



Investigation Report

Global Fund Grants to the Republic of Ghana

Ghana Ministry of Health

GF-OIG-14-021
11 December 2014
Geneva, Switzerland

Non-compliant expenditures	US\$ 3,840,003
Proposed recoveries	US\$ 3,840,003
Categories	Fraud / Misrepresentation of information Non-compliance with laws/Grant agreements Product Issues / Faulty Product Mismanagement Issues / Waste and abuse

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I. Background and Scope

The Global Fund has been supporting health programs in Ghana since 2002 with 14 grants disbursing US\$ 508 million to date. Presently, there are seven active grants in the Ghana portfolio.

The Procurement and Supply Management plan of grant GHN-809-G11-H, a round 8 HIV grant issued in November 2009, provided for the procurement of 178 million male condoms and 2 million female condoms using the self-branded 'Be Safe' label to prevent the spread of HIV among the Ghana public. The Ministry of Health of the Government of Ghana is the Principal Recipient and the Ghana Health Service is its implementing structure for Global Fund grants. The condoms were procured by the Ghana Health Service.

The Ghana Health Service is a public service body using public funds established by a Ghanaian parliamentary act. It is an autonomous executive agency responsible for the implementation of national policies under the control of the Minister for Health through its governing council - the Ghana Health Service Council. Its mandate is to provide and prudently manage comprehensive and accessible health services with a special emphasis on primary health care at regional, district and sub-district levels in accordance with approved national policies. The Ghana Health Service plays a critical role in HIV control in Ghana. It has been proposed as the lead national entity responsible for the coordination and implementation of Ghana's AIDS response, focusing on Antiretroviral Therapy and Prevention of Mother to Child Transmission. It has also been proposed as a Principal Recipient in the Ghana Tuberculosis / HIV Concept Note under the Global Fund's new funding model.

The condom procurement, which began in January 2010 and concluded in March 2013, experienced significant delays and price increases. The male condoms were supplied by Global Unilink Ventures Ltd, a small trading company based in Accra, under two separate contracts of 50 million units and 128 million units worth US\$ 1,450,000 and US\$ 3,840,000, respectively.¹ The condoms under the 50 million unit contract were supplied from a World Health Organization (WHO)-registered manufacturer in India in 2010 and have presented no known quality issues. However, the condoms under the larger second contract were supplied from several unidentified manufacturers in China. They were imported to Ghana in 2012 and 2013, paid for, and distributed to the public without proof of meeting required quality standards.

Due to complaints of poor quality by users, tests were conducted by the Ghana Food and Drug Authority² and an independent laboratory. They concluded that the entire lot of 128 million condoms was defective and not fit for use. The Food and Drug Authority stopped further distribution of the condoms and recalled outstanding batches. By the time the issue of defective condoms had become known, approximately 18.9 million condoms had been distributed from central medical stores to the districts. The incident was widely reported in the Ghanaian press in April 2013.

An independent committee formed by the Minister of Health in May 2013 to investigate the condom procurement found serious challenges, lapses, and departures from policies and practices required by Ghana's national procurement law and the Food and Drug Authority. In 2013, the Ghana Attorney General commissioned a criminal investigation, conducted by the Ghana Economic and Organized Crimes Office. The investigation is currently ongoing.

In April 2013, the Ghana Country Team alerted the OIG to the issues with the condom procurement. The OIG investigated this matter to determine if any relevant provisions of the grant agreement had been violated, to identify root causes and to agree management actions to prevent further recurrence.

¹ The Be Safe condom contracts and supplier payments were denominated in United States Dollars (US\$).

² The Food and Drug Authority operated under the name Food and Drug Board at the time.

II. Executive Summary

The investigation confirmed a total non-compliant expenditure of US\$ 3,840,003 with proposed recoveries of US\$ 3,840,003. This expenditure relates to the procurement of 128 million male condoms between 2010 and 2013 which were found to be substandard, over-priced and bought through a non-competitive tender process involving forged documents. The following issues were noted by the OIG investigators:

Quality issues - The investigation confirmed that the contracted supplier Global Unilink did not source the condoms from a WHO-certified manufacturer and did not meet WHO-specifications and appropriate quality standards.

Condom samples submitted by Global Unilink for quality tests as part of its bid proposal in late 2010 from Manufacturer 1, a WHO-certified manufacturer, passed testing. However, Global Unilink changed the manufacturer and sourced the condoms from (an) unknown Chinese manufacturer(s). The investigation was unable to reveal the identity of the manufacturer(s) of the substandard Be Safe condoms. The Ghana Health Service did not request condom samples from the alternative manufacturer(s) for testing purposes and the condoms were not tested.

Procurement issues

Non-competitive practices - The investigation found that the tender was advertised in local papers only and the response period was short. The bid proposals were evaluated over a year after the tender process and two out of the three suppliers were disqualified on technical grounds. Global Unilink's winning bid proposal was declared technically compliant, although it did not include key components required by the tender documents, nor did it demonstrate the supplier's ability to execute the contract. The review of the tender's evaluation by the Ghana Central Tender Board was bypassed and not performed. This is a key independent check and balance to ensure adherence to the Ghana Public Procurement Act 2003 and complete transparency.

Non-competitive pricing - Within a month of Global Unilink being awarded the contract award, the Ghana Health Service approved Global Unilink's request for a 35 percent increase in the condom's unit price equating to US\$ 995,000 of increased contract value, even though the contract was a fixed-price contract and not subject to adjustments, according to the bid provisions. There is no evidence that Global Unilink provided the Ghana Health Service any supporting documentation or market pricing data in support of its request for the increase. There is also no evidence of any in-depth research or due diligence supporting the Ghana Health Service's quick approval of the price increase, that it sought advice from the Ministry of Health, or that it considered re-tendering the procurement in light of such materially higher market pricing conditions and the substantial values involved.

Falsified documents - The OIG investigation found that the president of Global Unilink provided the Ghana Health Service with misleading information regarding the manufacturing source of the condoms and misrepresented the quality. Falsified documents included a Manufacturer's Letter of Authorization and manufacturer's certificates. This provided the false appearance that a certified condom manufacturer was the condom supplier. Copies of these documents were found in the procurement files of the Ghana Health Service, indicating that the forged documents were created some time after the condom tender and contract award and after the information of the substandard condoms had become public. The Ghana Health Service procurement staff accepted and filed the falsified documentation after the tender process.

The procurement process bypassed or ignored key checks and balances as well as risk control measures designed to ensure the integrity of the process and that the goods delivered met all the required technical specifications. Global Unilink did not submit samples from the replacement manufacturers for testing and did not notify the Ghana Food and Drug Authority when the condoms arrived in country. The Ghana Health Service did not conduct quality tests on the first batches of the condoms received.

Secretariat's actions already taken

Since 2012, the Secretariat's Country Team has put in place additional safeguards for the Ghana portfolio and addressed key risk areas. Prior to this incident, the Secretariat had begun instituting a number of changes and actions to address and rectify long-standing issues and concerns with procurement practices. The procurement of key health products and commodities has been moved to the Global Fund's Pooled Procurement Mechanism and Global Drug Facility. Additionally, the Secretariat has arranged to have the Local Fund Agent conduct post-product delivery reviews of all locally procured health products and commodities as an added layer of assurance. Since 2012, the Ghana Country Team has more resources and increased its focus on operational risk management. The Secretariat is also implementing plans to deploy logisticians to strengthen the visibility of commodity availability and flow; improve communications within the various levels of the supply chain; and improve warehouse storage, distribution, transport, inventory management and information systems.

The Secretariat has made it clear to the Ghana Ministry of Health that the defective condoms must be destroyed in line with international procedural and environmental regulations and will seek confirmation that the destruction has taken place.

Agreed Management Actions

Due to the investigation findings, the OIG has proposed formal actions agreed to by the Secretariat to be implemented as detailed in Section V:

- The Secretariat will finalize and pursue from all entities responsible an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.
- The Secretariat will address the misconduct by the supplier, Global Unilink Ventures, in accordance with the Global Fund's policy on supplier misconduct.
- To ensure that required quality control tests are performed, the Secretariat will provide the Ghana Food and Drug Authority with advance notice of the dispatch of critical health products and commodities procured for Global Fund programs (from whatever source). The Local Fund Agent will verify the quality testing has been conducted, before distribution.

III. Findings and Agreed Management Actions

01 Introduction

The Ghana Health Service is a Public Service body established by a Ghanaian parliamentary act. It is an autonomous Executive Agency responsible for implementation of national policies under the control of the Minister for Health through its governing Council - the Ghana Health Service Council. The Ghana Health Service receives public funds and thus remains within the public sector. Its mandate is to provide and prudently manage comprehensive and accessible health service with special emphasis on primary health care at regional, district and sub-district levels in accordance with approved national policies.

In 2010, the Ghana Health Service undertook the procurement of 178 million male and 2 million female condoms on behalf of the National AIDS/STI Control Program as provided by the grant's Procurement and Supply Management plan. The condoms were part of the Control Program's broader strategy to promote the adoption of safer sexual practices and to prevent the unnecessary transmission of HIV. Contracts for the male condoms were awarded to Global Unilink Ventures Ltd, a small, two-person local trading company based in Accra, in May 2010 for 50 million units and in June 2011 for 128 million units for US\$ 1.45 million and US\$ 3.84 million, respectively.

Condoms for the smaller of the two contracts, and for a previous one awarded to Global Unilink, were sourced by Global Unilink from a WHO-certified manufacturer in India ("Manufacturer 1"), and experienced no known quality issues and are not the subject of this investigation.

02 Quality Issues

Ghanaian law and the supplier contract terms and provisions required condoms to be sourced from a WHO-registered manufacturer, meet WHO-specifications, and pass all requisite quality control tests applicable to imported condoms.

The condom samples submitted by Global Unilink for quality tests as part of its bid proposal in late 2010 from Manufacturer 1, a WHO-certified manufacturer, passed testing. To-date, there have been no known issues raised with the quality or use of those condoms from Manufacturer 1, who cooperated with the investigation. Global Unilink ultimately elected to source the condoms from two or three condom manufacturers in China via the use of an intermediary in Nairobi, and did not submit samples from the replacement manufacturers for testing. There was no evidence to suggest that the intermediary was complicit in any fraud, their services were used by Global Unilink to acquire replacement condoms from China. The manufacturer(s) of the substandard Be Safe condoms remain(s) unconfirmed.

The condoms were not sourced from a WHO-certified manufacturer and did not meet WHO-specifications and appropriate quality standards. The Ghana Health Service did not request condom samples from the replacement manufacturers for testing and did not conduct quality tests on the first batches of the condoms received. Additionally, when the condoms arrived in country they did not notify the Ghana Food and Drug Authority, as required. About 18.9 million condoms had been distributed from central medical stores to the districts by the time it was known that the condoms were defective. The Ghana Health Service had ample opportunity to inform the authorities, as the first batch of condoms was not shipped until mid-2012, more than nine months from the contract award date. Moreover, the condoms were shipped in ten batches over an eight-month period from August 2012 to March 2013. See Annex B, Exhibit 1 for the schedule of shipments and ports of departure.

The reasons for such lapses and departures by the Ghana Health Service are not clear and are being investigated by the Ghana Attorney General. The Secretariat has strongly reiterated to the Ministry of Health that the defective condoms are to be destroyed, and done so in line with international procedural and environmental regulations.

The Ghana Health Service approved payment of Global Unilink's multiple invoices and payment of funds to Global Unilink and Harley's Limited over an eight-month period without first ensuring that the goods received conformed to required technical specifications and quality standards. The OIG concludes that the Ghana Health Service did not ensure that the National AIDS/STI Control Program received condoms of the required quality and at a reasonable price from a capable supplier with adequate financial assurance as required by the grant agreement.

Agreed Management Action 1: To ensure that required quality control tests are performed, the Secretariat will provide the Ghana Food and Drug Authority with advance notice of the dispatch of critical health products and commodities procured for Global Fund programs (from whatever source). The Local Fund Agent will verify the quality testing has been conducted, before distribution.

03 Procurement issues

Non-competitive practices

The investigation found that the condom tender by the Ghana Health Service and its Stores Supply and Drug Management Division was not performed in full compliance with applicable procurement laws and practices and the grant's standard terms and conditions. The procurement bypassed or ignored key checks and balances and risk control measures designed to ensure the integrity of the process and that goods delivered met all required technical specifications..

There is a provision in the grant agreement for:

- transparent and competitive procurement practices allowing for the involvement of all prospective bidders
- monitoring the quality of its procured health products
- ensuring the capabilities of the tender participants to fulfill the awarded contract
- procured health products to be from pre-qualified lists and to comply with the quality standards applicable in Ghana for those products.

To ensure wide interest and involvement of all prospective bidders, the tender should be advertised. The investigation found that the tender was advertised only in local papers and with a short response period. The manner in which bid proposals were evaluated, such as the disqualification of two out of the three suppliers on technical grounds, also limited competition and appeared to unfairly favor Global Unilink, whose 'winning' bid proposal was declared technically compliant. This was despite the fact that the Global Unilink bid did not include key components required by the tender documents, nor did it demonstrate the supplier's ability to execute the contract. Furthermore, the required review of the tender's evaluation by the Ghana Central Tender Board was bypassed and not performed. This is a key independent check and balance and component of transparency to ensure adherence to the Ghana Public Procurement Act 2003.

The Ghana Health Service also did not ensure that Global Unilink obtain a performance security in the form of a bank guarantee following the award of the contract. This is a requirement of the Ghana Public Procurement Act 2003 and the tender documents to financially protect its funds in the event of supplier non-performance or default, which ultimately happened.

The investigation identified that the Ghana Health Service did not adequately vet the supplier, Global Unilink, and its capabilities with respect to such a high volume order. Global Unilink was not required to purchase a performance security to protect the program financially in the event of supplier non-performance or default, as was required by the tender's terms and associated procurement law, and which ultimately happened.

Increased price

Within a month following the award of the contract, one year following the tender date, the Ghana Health Service approved Global Unilink's request for a 35 percent increase in the condom's unit price equating to US\$ 995,000 of increased contract value. This was despite the fact that the contract was a fixed-price contract and not subject to adjustments on any account, according to the bid provisions. There is no evidence that Global Unilink provided the Ghana Health Service with any supporting documentation or market pricing data in support of its request for the increase. There is also no evidence of any in-depth research or due diligence supporting the Ghana Health Service's quick approval of the price increase, that it sought advice from the Ministry of Health, or that it considered re-tendering the procurement in light of such materially higher market pricing conditions and the substantial values involved.

The condoms comprising the 128 million unit contract were originally proposed by Global Unilink to be sourced from Manufacturer 1. Previously, Global Unilink, had already sourced from this manufacturer for two smaller condom contracts with the Ghana Health Service.

During the significant delay between the bid tender closing date in August 2010 and the condom contract award to Global Unilink in June 2011, the wholesale price of condoms increased. This caused Manufacturer 1, Global Unilink's designated manufacturer, to raise its price from the price quoted at the time of the bid proposal, according to the manufacturer.

Although the condom contract was a fixed-price contract, Global Unilink nevertheless requested from the Ghana Health Service a 35 percent increase in the contracted unit price to offset the unexpected increase in wholesale prices. The Ghana Health Service immediately granted this, increasing the condom contract's value by US\$ 995,000.³

Even with the substantial price increase, the evidence shows that Global Unilink actively sought another manufacturer that could offer a lower wholesale price than Manufacturer 1. Global Unilink finally chose at least two manufacturers sourced in China (See Annex B, Exhibit 1) through a supplier agent located in Kenya, Harley's Limited. Global Unilink did not formally disclose to the Ghana Health Service the change in manufacturers or the identities of the substitute manufacturers.

The price increase, combined with the low-cost source of supply, allowed Global Unilink to make a substantial profits from the tender, according to the evidence. The condom manufacturers and the agent in Kenya were paid 80 percent of the contract's total value, or US\$ 3,072,000 (representing US\$ 3.456 per box or US\$ 0.024 per unit), to cover the wholesale price of the condoms, shipping and related importation costs for delivery to the Ghana seaport, as well as the agent's profit margin. Global Unilink was paid the remaining 20 percent of the contract's total value, or US\$ 768,000, to cover their bidding and contract execution. The OIG estimated these costs to be minimal, based on statements by Global Unilink's majority owner and other evidence. The Ghana Economic and Organized Crimes Office is investigating Global Unilink's use of the funds.

Agreed Management Action 2: The Secretariat will address the misconduct by the supplier, Global Unilink Ventures, in accordance with the Global Fund's policy on supplier misconduct.

Falsified documents

The OIG investigation found that the president of Global Unilink provided Ghana Health Service and the OIG investigation with fictitious, forged and misleading documentation during its investigation and made false and misleading statements to OIG investigators to mask the manufacturing source of the defective condoms and to misrepresent the condoms' quality. Evidence indicates that the forged and misleading documents were created some time after the condom tender and contract award and probably after news of the sub-standard condoms had become public.

³ Global Unilink was awarded the contract on 6 June 2011. It requested a 35% unit price increase on 4 July 2011, which was granted by the Ghana Health Service the next day on 5 July. The increased unit price was reflected in a new contract dated 19 July 2011.

At some point, after news of the substandard condoms had become public and the independent committee had begun investigating, Global Unilink attempted to represent to all concerned the condom's source as a WHO-certified condom manufacturer in Henan, China ("Manufacturer 2"). In the process, Global Unilink provided the Ghana Health Service, the independent committee investigating the procurement, the Ghana Economic and Organized Crimes Office, and the OIG with falsified and forged documents and statements purporting that Manufacturer 2 was its *original* proposed manufacturer at the time it had submitted its bid proposal in August 2010.

The falsified documents included a purported fake Manufacturer's Letter of Authorization indicating Manufacturer 2 as its proposed manufacturer and a revised price schedule indicating China, instead of India, as the country of origin. See Annex B, Exhibit 3. The documents also included copies of manufacturer certificates from Manufacturer 2 that were dated *subsequent to* the bid closing date (August 2010) and as late as 2012. These certificates are publically available from Manufacturer 2's website.

The false statements and documents mask the identity of the true manufacturer of the substandard and non-certified condoms and provide the false appearance that Harley's of Kenya and Manufacturer 2, a certified condom manufacturer, were the condom suppliers and part of Global Unilink's original bid proposal in August 2010. Evidence clearly shows they were not.

The OIG investigation also found copies of these documents in the procurement files of the Ghana Health Service provided to OIG investigators. These documents indicate that procurement staff accepted and filed the fake documentation in the procurement files long after the tender process. They passed them off as authentic documents of record filed contemporaneously with the bid proposals, when evidence clearly shows they were not.

When contacted, Manufacturer 2, which cooperated with the investigation, informed the OIG that it was not the manufacturer of the substandard condoms and categorically denied ever supplying condoms to Global Unilink, Harley's, or other buyers in Ghana. Manufacturer 2 also denied providing Global Unilink or Harley's an official Manufacturer's Letter of Authorization or manufacturer's certificates, documents which Global Unilink attempted to represent to OIG and others as part of its original bid proposal. Evidence clearly shows that they were not.

Manufacturer 2 informed the OIG that the Letter of Authorization and related certificates purported by Global Unilink to have been provided by Manufacturer 2 and submitted with its August 2010 bid, including the company stamp and representative signature, were fake, forged and inconsistent in form and substance with Manufacturer 2 documents and stamp. Manufacturer 2 told the OIG that it was contacted by Harley's in February 2012 requesting a price quote for the supply of 128 million WHO-certified male condoms and was not selected. An OIG analysis of the manufacturer's and bid documents confirms the inconsistencies and anomalies in the bid documents purported by Manufacturer 2.

Furthermore, evidence shows that the condoms were shipped from three different ports in north, central and south China, and the lettering on the shipping cartons bore at least two different printing formats, supporting the presumption of multiple manufacturers. See Annex B, Exhibit 1.

The manufacturer(s) of the substandard Be Safe condoms remain(s) unconfirmed.

Agreed Management Action 3: Based on the findings of this report, the Secretariat will finalize and pursue, from all entities responsible, an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.

IV. Conclusion

The investigation confirmed that 128 million condoms supplied from Global Unilink at a cost of US\$ 3.84 million were substandard and basic procurement rules and procedures were not followed. This allowed Global Unilink to be selected. Global Unilink then changed the manufacturer, increased the unit price of the condoms by 35% and provided false documentation. This went undetected by the Ghana Health Services which provided little to no oversight of quality or value for money.

The OIG acknowledges the actions taken by the Secretariat in directly addressing and rectifying the risks and issues within the Ghanaian portfolio. The Ministry of Health has taken action in conducting an independent investigation into the matter to identify root causes and has pledged drastic actions and reform. The Ghanaian authorities have launched a criminal investigation to hold responsible parties accountable to the law and to reclaim any illicit financial gains made.

The Global fund will seek to recover US\$ 3.84 million used to finance this condom purchase. Key health products are now bought solely through the Global Fund's Pooled Procurement Mechanism or other procurement partners. Appropriate actions against the supplier, Global Unilink, will be addressed and steps are being taken to better ensure health products are quality tested and meet applicable standards prior to distribution.

V. Table of Agreed Management Actions

No.	Category	Action	Due date	Owner
1	Programmatic and Performance Risk	To ensure that required quality control tests are performed, the Secretariat will provide the Ghana Food and Drug Authority with advance notice of the dispatch of critical health products and commodities procured for Global Fund programs (from whatever source). The Local Fund Agent will verify the quality testing has been conducted, before distribution.	31 March 2015	Head, Grant Management Division
2	Programmatic and Performance Risk	The Secretariat will address the misconduct by the supplier, Global Unilink Ventures, in accordance with the Global Fund's policy on supplier misconduct.	31 March 2015	Head, Grant Management Division
3	Recovery	Based on the findings of this report, the Secretariat will finalize and pursue, from all entities responsible, an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.	30 June 2015	Recoveries Committee

VI. Annex A: Methodology

The Investigations Unit of the OIG is responsible for conducting investigations of alleged fraud, abuse, misappropriation, corruption and mismanagement (collectively, “fraud and abuse”) within Global Fund financed programs and by Principal Recipients and Sub-recipients, (collectively, “grant implementers”), Country Coordinating Mechanisms and Local Fund Agents, as well as suppliers and service providers.⁴

While the Global Fund does not typically have a direct relationship with the recipients’ suppliers, the scope of the OIG’s work⁵ encompasses the activities of those suppliers with regard to the provision of goods and services. The authority required to fulfill this mandate includes access to suppliers’ documents and officials.⁶ The OIG relies on the cooperation of these suppliers to properly discharge its mandate.⁷

OIG investigations aim to: (i) identify the specific nature and extent of fraud and abuse affecting Global Fund grants, (ii) identify the entities responsible for such wrongdoings, (iii) determine the amount of grant funds that may have been compromised by fraud and abuse, and (iv), place the organization in the best position to obtain recoveries through the identification of the location or the uses to which the misused funds have been put.

OIG conducts administrative, not criminal, investigations. Its findings are based on facts and related analysis, which may include drawing reasonable inferences based upon established facts. Findings are established by a preponderance of credible and substantive evidence. All available evidence is considered by the OIG, including inculpatory and exculpatory information.⁸

The OIG finds, assesses and reports on facts. On that basis, it makes determination on the compliance of expenditures with the grant agreements and details risk-prioritized Agreed Management Actions.

Such Agreed Management Actions may notably include the identification of expenses deemed non-compliant for considerations of recovery, recommended administrative action related to grant management and recommendations for action under the Code of Conduct for Suppliers⁹ or the Code of Conduct for Recipients of Global Fund Resources¹⁰ (the “Codes”), as appropriate. The OIG does not determine how the Secretariat will address these determinations and recommendations. Nor does it make judicial decisions or issue sanctions.¹¹

Agreed Management Actions are agreed with the Secretariat to identify, mitigate and manage risks to the Global Fund and its recipients’ activities. The OIG defers to the Secretariat and, where appropriate, the recipients, their suppliers and/or the concerned national law enforcement agencies, for action upon the findings in its reports.

The OIG is an administrative body with no law enforcement powers. It cannot issue subpoenas or initiate criminal prosecutions. As a result, its ability to obtain information is limited to the rights to it under the grant agreements agreed to with recipients by the Global Fund, including the terms of its Codes, and on the willingness of witnesses and other interested parties to voluntarily provide information.

⁴ Charter of the Office of the Inspector General (19 March 2013), available at: http://theglobalfund.org/documents/oig/OIG_OfficeOfInspectorGeneral_Charter_en/, accessed 01 November 2013 2013.

⁵ Charter of the Office of the Inspector General (19 March 2013) § 2, 9.5 and 9.7.

⁶ Ibid., § 17.1 and 17.2.

⁷ Global Fund Code of Conduct for Suppliers (15 December 2009), § 17-18, available at: http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/, accessed 01 November 2013.

Note: Every grant is subject to the Global Fund’s Standard Terms and Conditions (STC) of the Program Grant Agreement signed for that grant. The above Code of Conduct may or may not apply to the grant.

⁸ These principles comply with the *Uniform Guidelines for Investigations*, Conference of International Investigators, June 2009; available at: <http://www.un.org/Depts/oios/pages/uniformguidelines.html>, accessed 01 November 2013.

⁹ See fn. 7, supra.

¹⁰ Code of Conduct for Recipients of Global Fund Resources (16 July 2012) available at: http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForRecipients_Policy_en/, accessed 01 November 2013.

Note: Every grant is subject to the STC of the Program Grant Agreement signed for that grant. The above Code of Conduct may or may not apply to the grant.

¹¹ Charter of the Office of the Inspector General (19 March 2013) § 8.1

The OIG also provides the Global Fund Board with an analysis of lessons learned for the purpose of understanding and mitigating identified risks to the grant portfolio related to fraud and abuse.

Finally, the OIG may make referrals to national authorities for prosecution of any crimes or other violations of national laws, and supports such authorities as necessary throughout the process, as appropriate.

Applicable Concepts of Fraud and Abuse

The OIG bases its investigations on the contractual commitments undertaken by recipients and suppliers. It does so under the mandate set forth in its Charter to undertake investigations of allegations of fraud and abuse in Global Fund supported programs.

As such, it relies on the definitions of wrongdoing set out in the applicable grant agreements with the Global Fund and the contracts entered into by the recipients with other implementing entities in the course of program implementation.

Such agreements with Sub-recipients must notably include pass-through access rights and commitments to comply with the Codes. The Codes clarify the way in which recipients are expected to abide by the values of transparency, accountability and integrity which are critical to the success of funded programs. Specifically, the Code of Conduct for Recipients prohibits recipients from engaging in corruption, which includes the payment of bribes and kickbacks in relation to procurement activities¹²

The Codes notably provide the following definitions of the relevant concepts of wrongdoings:¹³

- “Anti-competitive practice” means any agreement, decision or practice which has as its object or effect the restriction or distortion of competition in any market.
- “Collusive practice” means an arrangement between two or more persons or entities designed to achieve an improper purpose, including influencing improperly the actions of another person or entity.
- “Conflict of Interest”: A conflict of interest arises when a Recipient or Recipient Representative participates in any particular Global Fund matter that may have a direct and predictable effect on a financial or other interest held by: (a) the Recipient; (b) the Recipient Representative; or (c) any person or institution associated with the Recipient or Recipient Representative by contractual, financial, agency, employment or personal relationship. For instance, conflicts of interest may exist when a Recipient or Recipient Representative has a financial or other interest that could affect the conduct of its duties and responsibilities to manage Global Fund Resources. A conflict of interest may also exist if a Recipient or Recipient Representative’s financial or other interest compromises or undermines the trust that Global Fund Resources are managed and utilized in a manner that is transparent, fair, honest and accountable.
- “Corrupt practice” means the offering, promising, giving, receiving or soliciting, directly or indirectly, of anything of value or any other advantage to influence improperly the actions of another person or entity.
- “Fraudulent practice” means any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person or entity to obtain a financial or other benefit or to avoid an obligation.
- “Misappropriation” is the intentional misuse or misdirection of money or property for purposes that are inconsistent with the authorized and intended purpose of the money or assets, including for the benefit of the individual, entity or person they favor, either directly or indirectly.

Determination of Compliance

¹² Code of Conduct for Recipients of Global Fund Resources, section 3.4.

¹³ Available at: http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForRecipients_Policy_en/ and http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/

The OIG presents factual findings which identify compliance issues by the recipients with the terms of the Global Fund's Standard Terms and Conditions (STC) of the Program Grant Agreement. Such compliance issues may have links to the expenditure of grant funds by recipients, which then raises the issue of the eligibility of these expenses for funding by the Global Fund. Such non-compliance is based on the provisions of the STC.¹⁴ The OIG does not aim to conclude on the appropriateness of seeking refunds from recipients, or other sanctions on the basis of the provisions of the Program Grant Agreement.

Various provisions of the STC provide guidance on whether a program expense is eligible for funding by the Global Fund. It is worth noting that the terms described in this section are to apply to Sub-recipients (SRs) as well as Principal Recipients (PRs).¹⁵

At a very fundamental level, it is the Principal Recipient's responsibility "to ensure that all Grant funds are prudently managed and shall take all necessary action to ensure that Grant funds are used solely for Program purposes and consistent with the terms of this Agreement".¹⁶

In practice, this entails abiding by the activities and budgetary ceilings proposed in the Requests for Disbursement, which in turn must correspond to the Summary Budget(s) attached to Annex A of the Program Grant Agreement. While this is one reason for expenses to be ineligible, expending grant funds in breach of other provisions of the Program Grant Agreement also results in a determination of non-compliance.

Even when the expenses are made in line with approved budgets and work plans, and properly accounted for in the program's books and records, such expenses must be the result of processes and business practices which are fair and transparent. The STC specifically require that the Principal Recipient ensures that: (i) contracts are awarded on a transparent and competitive basis, [...] and (iv) that the Principal Recipient and its representatives and agents do not engage in any corrupt practices as described in Article 21(b) of the STC in relation to such procurement.¹⁷

The STC explicitly forbid engagement in corruption or any other related or illegal acts when managing Grant Funds: "The Principal Recipient shall not, and shall ensure that no Sub-recipient or person affiliated with the Principal Recipient or any Sub-recipient [...] participate(s) in any other practice that is or could be construed as an illegal or corrupt practice in the Host Country."¹⁸

Amongst prohibited practices is the rule that the Principal Recipient shall not and shall ensure that no person affiliated with the Principal Recipient "engage(s) in a scheme or arrangement between two or more bidders, with or without the knowledge of the Principal or Sub-recipient, designed to establish bid prices at artificial, non-competitive levels."¹⁹

The Global Fund's Code of Conduct for Suppliers and Code of Conduct for Recipients further provide for additional principles by which recipients and contractors must abide, as well as remedies in case of breaches of said fundamental principles of equity, integrity and good management. The Codes also provide useful definitions of prohibited conducts.²⁰

The Codes are integrated into the STC through Article 21(d) under which the Principal Recipient is obligated to ensure that the Global Fund's Code of Conduct for Suppliers is communicated to all bidders and suppliers.²¹ It explicitly states that the Global Fund may refuse to fund any contract with suppliers found not to be in compliance with the Code of Conduct for Suppliers. Similarly, Article 21(e) provides for

¹⁴ The STC are revised from time to time, but the provisions quoted below applied to all PRs at the time of the investigation.

¹⁵ Standard Terms and Conditions (2012.09) at Art. 14(b):

http://www.theglobalfund.org/documents/core/grants/Core_StandardTermsAndConditions_Agreement_en

¹⁶ Id. at Art. 9(a) and Art 18(f)

¹⁷ Id. at Art. 18(a)

¹⁸ Id., at Art. 21 (b)

¹⁹ Id. at Art. 21(b)

²⁰ Available at: http://www.theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en ; http://www.theglobalfund.org/documents/corporate/Corporate_CodeOfConductForRecipients_Policy_en

²¹ Standard Terms and Conditions (2012.09) at Art. 21(d)

communication of the Code of Conduct for Recipients to all Sub-recipients, as well as mandatory application through the Sub-recipient agreements.²²

Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including expenses made by Sub-recipients and contractors.²³

The factual findings made by the OIG following its investigation and summarized through this report can be linked to the prohibited conducts or other matters incompatible with the terms of the Program Grant Agreements.

Reimbursements or Sanctions

The Secretariat of the Global Fund is subsequently tasked with determining what management actions or contractual remedies will be taken in response to those findings.

Such remedies may notably include the recovery of funds compromised by contractual breaches. Article 27 of the STC stipulates that the Global Fund may require the Principal Recipient “to immediately refund the Global Fund any disbursement of the Grant funds in the currency in which it was disbursed [in cases where] there has been a breach by the Principal Recipient of any provision of this (sic) Agreement [...] or the Principal Recipient has made a material misrepresentation with respect to any matter related to this Agreement.”²⁴

According to Article 21(d), “in the event of non-compliance with the Code of Conduct, to be determined by the Global Fund in its sole discretion, the Global Fund reserves the right not to fund the contract between the Principal Recipient and the Supplier or seek the refund of the Grant funds in the event the payment has already been made to the Supplier.”²⁵

Furthermore, the UNIDROIT principles (2010), the principles of law governing the grant agreement, in their article 7.4.1, provide for the right of the Global Fund to seek damages from the Principal Recipient in case non-performance, in addition to any other remedies the Global Fund may be entitled to.

Additional sanctions, including with respect to Suppliers, may be determined pursuant to the Sanction Procedure of the Global Fund, for breaches to the Codes.

In determining what non-compliant expenditures are to be proposed as recoverables, the OIG advises the Secretariat that such amounts typically should be: (i) amounts, for which there is no reasonable assurance about delivery of goods or services (unsupported expenses, fraudulent expenses, or otherwise irregular expenses without assurance of delivery), (ii) amounts which constitute overpricing between the price paid and comparable market price for such goods or services, or (iii) amounts which are ineligible (non-related) to the scope of the grant and its approved work plans and budgets.

²² Id. at Art. 21(e)

²³ Id. at Art. 14

²⁴ Id. at Art. 27(b) and (d)

²⁵ Id.

VII. Annex B: Exhibits

Exhibit 1: Information on Condom Shipments

Chart A: Summary of Condom Shipments by Date and Outbound Port

Date Shipped	Date Received	Port of Loading	Condom Units
20-Jun-12	30-Aug-12	Qingdao Seaport China	9,828,000
23-Jun-12	30-Aug-12	Tianjin /Xingang Seaport China	5,004,000
10-Aug-12	25-Oct-12	Tianjin /Xingang Seaport China	15,645,600
25-Sep-12	15-Nov-12	Tianjin /Xingang Seaport China	15,746,400
28-Sep-12	10-Jan-13	Tianjin /Xingang Seaport China	21,232,800
1-Oct-12	3-Dec-12	Yantian/Shenzhen Seaport China	5,198,400
20-Oct-12	20-Dec-12	Tianjin /Xingang Seaport China	5,328,000
27-Oct-12	4-Jan-13	Tianjin /Xingang Seaport China	10,713,600
7-Nov-12	12-Feb-13	Qingdao Seaport China	15,580,800
10-Dec-12	13-Mar-13	Yantian/Shenzhen Seaport China	26,092,800
TOTAL RECEIVED			130,370,400
TOTAL CONTRACTED			128,000,160
SURPLUS			2,370,240

Source: Bills of Lading and other shipping records; Receipt records from Central Medical Stores

Legend:

Date Shipped = Date goods were placed on board ship in China port

Date Received = Date goods were received at Central Medical Stores, Accra

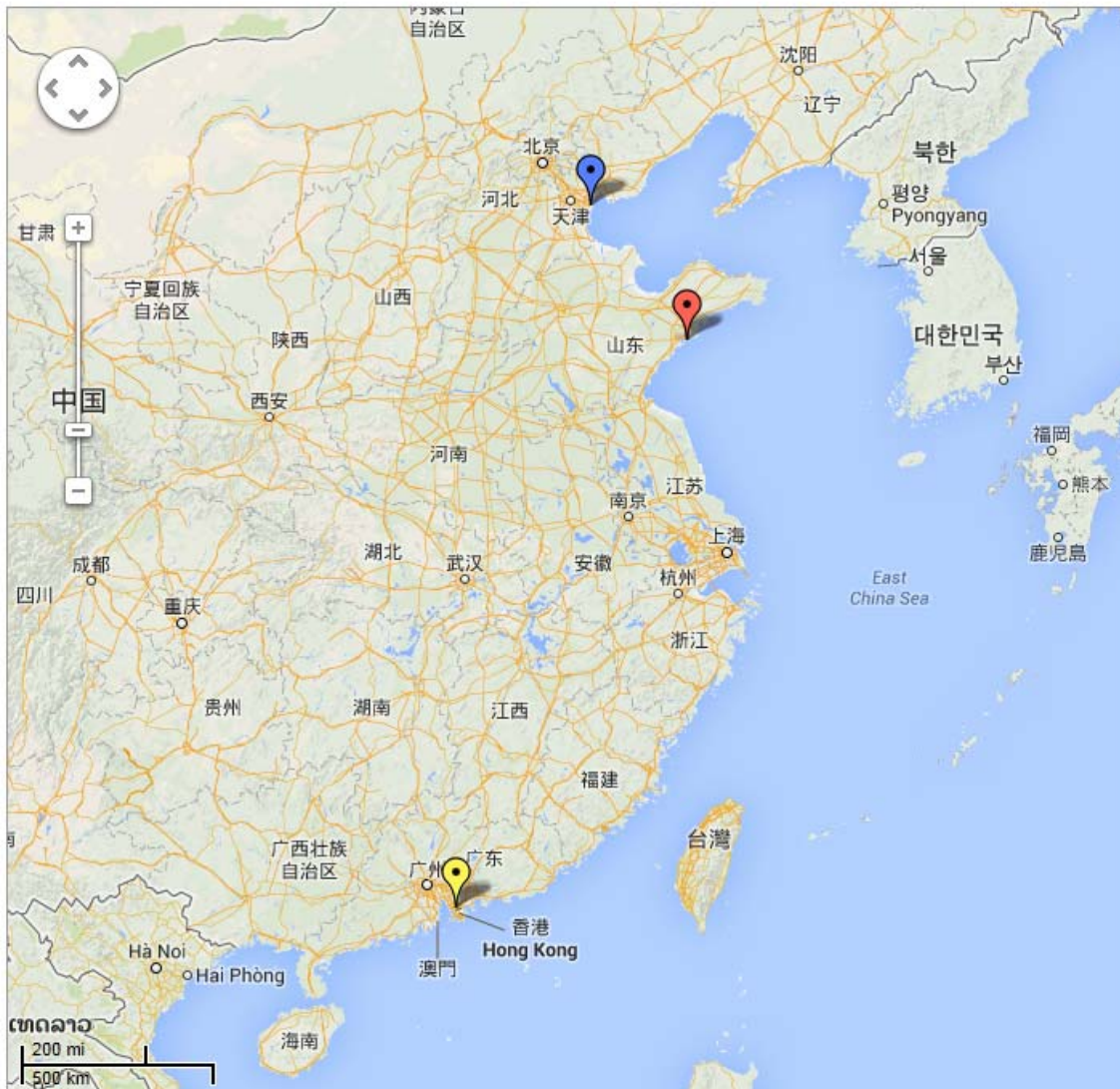
Port of Loading = Port in China at which condoms were shipped (see map at Chart B)

OIG Note: The actual amount of condoms received by Central Medical Stores was 2,370,240 units more than contracted and was due to supplier error. There was no payment made by Ghana Health Services to the supplier for the surplus error.

Chart B: Location of Outbound Shipping Ports of Condom Shipments

The condoms were shipped from the following seaports in China.

-  Xingang/Tianjin
-  Qingdao
-  Shenzhen/Yantian
China



Source: Bills of lading and other shipping records

Chart C: Photos of Shipping Boxes and Labels with Different Fonts



Exhibit 2: Payments for Condoms Made to Global Unilink and Harley's Limited from Global Fund Program Bank Account (in US\$)

The Ghana Health Service paid the following amounts to Global Unilink and Harley's Limited on the dates noted:

Drawing #	Request Date	Paid to Harley's (1)	Paid to Global Unilink (2)
1st	27-Aug-12	\$355,968	\$88,990
2nd	5-Sep-12	\$375,494	\$93,874
3rd	18-Oct-12	\$371,002	\$92,750
4th	15-Nov-12	\$124,762	
5th	15-Nov-12	\$509,760	
6th	20-Nov-12	\$127,872	
7th	20-Nov-12	\$257,126	
8th	26-Nov-12	\$374,112	
4th-8th	24-Dec-12		\$348,408
9th (3)	2-Jan-13	\$575,908	\$143,977
Total		\$3,072,004	\$767,999
Combined Total			\$3,840,003

Source: Ghana Health Service payment records

Note 1: Paid to I&M Bank Limited, Nairobi, Kenya; Harley's received 80% of the total contract value.

Note 2: Paid to Zenith Bank (Ghana) Limited, Accra; Global Unilink received 20% of the total contract value.

Note 3: Five percent (5%), or USD 38,400, of the final payment to Global Unilink was withheld as income tax and paid by GHS directly to the Ghana tax authorities in Cedi, resulting in US\$ 105,577 net paid to Global Unilink.


Exhibit 3: Comparison of Original Pricing Schedule versus Substituted Pricing Schedule in Global Unilink's Bid Proposal

Original Pricing Schedule included in original bid proposal (August 2010) – Country of Origin is India

Price Schedule
GLOBAL UNILINK VENTURES LIMITED
IFT No.: GHS/2010/ICT/B.2.3/47

s. No	Description	Country of Origin	Quantity	Unit Price EXW (Specify Place)	Total Price EXW	Total Price of Inland delivery to final destination	Total CIP site	Incidental Services and Others	Total Tender Price	Remarks
1	2	3	4	5	6=(4x5)	7	8=(6+7)	9	10=(8+9)	11
LOT 1	SILVER FOILED PLAIN MALE CONDOMS	INDIA	1236112 PACKS OF 144 (48 STRIPS OF 3)	US\$ 3.20 PER PACK OF 144 (48 STRIPS OF 3) CIF AIR	US\$ 3,955,558.40		US\$3,955,558.40	NIL	US\$3,955,558.40	
Grand Total									US\$3,955,558.40	

Total Tender Price: THREE MILLION NINE HUNDRED AND FIFTY FIVE THOUSAND FIVE HUNDRED AND FIFTY EIGHT DOLLARS AND FORTY CENTS.

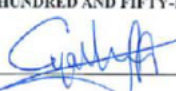
Signature of Tenderer 

Substitute Pricing Schedule inserted into bid proposal post-contract award – Country is Origin is China

Price Schedule
GLOBAL UNILINK VENTURES LIMITED
IFT No.: GHS/2010/ICT/B.2.3/47

S.No.	Description	Country of Origin	Quantity	Unit Price EXW (Specify Place)	Total Price EXW	Total Price of inland delivery to final destination	Total CIP site	Incidental Services and Others	Total Tender Price	Remarks
1	2	3	4	5	6=(4x5)	7	8=(6+7)	9	10=(8+9)	11
LOT 1	SILVER FOILED PLAIN MALE CONDOMS	CHINA	1236112 PACKS OF 144 (48 STRIPS OF 3)	US\$ 3.20 PER PACK OF 144 (48 STRIPS OF 3) CIF AIR	US\$ 3,955,558.40		US\$3,955,558.40	NIL	US\$3,955,558.40	
Grand Total									US\$3,955,558.40	

Total Tender Price: THREE MILLION NINE HUNDRED AND FIFTY-FIVE THOUSAND FIVE HUNDRED AND FIFTY-EIGHT DOLLARS AND FORTY CENTS

Signature of Tenderer 

OIG Note: The bid proposal called for bids on 178 million units, which was subsequently changed to 128 million units as 50 million units was awarded to Global Unilink in a separate contracting process.

VIII. Annex C: Summary of subject responses

The Minister of Health and the Director General of the Ghana Health Service were provided copies of the OIG's statement of findings on its condom investigation and the opportunity to provide comments on the report's content, findings and conclusions, which it did on 18 July 2014. The OIG's statement of findings represented the full record of all relevant facts and findings to be considered in forming this final report. All points made by the respondents were duly considered by the OIG and appropriate revisions were made to its findings as applicable and relevant as part of this final report. A summary of their combined response is provided below.

Condom Tender

Advertisement and Limitation of Competition. The response claimed no deliberate attempt to limit the tender's advertisement or to restrict participation. Although the response stated that the advertisement was not wrong under Ghana's procedures, it admitted that the advertisement was not posted in the International Business Journal, as were previous advertisements. It also admitted that posting the advertisement in a medium of wider circulation than the local press had a potential of eliciting much more responses, but that a bid received from a foreign firm for the supply of the female condoms (not a subject of this report) indicated that the advertisement was not limited to just local companies. Nevertheless, the response states that a directive has been given for international competitive tenders to be advertised in the dgMarket portal going forward.

The response also stated that the shortened response period was not intentional but was due to a technical hitch with the newspaper that caused a delay in its publication and shortened the available days for submission. The response stated that the submission date was duly extended and communicated to prospective buyers and those who had already purchased the bidding documents.

The OIG notes that dgMarket is one of the world's largest portals for tenders and consulting opportunities worldwide.

Independent Review. The response stated that every activity of the procurement process from the preparation of the tender document, through specification, advertising to evaluation was appropriately referred to the LFA or the Global Fund for approval. The response further stated that the LFA had approved the evaluation award to Global Unilink and had provided its "no objection" on the evaluation report.

The OIG notes that a request was made by the Global Fund Secretariat to the Ministry of Health in December 2010 for the Secretariat and LFA (and CCM Chair and Oversight Committee) to be provided copies of all aspects of large procurements going forward. The OIG notes that the date of this request fell after the preparation of the tender documents and the submission of bids, but prior to the bid evaluation. The OIG also notes that the LFA informed the OIG that the first time it had received any documents on the condom tender was 16 May 2011 and consisted of the evaluation report, which was reviewed by its procurement expert. The LFA further informed the OIG that it did not provide a no objection or other communication of same nature on the evaluation report to the Ghana Health Service but provided its comments, if any, to the Secretariat. The LFA further informed OIG that it was not provided a copy of the contracts nor was it informed of the price increase request or approval.

Performance Security. The response admitted that the lack of a performance security by Global Unilink was an omission and due to an assumption by the various parties involved that the matter had been dealt with. The response states that lessons have been learned and the requirement to have a performance security is now rigorously enforced in all tenders.

Disqualification of Bids on Technical Grounds. The response states that the reasons for disqualifying the bids as non-responsive of two of the three bidders for male condoms were not questionable or minor, but were clear and major deviations from the bidding requirements and procurement laws, and thus, fully justified. The response also stated that some items notably missing from Global Unilink's bid as pointed out by the OIG were not required as part of the evaluation criteria, and that it was unfair for the OIG to compare

the bids for the two disqualified bidders to Global Unilink's bid as the demands of the tender "at that stage were different."

Selection of Global Unilink as supplier. The response agreed that the condom procurement had issues of governance and lack of coordination, but took issue with the OIG's conclusion that the procurement was unfair, favored Global Unilink or lacked transparency. The response surmised that such arguments can be confirmed only if found from the on-going criminal investigation.

Price Increase

The response stated that the contract was indeed supposed to be a fixed price. The response stated, however, that circumstances at the time of contract award, such as an increase in the price of latex and the cost of transportation, necessitated an increase in the contract price.

The response stated that the determination of the percentage price increase was not arbitrary, but was done with a lot of consultation with and among the Director General, Programme Manager and the procurement unit who reached a carefully considered consensus. It stated that the documents reviewed by the OIG (the face of Global Unilink's letter showing the Director General's hand-written approval of the price increase) did not reflect all the details of the discussions that had taken place and the resulting justification of their decision. It also stated that the Entity Tender Committee was unable to meet at the time to concur its approval, but gave its retrospective approval at its next meeting.

The response stated that the issue of re-tendering the condom contract was considered, but that was rejected after a careful analysis, which concluded that the cost of a re-tender and potential stock out of condoms would likely exceed the value of the price increase.

The OIG notes that the supplier Global Unilink requested the price increase after it accepted the contract award and that Ghana Health Service was under no contractual obligation to grant one. Moreover, the OIG notes that the respondents provided no documentation supporting its statements as part of its response and the diligence conducted by it in reaching its group consensus. The OIG also notes that the cost of the price increase was US\$ 995,000, as reported herein, and was approved by the Director General in one day. The OIG also notes that apparently the cost of stock outs was not an issue for a re-tender as the first shipment of condoms was not received until August 2012, more than 12 months after the price increase was approved in July 2011, and that a re-tender could have been held during that time period.

Condom Manufacturer and Quality

The response stated that the Ghana Health Service was relying on the quality assurance processes of the Food and Drug Authority to quality check the incoming condoms, as prescribed by law for food and drug imports. The response stated, however, that the clearing agent at the Ghana port managed to clear the consignments through customs without the Food and Drug Authority's quality checks, and that this observed "weakness" has been addressed. It also stated that the procedures for the importation and associated quality checks of pharmaceuticals, medical and non-medical consumables have been made more stringent and that the central medical stores has been directed to withhold distribution of any products without an FDA test report. The response does not deny that the entire chain of systems in the condom procurement failed, but does not attribute the failure to connivance or corruption.

The OIG notes that the condom shipments were shipped and received in ten consignments over an eight-month period, from August 2012 to March 2013, with no notice to the FDA.

Misrepresentation of Facts

The response states that *subsequent* to the award of its contract in June 2011, Global Unilink informed the Ghana Health Service procurement staff of the inability of Manufacturer 1—the manufacturer proposed by Global Unilink in its original bid dated August 2010—to deliver the requisite quantities of condoms within the contract period and that *subsequent* to this a Manufacturer's Authorization from Harley's Limited and Manufacturer 2 was submitted by Global Unilink to the procurement staff. The response states that these events explain the presence of two Manufacturer's Authorizations in the procurement staff's tender files. The

response states that it confirms that Global Unilink provided the different authorizations maintained in the Ghana Health Service's tender files.

The OIG notes that the response does not explain why the procurement staff accepted the second Manufacturer's Authorization as an authentic component of Global Unilink's original bid, when clearly it was not, as admitted to and confirmed by the respondents.