that nonpersonal services contracts are not used, even inadvertently, to circumvent mission personnel ceilings.

¹ Federal Acquisition Regulations, Sections 37.101 and 37.104.



Audit Objectives

After receiving an allegation that nonpersonal services contracts were being used to circumvent personnel ceilings, the Office of Inspector General performed this audit to answer the following audit objectives:

- To what extent are missions in the Latin America and Caribbean region using nonpersonal services contracts with individual U.S. citizens?
- Have missions in the Latin America and Caribbean region used long-term nonpersonal services contracts with individual U.S. citizens to circumvent personnel ceilings?

The audit scope and methodology, including significant limitations on the scope of the audit, is described in Appendix 1.

Audit Findings

To what extent are missions in the Latin American and Caribbean region using nonpersonal services contracts with individual U.S. citizens?

According to information provided by the 16 USAID missions in the Latin America and Caribbean region, 8 missions had not awarded any nonpersonal services contracts with individual U.S. citizens between April 1, 1996 and February 3, 1997.² The other 8 missions had awarded 21 nonpersonal services contracts with individual U.S. citizens with total obligations of \$1,042,334. Of these, 17 nonpersonal services contracts with obligations of \$261,053 were short-term contracts of less than one year. The other 4 nonpersonal services contracts, with obligations of \$781,281, were long-term contracts with terms of one year or more. Information on these contracts is provided in the following table.

<i>Mission</i>	<i>Nonpersonal Services Contract Number</i>	<i>Purpose</i>	<i>Amount</i>	<i>Contract Period</i>
Honduras	522-0388-C-00-6190-00	Senior Education Advisor	\$213,058	10/1/96 to 9/30/98
Honduras	522-0364-C-00-7002-00	Technical Advisor	\$151,206	10/1/96 to 6/30/98
Honduras	522-0383-C-00-7001-00	Technical Advisor	\$167,517	10/10/96 to 10/9/97
Guatemala	596-0180-C-00-6023-00	Management Systems Specialist	\$249,500	5/1/96 to 4/30/98

² This time period followed a decrease in Missions' personnel ceilings for fiscal year 1997, as well as a USAID-wide reduction in force.

Have missions in the Latin America and Caribbean region used long-term nonpersonal services contracts with individual U.S. citizens to circumvent personnel ceilings?

For the four cases we examined, missions in the Latin America and Caribbean region have not used long-term nonpersonal services contracts with individual U.S. citizens to circumvent personnel ceilings between April 1, 1996 and February 3, 1997.

The four individuals who were awarded long-term nonpersonal services contracts were all formerly employed by USAID missions as either direct-hire employees or personal services contractors who were counted against mission personnel ceilings. When they became nonpersonal services contractors, they were no longer counted against the ceilings. However, in each case, their duties changed significantly and they were no longer subject to relatively continuous supervision and control by mission officials. Details on each contract are provided in the following sections:

- Contract 522-0388-C-00-6190 was for a part time senior education advisor to provide technical assistance to the Ministry of Education and a private Advisory Council for Human Resources Development under the Basic Education and Skills Training Project in Honduras. The contract was awarded to an individual who was formerly employed by USAID/Honduras as a direct hire employee. As a direct hire employee, the individual was counted against the mission's personnel ceiling, but as a nonpersonal services contractor he was not counted. Nonetheless, we found no indication that the mission's decision to use a nonpersonal services contract was inappropriate. For example, we found no indication that the individual was subject to relatively continuous supervision and control by USAID/Honduras, which would have implied that an employer-employee relationship existed. We were told that, during the first month of the contract, the contractor visited the mission on an almost daily basis, creating the appearance of relatively continuous supervision and control by the mission. However, when this came to his attention, the contracting officer discussed the matter with the parties involved to ensure that the contractor worked in the independent manner expected of nonpersonal services contractors.
- Contract 522-0364-C-00-7002 was for a part time technical advisor to coordinate all USAID-funded training on behalf of the Government of Honduras. It was awarded to an individual who was formerly employed by USAID/Honduras under a personal services contract. As a personal services contractor, the individual was counted against the mission's personnel ceiling but as a nonpersonal services contractor he was not counted. We concluded that the mission's decision to use a nonpersonal services contract was appropriate. When the individual was a personal services contractor, he was responsible for certain administrative and managerial functions within USAID/Honduras, such as supervising other mission personnel and serving as the mission training coordinator.

When he became a nonpersonal services contractor, he no longer performed these functions, and his office was moved to the Government of Honduras' project implementation unit. We found no indication that the contractor was subject to relatively continuous supervision and control by USAID/Honduras officials.

- Contract 522-0383-C-00-7001 was for a technical advisor to the general manager of the Financing Corporation for Cooperatives (FINACCOOP), which was implementing the USAID-funded Small Farmer Agribusiness Development (SFAD) Project. The individual to whom this contract was awarded was previously employed by USAID/Honduras under a personal services contract. When he was a personal services contractor, the individual counted against the mission's personnel ceiling but when he became a nonpersonal services contractor he was not counted. The mission's decision to use a nonpersonal services contract was appropriate. When he was a personal services contractor, the individual served as the USAID project manager for two projects, including the SFAD project. According to the individual, the administrative functions associated with being a USAID project manager absorbed about 50 percent of his time. When he became a nonpersonal services contractor, he was no longer responsible for these project management functions and he was able to devote all of his time to his new role as advisor to FINACCOOP. Also, as a nonpersonal services contractor, he worked outside the mission in office space provided by FINACCOOP. We found no evidence that the individual was subject to relatively continuous supervision and control by USAID/Honduras.
- Contract 596-0180-C-00-6023 was for a management systems specialist who provided technical assistance to the Central American Commission for Environment and Development (CCAD) under the Regional Environmental Project for Central America. The individual who provided nonpersonal services under this contract was formerly employed by USAID/Guatemala under a personal services contract as the assistant project manager for a predecessor project, the Regional Environmental and Natural Resources Management Project. It was clear that USAID/Guatemala's decision to award this nonpersonal services contract was based on the requirements of the position. The mission wanted an advisor who would be located in the offices of CCAD, providing full time technical assistance to CCAD's director. Since this arrangement precluded relatively continuous supervision and control of the individual by USAID/Guatemala officials, a nonpersonal services contract was the appropriate choice. (If USAID/Guatemala had decided that a personal services contract was more appropriate, it could have awarded one since it had a vacant U.S. personal services contractor position available at the time it awarded the nonpersonal services contract.)

In summary, sound programmatic reasons supported the missions' use of long-term nonpersonal services contracts with individual U.S. citizens, and, in awarding such contracts, the missions complied with Sections 37.101 and 37.104 of the Federal Acquisition Regulations.

Management Comments and Our Evaluation

We provided a draft audit report to the Deputy Assistant Administrator for Latin America and the Caribbean, USAID/Guatemala, and USAID/Honduras, who all stated that they had no comments to offer on the draft report.

SCOPE AND METHODOLOGY

Scope

We conducted our audit in accordance with generally accepted government auditing standards, except as discussed below. The audit fieldwork was conducted from February 3, 1997 through June 12, 1998, and covered the period from April 1, 1996 through February 3, 1997. To identify nonpersonal services contracts with individual U.S. citizens awarded by missions in the Latin America and Caribbean region during this period, we surveyed the missions in the region, asking them to provide basic information on each nonpersonal services contract such as the contract number, amount, and period of performance. Where the period of performance was for one year or more, we examined contracting documents and correspondence and interviewed USAID officials at the missions that awarded the contracts.

The audit was subject to several significant limitations:

- As the audit objectives indicate, the audit only covered nonpersonal services contracts with individual U.S. citizens. We did not, for example, review nonpersonal services contracts with institutional contractors or with foreign nationals.
- In answering the first audit objective (concerning the extent to which missions in the Latin America and Caribbean region using nonpersonal services contracts with individual U.S. citizens), we relied primarily on information provided to us by the missions. We did perform tests to verify the information provided by two of the missions, but, because we did not verify the information provided by the other missions, we have attributed the information in this audit finding to the missions themselves.
- In answering the second audit objective, (concerning whether missions in the Latin America and Caribbean region used long-term nonpersonal services contracts with individual U.S. citizens to circumvent personnel ceilings), we limited our conclusions to the four long-term nonpersonal services contracts with individual U.S. citizens that were identified during the audit.
- We did not review the management controls related to the audit objectives.
- Our review of compliance with applicable laws and regulations was limited to reviewing compliance with Sections 37.101 and 37.104 of the Federal Acquisition Regulations for

the four long-term nonpersonal services contracts with individual U.S. citizens that were identified during the audit.

Methodology

Our initial survey covered all 16 missions in the Latin America and Caribbean region. We verified the information reported by 2 of the 16 missions by comparing the information they reported to other contract listings available in the missions. Where the surveyed missions indicated that they had awarded long-term (one year or more) nonpersonal services contracts to individual U.S. citizens, we reviewed compliance with Sections 37.101 and 37.104 of the Federal Acquisition Regulations. This work consisted primarily of reviewing contracting documents and correspondence and interviewing USAID officials to obtain an understanding of the work performed by the nonpersonal services contractors and to determine whether the contractors were subject to the type of supervision and control usually prevailing in relationships between the U.S. Government and its employees.
