

INVESTIGATION REPORT

Global Fund Grants to Ghana

Ghana Health Services

GF-OIG-14-013 ■ 29 September 2014



Investigation of Global Fund Grants to Ghana

Ghana Health Service

GF-OIG-14-013

Categories - Non-compliance with laws/grant agreements
Collusion - Bidding and Tender irregularities

Non-compliant expenditures - US\$ 8,242,806

Proposed recoveries - US\$ 1,509,017

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1. Background and Scope

The Global Fund has been supporting health programs in Ghana since 2002. Ghana has a severe disease burden for tuberculosis and malaria and a high disease burden for HIV.¹ Currently there are 11 active Global Fund grants: five supporting HIV/AIDS, three supporting tuberculosis and three for malaria. To date, Ghana health programs have received a total of approximately US\$ 500 million.

From 01 November to 09 December 2010, as part of its 2010 work plan, the Office of the Inspector General (OIG) carried out an audit of Global Fund grants to Ghana.² The audit included a review of US\$ 254 million in disbursements across eight grants to the Ghana Ministry of Health³. For these grants, the Ghana Ministry of Health was a 'pass through' Principal Recipient, with all grant activities implemented by the Ghana Health Service, an autonomous executive agency responsible for implementation of national policies under the control of the Ghana Minister for Health through its governing council – the Ghana Health Service Council.⁴

The OIG audit identified approximately US\$ 9.8 million of non-compliant expenditure, including US\$ 9.35 million relating to construction contracts for the period 2005 to 2011.

The Investigation Unit of the OIG was asked to follow-up on those findings. This investigation examined ten projects, of which the following six were found to have construction components, with a cumulative cost of US\$ 8.2 million:

1. Offices for the National AIDS/STI Control Program (NACP office)
2. Regional Medical Stores (RMS) at Sunyani, Brong Ahafo (Brong Ahafo)
3. Comprehensive Care Center (CCC) at Effia Nkwanta District Hospital (Effia)
4. Cold Storage Unit at Korle-Bu for NACP (Cold Store)
5. Offices for the National Malaria Control Program (NMCP office)
6. Offices for the Disease Control Department (DCD office)

¹ Global Fund Eligibility List for 2012 Funding Channels – 13 January 2012

² Office of the Inspector General Audit Report 10-018 available at

<http://www.theglobalfund.org/en/oig/reports/>

³ GHN-102-G01-H-0 (Round 1 HIV), GHN-102-G02-T (Round 1 TB), GHN-202-G03-M (Round 2 malaria), GHN-405-G04-M (Round 4 malaria), GHN-506-G05-T (Round 5 TB), GHN-506-G06-H (Round 5 HIV), GHN-809-G07-M (Round 8 malaria), GHN-809-G11-H (Round 8 HIV)

⁴ <http://www.ghanahealthservice.org/aboutus.php?inf=Background>

2. Executive Summary

This investigation establishes that, between 2005 and 2011, the Ghana Ministry of Health's implementing agency, Ghana Health Service, spent US\$ 8.2 million in budget savings on the construction of six buildings without approval from the Global Fund. This included the rebuilding of NACP program manager's residential bungalow owned by the Ministry of Health, at a cost of US\$ 159,000.⁵ The investigation also found bidding irregularities in tenders managed by the Estate Management Department of Ghana Health Service. The Principal Recipient and the Local Fund Agent asserted that the then Fund Portfolio Manager gave verbal approval for budget savings to fund the construction projects but the investigation found no evidence to corroborate this assertion. The former Fund Portfolio Manager, who left the organization in 2011, stated that he did not recall giving verbal approval for the new construction.

The investigation also identified obvious omissions from the Progress Update/Disbursement Requests (PU/DR), tender documents and payments. Neither the Principal Recipient, nor the Local Fund Agent, reflected the existence or extent of construction projects in any of the PU/DRs. In other documents, the Principal Recipient identified construction projects as either "refurbishment", "redecorating" or "remodeling". There were several opportunities for these construction projects to be included as line items in grant budgets, for example, between Phase 1 and 2 of the Round 5 HIV grant. The Local Fund Agent conceded that they should have reported on any budget variances in the PU/DRs, which should have resulted in a documented justification from the Principal Recipient.

The investigation determined that of the US\$ 8.2 million spent on construction, US\$ 6.7 million was directly related to structural costs, and the ultimate use of these structures can be directly linked back to the goals of the funded programs. The remaining US\$ 1.5 million was spent on other costs including landscaping, car parking, furniture and computers, which, in addition to being unapproved and unbudgeted, were not competitively tendered.

The Global Fund recognizes the importance of supporting health systems,⁶ particularly in countries that have a high disease burden such as Ghana. Although the total US\$8.2 million spent on construction was not spent in compliance with the relevant grant agreements, was unapproved, unbudgeted and expended through non-competitive procurement, the investigators concluded that the buildings were program related and important components of the health system with regard to service delivery and governance. However, the investigation identified US\$ 1.5 million spent on other costs, i.e. the construction of a residential bungalow, furniture, parking, landscaping and digital satellite television, which had no such link. The Secretariat has agreed to seek the recovery of this amount from the Principal Recipients.

⁵ The expense was included in the invoices submitted for the construction of the regional medical stores at Brong Ahafo and was charged under line item H052-04-02-40, "Refurbish 25 ART centers" under the Round 5 HIV grant.

⁶ <http://www.theglobalfund.org/en/about/diseases/hss/>

There was a high turnover of staff in the Secretariat team overseeing the grants to Ghana during the period 2005-2011, who managed not only Ghana, but also several other country portfolios. The Local Fund Agent also maintained that up until 2008, procedures for the Local Fund Agent were ‘informal and patchy’.

Actions taken by the Global Fund Secretariat

The “High-Level Independent Review Panel on Fiduciary Controls and Oversight Mechanisms of the Global Fund to Fight, Aids, Tuberculosis and Malaria” (The Panel), which evaluated the Global Fund in 2011, also recognized these oversight issues and made recommendations to correct them. Consequently, since 2011, the Global Fund has made important changes to rectify the underlying issues, which led to the situation observed in this investigation. These changes include more guidance for the Local Fund Agent, the requirement that the Fund Portfolio Manager for High Risk /High Impact countries only manage one portfolio, improved record keeping and clearer guidance on budgeting and financial reporting. These safeguards will lower the risk of a “padded” budget as well as unreported expenditure of grant funds, and ultimately ensure that Principal Recipients use grant funds as defined in the work plans and budgets.

Agreed actions

For immediate action, the Secretariat will seek to recover funds from the Ministry of Health of the Republic of Ghana. The recovery amount proposed to the Recoveries Committee will be US\$ 1,509,017.

Although the Global Fund has provided guidance on budgeting for infrastructure projects that should prevent the diversion of funds, the nature of renovation and construction work is inherently risky. The architecture of Global Fund funding and the associated oversight are not well suited to these types of activities. Therefore, across the Global Fund Countries’ Portfolio, renovation projects will require additional scrutiny and safeguards to prevent collusive practices and the diversion of funds. This includes demonstrable commitment at the highest level of the Principal Recipient to prevent collusive practices; due diligence of the organizations tendering for renovation/construction projects; and demonstrable procedures in place to monitor and review the implementation of contract awards and the performance of the work with cost, quality and time controls.

3. Findings and Agreed Actions

Introduction

The Ministry of Health of the Government of Ghana is the Principal Recipient and Ghana Health Service is its implementing structure for Global Fund Grants.

Ghana Health Service is a public service body 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. 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 services with special emphasis on primary health care at regional, district and sub-district levels in accordance with approved national policies.

The Public Health Directorate, a division within Ghana Health Service, oversees several national disease control programs, three of which received funds from the Global Fund during the period covered by this investigation. These were the National AIDS/STI Control Program (NACP), National Malaria Control Program (NMCP) and the National Tuberculosis Control Program (NTCP).

The tendering process and oversight for all the above projects was managed by the Ministry of Health through the Estate Management Department, a unit of Ghana Health Services Health Administration Support Services Department.

Local Fund Agents are critical partners of the Global Fund. Their principal roles are to provide informed and independent professional advice about the capacity of Principal Recipients, to manage the implementation of activities funded under grants, to make recommendations concerning periodic disbursement of grant funds, to review grant performance when a grant is being considered for renewal, and to provide the Secretariat on an ongoing basis with relevant information on issues or risks which might affect grant performance.

During a grant period, the Global Fund disburses funds to the Principal Recipient based on performance targets achieved and financial needs for the following period. The Local Fund Agent's role is to review progress for the preceding period and assist the Global Fund in making a decision on disbursement. The Principal Recipient provides the details of programmatic progress in a single document, a Progress Update/Disbursement Request (PU/DR), on a periodic basis. The Local Fund Agent is required to review and validate the PU/DR informing the Global Fund on a grant's programmatic and financial performance.

Throughout the period under investigation (2005-2011) two Fund Portfolio Managers, who are no longer with the Global Fund, and several acting Fund Portfolio Managers, managed the Ghana portfolio. The program managers for NACP, NMCP and NTCP stated that they had obtained verbal approval from the Fund Portfolio Managers to reallocate savings that had been budgeted for program activities, to construction projects. One of the former Ghana Fund Portfolio Managers, who left the Global Fund in 2011, told OIG

investigators that he did not recall giving verbal approval to reallocate any of the funds. The second Fund Portfolio Manager, who is also no longer with the Global Fund, was reluctant to answer questions regarding the period during which she looked after the Ghana portfolio stating she was “not sure she remembered anything as it was so long ago”.

The Global Fund since 2011

In 2011, the Board of the Global Fund appointed a High-Level Independent Panel to assess the organization’s fiduciary controls and make recommendations to improve appropriate assurance to all its stakeholders. The Panel found that each Fund Portfolio Manager was responsible on average for 2.6 countries. Taking into account the Fund Portfolio Managers, Project Officers and Project Assistants, an average of 1.31 staff served each recipient country. The Panel found this coverage to be inadequate. The members of the Panel also found that Country Team members’ Key Performance Indicators were linked to fund disbursement and staff were penalized for making decisions that slowed down disbursements.⁷

Based on the Panel’s recommendations and the advent of the Global Fund’s “New Funding Model”, the Global Fund produced in depth guidance for the Country Teams. The Country Team, led by the Fund Portfolio Manager, now includes a finance officer, a legal officer, a public health/monitoring and evaluation officer and a procurement and supply chain manager. The Country Team determines the required Local Fund Agent support services, based on the Country Team’s capacity and the grant risks, and evaluates their performance and key deliverables. The Fund Portfolio Managers for High Impact/High Risk countries oversees only one portfolio and Key Performance Indicators are now geared more towards quality and impact outcomes rather than fund disbursement. The Global Fund management expects that a representative from the Country Team will be present in country approximately 40% of the time in high impact countries, with the Fund Portfolio Manager in country between 15-30% of the time depending on the severity of issues.

The Panel found that the role of the Local Fund Agents was unclear and, in many countries, the work was not sufficiently tailored to specific risks associated with grants.⁸ In 2010, the Secretariat and the OIG provided more explicit guidance on risk and initiated a number of actions to strengthen the Local Fund Agents to ensure that they adopt a more rigorous and systematic approach to identifying and stopping fraud. In 2011, The Global Fund revised the Local Fund Agent Manual to provide more explicit guidance on risk and revising the expectations for the Local Fund Agent’s review of PU/DRs. Local Fund Agents are now expected to pay greater attention to risk and the financial management performance of Principal Recipients.⁹

⁷ Information related to the High Level Review Independent Panel can be found at <http://www.theglobalfund.org/en/highlevelpanel/report/>

⁸ Ibid.

⁹ Information related to Guidelines and Tools now available to Local Fund Agents can be found at <http://www.theglobalfund.org/en/lfa/documents/>

In 2011, the Global Fund published “Guidelines for Budgeting in Global Fund Grants”, which was updated in 2012 and provided guidance to Local Fund Agents, Country coordinating Mechanisms and Principal Recipients. Module ten of the guidelines provides for budgeting of infrastructure and states that the Global Fund may finance small-scale construction projects, but not large-scale infrastructure projects such as an entire hospital. In general, if selected Principal Recipients have adequate office space, the building or leasing of office space can only be approved in exceptional circumstances. If renovation is included in the budget, a detailed cost estimate certified by a qualified professional is required.¹⁰

Because of the many changes that the Global Fund has implemented since 2011 it is unlikely that, today, the Ghana Health Service could use grant funds for construction projects beyond the refurbishment projects in the budget without explicit approval from the Country Team.

3.1 Unapproved expenditures from the NACP for the construction of offices

In 2006, the program manager for NACP, with the endorsement of the director general of Ghana Health Service, gave approval for the Estate Management Department to tender for the construction of an office building for NACP. Payment for construction of the building began in July 2006 and continued in four phases until September 2008. The offices, including furniture and external works, cost approximately US\$ 2 million, which was paid for with grant funds. OIG investigators reviewed all detailed budgets and PU/DRs for the period and found no mention that the Global Fund had approved the construction of this building. Therefore, the OIG concluded that this expenditure was not compliant with the grant agreement as it was outside of the scope of the grant and that the costs were legally recoverable from the Principal Recipient.

OIG investigators reviewed all available project and tendering documents for the construction of this office and determined that the tender process was not competitive (see Finding 3.7). They also found that there was no tender for the furniture and computers, but found the Estate Management Department had tasked the building contractor to purchase and supervise the installation of furniture and computers.

In 2014, OIG investigators visited the NACP offices and observed that employees of the NACP worked from the building and were overseeing programs funded by the Global Fund. Therefore, the OIG determined that all expenditures related to the construction of the building including: the physical structure, electrical works, transformer, plumbing works, and the security of the building such as burglar proofing and fence were ultimately contributing to Ghana’s health system. The Secretariat of the Global Fund then determined that they would retroactively allow the payment of these expenditures from grant funds; expenditures relating to the furniture, digital satellite television, parking and landscaping would, however, be disallowed. The Secretariat allowed costs of

¹⁰ Ibid

approximately US\$ 1.6 million and maintained that a total of approximately US\$ 300,000 was out of scope and procured inappropriately.¹¹

In their response to these findings, the Ministry of Health/Ghana Health Service claimed that the Fund Portfolio Manager had given verbal approval for the reallocation of funds and: “Forecasts could be done, for the ensuing quarter/semester, shifting funds from activities, where funds are no longer needed, to activities where more funds required”. They stated that they had made forecasts and included them in the PU/DRs which went to the Local Fund Agent and Global Fund.¹² The Local Fund Agent supported Ghana Health Service stating that the Global Fund was aware of these projects, but acknowledged that there was an error in not reporting the budget variance in the PU/DRs.¹³

Agreed Action 1: The recoveries committee will assess the amount to be sought for recovery from the Ministry of Health/Ghana Health Service based on the amount of expenditures identified by the investigation as non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program Grant Agreements in relation to the construction of NACP offices, and notably the proposed recoverable expenditures of US\$ 300,509.

3.2 Unapproved expenditures from the NACP for the construction of Regional Medical Store, Brong Ahafo

In 2009, the program manager for NACP, with the endorsement of the director general of Ghana Health Service, gave approval for the Estate Management Department to tender for the construction of a new regional medical store for the Brong Ahafo district. Payment for the construction on the building began in July 2009 and continued until January 2011. The store, which also included a cold store facility and administrative offices, on a large compound, cost approximately US\$ 2.1 million, which was paid for with grant funds. OIG investigators reviewed all detailed budgets and PU/DRs for the period and found no mention that the Global Fund had approved the construction of this store. Therefore, the OIG concluded that this expenditure was not compliant with the grant agreement as it was outside of the scope of the grant and that the costs were legally recoverable from the Principal Recipient.

OIG investigators reviewed all available project and tendering documents for the construction of the store and determined that the tender process was not competitive (see Finding 3.7). They also found that there was no tender for the furniture, but found the Estate Management Department had tasked the building contractor to purchase and supervise the installation of furniture.

In 2014, OIG investigators visited the regional medical store and observed that Ghana Health Service managed the store and that stored items were health related. At the time of the visit, there were no Global Fund-financed products stored. The OIG determined that

¹¹ Annex B, Table 1 NACP Office – Amounts of non-compliant expenditures

¹² Annex D, Summary of MOH/GHS responses

¹³ Annex E, Summary of LFA responses

all expenditures related to the construction of the store, including: the physical structure, electrical works, transformer, plumbing works, and the security of the store such as burglar proofing and compound wall were ultimately related to strengthening Ghana's health capacity. The Secretariat of the Global Fund then determined that they would retroactively allow the payment of these expenditures from grant funds. Expenditures related to the remodeling of the program manager's residence, the furniture, parking, open shed and landscaping would, however, be disallowed. The Secretariat allowed costs of approximately US\$ 1.6 million and maintained that a total of approximately US\$ 500,000 was out of scope and procured inappropriately.¹⁴

In their response to these findings, the Ministry of Health/Ghana Health Service claimed that the Fund Portfolio Manager had given verbal approval for the reallocation of funds and: "Forecasts could be done, for the ensuing quarter/semester, shifting funds from activities, where funds are no longer needed, to activities where more funds required". They stated that they had made forecasts and included them in the PU/DRs which went to the Local Fund Agent and Global Fund. They also stated that the regional medical store was budgeted for in Round 8 HIV, which was signed in November 2011.¹⁵ The Local Fund Agent supported the Ghana Health Service stating that the Global Fund was aware of these projects, but acknowledged that there was an error in not reporting the budget variance in the PU/DRs.¹⁶

Agreed Action 2: The recoveries committee will assess the amount to be sought for recovery from the Ministry of Health/Ghana Health Service based on the amount of expenditures identified by the investigation as non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program Grant Agreements in relation to the construction of the regional medical store, Brong Ahafo, and notably the proposed recoverable expenditures of US\$ 488,452.

3.3 Unapproved expenditures from the NACP for the construction of Effia Nkwanta Comprehensive Care Center

In 2009, the program manager for NACP, with the endorsement of the director general of Ghana Health Service, gave approval for the Estate Management Department to tender for the construction of a comprehensive care center at Effia Nkwanta district hospital. Payment for construction on the building began in August 2009 and continued until December 2010. The center, which required extensive additional costs from the original tendered because of a site change cost approximately US\$ 1.4 million, which was paid for with grant funds. OIG investigators reviewed all detailed budgets and PU/DRs for the period and found no mention that the Global Fund had approved the construction of this comprehensive care center. Therefore, the OIG concluded that this expenditure was not compliant with the grant agreement as it was outside of the scope of the grant and that the costs were legally recoverable from the Principal Recipient. OIG investigators

¹⁴ Annex B, Table 2 Brong Ahafo – Amounts of non-compliant expenditures

¹⁵ Annex D, Summary of MOH/GHS responses

¹⁶ Annex E, Summary of LFA responses

reviewed all available project and tendering documents for the construction of the comprehensive care center and determined that the tender process was not competitive (see Finding 3.9).

In 2014, OIG investigators visited Effia Nkwanta hospital and the comprehensive care center and observed that it was a functioning clinic and part of the Ghana Health Service care system. At the time of the visit, the clinic was not in session, but the onsite nurses stated, that on clinic days, several hundred people came for HIV testing. Therefore, the OIG determined that all expenditures related to the construction of the center, which included: the physical structure, electrical works, plumbing works, and the security of the center such as burglar proofing ultimately contributed to Ghana's health capacity. The Secretariat of the Global Fund then determined that they would retroactively allow the payment of these expenditures from grant funds. Expenditures related to the drive way and parking would, however, be disallowed. The Secretariat allowed costs of approximately US\$ 1 million and maintained that a total of approximately US\$ 400,000 was out of scope and procured inappropriately.¹⁷

In their response to these findings, the Ministry of Health/Ghana Health Service claimed that the Fund Portfolio Manager had given verbal approval for the reallocation of funds and: "Forecasts could be done, for the ensuing quarter/semester, shifting funds from activities, where funds are no longer needed, to activities where more funds required". They state that they had made forecasts and included them in the PU/DRs which went to the Local Fund Agent and Global Fund.¹⁸ The Local Fund Agent supported Ghana Health Service stating that the Global Fund was aware of these projects, but acknowledged that there was an error in not reporting the budget variance in the PU/DRs.¹⁹

Agreed Action 3: The recoveries committee will assess the amount to be sought for recovery from the Ministry of Health/Ghana Health Service based on the amount of expenditures identified by the investigation as non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program Grant Agreements in relation to the construction of Comprehensive Care Center, Effia Nkwanta, and notably the proposed recoverable expenditures of US\$ 455,560.

3.4 Unapproved expenditures from the NACP for the construction of the cold store at Korle-Bu

In 2009, the program manager for NACP, with the endorsement of the director general of Ghana Health Service, gave approval for the Estate Management Department to tender for the construction of a cold store at the location of the new NACP offices in Korle-Bu. Payments for the construction on the facility began in August 2009 and continued until August 2010. The center, which in the original design drawings also included a gym, cost approximately US\$ 700,000, which was paid for with grant funds. OIG investigators reviewed all detailed budgets and PU/DRs for the period and found no mention that the Global Fund had approved the construction of this comprehensive care center. Therefore,

¹⁷ Annex B, Table 3 Effia Nkwanta – Amounts of non-compliant expenditures

¹⁸ Annex D, Summary of MOH/GHS responses

¹⁹ Annex E, Summary of LFA responses

the OIG concluded that this expenditure was not compliant with the grant agreement as it was outside of the scope of the grant and that the costs were legally recoverable from the Principal Recipient.

OIG investigators reviewed all available project and tendering documents for the construction of the cold store and determined that the tender process was not competitive (see Finding 3.9).

In 2014, OIG investigators visited the NACP offices and the cold store. They observed that it was used as a storage facility, including the area that had been designed as the gym, and items purchased with grant funds were in storage. The OIG determined that all expenditures related to the construction of the cold store, which included: the physical structure, electrical works, plumbing works, and the security were ultimately contributing to strengthening health capacity. The Secretariat of the Global Fund then determined that they would retroactively allow the payment of these expenditures from grant funds. Expenditures related to the parking, landscaping and the rubber tiles, originally meant for the gym but never installed, would, however, be disallowed. They allowed costs of approximately US\$ 700,000 and maintained that a total of approximately US\$ 16,000 was out of scope and procured inappropriately.²⁰

In their response to these findings, the Ministry of Health/Ghana Health Service claimed that the Fund Portfolio Manager had given verbal approval for the reallocation of funds and: “Forecasts could be done, for the ensuing quarter/semester, shifting funds from activities, where funds are no longer needed, to activities where more funds required”. They state that they had made forecasts and included them in the PU/DRs which went to the Local Fund Agent and Global Fund.²¹ The Local Fund Agent supported Ghana Health Service stating that the Global Fund was aware of these projects, but acknowledged that there was an error in not reporting the budget variance in the PU/DRs.²²

Agreed Action 4: The recoveries committee will assess the amount to be sought for recovery from the Ministry of Health/Ghana Health Service based on the amount of expenditures identified by the investigation as non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program grant Agreements in relation to the construction of a cold store facility at Korle-Bu, and notably the proposed recoverable expenditures of US\$ 16,086.

3.5 Unapproved expenditures from the NMCP for construction of offices

In 2005, the program manager for NMCP, with the endorsement of the director general of Ghana Health Service, gave approval for the Estate Management Department to tender for the construction of an office building for NMCP. Payment for the construction on the building began in June 2005 and continued in phases until February 2011. The offices, including furniture, computers and external works, cost approximately US\$ 1.2 million,

²⁰ Annex B, Table 4 Cold Store – Amounts of non-compliant expenditures

²¹ Annex D, Summary of MOH/GHS responses

²² Annex E, Summary of LFA responses

which was paid for with grant funds. OIG investigators reviewed all detailed budgets and PU/DRs for the period and found no mention that the Global Fund had approved the construction of the building. Therefore, the OIG concluded that this expenditure was not compliant with the grant agreement as it was outside of the scope of the grant and that the costs were legally recoverable from the Principal Recipient. OIG investigators reviewed all available project documents for the construction of the office and determined that there was no tendering for this project and Estate Management Department had selected the contractor based on prior work he had completed for Ghana Health Service. They also found that there was no tender for the furniture and computers, but that the Estate Management Department had tasked the building contractor to purchase and supervise the installation of furniture and computers.

In 2014, OIG investigators visited the NMCP offices and observed that employees of the NMCP worked from the building and were overseeing programs funded by the Global Fund. Therefore, the OIG determined that all expenditures related to the construction of the building, which included: the physical structure, electrical works, transformer, plumbing works, and the security of the building such as burglar proofing and fence were ultimately related to strengthening the health capacity. The Secretariat of the Global Fund then determined that they would retroactively allow the payment of these expenditures from grant funds; expenditures related to the furniture, computers, parking and landscaping would, however, be disallowed. They allowed costs of approximately US\$ 1 million and maintained that a total of approximately US\$ 200,000 was out of scope and procured inappropriately.²³

Both the Ministry of Health/Ghana Health Service and the Local Fund Agent disagreed with this OIG finding, stating that the Global Fund was aware of the construction project and had given verbal approval to pay for the office and store from savings found in other budget line items. Although the Ministry of Health/Ghana Health Service provided emails to support that approval had been given by the Global Fund, the discussion contained within the correspondence revolved around “renting and renovation”. The investigators found no communications to indicate that the Global Fund had approved anything but rental space or refurbishment of an existing building and this was reflected in the amount budgeted for this activity. The Local Fund Agent also stated: “However, the Principal Recipient proposed to the Global Fund Secretariat, through the Fund Portfolio Manager, for the amount to be used in renovating a building...”.^{24, 25}

Agreed Action 5: The recoveries committee will assess the amount to be sought for recovery from the Ministry of Health/Ghana Health Service based on the amount of expenditures identified by the investigation as non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program Grant Agreements in relation to the construction of NMCP offices, and notably the proposed recoverable expenditures of US\$ 248,410.

²³ Annex B, Table 5 NMCP Office – Amounts of non-compliant expenditures

²⁴ Annex D, Summary of MOH/GHS responses

²⁵ Annex E, Summary of LFA responses

3.6 Unapproved expenditures from the NTCP used for the construction of the Disease Control Department offices

In 2007, the director general of Ghana Health Service, with the endorsement of the director Public Health, gave approval for the Estate Management Department to tender for the construction of an office building for Disease Control Department. Payment for the construction on the building began in August 2007 and the building remains unfinished to date. The amount of grant funds spent so far is approximately US\$ 800,000. OIG investigators reviewed all detailed budgets and PU/DRs for the period and found no mention that the Global Fund had approved the construction of this building. Therefore, the OIG concluded that this expenditure was not compliant with the grant agreement as it was outside of the scope of the grant and that the costs were legally recoverable from the Principal Recipient.

In 2014, OIG investigators visited the Disease Control Department offices and found that the NTCP was located on one floor in the building. The remainder of the building remains unoccupied and unfinished. Therefore, the OIG determined that all expenditures related to the construction of the building, which included: the physical structure, electrical works and plumbing works, were ultimately contributing to strengthening health capacity. The Secretariat of the Global Fund then determined that they would retroactively allow the payment of these expenditures from grant funds. As a result, they allowed the total of approximately US\$ 800,000.²⁶

The Ministry of Health/Ghana Health Service disagreed that the expenditures were unapproved, stating that in fact they had not needed to seek approval, as there had been no change to their summary budget²⁷ i.e. budget savings were channeled to the construction project. The Local Fund Agent also stated that construction of the Disease Control Department office had been discussed with the Global Fund Portfolio Manager, who, allegedly, had agreed that savings could be used for the construction of the office building²⁸. This individual is no longer working for the Global Fund and the OIG could not corroborate this account. The OIG maintains that the Local Fund Agent should have reviewed more closely the budget and reported budget variances to the Global Fund via the PU/DR. The budget was excessive for the planned activities i.e. Ghana Health Service exceeded their targets of renovating directly observed treatment short courses centers (DOTS) by 56% and still had money in reserve, which funded the construction of the Disease Control Department offices. The Local Fund Agent acknowledged that there was scope for improvement in their reporting.

3.7 Bidding irregularities, for tenders managed by the Estate Management Department of Ghana Health Service

The OIG's investigation found that the contracts for all ten projects had been awarded to the same individual through two different companies, Rich Bebe Agencies Limited

²⁶ Annex B, Table 6 DCU Office – Amounts of non-compliant expenditures

²⁷ Annex D, Summary of MOH/GHS responses

²⁸ Annex E, Summary of LFA responses

(RBAL) and Osfield Enterprises Limited (Osfield), through the manipulation of the bidding processes in violation of host country laws and Global Fund grant Standard Terms and Conditions.

Of the ten projects, four were single sourced, based on prior work history, resulting in RBAL being awarded the contracts for the NMCP office and Dodowa hospital and Osfield being awarded the contracts for Tema and Pentang hospitals and Tema Fevers Unit. Five of the projects went through selective tendering, during which bidders were shortlisted. For one project, the NACP office, documents indicate the project was tendered, but no documents were found that enabled the OIG to evaluate the tendering process.

The documentary evidence shows that employees of the Estate Management Department were aware that RBAL and Osfield had the same beneficial owner. The OIG investigation found numerous documents sent from RBAL and Osfield that bore the same signature as the director for both companies, countersigned to indicate they had been reviewed by employees of the Estate Management Department of Ghana Health Services. Estate Management Department employees made up the tender evaluation panel on the projects that were tendered and reviewed documents submitted by both RBAL and Osfield, some of which showed that they have the same ownership.

None of the selective tendering processes conducted were competitive. In the case of the tender for “External Works” for the NACP office there were three bidders, however, two of the bidders were disqualified for non-submission of the tender security, leaving Osfield as the remaining candidate. In addition, documentary evidence indicates that the representatives of the two other bidders are connected to RBAL, and therefore Osfield.

The Disease Control Department office was another of the projects that went through selective tendering. There were five bidders for the project, one of which was RBAL. Two bidders were disqualified for non-submission of the tender security and both submitted documents showing that they were connected to RBAL. A third bidder’s submission was signed by an individual whose name and signature also appeared as a witness on the performance bond included in RBAL’s bid. The OIG’s investigation found that there were only two independent bidders for this project and the tender process was compromised because the other three bidders had a connection to RBAL.

In June 2009, three projects were put out for tender at the same time: Brong Ahafo, Cold Store and Effia. RBAL and Osfield were shortlisted and bid on all three of these projects. The Brong Ahafo and the cold store tenders had two additional bidders and the Effia tender had three additional bidders. Both of the additional bidders for Brong Ahafo were found to have ties to RBAL with one of the bidders submitting a company profile at a later date that included the following projects: “Refurbishment of comprehensive care center at Effia Nkwanta Hospital”, “Construction of VCT Center at Tema General Hospital”, and “Construction of Fevers Unit at Tema General Hospital”. RBAL constructed the comprehensive care center at Effia Nkwanta and Osfield constructed the other two projects. In the cold store and Effia tenders, the additional bidders were found to have ties to either Osfield or RBAL.

In their response to the investigation findings regarding the anti-competitive bidding practices, Ghana Health Service asserted:

“The Ghana Health Service has noted with concern the problems associated with the procurement process used by Estate Management Department in handling issues related to the award of Contracts to both RBAL and Osfield with particular reference to the association of persons behind the two firms. It appears the Estate Management Department found ways of giving a good and reliable contractor a critical assignment to be delivered within short notice.....” and then further: “It is admissible on hindsight that the procurement was problematic but the works were properly and well executed on time and within budget.”

Ghana Health Service and Estate Management Department also circumvented the requirements of Ghana’s *Public Procurement Act 2003* (the Act) through the manipulation of the initial contract price of the projects and by awarding contracts without conducting a tendering process. The Act established a Public Procurement Board to oversee the procurement of goods and services for government ministries, departments and agencies. Under Part IV of the Act, “Methods of Procurement”, government ministries are permitted to undertake restricted tendering, but as per Section 39(1) (b) the government department is required to select: *“in a non-discriminatory manner, a number of suppliers or contractors to ensure effective competition”*.²⁹

The Act also allows for single-source procurement or restricted tendering with the approval of the Board: *“where there is urgent need for the goods, works or services...” or: “if goods, works or services are available only from a limited number of suppliers or contractors...”* There is no documentation available to show that Board approval was sought in the award of the contracts for either the NMCP office, Dodowa, Pentang or Tema hospitals; none of which were awarded through a competitive tendering process. In response to this finding, Ghana Health Service stated that the VCT centers at Tema, Dodowa and Pantang were treated as extensions of the contracts on the NACP and NMCP buildings and “permission was granted through the GHS Entity Tender Committee for the said procurement”.

Under Part IX “Miscellaneous Provisions”, Part 87 (1) “Modifications” the Act states: *“Except in cases of extreme urgency, where there will be an aggregate increase in the original amount of the contract by more than 10 percent of the original price, a procurement entity shall inform the appropriate Tender Review Boards in the case of a contract subject to review by the Tender Review Board of any proposed extension, modification or variation order with reasons”*.

On 29 April 2009, the former deputy director general of Ghana Health Service sent a letter to the Public Procurement Authority, requesting approval to use selective/restrictive tendering procedures for the regional medical store Brong Ahafo, cold store and Effia construction projects. In the letter, the estimated costs of the projects were significantly understated compared with the estimates produced by contractors and consultants. The final costs of the three projects were well in excess of the estimates given in the letter to the Public Procurement Authority. Brong Ahafo’s cost increase was

²⁹ Ghana’s Public Procurement Act can be found at <http://www.ppghana.org/documents/manuals.asp>

approximately 469% over the initial figure; the cold store project's percent cost increase was approximately 185% over the initial figure; and Effia was approximately 1,297%.

The OIG found no evidence to show that the Estate Management Department reported the cost increases to the Public Procurement Authority. Ghana Health Service's response to the OIG's finding that it had significantly understated known project costs was that there were "transposition errors" and they stated that:

"The Public Procurement Authority (PPA), mindful of contract price changes enjoins all procurement entities to report on final Contract award to the Authority, which are then published. This exercise has been duly done on the 3 projects in question and we have so far received no criticism from the PPA since the projects were duly executed."

However, none of the letters to the Public Procurement Authority giving the final award costs were included with the response.

Agreed Action 6: Across the Global Fund Countries' Portfolio, renovation projects require additional scrutiny and safeguards to prevent collusive practices or disguised as construction activities. This will include demonstrable commitment at the highest level of the Principal Recipients to prevent collusive practices; due diligence of the organizations tendering for renovation/construction projects; and demonstrable procedures in place to monitor and review the implementation of contract awards.

4. Conclusion

This investigation found a preponderance of evidence demonstrating amounts of unapproved expenditures, and irregularities in the awarding of construction contracts by Ghana Health Service. Given that grant management policies were unclear at the time of the actions investigated and the works are used for program purposes, the OIG supports the Secretariat's determination to retroactively approve some expenditures and proposes a recoverable amount of US\$ 1,509,017.

Grant funds were reallocated by Ghana Health Service for unapproved construction projects. The contracts were either single sourced or underwent a tendering process in which the bidding companies were found to be linked. Ghana Health Service employees were aware that bidding was not competitive and that the contracts were all awarded to one supplier.

Since 2011, the Global Fund has made significant changes to how Country Teams are aligned and has provided additional training and guidance to Local Fund Agents to improve the oversight of country grant portfolios.

Summary – Amounts of non-compliant expenditures

Amount reviewed: US\$ **8,242,806**

| Building | Amounts of non-compliant expenditures³⁰ Amount US\$ | Proposed recoveries Amount US\$ |
|---|---|--|
| NACP Office | 1,963,363 | 300,509 |
| Regional Medical Store, Brong Ahafo | 2,122,538 | 488,452 |
| Comprehensive Care Center, Effia Nkwanta | 1,425,276 | 455,560 |
| Cold Store, Korle-Bu | 690,227 | 16,086 |
| NMCP Office | 1,225,919 | 248,410 |
| DCU Office | 815,483 | 0 |
| TOTAL | 8,242,806 | 1,509,017 |

³⁰ In this instance, the expenditures are non-compliant because they were both out of the scope of the program and were expended through irregular procurement activities.

5. Table of Agreed Actions

| No. | Category | Action | Due date | Owner |
|-----|----------------|---|---------------------|-----------------------------|
| 1 | Non-Compliance | <p><i>The recoveries committee will assess the amount to be sought for recovery from the Ministry of Health/Ghana Health Service based on the amount of expenditures identified by the investigation as non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program Grant Agreements in relation to the construction of NACP offices, and notably the proposed recoverable expenditures of The recovery of US\$ 300,509. will be sought from the Ministry of Health/Ghana Health Service in relation to unapproved expenditures for the construction of NACP offices</i></p> | October 2014 | Recoveries Committee |
| 2 | Non-Compliance | <p><i>The recoveries committee will assess the amount to be sought for recovery from the Ministry of Health/Ghana Health Service based on the amount of expenditures identified by the investigation as non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program grant Agreements in relation to the construction of the regional medical store, Brong Ahafo, and notably the proposed recoverable expenditures of The recovery of US\$ 488,452 will be sought from the Ministry of Health/Ghana Health Service in relation to unapproved expenditures for the construction of regional medical</i></p> | October 2014 | Recoveries Committee |

| | | | | |
|---|----------------|--|---------------------|-----------------------------|
| | | <i>store, Brong Ahafo.</i> | | |
| 3 | Non-Compliance | <i>The recoveries committee will assess the amount to be sought for recovery from the Ministry of Health/Ghana Health Service based on the amount of expenditures identified by the investigation as non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program grant Agreements in relation to the construction of Comprehensive Care Center, Effia Nkwanta, and notably the proposed recoverable expenditures of The recovery of US\$ 455,560 will be sought from the Ministry of Health/Ghana Health Service in relation to unapproved expenditures for the construction of Comprehensive Care Center, Effia Nkwanta.</i> | October 2014 | Recoveries Committee |
| 4 | Non-Compliance | <i>The recoveries committee will assess the amount to be sought for recovery from the Ministry of Health/Ghana Health Service based on the amount of expenditures identified by the investigation as non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program grant Agreements in relation to the construction of a cold store facility at Korle-Bu, and notably the proposed recoverable expenditures of The recovery of US\$ 16,086. will be sought from the Ministry of Health/Ghana Health Service in relation to unapproved expenditures for the construction of a cold store facility at Korle-Bu</i> | October 2014 | Recoveries Committee |

| | | | | |
|---|----------------|---|---------------|---------------------------------|
| 5 | Non-Compliance | <p><i>The recoveries committee will assess the amount to be sought for recovery from the Ministry of Health/Ghana Health Service based on the amount of expenditures identified by the investigation as non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program grant Agreements in relation to the construction of NMCP offices, and notably the proposed recoverable expenditures of The recovery of US\$ 248,410 will be sought from the Ministry of Health/Ghana Health Service in relation to unapproved expenditures for the construction of NMCP offices.</i></p> | November 2014 | Recoveries Committee |
| 6 | Collusion | <p><i>Across the Global Fund Countries' Portfolio, renovation projects require additional scrutiny and safeguards to prevent collusive practices or disguised as construction activities. This will include demonstrable commitment at the highest level of the Principal Recipients to prevent collusive practices; due diligence of the organizations tendering for renovation/construction projects; and demonstrable procedures in place to monitor and review the implementation of contract awards</i></p> | TBD | Division Head, Grant Management |

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.³¹

Investigation methodology in this report included: review of Ghana Health Services Estate Management Department project files, review of Country Team files, interviews, and site visits.

While the Global Fund does not typically have a direct relationship with the recipients’ suppliers, the scope of OIG’s work³² 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.³³ The OIG relies on the cooperation of these suppliers to properly discharge its mandate.³⁴

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 be compromised by fraud and abuse, and (iv), place the Organization in the best position to obtain recoveries through identification of the location or 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.³⁵

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 Actions.

Such Agreed Actions may notably include 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 Suppliers³⁶ or the Code of Conduct for Recipients of Global Fund Resources³⁷ (the

³¹ 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.

³² Charter of the Office of the Inspector General (19 March 2013) § 2, 9.5 and 9.7.

³³ Ibid., § 17.1 and 17.2.

³⁴ 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.

³⁵ 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.

³⁶ See fn. 34, supra.

“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.³⁸

Agreed 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.

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 activities.³⁹

³⁷ 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.

³⁸ Charter of the Office of the Inspector General (19 March 2013) § 8.1

³⁹ Code of Conduct for Recipients of Global Fund Resources, section 3.4.

The Codes notably provide the following definitions of the relevant concepts of wrongdoings:⁴⁰

- *“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.*
- *“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

The OIG presents factual findings that 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.⁴¹ The OIG does not aim to conclude on the appropriateness of seeking refunds from recipients, or other sanctions based on 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 as well as Principal Recipients.⁴²

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”.⁴³

⁴⁰ Available at

http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForRecipients_Policy_en/ and http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/

⁴¹ The STC are revised from time to time, but the provisions quoted below applied to all PRs at the time of the investigation.

⁴² Standard Terms and Conditions (2012.09) at Art. 14(b):

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

⁴³ Id. at Art. 9(a) and Art 18(f)

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.⁴⁴

The STCs 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.”⁴⁵

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.”⁴⁶

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.⁴⁷

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.⁴⁸ 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 communication of the Code of Conduct for Recipients to all Sub-recipients, as well as mandatory application through the Sub-recipient agreements.⁴⁹

⁴⁴ Id. at Art. 18(a)

⁴⁵ Id., at Art. 21 (b).

⁴⁶ Id. at Art. 21(b)

⁴⁷ Available at

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

⁴⁸ Standard Terms and Conditions (2012.09) at Art. 21(d)

⁴⁹ Id. at Art. 21(e)

Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including expenses made by Sub-Recipients and contractors.⁵⁰

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 to 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.”⁵¹

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.”⁵²

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 recoverable, 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 grant scope or not included in the approved work plans and budgets.

⁵⁰ Id. at Art. 14

⁵¹ Id. at Art. 27(b) and (d)

⁵² Id.

Annex B: Tables

The figures below represent the final state of the Secretariat's retroactive approval of certain non-compliant expenditures which were deemed related to the overall program goals.

Table 1: NACP Office – Amounts of non-compliant expenditures

| IPC | Exchange Rate | Allowable Amount GHS ⁵³ | Allowable Amount US\$ | Disallowable Amount GHS | Disallowable Amount US\$ | Reason |
|-----|-----------------------------|------------------------------------|-----------------------|-------------------------|--------------------------|-----------------------|
| 1 | 0.00010905100 | 135,308,113 | 14,755 | | | Advance Mobilization |
| 2 | | 1,048,820,336 | 114,375 | | | Building Construction |
| 3 | 0.00010828485 ₅₄ | 1,368,574,604 | 148,196 | | | Building Construction |
| 4 | 0.00010793315 ⁵⁵ | 1,236,491,050 | 133,458 | | | Building Construction |
| 5 | 0.00010816660 | 124,048,883 | 13,418 | | | Building Construction |
| | 1.0071 | 235,693 | 237,366 | | | Building Construction |
| 6 | 0.7717 ⁵⁶ | 264,969 | 204,477 | | | Building Construction |
| | | | | 3,646 | 2,814 | DSTV |

⁵³ Prior to July 2007 old Ghanaian Cedis used (GHc)

⁵⁴ Payments for this IPC were booked on 2 separate days so an average exchange rate of the 2 days is used

⁵⁵ Payments for this IPC were booked on 2 separate days so an average exchange rate of the 2 days is used

⁵⁶ Payments for this IPC were booked on 2 separate days so an average exchange rate of the 2 days is used

| | | | | | | |
|---------------------------|----------------------|--|------------------------------|--------------------------------|---------------------------------|----------------------------|
| 7 | 0.8519 | 239,146 | 203,728 | | | Building Construction |
| 3-Ex. Works | 1.0005 ⁵⁷ | 41,376 | 41,397 | | | Building Construction |
| IPC | Exchange Rate | Allowable Amount GHS⁵⁸ | Allowable Amount US\$ | Disallowable Amount GHS | Disallowable Amount US\$ | Reason |
| 3-Ex. Works | 1.0005 ⁵⁹ | | | 194,810 | 194,907 | Paving |
| | | | | 46,001 | 46,024 | Landscaping |
| | | | | 25,346 | 25,359 | Kerbs & Parking |
| | | | | 3,490 | 3,492 | Site clearance parking |
| | | | | 2,907 | 2,908 | Demolition of paving |
| 9 | 1.0026 | 110,683 | 110,971 | | | Building Construction |
| | | | | 24,940 | 25,005 | Fixtures & Fittings |
| 1-Phase 4 | | 137,167 | 137,524 | | | Renovation of old building |
| 10 | 0.9808 | 174,355 | 171,007 | | | Transformer |
| 2-Phase 4 | 0.8481 | 7,219 | 6,122 | | | Retention Claim |
| 4-Ex. Works | | 35,872 | 30,423 | | | Retention Claim |
| 12 | | 112,765 | 95,636 | | | Retention Claim |
| TOTAL AMOUNTS US\$ | | | 1,662,854 | | 300,509 | |

⁵⁷ Payments for this IPC were booked on 2 separate days so an average exchange rate of the 2 days is used

⁵⁸ Prior to July 2007 old Ghanaian Cedis used (GHc)

⁵⁹ Payments for this IPC were booked on 2 separate days so an average exchange rate of the 2 days is used

Table 2: Regional Medical Store, Brong Ahafo – Amounts of non-compliant expenditures

| IPC | Exchange Rate | Allowable Amount GHS | Allowable Amount US\$ | Disallowable Amount GHS | Disallowable Amount US\$ | Reason |
|--------------------------|----------------------|----------------------|-----------------------|-------------------------|--------------------------|----------------------------|
| 1 | 0.6717 ⁶⁰ | 316,163 | 212,367 | | | Advance Mobilization |
| 2 | 0.6915 | 800,797 | 553,751 | | | Building Construction |
| 3 | 0.6956 | 130,554 | 90,813 | | | Building Construction |
| | | | | 79,877 | 55,562 | Program Manager's Bungalow |
| 4 | 6933 | 72,580 | 50,320 | | | Building Construction |
| | | | | 148,708 | 103,099 | Program Manager's Bungalow |
| 5 | 0.6835 | 336,252 | 229,828 | | | Building Construction |
| | | | | 61,785 | 42,230 | Parking area and kerbs |
| | | | | 6,111 | 4,177 | Landscaping |
| 7 | .6601 | 752,927 | 497,007 | | | Building Construction |
| | | | | 212,641 ⁶¹ | 140,364 | Parking area and kerbs |
| | | | | 94,566 | 62,423 | Paving |
| | | | | 54,590 ⁶² | 36,035 | Landscaping |
| | | | | 48,222 | 31,831 | Open Shed |
| | | | | 19,285 | 12,730 | Furniture |
| TOTAL AMOUNT US\$ | | | 1,634,086 | | 488,452 | |

⁶⁰ Payments for this IPC were booked on 2 separate days so an average exchange rate of the 2 days is used

⁶¹ IPC7 less amount taken in IPC 5

⁶² IPC 7 less amount taken in IPC 5

Table 3: Comprehensive Care Center Effia Nkwanta – Amounts of non-compliant expenditures

| IPC | Exchange Rate | Allowable Amount GHS | Allowable Amount US\$ | Disallowable Amount GHS | Disallowable Amount US\$ | Reason |
|--------------------------|---------------|----------------------|-----------------------|-------------------------|--------------------------|-----------------------|
| 1 | 0.6804 | 168,875 | 114,903 | | | Advance Mobilization |
| | 0.6829 | 8,888 | 6,070 | | | Advance Mobilization |
| 2 | 0.6956 | 369 | 257,264 | | | Building Construction |
| EMU | 0.6987 | 9,959 | 6,958 | | | Engineering Services |
| 3 | 0.6835 | 328,005 | 224,191 | | | Building Construction |
| 4 | 0.6945 | 153,414 | 106,546 | | | Building Construction |
| 5 | 0.6678 | 380,029 | 253,783 | | | Building Construction |
| | | | | 682,181 | 455,560 | Drive way and parking |
| TOTAL AMOUNT US\$ | | | 969,716 | | 455,560 | |

Table 4: Cold Store – Amounts of non-compliant expenditures

| IPC | Exchange Rate | Allowable Amount GHS | Allowable Amount US\$ | Disallowable Amount GHS | Disallowable Amount US\$ | Reason |
|--------------------------|---------------|----------------------|-----------------------|-------------------------|--------------------------|-----------------------|
| 1 | 0.6757 | 146,011 | 98,660 | | | Advance Mobilization |
| 2 | 0.6915 | 54,537 | 37,712 | | | Building Construction |
| 3 | 0.6956 | 95,455 | 66,398 | | | Building Construction |
| 4 | 0.6933 | 649,499 | 450,298 | | | Building Construction |
| | | | | 11,570 | 8,021 | Paving |
| | | | | 7,740 | 5,366 | Rubber Tiles (gym) |
| | | | | 3,892 | 2,698 | Landscaping |
| EMU | 0.6681 | 31,542 | 21,073 | | | Engineering Services |
| TOTAL AMOUNT US\$ | | | 674,141 | | 16,086 | |

Table 5: NMCP Office – Amounts of non-compliant expenditures

| IPC | Exchange Rate | Allowable Amount GHS ⁶³ | Allowable Amount US\$ | Disallowable Amount GHS | Disallowable Amount US\$ | Reason |
|-----|---------------|------------------------------------|-----------------------|-------------------------|--------------------------|---|
| 1 | 0.00010918000 | 659,433,659 | 71,997 | | | Advance Mobilization |
| 2 | | 428,133,279 | 46,744 | | | Building Construction |
| 3 | | 283,595,334 | 30,963 | | | Building Construction |
| 4 | | 432,474,066 | 47,218 | | | Building Construction |
| 5 | | 536,630,187 | 58,589 | | | Building Construction |
| 6 | 0.00010989010 | 188,775,202 | 20,745 | | | Building Construction |
| | | | | 122,741,220 | 13,488 | Drains, Aprons, Kerbs & Planted Areas |
| 7 | 0.00010987040 | 495,503,990 | 54,441 | | | Building Construction |
| | | | | 277,087,222 | 30,444 | Furniture & Fittings |
| | | | | 7,701,040 | 846 | Drains, Aprons, Kerbs & Planted Areas ⁶⁴ |
| 8 | 0.00010952720 | 760,737,126 | 83,321 | | | Building Construction |
| 9 | 0.00010869570 | 413,813,553 | 44,980 | | | Building Construction |
| | | | | 132,648,900 | 14,418 | Drive and Parking |
| | | | | 43,537,500 | 4,732 | Teflon Parking Canopy |

⁶³ Prior to July 2007 old Ghanaian Cedis used (GHc)

⁶⁴ IPC 7 less amount taken in IPC 6

| IPC | Exchange Rate | Allowable Amount GHS ⁶⁵ | Allowable Amount US\$ | Disallowable Amount GHS | Disallowable Amount US\$ | Reason |
|--------------------------|-----------------------------|------------------------------------|-----------------------|-------------------------|--------------------------|---------------------------------------|
| 10 | 0.00010828485 ⁶⁶ | 376,006,120 | 40,716 | | | Building Construction |
| | | | | 462,210,000 | 50,050 | Drains, Aprons, Kerbs & Planted Areas |
| | | | | 16,178,750 | 1,752 | Commemorative Plaque & Signs |
| 1 Add. Works | 0.9984 | 73,457 | 73,339 | | | Additional Burglar Proofing |
| 1 Cont. | 0.7638 | 68,387 | 52,234 | | | Unknown |
| 2 Add. Works | 0.6726 | 45,726 | 30,755 | | | Building Construction |
| | | | | 109,593 | 73,712 | LCDs, Computers & Furniture |
| 3 Add. Works | 0.6929 | 437,895 | 303,417 | | | Transformer, Fence, Construction |
| | | | | 16,747 | 11,604 | Paving & Kerbs |
| | | | | 1,331 | 922 | Landscaping |
| 4 Add. works | 0.6284 | 28,724 | 18,050 | | | Building Construction |
| | | | | 73,903 | 46,441 | Furniture ⁶⁷ |
| TOTAL AMOUNT US\$ | | | 977,509 | | 248,410 | |

⁶⁵ Prior to July 2007 old Ghanaian Cedis used (GHc)

⁶⁶ Payments for this IPC were booked on 2 separate days so an average exchange rate of the 2 days is used

⁶⁷ IPC 4 Add. Works less IPC 2 Add. Works

Table 6: DCU Office – Amounts of non-compliant expenditures

| IPC | Exchange Rate | Allowable Amount GHS | Allowable Amount US\$ | Disallowable Amount GHS | Disallowable Amount US\$ | Reason |
|--------------------------|----------------------|----------------------|-----------------------|-------------------------|--------------------------|---|
| 1 | 1.0340 ⁶⁸ | 450,385 | 465,698 | | | Advance Mobilization, Renovation of DCD Head office at CHI, NCDPC, New EPI Office, NBCP |
| 2 | 08507 | 185,398 | 157,718 | | | Building Construction |
| 4 | 06991 | 145,000 | 101,370 | | | Building Construction |
| 5 | | 129,735 | 90,698 | | | Building Construction |
| TOTAL AMOUNT US\$ | | | 815,483 | | 0 | |

⁶⁸ Payments for this IPC were booked on separate days so average exchange rate of the 4 days is used

Annex C: Summary of Ministry of Health/Ghana Health Services responses

| Finding | Response |
|--|---|
| Unapproved expenditures from the NACP for construction/refurbishment of various structures | During grants implemented in “the early years” communication was mostly via telephone and face-to-face meetings during country visits and verbal approvals were the norm. The portfolio manager and finance leads advised program managers that forecasts could be done, shifting funds from activities when funds were not needed to activities where funds were needed. Therefore, periodically the program made forecasts based on needs and included them in the PU/DR. Funds were released based on forecasts made and so “this pre-supposes that, once funds are released, the forecasts made have been approved. Prudent and judicious use of resources led to the Principal Recipient far exceeding the number of facilities cited in the grant agreement”. |
| Unapproved expenditures from the NTCP used for the construction of the DCD offices | Funds were not diverted from life savings interventions and the building is used for program purposes. Annex A of the grant agreement states “Improve infrastructure and develop facilities (staff position, building, equipment, transport)”. The Principal Recipient underspent its infrastructure budget and met its objectives for the program. Sub section (b) 2 requires the Principal Recipient to implement according to summary budget [emphasis in the original] and changes to the summary budget only require Global Fund written approval. The Principal Recipient did not make changes to the summary budget. The infrastructure budget was forecasted in Principal Recipient sources and uses and discussed with the FPM. |
| Unapproved expenditures from the NMCP that were not used for the purpose intended | These actions were approved by the Global Fund by verbal consent. The store was approved instead of renting warehouse space. All six regional medical stores budgeted to be renovated were renovated. A procurement plan for the transformer (provided) was given to the Global Fund and approved. |
| Bidding irregularities | The basis for single sourcing of RBAL was because the firm had built staff accommodation and a clinic. Estate Management Department found ways of giving a good a reliable contractor a critical assignment which needed to be completed in a short amount of time. The construction of the NACP office was a single tender, but the |

program manager advised that at the time there were not sufficient funds for the whole project so the construction was done in phases. Approvals were obtained from the GHS Entity Tender Committee at the beginning of each phase. All documents relating to the tender are available, except the tender evaluation report, which needs to be traced from the National Archives. The period between 2003 and 2005 was a period of public education and sensitization for the Public Procurement Act and therefore its application to procurement was relaxed. The MOH Procurement Procedures Manual was used and the Entity Tender Committee gave approval for NCMP building. The VCT centers at Tema, Dodowa and Pantang were treated as extensions of the main contracts on the NACP and NMCP buildings. Approval was obtained from the PPA on five projects. There was a mistake in the numbers submitted to the PPA. However, these figures are not critical to the approval decisions of the PPA. The PPA is aware of price changes and asks the entities to report on the final contract award figures, which are then published. This was done on the Brong Ahafo, Effia and Cold Store projects and Estate Management Department received no criticisms from the PPA as the projects were completed.

The OIG suggests that Estate Management Department denied knowledge of the two companies being run by one individual. This is not true. Estate Management Department sought to obtain advantages using the same organization which had completed successful projects. The advantages were locking in prices over a period of time, using the funds from Global Fund timely.

Annex D: Summary of Local Fund Agent responses

| Finding | Response |
|---|--|
| <p>Unapproved expenditures from the NACP for construction/refurbishment of various structures</p> | <p>There was a budget for “Renovation of NACP offices including furnishings” in Phase 1 of GHN-506-G06-H of \$218,750. Local Fund Agent acknowledges that the actual expenditure was significantly higher than the budgeted amount. The Local Fund Agent was aware of the projects and their error was not in reporting the budget variance in the PU/DRs. The Local Fund Agent have at all times provided to the Global fund independent and informed advice on the activities and at the time they were not required to report on every exception. Most meetings with the Fund Portfolio Manager were held in NMCP offices so Global Fund was aware from outset to completion of the construction. Construction activities were not hidden and any budget overruns were discussed and agreed upon during missions.</p> |
| <p>Unapproved expenditures from the NTCP used for the construction of the DCD offices</p> | <p>The re-modelling of the DCD office was needed to enhance DOTS implementation. The DCD office was meant to provide a laboratory to promote investigation of emerging Drug Resistant-TB and other research. It was also to provide storage space for TB commodities and office space. Principal Recipient discussed with the Global Fund about using savings for the DCD office as part of overall DOTS improvement and lab expansion. The Local Fund Agent acknowledges that they should have sought further clarification from the Principal Recipient on the budget overrun for the renovation of DOTS centers and laboratories. The Local Fund Agent have at all times provided to the Global fund independent and informed advice on the activities and at the time they were not required to report on every exception. Most meetings with the Fund Portfolio Manager were held in NMCP offices so Global Fund was aware from outset to completion of the construction. Construction activities were not hidden and any budget overruns were discussed and agreed upon during missions.</p> |
| <p>Unapproved expenditures from the NMCP that were not used</p> | <p>There were two activity line items to rent office space. Principal Recipient proposed to Fund Portfolio Manager that the amount be used in renovating a building to provide sustainability. Therefore two line items were combined for the construction of the existing site. There were budget overruns, but were</p> |

| | |
|---------------------------|--|
| for the purpose intended. | funded and forecasted properly from other line items. Part of the funds for the store room were from line item “ Partly renovate and Refurbish parts of the Central and Regional Medical Stores”. This was budgeted for in the Rolling Communication Channel before consolidated with Malaria 8 grant. The Local Fund Agent have at all times provided to the Global fund independent and informed advice on the activities and at the time they were not required to report on every exception. Most meetings with the Fund Portfolio Manager were held in NMCP offices so Global Fund was aware from outset to completion of the construction. Construction activities were not hidden and any budget overruns were discussed and agreed upon during missions. |
| Bidding irregularities | N/A |