



USAID
FROM THE AMERICAN PEOPLE

OFFICE OF INSPECTOR GENERAL

AUDIT OF THE ADEQUACY OF USAID'S ANTITERRORISM VETTING PROCEDURES

AUDIT REPORT NO. 9-000-08-001-P
November 6, 2007

WASHINGTON, DC

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Office of Inspector General

November 6, 2007

MEMORANDUM

TO: Acting Director, Office of Security, Randy Streufert
Director, Office of Acquisition and Assistance, Maureen Shauket

FROM: Director, Performance Audits Division, Steven H. Bernstein

SUBJECT: Audit of the Adequacy of USAID's Antiterrorism Vetting Procedures
(Report No. 9-000-08-001-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 incorporated them where appropriate. We have included your comments in their entirety as appendix II.

The report contains eight recommendations intended to improve USAID's antiterrorism vetting procedures. Based on your comments and the documentation provided, we consider that management decisions have been reached on all of the recommendations with the exception of Recommendation No. 5. Determinations of final action for all of the recommendations will be made by the Audit Performance and Compliance Division (M/CFO/APC) after the proposed actions are completed.

Thank you for the cooperation and courtesy extended to the audit team during this review.

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SUMMARY OF RESULTS

The Performance Audits Division of USAID's Office of Inspector General designed this audit to determine whether USAID's antiterrorism vetting policies, procedures, and controls are adequate to reasonably ensure that assistance is not provided to terrorists (page 4).

The audit determined that USAID's policies, procedures, and controls are not adequate to reasonably ensure against providing assistance to terrorists. In fact, except as noted below, these policies or procedures do not require the vetting of potential or current USAID partners. Furthermore, sufficient management controls have not been developed to reasonably prevent aid from being inadvertently provided to terrorists. However, USAID has taken some antiterrorism actions. For instance, USAID/West Bank and Gaza, the Office of Security, and the Office of Acquisition and Assistance have developed some guidance to be used by mission officials, security professionals, and agreement officers. This guidance includes checking against a U.S. Department of Treasury list for designated terrorists, obtaining certifications from grantees attesting that they have not supported terrorists, and including antiterrorism clauses in grants and contracts (pages 5 - 6). In addition, USAID participated in an interagency working group to develop a counterterrorism plan (page 7). Although USAID has funded some grantees that have had terrorist affiliations, it took appropriate corrective action by cutting off funding in the two cases discussed in this report (pages 8 - 9).

To decrease the risks of inadvertently providing funding or material support to terrorist entities, USAID should issue guidance for a worldwide antiterrorism vetting program (pages 8 - 10). Because the issuance of this guidance may take some time, USAID, in the short term, should combine the different antiterrorism procedures currently in place and develop a database for worldwide vetting. Its vetting program should include U.S. and non-U.S.-based partners (pages 10 - 14), and USAID should publicize its intent to maintain information on U.S. citizens and legal aliens for vetting purposes (pages 15 - 16). Finally, USAID should also improve management controls for the data accuracy and completeness of Agency award information (pages 17 - 19).

Accordingly, we made the following recommendations to the Office of Security:

- Coordinate with other USAID offices to finalize draft antiterrorism guidance and establish milestones for publication (page 10).
- Develop internal procedures for documenting results of vetting decisions, along with an appeals process to be used when offices disagree about the vetting results (page 11).
- Develop a briefing document that summarizes antiterrorism roles and responsibilities of USAID offices and disseminate the document for Agency use (page 11).
- Develop and then implement a plan to expand its antiterrorism vetting database for worldwide use (page 13).

- Develop, implement, and communicate procedures to vet U.S. and non-U.S.-based partners where appropriate (page 14).
- Review proposed guidance to ensure that it addresses antiterrorism measures for USAID partners conducting multicountry programs (page 19).

We also made the following recommendations to the Office of Acquisition and Assistance:

- Incorporate USAID's worldwide antiterrorism guidance, when issued, into its acquisition and assistance guidance where appropriate (page 10).
- Develop procedures to ensure that database information regarding awards is complete and accurate, and is sent to responsible offices (page 19).

Management decisions were reached on all recommendations with the exception of Recommendation No. 5. Management's comments are included in their entirety in appendix II.

BACKGROUND

The 9/11 Commission concluded that the al-Qaida terrorist group required about \$450,000 to conduct the September 11, 2001, attacks that killed nearly 3,000 people and caused billions of dollars in economic losses. The Commission found that the terrorist group exploited the sympathies of employees in certain foreign branches of large, international charities and controlled entire charities through strategically positioned operatives to finance its war against the United States. The same vulnerabilities exist for U.S. Government (USG) agencies, such as USAID, that rely on nongovernmental organizations as partners to conduct their foreign assistance programs.

Both Executive Order (E.O.) 13224 and the USA PATRIOT Act state that the USG policy is to deny terrorists and terrorist organizations access to funding, material support and resources (see appendix III). To mitigate some of the risks of inadvertently funding terrorists, officials from the Office of Security and other offices use a multifaceted approach that includes the use of antiterrorism clauses and certifications for potential and current recipients, program monitoring, vetting, and auditing. A key tool in implementing and enforcing this policy is “vetting” or comparing identifying information¹ about individuals against information contained in databases developed and maintained by intelligence agencies. Vetting, as an intelligence and security process, helps USAID to reasonably ensure that it avoids funding or providing material support and resources to terrorists or terrorist organizations.

At USAID, various offices and missions use different measures to decrease the risk that terrorists will receive Agency funds. The Office of Security (SEC) is responsible for developing antiterrorism policies and procedures and for conducting some of the vetting of potential USAID partners at the request of some of the missions. In addition, USAID’s Office of Acquisition and Assistance (OAA) and USAID/West Bank and Gaza have issued various directives, orders, and guidance to address terrorist financing issues. Moreover, both SEC and USAID/West Bank and Gaza have conducted vetting of potential recipients. As shown in appendix IV, USAID has published a number of internal directives that address terrorist financing issues and specific processes designed to eliminate sources of terrorist financing.

To ensure that USAID-funded assistance does not inadvertently provide support for terrorism, several offices play distinct roles in employing antiterrorism measures since USAID conducts programs in countries where terrorism is a threat (appendix V). In 1999, USAID named a coordinator for counterterrorism within SEC. The coordinator’s role includes representing the Agency on counterterrorism matters throughout the executive branch and liaising with the U.S. intelligence community. Several offices worldwide carry out antiterrorism measures on an ad hoc basis – not systematically. Some missions rely on U.S. embassies that work in the same countries to conduct vetting. The Agency uses a more comprehensive approach for vetting potential

¹ Identifying information about an individual screened for terrorist connections may include, among other things, a person’s full name and aliases, date and place of birth, nationality, address, and passport number.

recipients of assistance for activities to be conducted in the West Bank and Gaza, the only area of USAID operations where vetting is mandated by statute.

In 2003, Congress imposed requirements contained in the fiscal year (FY) 2003 congressional appropriation applicable to Economic Support Funds for USAID assistance to the West Bank and Gaza. The appropriation required that the Secretary of State take all appropriate steps to ensure that assistance is not provided to entities or individuals engaged in terrorist activity. To cite a recent example, Hamas² achieved an election victory in the West Bank and Gaza in January 2006. USAID subsequently designed its activities in the region to provide assistance to its partners that did not have association or contact with the Palestinian Authority.

In March 2007, a newspaper article³ alleged that USAID provided funding to Palestinian universities that had participated in the “advocacy, support, or glorification” of terrorist activity.

AUDIT OBJECTIVE

The Office of Inspector General's Performance Audits Division conducted this audit as a result of a congressional request to investigate and report on both the specific allegations in the news article⁴ and the general effectiveness of USAID's antiterrorism vetting procedures. Therefore, this audit was designed to answer the following question:

Are USAID's antiterrorism vetting policies, procedures, and controls adequate to reasonably ensure that assistance is not provided to or through terrorists worldwide?

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

² In 1995, the U.S. President designated Hamas as a terrorist organization, according to Executive Order 12947.

³ On March 5, 2007, the *Washington Times* published a news article, entitled “School linked to Hamas gets U.S. cash.”

⁴ The USAID Regional Inspector General in Cairo, Egypt is conducting a separate audit regarding the allegations identified in the *Washington Times* news article.

AUDIT FINDINGS

Although it conducts programs in countries where terrorism is a major concern,⁵ USAID has not developed or instituted a worldwide antiterrorism program that reasonably ensures that the Agency does not provide material support to terrorists. In fact, except as noted in the following paragraph, USAID has no policies or procedures that address or require vetting potential or current USAID partners worldwide, especially in areas with high risks of terrorist activity; and it has not developed sufficient controls to reasonably ensure that aid is not inadvertently provided to terrorists. Currently, no statutes, regulations, or Executive orders (E.O.s) explicitly require Federal agencies to establish antiterrorism programs that would include vetting or screening identifying information about individuals.⁶ However, the intent of the applicable legal authorities is to prohibit providing material support to terrorists. In the past, USAID has provided funding to some grantees that have had terrorist affiliations, as identified in this report. Once the terrorist affiliations were identified, however, USAID took appropriate corrective action by cutting off funding.

Although some individual missions conduct antiterrorism vetting on an ad hoc basis, USAID uses a more comprehensive and systematic approach for vetting potential partners and recipients of assistance for the West Bank and Gaza program activities because of statutory requirements that apply only to these activities.⁷ These comprehensive measures for West Bank and Gaza include policies, procedures, and controls to vet individuals or entities and reduce or eliminate possibilities that terrorists could obtain USG funds.

Even though USAID does not have a worldwide antiterrorism program, some offices have exercised due diligence and developed guidance and procedures. Efforts to develop a program that would include a vetting policy have been hindered by the absence of a Government-wide vetting policy, as well as the reluctance of some USAID officials to establish a policy in the absence of specific legislation. Nevertheless, USAID/West Bank and Gaza, and USAID/Washington's Offices of Security (SEC) and Acquisition and Assistance (OAA) have developed some guidance that includes components of a worldwide antiterrorism vetting program.

⁵ Appendix V shows the seven countries where terrorism represents a major threat to USAID activities.

⁶ Homeland Security Presidential Directive (HSPD) No. 6 directs and authorizes executive departments and agencies to examine their programs to determine where vetting should be applied. In addition, HSPD-6 states that U.S. policy is to develop, integrate, and maintain accurate and current information about individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism.

⁷ The scope of the antiterrorism vetting process does not include a separate review of a recipient's funding from non-USAID sources. Consequently, the vetting process does not include, within its scope, a review for creditworthiness, bankruptcy history, links or convictions related to financial or violent crimes, or trafficking in persons.

In 2002 and 2003, USAID/West Bank and Gaza published guidance in a mission order regarding E.O. 13224 for the prohibition of terrorist financing by the Mission, as well as guidance on vetting⁸ and certification.⁹ The guidance, updated in January 2007, defined who would be vetted and what information would be collected. It further established procedures by which the Mission, its partners and U.S. Embassy Tel Aviv staff would work together to ensure that USG assistance would not support terrorist activities.

In January 2007, SEC assumed the responsibility for vetting all non-U.S.-based West Bank and Gaza partners. SEC has taken the lead to expand an electronic database system that will be able to accommodate missions worldwide using a risk-based approach and other assessment factors. Before that time, U.S. Embassy Tel Aviv assisted the Mission in its efforts.

In conjunction with the ad hoc vetting process at USAID, OAA developed three administrative antiterrorism measures. These measures in the Automated Directives System include two requirements and a mandatory clause that is included in each agreement:

- USAID personnel are obligated to check the U.S. Department of Treasury's Office of Foreign Assets Control list for designated terrorists.¹⁰
- Grantees are required to sign a certification attesting that they have not provided any material support to terrorists in the past 10 years.¹¹
- Contractors and partners are reminded of their legal duty to comply with applicable antiterrorism laws by the mandatory clause in each award.¹²

The following seven sections address USAID's accomplishments and challenges in establishing an antiterrorism program. The first section discusses USAID's development of a pilot vetting program, as well as the basic cause for USAID's delay in developing an Agency-wide program that would include vetting. The second and third sections discuss USAID's need to approve guidance for a worldwide antiterrorism vetting program, as well as the need, in the interim, for USAID to unify interim procedures that will define

⁸ Section 559 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 requires vetting prior to the obligation of Economic Support Funds for assistance for the West Bank and Gaza. It also prohibits the provision of any funds appropriated under the Act for the purposes of recognizing or otherwise honoring individuals who commit or have committed acts of terrorism.

⁹ A potential USAID grantee certifies, in writing, that it has not provided any material support to terrorists.

¹⁰ Refer to Acquisition and Assistance Policy Directive (AAPD) 02-04, Automated Directives System (ADS) 302, and Procurement Executive Bulletin (PEB) 2005-12.

¹¹ See ADS 303 and AAPD 04-14.

¹² As noted in PEB 2005-12.

office roles and responsibilities. The fourth section highlights some of the Agency's successes in establishing a vetting database with regard to the need to expand the database for worldwide use. The fifth and sixth sections address the challenges that USAID has faced and overcome regarding the need to vet both U.S. and non-U.S.-based partners, and to publicize USAID's intent to maintain vetting information. The final section addresses the challenges that the Agency has faced in accurately documenting its worldwide activities. While many challenges remain, SEC anticipates the development of policies and procedures that can be systematically implemented worldwide within the next few years.

USAID Participates in Interagency Working Group to Develop an Agency Counterterrorism Plan

In October 1999, the National Security Council directed the Department of State to establish an interagency working group on nongovernmental organizations and terrorist financing. The group, which included USAID, was to make recommendations to be applicable worldwide. Although the group circulated a draft report for review, a final report was never published because of staff departures and turnover, according to a security official who was a member of the group.

In the absence of any Government-wide vetting program, in October 2000, USAID piloted an informal vetting process for all private voluntary organizations (PVOs) registered or applying for registration with USAID.¹³ Later, in September 2001, the USAID Administrator directed SEC and General Counsel staff to develop a counterterrorism plan that would be consistent with recommendations contained in the interagency working group draft report. One of the recommendations considered was a requirement that nongovernmental entities applying to the USG for grants and contracts be vetted by the intelligence community.

In an internal memorandum to the Administrator in May 2003, the Assistant Administrator for Democracy, Conflict and Humanitarian Assistance (DCHA) requested the suspension of the pilot vetting program because of insufficient intelligence community resources to conduct screening. At that time, at least 28 applicants for PVO registration had not been vetted and, therefore, could not respond to solicitations for grants and cooperative agreements. As the DCHA official explained, a review revealed that no Government-wide mandate required vetting at USAID. Therefore, USAID suspended its pilot vetting procedures in July 2003 until a Government-wide vetting program could be approved.

In January 2004, another interagency working group began to develop policies and procedures for a Government-wide vetting program to address terrorist financing. In early 2005, the group agreed upon a memorandum of understanding to implement vetting and other terrorist financing procedures on a pilot basis. However, according to one SEC official, negotiations broke down when one department decided that it could not implement some of the recommendations in the model memorandum of

¹³ A PVO is a U.S.-based, private, voluntary organization engaged in international humanitarian and development assistance.

understanding. Consequently, no Government-wide vetting program has been implemented to date, and USAID has not published its own guidance.

USAID Should Approve Guidance for a Worldwide Antiterrorism Vetting Program

Automated Directives System (ADS) 501.3.1, *Policy Directives and Required Procedures, About the ADS*, states that all USAID internally created policy directives and required procedures must be codified in the ADS. Although USAID officials drafted policy guidance to be included in the ADS, USAID has not approved any guidance for publication. This occurred, in part, because the Office of Security wants to conduct tests at selected field missions of the draft worldwide policy and some of its procedures to ensure that the system will work before issuing guidance. As a result, USAID employees may not be aware of or understand their responsibilities regarding antiterrorism vetting, and USAID risks providing funding or other material support and resources to terrorists or terrorist organizations.

ADS 501.3.1, *Policy Directives and Required Procedures, About the ADS*, states that all USAID internally created policy directives and required procedures must be codified in the ADS. Moreover, ADS 501.1, entitled *The Automated Directives System - Overview* stipulates that the heads of Federal agencies shall “make and preserve records containing adequate and proper documentation” of the agency’s policies and procedures, among other things. According to the guidance, such policies and procedures are “necessary to protect the legal and financial rights of the Government and of the persons directly affected by the Agency’s activities,” as required by law.

In March 2005, SEC began drafting ADS 570, entitled *Counterterrorism Vetting Program*, which has not yet been approved or published. In May 2007, a SEC official provided the draft policy to General Counsel staff for review. The draft ADS stipulates that SEC will be the responsible office for processing vetting requests from any USAID office or field mission. In addition, the draft policy requires vetting for all potential non-U.S. nongovernmental recipients of USAID grants and cooperative agreements. U.S.-based contractors will be exempt from this requirement until additional legal and administrative requirements that apply specifically to contractors can be resolved, as discussed in more detail on pages 15 – 16 of this report.

In at least two instances, USAID provided funding to grantees who had ties to terrorists. According to one security official, these instances could have been avoided if USAID had comprehensive vetting policies and procedures. The two examples are detailed below:

- In January 2006, the American Embassy in Bosnia notified SEC that the president of one of its subgrantees had been on a “watch list”¹⁴

¹⁴ The watch list is a consolidated list of names managed by the FBI’s Terrorist Screening Center containing the names of known or suspected terrorists, both international and domestic. Various agencies, whose missions require screening for links to terrorism, use watch list records. For example, U.S. Customs and Border Protection use it to screen travelers at ports of entry.

since May 1997 that prohibited his entry into the United States. USAID did not have significant information about the subgrantee officer when it provided a grant to a U.S. partner of the subgrantee. At the time of discovery, USAID had expended \$61,000 of \$180,000 planned for the project, which was scheduled to end in December 2006. After consultation with State Department officials, USAID terminated the funding to the subgrantee.

- In February 2005, a USAID partner pled guilty to lying to law enforcement officials about his involvement with and support to one of the disciples of Osama bin Laden in a terrorism-related investigation. In August 2005, a U.S. District Court in Louisiana sentenced the former USAID partner to 48 months' imprisonment and a fine for making false statements to Federal agents in connection with counterterrorism investigations. Before the indictment, USAID officials had provided the partner with approximately \$108,000 (of an estimated \$1 million) from July 2004 to January 2005 for a program funded out of USAID/Pakistan. Initially, the U.S. Embassy in Pakistan notified USAID about the partner's arrest in October 2004 pursuant to the indictment. Of the \$108,000, USAID paid the partner \$25,000 as a termination settlement for the grant that was awarded in July 2004.

Even though executive and legislative decisions, such as those illustrated in appendix III, establish that the USG has both legal and financial interests in ensuring that public funds do not support terrorist activities, USAID had several reasons for not publishing guidance for worldwide comprehensive antiterrorism measures that would include a vetting program. First, USAID officials relied on an interagency working group, which did not produce a final report to develop Government-wide vetting policies and procedures. Second, USAID managers have differing opinions about the applicability of vetting for some potential recipients and concerns about its effects on the timely provision of services. Third, requirements mandated by the Privacy Act of 1974 have hampered USAID attempts to screen U.S. individuals and organizations. Furthermore, a SEC official stated that USAID's efforts to publish Agency-wide guidance on vetting have been partly hampered by the problems of implementing the guidance. To fully implement any formal guidance for a worldwide vetting program, USAID would need to expand an electronic vetting database, test the new processes and procedures at selected field missions, and communicate the new requirements to grantees in a timely and efficient manner.

Without ADS guidance for vetting, USAID employees may not be aware of or understand their responsibilities regarding antiterrorism vetting. As a result, USAID risks providing funding or other material support and resources to terrorists or terrorist organizations. Although no executive branch action or statute requires USAID to conduct vetting on a worldwide basis, the Agency could benefit from doing so. USAID is obligated to ensure that it does not provide material support to terrorists, and, therefore, we are making the following recommendation:

Recommendation No. 1: We recommend that USAID's Office of Security coordinate with other USAID offices to finalize the draft antiterrorism guidance and establish milestones for publication.

Additionally, to ensure that the final published SEC policy requirements are incorporated into other official guidance and implemented in a timely and efficient manner, OAA will need to include the appropriate references to the finalized antiterrorism guidance into its guidance and documents to ensure that NGOs are appropriately informed.

Recommendation No. 2: We recommend that USAID's Office of Acquisition and Assistance incorporate the references to the finalized antiterrorism guidance as a mandatory reference in its acquisition and assistance guidance, as appropriate.

USAID Offices Should Unify Interim Office Antiterrorism Procedures

Automated Directives System 596.3.1*c, *Establishing Management Controls*, requires USAID managers to promptly record transactions and events to maintain the relevancy and value to management in controlling operations and making decisions. Although several USAID offices, bureaus, and missions have their own policies and procedures, USAID has not unified them to facilitate staff knowledge about roles and responsibilities for antiterrorism measures. Until USAID finalizes Agency-wide guidance, no unified procedures exist because of differing opinions by USAID managers about the applicability of vetting and its effects on the timely provision of services. As a result, in the short term, the roles and responsibilities of various USAID offices are not clearly defined, and policies and procedures are not readily accessible for consultation and review.

Automated Directives System ADS 596.3.1*c, *Establishing Management Controls*, requires USAID managers to promptly record transactions and events to maintain the relevancy and value to management in controlling operations and making decisions. As a control objective, the activities associated with promptly recording transactions and events help to ensure that USAID will be effective and efficient in controlling operations and making decisions.

USAID has not developed any interim procedures that coordinate the processes it currently uses. The lack of final Agency-wide procedures can present a problem if SEC recommendations are not followed. If SEC recommends that a grantee not be allowed to conduct USAID programs based on derogatory information, another USAID office might make a decision to disregard SEC's recommendation. Consequently, USAID might award an agreement in spite of SEC's recommendation, which is not documented for management review and the historical record, making it difficult for USAID management to review decisions in the future. OAA has published guidance on antiterrorism measures for potential partners who wish to conduct business on behalf of USAID. However, various USAID/Washington offices have responsibilities in coordinating efforts to implement USAID's current policies and procedures. (See appendix VI.)

Although numerous offices have guidance regarding antiterrorism measures specific to their operations, no consolidated interim Agency-wide procedures exist, in advance of finalized ADS guidance, for three reasons, as follows:

- USAID managers have differing opinions about the applicability of vetting and its effects on the timely provision of services.
- Some USAID officials are reluctant to support a vetting policy in the absence of specific Government legislation.
- Staff can disregard SEC's recommendations not to fund a partner.

Although offices may disregard SEC recommendations, the rationale for these decisions is not documented for further management review. In one instance, two USAID offices took the lead to provide public information about vetting that was not cleared through SEC before it was provided in a briefing to the general public. These offices cleared information regarding a university's involvement with the terrorist group, Hamas, that was not correct. Consequently, in March 2007, USAID reported that a university was not affiliated with the Hamas organization, when in fact, it was. Although SEC is responsible for counterterrorism vetting procedures, SEC officials were not consulted before this information was provided to the public.

Without coordinated and unified antiterrorism measures, USAID is not assured that its measures are both consistent and transparent. Unified guidance will help ensure that measures are not arbitrary or capricious. In addition, unified guidance will help recipients, USAID staff, and other Federal departments to become more knowledgeable about USAID's current antiterrorism measures before any new regulatory or administrative requirements are mandated.

The ADS process can be lengthy and take as much as a year or more to finalize draft guidance. Given the sensitivity, complexities, and visibility of the vetting issues, we believe that USAID could benefit from interim internal procedures until formal guidance has been finalized. Therefore, we are making the following recommendations:

Recommendation No. 3: We recommend that USAID's Office of Security develop internal procedures for award decisions, along with an appeal and elevation process to be used when offices disagree about the relevance of vetting results that include derogatory information.

Recommendation No. 4: We recommend that USAID's Office of Security develop a briefing document that summarizes current USAID offices antiterrorism roles and responsibilities and disseminate the document for Agency use.

USAID Should Develop a Database for Worldwide Antiterrorism Vetting

The Homeland Security Presidential Directive (HSPD)-6, in part, states that the U.S. Government policy is to maintain accurate information about individuals known or suspected to be engaged in conduct or related to terrorism. Although USAID uses an electronic database to support vetting efforts at one of its missions, the Agency has not expanded the database for use by missions worldwide. The database was initially created for use at one mission, and was not designed for rapid expansion for multiple missions. Without a database that is capable of expanding worldwide, the effectiveness and efficiency of USAID antiterrorism vetting activities may be inadequate.

The Homeland Security Presidential Directive (HSPD)-6 directs and authorizes executive departments and agencies to examine their programs to determine where vetting should be applied. In part, the HSPD states that the U.S. Government policy is to develop, integrate, and maintain thorough, accurate, and current information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism.

In 2006, USAID/West Bank and Gaza developed an electronic database to assist USAID and U.S. Embassy Tel Aviv staff to process vetting requests for its partners. Mission staff entered data into the database and forwarded the information to U.S. Embassy officials for review, as illustrated in appendix VII. SEC assumed responsibilities for managing the electronic database in January 2007 with plans to expand its use to other missions. However, USAID has not yet expanded the database for other missions or bureaus although SEC has analyzed future database requirements and cost estimates for the requirements. SEC has taken the lead to expand the electronic database system that it believes will be able to accommodate multiple missions worldwide using a risk-based approach and other assessment factors.

However, SEC has not been able to expand its use of this database because the database was not designed for rapid expansion for multiple missions. Moreover, until recently USAID/Washington officials had not budgeted funds for any upgrades to the database system or finalized plans for any incremental expansion of the system to other missions. For FY 2008, the Acting Administrator approved \$800,000 to upgrade the vetting database system. Furthermore, about \$200,000 is needed annually for system upgrades. In addition, funding for hardware and training will be needed to deploy the system worldwide. Planned upgrades would include the following:

- The expansion of the system to house data from multiple missions incrementally, especially where USAID conducts programs in areas with high risk of terrorist activity.
- A secure connection to allow nongovernmental organizations to provide vetting data electronically.
- An automated transmission of vetting data.

According to SEC, after the database system expansions become operational and fully tested, USAID could feasibly develop a multimission database system by the end of 2008.

The upgrade and deployment worldwide will not necessarily be a simple process. Business processes will need to be evaluated and possibly changed to accommodate multiple missions and their specific needs, which would include travel costs. Without a commitment from USAID management to approve funding based on cost estimates and analyses, the implementation of the database worldwide will be hindered, which will affect the effectiveness and efficiency of the vetting process. Therefore, we are making the following recommendation:

Recommendation No. 5: We recommend that USAID's Office of Security develop a plan to expand and then implement its antiterrorism vetting database for worldwide use.

USAID Vetting Program Should Include U.S. and Non-U.S.-based Partners

The foreign operations appropriations laws for fiscal years 2003 through 2006 imposed requirements tailored to the West Bank and Gaza to ensure that assistance was not provided for terrorist activities. Although the statutory language did not distinguish between U.S. and non-U.S.-based individuals or entities, USAID has vetted only non-U.S.-based nongovernmental individuals and organizations because the Agency has not been able to conduct vetting on U.S. individuals or organizations until certain requirements mandated by the Privacy Act of 1974 are followed. Consequently, USAID has not fully complied with requirements to vet some of its partners that conduct activities in the West Bank and Gaza.

Foreign operations appropriations laws for fiscal years 2003 through 2006 each contained a section entitled "vetting" for recipients of certain assistance for the West Bank and Gaza. A representative statutory provision, *Section 566(b) of the Consolidated Appropriations Act, 2004 (P.L. 108-199)*, states, in part, that:

Prior to the obligation of funds appropriated by this Act under the heading "Economic Support Fund" for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual or entity that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity.

Most notably, the statutory language, which is nearly identical for all four fiscal years, made no distinction between U.S. and non-U.S.-based individuals or entities. Notwithstanding this lack of distinction, USAID has requested that vetting be conducted for only non-U.S. individuals and organizations. A non-U.S. organization, for this purpose, is one formed under the laws of a foreign government.

Vetting requests at USAID have been solely targeted at non-U.S. organizations because specific mission guidance excludes vetting of U.S.-based partners. The guidance states that vetting applies only to non-U.S. organizations and individuals, even though the guidance also notes that the foreign operations appropriations laws since fiscal year 2003 are of “special relevance.” According to an Office of Security official, USAID cannot conduct vetting on U.S. individuals or organizations, at the missions or at headquarters, until certain requirements mandated by the Privacy Act of 1974 are followed. (The issue is discussed in more detail in the next section.)

The failure to vet U.S.-based organizations invites opportunities for terrorist organizations to exploit USAID foreign assistance programs. Significantly, according to an indictment filed in a U.S. District Court, a charitable organization incorporated in Texas transferred funds from its bank accounts in Texas to *zakat*¹⁵ committees and other organizations in the West Bank and Gaza controlled by Hamas. Hamas previously had been designated as a foreign terrorist organization and subject to various sanctions under a number of U.S. laws. OAA data during fiscal years 2002 to 2005 indicated that USAID did not provide any funding directly to that organization. According to USAID’s criteria, however, that organization would have evaded vetting review because it was a U.S.-based organization.

In vetting only non-U.S.-based recipients, USAID has not fully complied with a crucial element of U.S. counterterrorism policy, denying possible terrorist organizations the funding to carry out their operations. As demonstrated in the case cited above, the funding source can be U.S.-based. While scarce vetting resources must be used judiciously, the vetting of U.S.-based organizations is a prudent management response. Moreover, although the appropriations language requiring vetting applies exclusively to the West Bank and Gaza recipients, it does not exempt USAID from ensuring that other recipients are free from terrorist connections. Therefore, we are making the following recommendation:

Recommendation No. 6: We recommend that USAID’s Office of Security develop, implement, and communicate procedures to vet both U.S. and non-U.S.-based partners where appropriate.

¹⁵ “Zakat,” which means “charity” or “alms giving,” is one of the pillars of Islam and is required for all practicing Muslims.

USAID Should Publicize its Intent to Maintain Information on U.S. Citizens

The Privacy Act of 1974, 5 U.S.C. § 552a(e)(4), requires Government agencies such as USAID to publish in the Federal Register a description of each system of records that it maintains. At the onset of the audit, USAID officials had not published a "System of Records Notice" about its intent to collect information about U.S.-based potential or current partners for vetting purposes. The reason given was that complex interagency negotiations had not proceeded in a timely manner. As a result, USAID will not be able to vet U.S.-based partners until it has completed the public review and responded to comments, at the earliest by the end of December 2007.

A U.S. agency must establish rules covering a broad range of issues related to a system of records, and it must establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records. The Privacy Act of 1974, 5 U.S.C. § 552a(e)(4),¹⁶ requires USAID to publish in the Federal Register a description of each system that it maintains. In addition, the Privacy Act prohibits, with certain exceptions, the disclosure of any record that is contained in a system of records to any person or to another agency except by written request to or consent from the individual to whom the record pertains. In accordance with the guidance, USAID must publish a Privacy Act "System of Records Notice" (SORN) in the Federal Register.¹⁷ This system will collect information about employees or other officials of nongovernmental organizations who apply for USAID funding or who apply for registration with USAID as private voluntary organizations.

USAID published its SORN in the Federal Register on July 17, 2007, so the SORN is currently in the public review process. Therefore, USAID complied with the provisions of the Privacy Act before developing a worldwide electronic database system to maintain information about U.S. individuals. The SORN publicizes USAID's intention to store information on U.S. citizens and legal aliens in a system of records for vetting purposes. Interested persons have a 60-day period to submit written comments to USAID. At best, SEC officials expect to respond to substantive comments by early fall 2007, after which they can begin using the Department of Justice's Terrorist Screening Center (TSC) databases to vet U.S.-based partners and potential partners by the end of December 2007.

At the onset of the audit, USAID officials had not published the SORN because extensive coordination and agreement among offices within USAID and with external agencies such as the Office of Management and Budget and the intelligence community had to occur to ensure that appropriate language was included in the notices. This language not only had to satisfy the basic requirements of the Privacy Act, but also had

¹⁶ The Privacy Act of 1974, as amended, defines a "system of records" as a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

¹⁷ The notice is required to publicize USAID's intent to use an electronic database system for vetting purposes.

to ensure that appropriate exemptions were claimed to provide protections for the law enforcement and intelligence information that would be the basis for security decisions.

USAID and TSC officials are finalizing an agreement to permit the TSC to assist USAID in completing the large number of pending requests for the USAID Mission in Tel Aviv. Until USAID complies with the Privacy Act of 1974 as amended, responds to any public comments to the SORN, and signs a memorandum of understanding with the TSC, the TSC has tentatively agreed to process non-U.S. citizens for vetting of West Bank and Gaza programs. SEC has hired two intelligence analysts to conduct USAID's screening work at the TSC after an agreement is finalized.

Even after it completes the SORN process, USAID may face additional challenges because of certain requirements of the Computer Matching and Privacy Protection Act as it relates to screening U.S. citizen information. Although a formal conclusion about exceptions to computer matching has not been reached between Department of Justice and USAID officials, the Computer Matching Act limitations would apply to U.S. citizens who are direct recipients of a grant or agreement and would exclude U.S.-based organizations, since the Act applies to individuals. The use of the TSC database will require USAID officials to review the actual intelligence information behind the listing in the database before making a decision to grant funds, deny a grant application, or terminate an active grant.

As indicated in appendix VIII, the use of the TSC database may be subject to the requirements of the Computer Matching and Privacy Protection Act, which amended the Privacy Act. USAID will not be able to vet its U.S.-based partners or use the TSC database until it carries out measures required by the Privacy Act. This delay compromises the Agency's ability to obtain up-to-the-minute information about individuals involved, suspected of being involved in terrorism, or those who have other terrorist affiliations. Since USAID can benefit from readily-available verifiable information such as that which is contained in the TSC database, the Agency should be able to reduce some of the challenges that it may ordinarily encounter when conducting vetting activities.¹⁸

Because USAID has published the SORN and is awaiting comments, we are not making a recommendation at this time.

¹⁸ To illustrate one challenge in vetting, the U.S. Department of Treasury's Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons includes six different entries for Osama bin Laden. Each entry contains multiple variations on his name; one variant is Usama bin Muhammad bin Awad bin Ladin.

USAID Should Improve Management Controls Over Recording Transactions

ADS 596.3.1, *Establishing Management Controls*, requires managers to design and implement effective management controls to help ensure that management directives are being carried out. For USAID to know where its activities are being implemented, OAA uses an electronic database to track award information, including the place of performance. However, the database was incomplete and inaccurate because some information about the awards was not entered into the system. As a result, USAID managers cannot be assured that they know the full universe of activities being implemented, especially in countries where vetting may be necessary.

ADS 596.3.1, *Establishing Management Controls*, requires managers to design and implement effective management controls to help ensure that management directives are being carried out. These controls also provide a basis for assessing the risks that USAID faces from both internal and external sources. Control activities that help to achieve these important goals include the accurate recording of transactions and controls over information processing.

In order for USAID to know where its activities are being implemented, OAA uses an electronic database to track various information about its awards, including where activities will take place (place of performance). According to one OAA official, data fields include data source, place of performance, and the like when contracting personnel enter this information into the database. Although the database provides a management tool for review and oversight, the OAA database¹⁹ was incomplete and inaccurate because some information on the awards was either not entered into the system or it did not consider the activities that were being implemented in multiple countries. OAA's list of centrally funded²⁰ worldwide awards contained 8,062 records. These records included information about the West Bank and Gaza awards. However, as many as 1,669 "place of performance" fields were not complete. OAA listed nine centrally funded Economic Support Fund awards for fiscal years 2003 to 2006 whose place of performance was specified as the West Bank and Gaza. USAID's Bureau for Democracy, Conflict Humanitarian Assistance, Office of Conflict Management and Mitigation (CMM)²¹ managed these awards. About \$4 million in assistance has been obligated for eight of the nine awards to U.S.-based grantees for these programs to date.

¹⁹ Auditors did not test the entire database. The review was limited to only those records within the database for West Bank and Gaza assistance awards that were centrally funded out of USAID/Washington.

²⁰ When an award is centrally funded out of Washington, the USAID/Washington office manages the grant or cooperative agreement.

²¹ CMM helps to identify sources of conflict and fragility as it integrates conflict mitigation and management into USAID programs conducted worldwide. CMM supports reconciliation programs and activities that attempt to unite individuals of different ethnic, religious, or political backgrounds from areas of civil conflict and war.

Although OAA's database listed the nine awards with a "place of performance" as the West Bank and Gaza, CMM records show that some of the program activities were activities that occurred in various locations across the Middle East. One of the nine awards was authorized by the President.²² According to CMM staff, of the eight remaining awards, three awards had activities in the West Bank and Gaza, three had activities in Israel that included Palestinian participants or trips outside of Israel. For example:

- Program activities included funding the operation of a radio station located in Israel. Station staff included Israelis and Palestinians who lived in Israel. However, USAID suspended the grant because of possible program contact with restricted categories of organizations and individuals. In June 2006, the grant was recommended for early termination. CMM provided a subgrant for activities to be conducted in the West Bank and Gaza.
- USAID funds supported training events in mediation and negotiations that occurred in Jerusalem and Haifa, Israel. Participants and staff included Israelis and Palestinians. USAID officials were not able to determine whether the Palestinian participants came from Gaza or the West Bank. Training events also included activities for youth to carry out community service projects and outreach within Israel, as well as in the West Bank and Gaza (including within refugee camps). According to CMM officials, the grantee's semiannual report from March 6, 2006, seemed to indicate that the USAID award also supported one of two national seminars held in Ramallah, the West Bank. However, because this program was funded by multiple donors, CMM officials concluded that it was not certain whether USAID funded the Ramallah seminars.
- Another USAID-funded program provided training for Israeli and Palestinian civil society actors to increase capacity and increase cooperation in Israel. CMM officials believe the program likely included Palestinian participants from the West Bank.
- Two grants involved activities in Israel to reduce pollution levels in waters in Palestinian areas. Although field trips were made to Jordan, CMM officials did not believe that any activities took place in the West Bank and Gaza.
- One USAID program provided reconciliation activities between Israeli Jews and Israeli Arabs (Palestinians with Israeli citizenship) in Israel.

According to an OAA official, the system did not require entering any information into a field labeled "place of performance," which led to the omission of some of the data. As a result, the West Bank and Gaza assistance award list is incomplete and inaccurate. As illustrated in the examples above, since many of the projects may be conducted in more

²² A cash transfer to the Palestinian authority in 2003 was personally approved by the U.S. President.

than one country, it may be difficult to determine from the OAA database not only the number and value of grants awarded USAID-wide, but also the number of beneficiaries.

As a result of incomplete data, USAID managers cannot be assured that they know the full universe of activities being implemented, especially in countries where vetting may be necessary. Furthermore, USAID cannot make sound management decisions for the West Bank and Gaza, an area of key concern to U.S. national interests and one with unique vetting legal requirements, nor can the Agency accurately assess its security workload since the database excludes some centrally funded awards that require vetting. Therefore, we are making the following recommendations:

Recommendation No. 7: We recommend that USAID's Office of Acquisition and Assistance develop procedures to ensure that database information regarding its awards is complete and accurate, and sent to responsible offices.

Additionally, given OAA's database weaknesses in identifying multicountry awards, we are making a recommendation to SEC so that its finalized guidance addresses multicountry programs.

Recommendation No. 8: We recommend that USAID's Office of Security review its proposed Agency-wide guidance to ensure that it addresses antiterrorism measures for USAID partners conducting multicountry programs.

EVALUATION OF MANAGEMENT COMMENTS

In their responses to the draft report, SEC and OAA officials concurred with all of the recommendations. Each of the offices responses to each of the eight recommendations is evaluated below:

To address Recommendation No. 1, SEC officials have coordinated with other USAID offices in the first of several planned meetings to discuss policy changes and proposed revisions for specific OAA directives and review draft guidance. We believe that these and other planned actions will guide antiterrorism vetting policy decisions that will facilitate the publication of USAID guidance during the first quarter of calendar year 2008. Accordingly, a management decision has been reached on this recommendation.

Regarding Recommendation No. 2, OAA plans to revise its guidance in accordance with the new ADS Chapter 570. Accordingly, a management decision has been reached on this recommendation.

To address Recommendation No. 3, SEC officials plan to track and document vetting results. In consultation with other USAID offices, a process will be developed that will be included in the finalized ADS guidance. Accordingly, a management decision has been reached on this recommendation.

To address Recommendation No. 4, SEC officials anticipate that an appropriate briefing document could be published after USAID provides guidance on the Agency's planned approach to the vetting issue. Accordingly, a management decision has been reached on this recommendation.

We revised Recommendation No. 5 to be more precise. We discussed the revised recommendation with SEC on November 2, 2007, who agreed with the revised recommendation. Based on SEC's agreement with the revised recommendation, a management decision can be reached when SEC develops a plan to expand its antiterrorism vetting database for worldwide use. The recommendation can be closed once this plan is implemented.

To address Recommendation No. 6, SEC and other officials worked together to publish the required notices of USAID's intent to collect information from and screening of U.S. persons and organizations before the audit concluded. SEC plans to ensure that persons and organizations are included in USAID's finalized vetting directives and guidance. Accordingly, a management decision has been reached on this recommendation.

To address Recommendation No. 7, OAA officials plan to deploy a new database system during fiscal year 2008 that will include procedures about mandatory information that should be entered into the system. The mandatory information, which will include the locations of USAID programs conducted, will help to strengthen management

controls to ensure that data are complete and accurate. Accordingly, a management decision has been reached on this recommendation.

Regarding Recommendation No. 8, SEC officials plan to coordinate with other USAID offices to develop procedures to address vetting that affect multicountry programs, as a part of the Agency's vetting policy determination. Consequently, based on the outcome of the policy determination expected by the end of the first quarter of calendar year 2008, SEC plans to address the issue further in published guidance. Accordingly, a management decision has been reached on this recommendation.

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SCOPE AND METHODOLOGY

Scope

The Office of Inspector General conducted this audit in accordance with generally accepted government auditing standards. The purpose of this audit was to determine whether USAID's antiterrorism vetting policies, procedures, and controls are adequate to reasonably ensure that assistance is not provided to or through terrorists worldwide. We conducted this audit at four USAID/Washington offices: the Office of Acquisition and Assistance, the Office of Security, the Office of Legislative and Public Affairs, and the Office of General Counsel. We also interviewed officials from other Federal agencies in the Washington, DC, area: the Department of Treasury, Department of Justice, the Federal Bureau of Investigation, the Central Intelligence Agency, and the Department of State. The fieldwork was performed between April 17 and July 25, 2007, with updates through August 30, 2007.

USAID provided about \$20 billion in assistance through grants and cooperative agreements from fiscal years 2002 to 2006. The examples of occurrences in which USAID provided funding to grantees that had ties to terrorists are illustrative only. As such, these examples are not necessarily representative of the total universe of occurrences in which funding was provided to grantees that had an association with terrorists. This audit covered policies, procedures, and controls from fiscal years 2002 to 2006. We obtained an understanding of the management controls related to documentation, recording of transactions, and management review at the functional level to determine the roles and responsibilities of the major USAID offices that conduct antiterrorism measures. Because this audit focused on antiterrorism vetting policies, procedures, and controls, we did not conduct field visits to test transactions.

Methodology

We reviewed various statutes, regulations, and Executive orders. In particular, we focused on the following: (a) Executive Order 13224, which blocks property and prohibits transactions with persons who commit, threaten to commit, or support terrorism, (b) Homeland Security Presidential Directive-6, which mandates the heads of executive departments and agencies to conduct screening on individuals known or suspected to be engaged in terrorism, and (c) USAID's Office of Acquisition and Assistance's use of policy directives and Automated Directives System to implement the Executive Order within the Agency. We did not review the draft ADS guidance that the Office of Security has developed to address policies, procedures, and controls that include antiterrorism vetting since the draft is currently being reviewed by General Counsel.

In addition, we interviewed officials from the USAID/Washington Offices of Security, Acquisition and Assistance, Legislative and Public Affairs, and General Counsel to (a) gain an understanding of the Agency's antiterrorism measures including vetting and other USAID procedures and controls, and (b) obtain an understanding of management controls related to the development of processes. We also reviewed National Security Council documentation about vetting issues, as well as numerous documents and files related to USAID/Washington's evaluation of these measures.

We also reviewed documentation regarding some grantees that had terrorist affiliations to determine the extent to which the Agency took appropriate corrective action for the examples discussed in this report. However, we did not audit the grantee financial records to determine the propriety of costs.

We performed random sampling on a universe of 7,194 worldwide grants and cooperative agreements, of which 2,072 were identified as grants. To obtain a 90 percent confidence level, at less than 5 percent error and 4 percent precision, the sample needed to include a review of 52 assistance awards for mandatory certifications. Of the sample of 52 awards, we reviewed 43 of the 52 sample awards because 9 awards were not available for review. To substitute, we reviewed nine awards that had been identified as conducted in the West Bank and Gaza but funded out of USAID/Washington.

For the activities conducted in the West Bank and Gaza that were funded out of Washington, we reviewed files for a universe of nine grants awarded during fiscal years 2003, 2004, and 2005. According to the OAA database, these grants represented about \$25 million or 31 percent of the total West Bank and Gaza funding of about \$81 million for procurement actions. During the review, we noted the type of program activities conducted, the participants and beneficiaries involved, and the specific location where the activities were conducted.

MANAGEMENT COMMENTS



October 17, 2007

MEMORANDUM

TO: Director, Performance Audits Division, Steven H. Bernstein

FROM: Director, Office of Security, Harry Manchester

SUBJECT: Audit of the Adequacy of USAID's Anti-terrorism Vetting Procedures
(Report No. 9-000-08-001-P)

Background:

The Office of Security (SEC) wishes to thank the Inspector General (IG) Performance Audits Division for their interest in the Non-Governmental Organization (NGO) Vetting initiative and the professionalism of its staff during the conduct of the audit. This audit is the first examination of the vetting initiative since its inception approximately seven years ago. A thorough examination of the activities, plans, policies and efforts surrounding the endeavor will help to improve USAID's posture as it attempts to mitigate the vulnerabilities of USAID's partners from the threat of terrorist elements.

SEC Response:

In general, the audit recommendations are reasonable, having been formulated with an insight toward improving the planning, documentation and oversight of the contemplated NGO vetting program. SEC would like to note that it has been diligently pursuing a systemic solution to the NGO vetting issue for approximately seven years, in conjunction with representatives from the Office of the General Counsel (GC) and with input from members of regional and pillar bureaus. SEC has been at the forefront of developing and improving the vetting mechanisms for the USAID West Bank/Gaza (WBG) Mission in response to previous audit findings by the Government Accountability Office (GAO) and the USAID IG. SEC appreciates the IG's recognition of its on-going efforts in this area as evidenced by the documentation of the complexity of this challenging issue and the progress achieved to date.

OAA Response:

We would like to thank USAID's Office of the Inspector General (OIG) for the opportunity to review and comment on the draft IG report entitled Audit of the Adequacy of USAID's Anti-Terrorism Vetting Procedures. The Office of Acquisition and Assistance (OAA) shares the same

concerns as the OIG in not wanting USAID funding to get into the hands of terrorist organizations. We support the U.S. Government's objective of denying terrorists and terrorist organizations access to funding and other forms of material support and resources and would like to emphasize what we have done to support this objective.

The first page of the report is somewhat misleading in that it states that "USAID does not have worldwide policies or procedures that address or require vetting potential or current USAID partners, and has not developed sufficient controls to reasonably prevent aid from being inadvertently provided to terrorists." As a matter of fact, USAID has the most comprehensive and systematic anti-terrorist financing program of all grant making agencies in the Executive Branch. We believe that the draft report should be more explicit in presenting the policies and procedures that USAID already has in place, and also should provide additional context with respect to the vetting procedures currently utilized for the West Bank and Gaza.

USAID's program includes Acquisition and Assistance Procurement Directives (AAPD's), guidance in the Agency Automated Directives System (ADS), and Procurement Executive Bulletin references to mandatory clauses for all solicitations, contracts and assistance instruments. USAID also requires mandatory certifications prior to award of assistance funds to any U.S. or foreign NGO, and mandatory checking of the Office of Foreign Assets Control (OFAC) list and other appropriate lists to minimize the risk that USAID funds will be diverted to terrorists or used for terrorist purposes. The USAID Mission for West Bank and Gaza has been conducting vetting, as envisioned by this OIG report, since 2003 in compliance with statutory requirements, and this vetting program has been improved constantly over the years. Despite the absence of a clear consensus within the U.S. Government on the extension of vetting procedures used in the West Bank and Gaza to other countries and regions, USAID staff have proceeded to develop the Partner Vetting System (PVS) which, if approved by the Administrator, would provide missions worldwide with the authority (but not an unconditional mandate) to conduct vetting as appropriate.

While the applicable sub-section in our appropriations legislation is entitled "Vetting," the text of that sub-section does not expressly refer to vetting or prescribe what measures USAID should take in carrying out this mandate. Rather, it requires the Secretary of State to "take all appropriate steps" to ensure that ESF is not provided to individuals or entities associated with terrorism. It is thus left up to the Executive Branch to determine what procedures should be followed and vetting is merely one of a series of measures that are available to the Mission. When formulating terrorist financing procedures, each decision to vet or not carries an associated risk and an associated cost. The risk of course is that funds might go to a terrorist while the cost is additional administrative burden and delay in program implementation, which cumulatively must be considered given the limited resources. USAID needs to decide, on a situational basis, whether to vet, especially where the risk is greatest, and when to rely on other anti-terrorist financing measures to meet the desired result.

We would note our concern that the implementation of the policies, systems and procedures recommended by the draft audit report will increase the workload of USAID contracts and agreements officers and others involved in planning, awarding and managing acquisition and assistance awards, and may cause serious delays in awarding grants and contracts. The

additional staffing and overall resource requirements for developing and implementing the PVS and related policies and procedures should be determined in connection with a decision to proceed.

The following are SEC and OAA responses to the Audit Recommendations:

Audit Recommendation No. 1:

We recommend that the Office of Security coordinate with other USAID offices to update the draft anti-terrorism guidance and establish milestones for publication.

SEC Response:

SEC, OAA and GC have held the first of what will be several meetings to discuss the policy changes required to permit proper implementation of the vetting program. This combined effort will include completion and review of a specific vetting Automated Directive System (ADS) Chapter 570 and revisions of certain Acquisition and Assistance Policy Directives (AAPD). Paramount to completing vetting policy and guidance is a final policy determination by the USAID Administrator (A/AID) that will outline the breadth and depth of the vetting program. As contemplated, a pilot program, utilizing the experience of the WBG Mission, will test the procedures, infrastructure and personnel resources to help inform the decision process. Resultant decisions will guide the specific policies and procedures that will appear in ADS Chapter 570 and the applicable AAPDs. It is expected that the underlying policy decisions would be made by the end of calendar year 2007 which will facilitate the clearance and publication of the ADS Chapter by April 2008.

Audit Recommendation No. 2:

We recommend that the Office of Acquisition and Assistance incorporate the anti-terrorism guidance as a mandatory reference in its acquisition and assistance instruments, as appropriate.

OAA Response:

OAA will revise its guidance in accordance with the new ADS Chapter 570

Audit Recommendation No. 3:

We recommend that the Office of Security develop internal procedures for award decisions, along with an appeal and elevation process to be used when offices disagree about the relevance of vetting results that include derogatory information.

SEC Response:

All internal procedures and processes for the decision and approval of awards and assistance are currently being developed in conjunction with the planned West Bank/Gaza Partner Vetting

System (PVS) pilot program. The current guidance provides that SEC, after review of applicable intelligence information, will provide a written recommendation to the initiator of a vetting request. Essentially, the recommendation will indicate SEC's position to either award or deny an award. This recommendation can be automated through the PVS which would be used to track the vetting results and generate a written response to the requestor. It is important to emphasize, however, that at this time all policies and procedures are still in a development phase and will continue to be analyzed and amended as the Agency learns more through the PVS pilot program.

SEC will coordinate with GC, OAA, and other applicable offices and/or bureaus to develop an appropriate mechanism and identify the offices which will be responsible for de-conflicting opposing opinions regarding specific awards. This process is expected to be developed in concert with related policies and procedures to be outlined in the ADS chapter during the first quarter of calendar year 2008 as well as the pilot program in West Bank/Gaza.

Audit Recommendation No. 4:

We recommend that the Office of Security develop a briefing document that summarizes current USAID offices' anti-terrorism roles and responsibilities and disseminate the document for Agency use.

SEC Response:

In cooperation with GC, OAA, and other applicable offices and/or bureaus, SEC will be developing guidance on the antiterrorism roles and responsibilities of each office/bureau in the Agency. In a similar vein, SEC is aware that the Office of the Secretary of State is preparing to release a document which outlines the Department of State's approach to the NGO vetting issue and provides basic guidance to its bureaus, offices, and USAID. In turn, USAID will also be required to provide similar guidance to its bureaus and missions. SEC looks forward to active participation in the development of the USAID guidance and anticipates that the guidance will outline USAID's interim and long term vetting solutions. It is expected that an appropriate USAID briefing document will be published after public comment is received and addressed in response to the Privacy Act notices which were published in July and October of 2007.

Audit Recommendation No. 5:

We recommend that the Office of Security (a) develop procedures to routinely document and review database system requirements, prepare cost estimates, analyses, and milestones; and (b) document management decisions.

SEC Response:

SEC has been involved in the development and documentation of system requirements for the West Bank/Gaza specific PVS database since March 2006. SEC has coordinated directly with WBG Mission staff and USAID Chief Information Officer (CIO) personnel since the related GAO and USAID IG audit of the USAID WBG vetting program. SEC's past and on-going coordination includes participation in the development of a new vetting database (PVS) for the

WBG Mission. This new database was foreseen as the platform to support what could be a centralized PVS database to support numerous USAID programs. To this end, SEC received \$800K in FY 2007 Operating Expense (OE) funds to support further development and automation of the database to enhance the vetting process for USAID WBG and potentially other programs in the future. Requirements and costs are routinely coordinated between SEC, CIO, the Mission and IT contractors. SEC will continue to pursue enhancements to the vetting process and infrastructure to support the USAID WBG Mission and with CIO representatives, ensure proper documentation of system requirements and resource needs. SEC will continue to monitor and document the system requirements as it concerns the process in USAID WBG. SEC will also ensure that any additional technology investment receives all proper fiscal and budgetary approvals from the Agency or other USG Offices/Departments. Subsequent to A/AID policy determination regarding the continuation and expansion of the vetting program, SEC will monitor, document and coordinate broader resource implications with appropriate USAID offices.

Audit Recommendation No. 6:

We recommend that the Office of Security develop, implement and communicate procedures in its anti-terrorism measures to vet both U.S. and non-U.S.-based partners.

SEC Response:

To permit collection of information from and screening of U.S. persons, SEC, the USAID Privacy Office, and GC published the required administrative notices in the federal register. These notices included a System of Record Notice (SORN), Proposed Rulemaking and a Paperwork Reduction Act Request (Proposed Collection)²³. These notices prescribed mandatory public comment periods for which a considerable number of responses were received. GC and the Privacy Office have categorized and reviewed the responses and are formulating a Final Rulemaking to be submitted to the Federal Register should the Agency choose to move forward with the PVS program. This notice will address all concerns and questions raised by the respondents. After consideration of the public comments, absent any legal or policy limitations that would preclude inclusion of U.S. persons, SEC will ensure U.S. persons and/or organizations are included in the vetting directives and guidance. This matter will be addressed in the policy determinations that will underpin the new ADS chapter. It is expected that these issued could be resolved by the end of the first quarter in calendar year 2008. It should be further noted that a final determination regarding possible exemptions to the Computer Matching Act have not yet been received from the Department of Justice (DOJ) Data Integrity Board. However, DOJ acknowledged that the Computer Matching Act would only apply to U.S. persons

²³ The cites for the respective notices are as follows:

SORN: <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-3330.pdf>

Rulemaking: <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-3331.pdf>

Paperwork Reduction Act (Initial and Update/Extension):

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-3555.pdf>

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-4775.pdf>

who are receiving direct funding from USAID. The Computer Matching Act would not apply to those U.S. persons being screened as Senior Officials wherein the Organization is the recipient of the funding.

OAA Response:

Concerning the West Bank and Gaza, we note that while the applicable sub-section in our appropriations legislation is entitled “Vetting,” the text of that sub-section does not expressly refer to vetting or prescribe what measures USAID should take in carrying out this mandate. Rather, it requires the Secretary of State to “take all appropriate steps” to ensure that ESF is not provided to individuals or entities associated with terrorism. It is thus left up to the Executive Branch to determine what procedures should be followed and vetting is merely one of a series of measures that are available to the Mission. When formulating terrorist financing procedures, each decision to vet or not carries an associated risk and an associated cost. The risk of course is that funds might go to a terrorist while the cost is additional administrative burden and delay in program implementation, which cumulatively must be considered given the limited resources available to the Mission and the important foreign policy objectives in West Bank and Gaza. The procedures selected by the Mission, i.e., to vet non-U.S. NGOs but not U.S. NGOs, were intended to forge an administrative balance between the need to vet, especially where the risk is greatest, and when to rely on other anti-terrorist financing measures to meet the desired result. Congress was aware, as far back as 2002, that the Mission in West Bank and Gaza did not intend to vet U.S. NGOs. Moreover, the recent GAO report did not recommend that the Mission act otherwise.

Audit Recommendation No. 7:

We recommend that USAID’s Office of Acquisition and Assistance develop procedures to ensure that database information regarding its awards is complete and accurate, and disseminated to responsible offices.

OAA Response:

In the NMS system, the Place of Performance field was an optional field. Thus there were NMS entries where the Place of Performance was left blank. This may have been because the place of performance was in more than one country and there was no corresponding code for that particular aggregation of countries. This problem won’t occur in GLAS, the system to be deployed in all of Washington this fiscal year, because the Place of Performance field in GLAS is a mandatory field. With the use of GLAS, this problem is resolved.

Audit Recommendation No. 8:

We recommend that the Office of Security review the proposed guidance to ensure that it addresses anti-terrorism measures for USAID partners conducting multicountry programs.

SEC Response:

Dependent on the final policy determinations by A/AID and information developed by the PVS pilot program, SEC will coordinate with OAA and other applicable bureaus and/or offices to develop procedures to address vetting which affects multi-country programs. Implementation of such guidance will lie with the bureaus or offices initiating awards. The guidance will direct vetting requests be transmitted to SEC based on the location of the activity or other determinant factor, regardless of the location of the initiator. SEC will be in position to monitor the receipt of vetting data, but will not be in position to determine the location, number or identity of organizations or individuals requiring vetting, prior to their placement in the PVS. This matter will be addressed as part of the policy determinations that will underpin the new ADS chapter. It is expected that these issue could be resolved by the end of the first quarter in calendar year 2008.

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Statutes, Regulations, and Executive Orders²⁴

Date Issued	Name	Purpose
10/18/1988	Computer Matching and Privacy Protection Act of 1988	Amends the Privacy Act of 1974, as amended, to add procedural requirements for agencies to follow when engaging in computer-matching activities; requires agencies that engage in matching activities to establish Data Protection Boards to oversee those activities.
04/24/1996	Antiterrorism and Effective Death Penalty Act of 1996	Addresses fines and imprisonment regarding knowingly providing material support or resources to terrorists or designated foreign terrorist organizations.
09/23/2001	Executive Order 13224	Prohibits funding and supporting organizations or individuals associated with terrorism.
10/26/2001	USA PATRIOT Act	Provides the Government with various tools to intercept and obstruct terrorism.
10/26/2001	18 United States Code Section 2339 (Harboring or Concealing Terrorists)	Addresses penalties and fines for harboring or concealing terrorists; penalties include fines, imprisonment for no more than 10 years, or both.
09/16/2003	Homeland Security Presidential Directive-6	Authorizes the integration and use of screening information.
08/27/2004	Homeland Security Presidential Directive -11	Authorizes comprehensive terrorist-related screening procedures.
Various	Consolidated Appropriations Resolution, 2003; Consolidated Appropriations Acts of 2004 and 2005	Require the establishment of vetting procedures before obligating assistance under the Economic Support Fund for the West Bank and Gaza; designed to ensure U.S. assistance is not provided to or through any individual, entity, or institution associated with terrorist activity, among other things.

²⁴ These are a representative sample of the statutes, regulations, and Executive orders pertaining to anti-terrorism issues.

Date Issued	Name	Purpose
11/14/2005	Section 559 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (P. L. No. 109-102)	Requires vetting prior to the obligation of Economic Support Funds for assistance to the West Bank and Gaza and prohibits any funds appropriated under the Act from being provided for the purposes of recognizing or otherwise honoring individuals who commit or have committed acts of terrorism.
02/02/2006	Federal Acquisition Regulation: Subpart 25.7, Prohibited Sources; Section 25.701, Restrictions	Requires querying the U.S. Department of Treasury's Office of Foreign Assets Control list prior to making awards; prohibits transactions with contractors and subcontractors that are on this list.

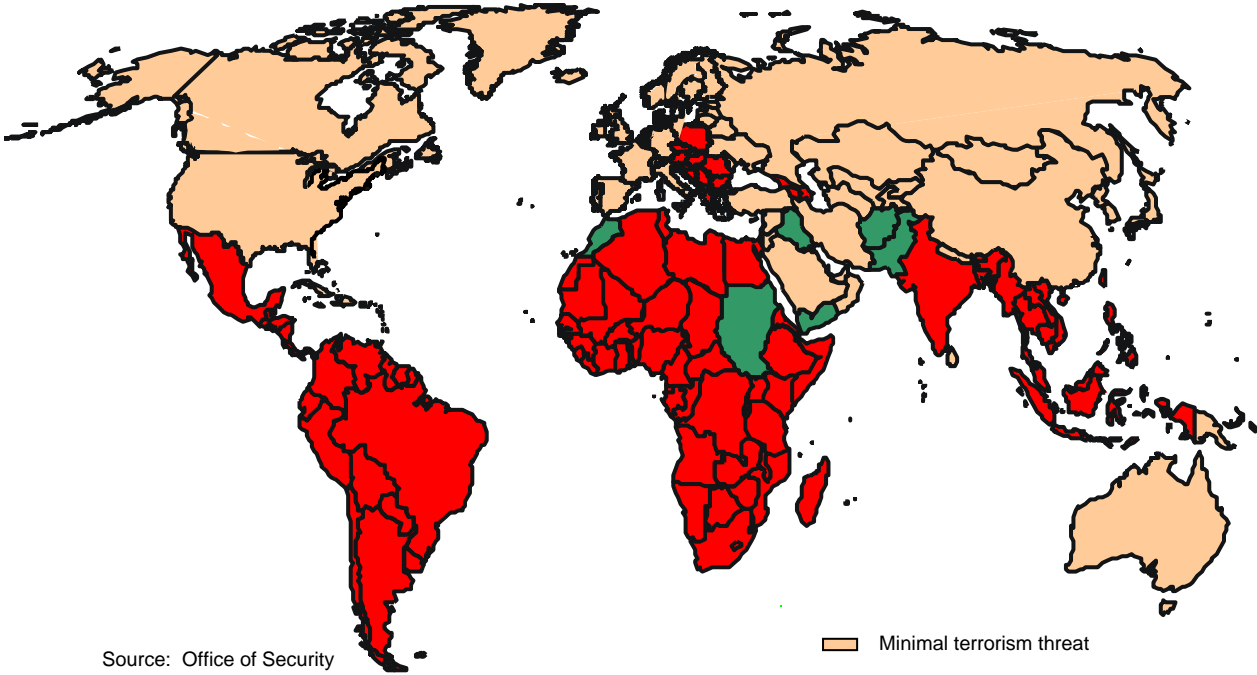
USAID Guidance

Date Issued	Name	Purpose
03/20/2002	Acquisition and Assistance Policy Directive 02-04	Office of Acquisitions and Assistance (OAA) discusses the passage and effect of Executive Order (E.O.) 13224, and includes antiterrorism language for contracts, grants, and cooperative agreements, as well as the Website address for the Office of Foreign Assets Control.
03/26/2002	2002-West Bank and Gaza -05*	USAID/West Bank and Gaza guidance regarding implementation of E.O. 13224.
10/15/2002	ADS 508 – <i>Privacy Act</i>	Agency policy for safeguarding individual privacy and ensuring access by individuals to records about themselves; establishes policy for the disclosure of personal information and assigns responsibilities within the Agency for various actions to fulfill the requirements of the Privacy Act of 1974.
08/26/2003	2003-DIR-01*	USAID/West Bank and Gaza guidance on vetting and certifications.
09/24/2004	AAPD 04-14	Requires USAID agreement officers to obtain certifications (from both U.S. and non-U.S. nongovernmental organizations) that the organization does not support terrorism before awarding a grant or cooperative agreement. (<i>Supersedes AAPD 02-19 and AAPD 04-07.</i>)
03/17/2006	2006-West Bank and Gaza -13*	USAID/West Bank and Gaza Mission Order No. 21 updates antiterrorism measures regarding procedures to implement E.O. 13224.
05/26/2006	2006-West Bank and Gaza -18*	USAID/West Bank and Gaza Mission Order No. 18 clarifies information in Mission Order No. 21

07/20/2006	Procurement Executive Bulletin 2005-12	OAA procurement bulletin reminder regarding requirement to determine the “responsibility” of potential awardees; reminder about antiterrorism requirements of AAPD 02-04 and AAPD 04-14; requirement to check the Office of Foreign Assets Control list prior to making an award. Also includes terrorist financing clause in award guidance.
1/30/2007	Automated Directives System (ADS) 303 - <i>Grants and Cooperative Agreements to Nongovernmental Organizations</i>	Assistance policy and procedures that includes various required certifications, internal mandatory references and mandatory standard provisions for grants and cooperative agreements to nongovernmental organizations.
3/23/2007	ADS 302 - <i>USAID Direct Contracting</i>	<p>Guidance contains acquisition policy and procedures.</p> <p>ADS 302.3.5.5, <i>Prohibition on Transactions with Designated Entities Associated with Terrorism – Office of Foreign Assets Control (OFAC) List</i> references AAPD 02-04, and includes a link to the OFAC list.</p> <p>ADS 302.3.6.12, <i>Prohibition on Transactions with Designated Entities – Office of Foreign Assets Control (OFAC)</i>, references FAR Subpart 25.7 Prohibited Sources and relevant sections, as well as AAPD 02-04 and its requirements.</p>

* This guidance is specific to the West Bank and Gaza.

Map: Terrorism Threat in Countries with USAID Activities



Source: Office of Security

- Minimal terrorism threat
- High terrorism threat
- Major terrorism threat:
Iraq, Afghanistan, Pakistan, Lebanon,
Sudan, Yemen, and Morocco.

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USAID Offices' Antiterrorism Roles and Responsibilities

Office of Acquisition and Assistance (OAA)

OAA is the only headquarters office that has incorporated antiterrorism guidance into the ADS. It has also developed policy directives and procurement correspondence to discuss, among other things, the effects of Executive Order 13224 to prohibit transactions with individuals or entities who commit, threaten to commit, or support terrorism. OAA, which oversees USAID's procurement functions, has developed these procedures to implement legislative requirements as well as to complement some of the Office of Security's procedures.

OAA published two ADS chapters²⁵ that incorporate guidance originally contained in the policy directives and include requirements for antiterrorism language such as mandatory clauses regarding compliance with antiterrorism laws for contracts,²⁶ grants, cooperative agreements, and similar documents. In addition, agreement and contracting officers and cognizant technical officers must verify that an applicant does not appear on the Department of Treasury's Office of Foreign Assets Control (OFAC) list of designated terrorists and terrorist organizations, a practice that provides some assurance that potential and active recipients of USAID funds do not promote terrorism. The policy directives also include specific language that must be included in solicitations, contracts, program statements, application requests, grants or cooperative agreements.

OAA also requires agreement officers to obtain antiterrorism certifications before awarding a grant or cooperative agreement to either a U.S. or non-U.S. nongovernmental organization (NGO). In the certification, the NGO is expected to state it has not provided, in the past 10 years, or will not knowingly provide, material support and resources to any individual or entity that engages in terrorist activities,²⁷ or to any individual or entity that appears in the OFAC or the United Nations Security Council Resolution 1267 lists.²⁸

²⁵ ADS 302, *USAID Direct Contracting* contains acquisition (contract) policy and procedures regarding the prohibition of transactions with designated entities associated with terrorism. ADS 303, entitled *Grants and Cooperative Agreements to Nongovernmental Organizations* discusses the USAID's terrorist financing certification requirements and the financing provisions to be included in USAID awards (grants and cooperative agreements).

²⁶ As documented in appendix IX, acquisitions (as with contracts) and assistance (as in grants and cooperative agreements) differ in terms of purpose, relationship, USAID role, and the like.

²⁷ OAA excludes the use of the antiterrorism certification for USAID contracts because doing so would deviate from the Federal Acquisition Regulation (FAR), which must be approved in advance. Thus, the requirement to sign the certification applies only to assistance instruments such as grants and cooperative agreements.

²⁸ The United Nations Security Council Resolution 1267 list includes individuals and entities linked to the Taliban, Usama bin Laden, or the al-Qaida organization.

Office of Security (SEC)

As of January 2007, SEC assumed the responsibility for vetting all non-U.S.-based West Bank and Gaza recipients, as well as performing ad hoc vetting for USAID missions and Washington bureaus. Before this time, the U.S. Embassy in Tel Aviv was responsible for vetting all non-U.S.-based potential partners in the West Bank and Gaza who applied for Agency grants and cooperative agreements.

To conduct its work, SEC sends the intelligence community the information to be vetted. Once the vetting is completed, the intelligence community returns the vetting information to security officials, who in turn, provide either a *derogatory* or *nonderogatory* recommendation to mission or bureau officials. A derogatory recommendation is not binding on an agreement or contracting officer, who may choose to fund a recipient despite SEC's recommendation. Moreover, since these recommendations and the ultimate decisions are not documented, no record is immediately accessible to facilitate an appeals process.

Office of General Counsel (GC)

GC provides legal advice on antiterrorism issues and drafts key language in clauses and certifications. GC also: (a) works with USAID employees, as well as with the Departments of Justice, State, and Treasury to obtain the necessary approvals, waivers, and licenses, so that USAID, contractor, and partner employees can implement U.S. foreign policy without concerns over criminal or civil prosecution; (b) represents USAID, along with SEC, on interagency working groups on terrorist financing; (c) assists USAID offices with the administrative appeals process; and (d) coordinates with the Department of Justice on civil and criminal actions.

Office of Legislative and Public Affairs (LPA)

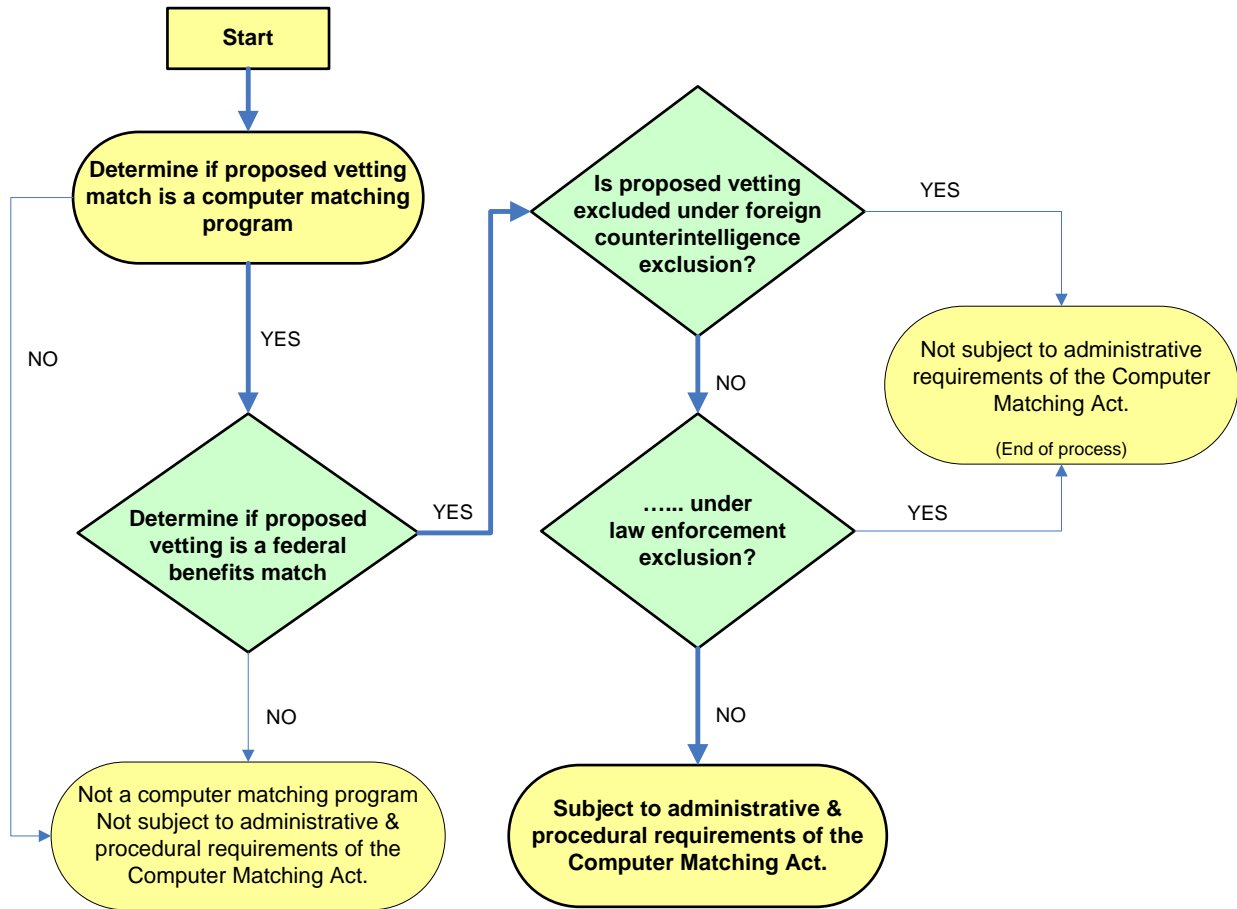
LPA has an "information-sharing" role in vetting and responding to congressional or press inquiries. LPA interacts with Department of State counterparts as well as other USAID offices such as SEC and OAA, in responding to congressional and press inquiries concerning vetting.

USAID/West Bank And Gaza Vetting Process

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DATA INTEGRITY BOARD DECISION PROCESS



Yellow indicate Decision
 Green indicates beginning or end of program flow

Source: Office of Security

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Comparison of Acquisitions Versus Assistance

Topic	Acquisition	Assistance
Instrument Type	Contract Types: fixed price, cost reimbursement, time and materials, indefinite quantity	Grant or cooperative agreement
Purpose	Purchase for Government's direct benefit or use	Support or stimulate a public purpose
Relationship	Vendor or contractor	Partner
USAID's Role	Purchaser	Donor/Funding Agency/Sponsor
Implementer's Role	Provide Goods or Services to USAID	Implement Program
M/OAA Officer	Contracting Officer (CO)	Agreement Officer (AO)
Main implementer	Contractor	Recipient/Grantee
Sub implementers	Subcontractors	Subrecipients
Activity	Work or services	Program
Description of Activity	Statement of Work	Program Description
Can focus on results?	Yes (performance-based service contracts)	Yes (results-oriented program descriptions)
Cost-sharing	Very Rare	Often
Legal framework	Federal Acquisition Regulations (FAR) Competition in Contracting Act (CICA) AID Acquisition Regulation (AIDAR); 22 CFR pt. 216	Federal Grant and Cooperative Agreement Act, 22 CFR 226, Automated Directives System (ADS); 22 CFR pt. 216
Competition	Mandated by Statute	Encouraged by Policy
Exceptions to competition	AIDAR: Personal Services Overseas; Services less than \$250,000 (overseas); Determination by AA or Administrator; Title XII (Land grant Universities); Continuation of specialized services	ADS: Amendments; unsolicited application; critical to objectives of foreign assistance; small awards; exclusive/predominant capability
Solicitation methods	Request for Proposals (RFP), Invitation for Bids (IFB) and Request for Quotes (RFQ).	Request for Applications (RFA) Annual Program Statement (APS)
Solicitation posting location	www.FedBizOpps.gov	www.Grants.gov
Offer	Bid, proposal or quote	Application
Offeror	Bidder or offeror	Applicant
After Award Exchanges	Post-Award Debriefing	Post-Award Discussions
Award protests	Normally filed with USAID or GAO	No formal procedure; handled informally within USAID
Administrative Authority	CO has overall responsibility for contract administration; Cognizant Technical Officer (CTO) has responsibility for all technical matters	Limited by regulation to selected essential aspects in cooperative agreement – CTO delegated by AO
Meetings after Award	Post-award Orientation Conference	Post-award Implementation Meeting
Basis of Payment	Usually Fixed Price or Rate, or Cost Plus Fixed Fee	Costs
Timing of payment	Reimbursement, normally after incurrence	Reimbursement, normally in advance
Changes after award	Modifications	Modifications
Performance disputes	CO's final decision may be appealed to Board of Contract Appeals or Court of Federal Claims	AO's decision may be appealed within USAID to Chief Assistance Officer, then to U.S. Court of Claims
Termination rights	For default or unilaterally by USAID for Convenience	For cause, mutually, or changed circumstances

Source: Assistance Management for Cognizant Technical Officers workbook.

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