The Global Fund
To Fight AIDS, Tuberculosis and Malaria

Office of the Inspector General

INVESTIGATION REPORT

Global Fund Grants to Burundi

Secrétariat Exécutif Permanent du Conseil National de Lutte contre le SIDA (SEP/CNLS)

GF-OIG-14-018 ■ **17 October 2014**

The Global Fund
To Fight AIDS, Tuberculosis and Malaria

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Investigation of Global Fund Grants to Burundi

Secrétariat Exécutif Permanent du Conseil National de Lutte contre le SIDA (SEP/CNLS)

(Case No. 335/2013)

GF-OIG-14-018

Categories – Fraud – Misrepresentation of Information

Non-compliant expenditure: US$ 415,148

Proposed recoveries: US$ 283,068

Table of Contents

1. Background and Scope

As at 30 June 2014, the Global Fund has made commitments under 11 grants to the Republic of Burundi totaling US$ 202.07 million, of which US$ 189.84 million has been disbursed. Public sector entities, civil society and faith-based organizations as well as private sector institutions implement the Global Fund program activities throughout the country's 17 provinces and 45 districts.

The Secrétariat Exécutif Permanent du Conseil National de Lutte contre le SIDA (SEP/CNLS) is a Principal Recipient (PR) of grant funds in Burundi. The Government of Burundi established SEP/CNLS in March 2002 to lead and provide a multi-sectorial response to the HIV epidemic.

In 2002, the Office of the President of the Republic of Burundi established the Ministry of AIDS which administered SEP/CNLS. In August 2010, the Ministry of AIDS merged with the Ministry of Public Health to form the Ministry of Public Health and the Fight against AIDS.

In March 2013, SEP/CNLS informed the Global Fund Secretariat (the Secretariat) of an ongoing investigation by the U.S. Department of Justice and the U.S. Securities and Exchange Commission into allegations of corruption involving California based Bio-Rad Laboratories (Bio-Rad). Bio-Rad manufactures and distributes life science research and clinical diagnostic products and supplies HIV rapid diagnostic test kits (RDTs) to SEP/CNLS. In Burundi, a local company, Diagnostica, acts as Bio-Rad's authorized in-country agent.

On 8 May 2013, the Secretariat informed the Office of the Inspector General (OIG) of the ongoing corruption investigation by the U.S. Department of Justice and the U.S. Securities and Exchange Commission involving Bio-Rad. The Secretariat also informed the OIG of additional concerns identified by the Local Fund Agent relating to procurements by SEP/CNLS from Bio-Rad's local agent, Diagnostica.

Based upon these reports the OIG initiated an investigation, the scope of which included:

- all procurements from Diagnostica by SEP/CNLS between January 2005 and August 2013; and
- all procurements from Bio-Rad by SEP/CNLS between January 2005 and December 2012.

The OIG contacted Bio-Rad's offices in both France and the U.S.A. through letters dated 30 July 2013 and 6 November 2013 to ascertain any additional relevant information; however, no formal response has been received.

2. Executive Summary

Fraud, overpricing and irregularities associated with procurement of medical equipment by SEP/CNLS from Diagnostica

This investigation found evidence of fraud, overpricing and irregularities associated with the procurement of refrigerators, freezers and warehousing services by SEP/CNLS from Diagnostica. Specifically, the OIG found that SEP/CNLS's procurement process was inadequate to manage high-value procurements effectively. This led to fraud and abuse of the Global Fund grants by the supplier Diagnostica which submitted forged certificates in support of its bids, delivered equipment that did not meet the specifications set out in its bids, and overpriced for the equipment it delivered.

Between 2010 and 2011, SEP/CNLS procured refrigerators and freezers from Diagnostica through two tenders totaling US$ 276,101[1] (US$ 161,400 and US$ 123,600). The OIG investigation found that SEP/CNLS changed the specifications of the refrigerators from those agreed in the Procurement and Supply Management (PSM) Plan without the approval of the Global Fund as required by the terms and conditions of the grant agreement between SEP/CNLS and the Global Fund. Further, SEP/CNLS did not advertise the procurement of the refrigerators by open tender. According to SEP/CNLS, their procurement expert, based on her personal experience, selected the bidders.

This investigation also found that the SEP/CNLS bid committee accepted forged Conformité Européenne (CE)[2] certificates for these two tenders, which was a pre-requisite for tender submission, from Diagnostica. The CE certificates provided by Diagnostica in their bids for the supply of the refrigerators were for 'respiratory devices' and not for refrigerators. The two SEP/CNLS bid evaluation committees failed to verify the authenticity of these CE certificates provided by Diagnostica. In the second tender, SEP/CNLS did not verify that the refrigerators delivered were from the manufacturer specified in the bids submitted by Diagnostica. The OIG's independent price verification found that SEP/CNLS paid approximately double the market price for the refrigerators supplied by Diagnostica compared to direct purchase from the manufacturer. This resulted in unwarranted costs of US$ 144,021 to the Global Fund that the OIG finds is a proposed recovery. Such recoverability is based on an assessment by the OIG of the value obtained, or the economic loss incurred, through the non-compliant expenditures.

Although this investigation found no conclusive evidence of corrupt or collusive practices between SEP/CNLS and Diagnostica during the two tenders, the forged certificates provided by Diagnostica and the procurement irregularities at SEP/CNLS identified by the investigation are indicative of such practices. The investigation found that the SEP/CNLS procurement process was neither competitive nor transparent and that the SEP/CNLS procurement guidelines were inadequate for high value procurements leading to the purchase of overpriced medical equipment.

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[1] Including the penalty of US$ 8899.20 charged by SEP/CNLS to Diagnostica for a delay of 72 days in delivery.
[2] http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/index_en.htm - CE certification confirm that the product is assessed before being placed on the market and meets EU safety, health and environmental protection requirements.

Procurement of unapproved HIV Rapid Diagnostic Test Kits (RDTs) from Bio-Rad by SEP/CNLS

This investigation did not find evidence of corruption relating to the procurement of medical products from Bio-Rad by SEP/CNLS. However, the investigation found that SEP/CNLS procured HIV RDTs from Bio-Rad that were not pre-approved by the Global Fund.

From 2007 to 2010, SEP/CNLS procured Genscreen™ Ultra and Genie III HIV RDTs from Bio-Rad at a cost of US$ 121,047. This was contrary to the Procurement and Supply Management plan and the Standard Terms and Conditions of the Global Fund grant agreement which specified Genscreen™ Plus and Genie II HIV RDTs. Further, SEP/CNLS's expert pharmacist confirmed that SEP/CNLS did not obtain prior approval from the Global Fund for the deviation from the agreed Procurement and Supply Management plan as required by the terms and conditions of the Global Fund grant agreement with SEP/CNLS.

The OIG finds that the reasons provided by SEP/CNLS for deviating from the agreed Procurement and Supply Management plan are untenable. The conditions of the grant agreement state that the Principal Recipient must ensure that the procurement under the Program is carried out in accordance with and/or submit any proposed changes to health products agreed in the Procurement and Supply Management plan to the Global Fund for prior approval. Additionally, SEP/CNLS did not attempt to procure alternative pre-approved HIV RDTs from another supplier. Notably because of the quality assurance issues in this case, the OIG concludes no tangible value was obtained from the purchase of these RDTs. Therefore it proposes US$ 121,047 as a recoverable amount to the Global Fund.

In 2009, a Local Fund Agent review highlighted similar issues in the recipient's procurement processes to those identified during this investigation. Specifically, the Local Fund Agent review identified the following: one entity represented different bidders in a tender; the recipient did not include an acknowledgement of receipt of bids by the short listed suppliers; and incomplete proposals from pre-approved suppliers were rejected on technical grounds, without any further consideration of their merit.

Although the Local Fund Agent considered that the Principal Recipient was complying with the Global Fund's quality assurance policy for the procurement of health products, it made some recommendations to strengthen weaknesses in the recipient's procurement process noted during their review. The OIG found that the Local Fund Agent's recommendations did not completely address these weaknesses as these issues emerged again in the procurements reviewed by the OIG in this investigation.

Learning from the issues identified and during the course of the OIG investigation, the Global Fund has already implemented certain safeguard measures including:

- the procurement of pharmaceutical and health products outsourced to the Pooled Procurement Mechanism in May 2013;
- the Principal Recipient is requested to submit an annual non-health procurement plan for non-objection by the Global Fund; and
- implementing a fiscal agent on all grants for the Burundi portfolio. In all cases, the Fiscal Agent reviews the procurement process before payment and in cases of high-

value transactions the Fiscal Agent is involved at the different stages of the procurement process.

Following its investigation, the OIG proposed a number of further actions that were agreed by the Secretariat and which are set out in detail in Section 5.

In summary, it was agreed that:

a. The Recoveries Committee will assess the amount to be sought for recovery based on expenditures that were non-compliant with the Standard Terms and Conditions of the relevant Global Fund Program Grant Agreements.

b. The Country Team will also instruct the Principal Recipient, SEP/CNLS, to revise and update their procurement manual and define clear guidelines and processes for procurement depending on the materiality of the tender amount. This will include the following: advertisement of tenders, prequalification of suppliers, timelines on submission and evaluation of bids, confidentiality of bidder's information, basic supplier's due diligence, technical and financial bid evaluation including verification of bid documents, emergency procurement guidelines, etc.

c. The Country Team will continue to explore additional options for outsourcing high value non-health procurement to suitably qualified and vetted procurement agents.

d. The Country Team will remind the Principal Recipient, SEP/CNLS, of the importance of adherence to the agreed Procurement and Supply Management plan and the requirement to obtain documented prior approval from the Global Fund for all deviations from the plan.

e. Based on the findings of this report, the Secretariat will address the supplier misconduct in accordance with the Secretariat's policy on supplier misconduct[3] and the 'Sanctions Panel Procedure relating to the Code of Conduct for Suppliers'[4].

[3] Operational Policy Note on "Supplier Misconduct", dated 11 June 2014. http://www.theglobalfund.org/documents/core/manuals/Core_OperationalPolicy_Manual_en/, accessed 3 October 2014.
[4] "Sanctions Procedures Relating to the Code of Conduct for Suppliers", dated 11 June 2014. http://www.theglobalfund.org/documents/corporate/Corporate_SanctionsProcedures_Policy_en/ accessed 3 October 2014

3. Findings and Agreed Actions

3.1 Fraud, overpricing and irregularities associated with procurement from Diagnostica

Between 2010 and 2011, SEP/CNLS procured refrigerators and freezers from Diagnostica valued at US$ 276,101[5] under tender number: Pride/6/2010 - US$ 161,400 and Pride/27/2011 - US$ 123,600.

The OIG's investigation into these procurements found that SEP/CNLS:

- changed the specifications of the refrigerators from the Procurement and Supply Management plan without prior approval of the Global Fund;
- carried out irregular procurement practices;
- accepted a forged CE certificate from the supplier Diagnostica;
- did not verify that the refrigerators delivered by Diagnostica met the tender specifications;
- paid approximately double the market price for the refrigerator compared with purchasing the refrigerators directly from the manufacturer; and
- procured warehousing services from Diagnostica that were unapproved by the Global Fund.

3.1.1 Change of refrigerator specifications without prior approval from the Global Fund

The OIG's investigation into the two tenders: Pride/6/2010 and Pride/27/2011, found that in both tenders, SEP/CNLS changed the specifications of the refrigerators from those specified in the agreed Procurement and Supply Management plan dated November 2009 without obtaining prior approval from the Global Fund.

The SEP/CNLS procurement expert stated that the refrigerator specifications agreed in the Procurement and Sourcing Management plan with the Global Fund were not aligned with the specific needs in Burundi and were therefore changed. She further stated that she received help in obtaining refrigerator specifications from an expert biomedical engineer of *the Institut National de la Sante Publique* (INSP), an organization within the Ministry of Public Health, Burundi, because she did not understand the refrigerator specifications in the plan.

In contrast to the procurement expert's claims, the biomedical engineer told the OIG that he copied and pasted the specifications for the refrigerators from a European website

[5] Including the penalty of US$ 8899.20 charged by SEP/CNLS to Diagnostica for a delay of 72 days in delivery.

'Socimed'. He further confirmed that the specifications for refrigerators on the Socimed website are not country specific and he made no changes to align them to the specific needs for Burundi, as claimed by the procurement expert. He also confirmed that SEP/CNLS neither shared the refrigerator specifications agreed in the Procurement and Supply Management plan with the Global Fund, nor the list of medical products that were to be stored in the refrigerators. The statements of SEP/CNLS's procurement expert and the biomedical engineer as to why the refrigerator specifications were changed from the Procurement and Supply Management plan are inconsistent and do not justify the change of the specifications by SEP/CNLS.

In response to the OIG's initial investigation findings, SEP/CNLS stated that some of the plan's specifications were invalid and they have since requested the biomedical engineer to stop procuring obsolete equipment. SEP/CNLS also claimed that some of the elements in the Procurement and Supply Management plan are only for information and changing equipment specifications should not violate the terms of the grant agreement with the Global Fund.

The OIG finds this last claim untenable. Any deviations from the agreed Procurement and Supply Management plan, in this case a change of specification of medical equipment, requires Global Fund approval. SEP/CNLS did not obtain approval to change the specifications of the refrigerators from those agreed in the Procurement and Supply Management plan.

Agreed Action 1: The Country Team will remind the Principal Recipient, SEP/CNLS, of the importance of adherence to the agreed Procurement and Supply Management plan and the requirement to obtain documented prior approval from the Global Fund for all deviations from the plan.

3.1.2 Irregularities identified in the distribution of the tender documents to the different suppliers by SEP/CNLS

The OIG investigation found that SEP/CNLS did not advertise the tender for the refrigerators and freezers in any local or international newspapers. The procurement expert at SEP/CNLS stated that the suppliers for the two tenders were selected based on her personal experience. SEP/CNLS also shared the entire list of suppliers contacted for the tenders with the individual suppliers. Such procurement processes are inadequate and irregular, potentially fuelling collusive practices and reducing fair competition.

Further, the investigation found that SEP/CNLS procurement guidelines did not detail the processes to be carried out for procurements above US$ 100,000 and only required that international suppliers be consulted.

For the first tender for refrigerators and freezers (Pride/6/2010), SEP/CNLS stated that they contacted 14 suppliers. However, the acknowledgements of receipt of tender documents were signed by 12 suppliers. SEP/CNLS was unable to provide the

acknowledgements of receipt of tender document for the two remaining suppliers, including the winning bidder, Diagnostica.

Of the 12 suppliers that acknowledged the receipt of the tender document, eight suppliers did not submit bids. Of these eight suppliers, two individuals acknowledged the receipt of bid for six suppliers. For three international suppliers: ACIA, Marvel and FSE International, the acknowledgments for the receipt of the tender documents appear to have been signed by the same individual. The SEP/CNLS procurement expert explained that this individual also represented Hospital Medical Services (another local supplier) and three other suppliers: Mission Pharma, Svizera and MEG. The acknowledgements for the receipt of the tender documents for these three suppliers appear to have been signed by another single individual (refer exhibit 3).

SEP/CNLS stated that they contacted five international suppliers out of the total 14 suppliers listed in the tender documents. The investigation found that two of the five international suppliers were traders of medical equipment and not manufacturers.

Similarly, for the second tender for refrigerators (Pride/27/2011), SEP/CNLS stated that 14 suppliers were contacted, of which six suppliers submitted their bids. Again, SEP/CNLS was unable to provide the acknowledgement of receipt of the tender documents for this tender.

SEP/CNLS stated that they contacted four international suppliers of the 14 suppliers listed in the tender documents. Of these four international suppliers, two were traders of medical equipment and not manufacturers.

In response to the OIG's findings, SEP/CNLS stated that they carried out the procurement of the refrigerators and freezers in line with their procurement manual, which only requires consultation with international suppliers. Therefore, since their procurement expert contacted the suppliers directly, there was no need to publish any advertisements in local or international newspapers.

SEP/CNLS also stated that they did not see any abnormality in three international bidders being represented by one local agent, who was also an independent bidder for the same tender. Additionally, in their response, SEP/CNLS also provided the acknowledgement of receipt of the tender documents for two international suppliers. As stated above, the OIG's independent verification found that both suppliers were traders of medical equipment and not manufacturers. Therefore, this procurement may not have resulted in SEP/CNLS obtaining the best market prices for the equipment.

The investigation found that the procurement process was neither competitive nor transparent and that the SEP/CNLS procurement guidelines were inadequate for high value procurements. Additionally, SEP/CNLS did not approach original equipment manufacturers during the procurement process. This would have provided SEP/CNLS with an opportunity to establish a fair market price for the refrigerators. In addition to leading to potential waste and inefficiency, such procurement irregularities are a potential indicator of collusive or corrupt practices and reduced fair competition.

Agreed Action 2: The Country Team will instruct the Principal Recipient, SEP/CNLS, to revise and update their procurement manual and define clear guidelines and processes for procurement depending on the materiality of the tender amount. This will include the following: advertisement of tenders, acknowledgement of issue of tender document, acknowledgement of receipt of bids, method of communication to prospective suppliers, guidelines on access to bid documents by staff before they are open in bid committee meetings, prequalification of suppliers, timelines on submission and evaluation of bids, confidentiality of bidder's information, basic supplier's due diligence, process to be followed for technical and financial bid evaluation including verification of bid documents, and detailed guidelines for emergency procurement.

3.1.3 Forged Conformité Européenne (CE) certificates provided by Diagnostica

The tender documents issued by SEP/ CNLS required the bidders to provide refrigerators with CE certification. The investigation found that the CE certificate provided by Diagnostica in its bids stated that the certificate was issued for 'respiratory devices' and not for refrigerators or freezers. Neither of the two SEP/CNLS bid evaluation committees verified the CE certificates provided by Diagnostica.

The OIG's independent verification of the CE certificates provided by the winning bidder, Diagnostica in both tenders (Pride/6/2010 and Pride/27/2011), revealed that the CE certificates were fraudulent as they were not issued by stated certification authority (refer exhibit 4).

The OIG interviewed the owner of Diagnostica, who claimed that he received the CE certificates via post from the manufacturer of the refrigerators; however, he was unable to provide any documentation to support this statement.

In the tender Pride/6/2010, the SEP/CNLS bid evaluation committee selected Diagnostica over the lowest bidder Unitech. The reasons cited by SEP/CNLS for not selecting Unitech were the bidder's non-submission of a CE certificate and the absence of a temperature alarm in the bid as required per the tender documents. The price quoted by Diagnostica for the refrigerators was more than 2.5 times the price quoted by Unitech:

- Unitech – US$ 63,242
- Diagnostica – US$ 164,800

In response to the OIG's findings, SEP/CNLS stated that they did not verify the authenticity of the CE certificate but only verified the existence of the certifying authority. SEP/CNLS also indicated that the supplier of such certificate should provide a response to the forgery.

The OIG finds that Diagnostica submitted forged CE certificates in its bids and that SEP/CNLS did not authenticate the certificates or the description of the equipment to which the certificates applied.

Agreed Action 3: The Secretariat will initiate the Sanctions Panel procedure against the supplier Diagnostica and its key management personnel involved in submitting forged tender documents.

The Country Team will use the lessons learned from this investigation in the current arrangements for local procurements in Burundi (if and where they have not already done so). For instance:

The Country Team will reiterate to the Principal Recipient and Sub-recipients to include the Global Fund's Code of Conduct for Suppliers in the conditions of contracts established with their suppliers.

The Country Team will advertise to a broader audience of Principal Recipient and Sub-recipient staff members the Global Fund's procedures for reporting fraud and abuse to the OIG and its underlying whistleblowing policy.

3.1.4 Non-adherence to the refrigerator specifications provided in the tender bids by Diagnostica

For the second tender (Pride/27/2011), Diagnostica provided specifications of 103 refrigerators to be sourced from the Chinese Company - Zhongke Meiling Cryogenics Limited Company (ZMCLC). The OIG's independent verification revealed that the model XCD-180, supplied by Diagnostica, was neither manufactured nor supplied by ZMCLC. Moreover, ZMCLC confirmed having supplied refrigerators to Diagnostica only in first tender (Pride/6/2010).

The owner of Diagnostica stated that his company procured the refrigerators supplied to SEP/CNLS for tender Pride/27/2011 through a trading company in China named Hubei Hongling Trading Company Ltd (HHTCL) and not from ZMCLC as proposed in its bid submitted to SEP/CNLS.

SEP/CNLS accepted this change without verifying the CE certification of the alternate manufacturer, HHTCL. The OIG was unable to establish contact with the trading company that supplied the refrigerators to Diagnostica.

The OIG's enquiries with the manufacturer of the refrigerator, ZMCLC, established that the model (YC 300L) supplied by Diagnostica against the tender Pride/6/2010, did not meet the specifications of having a 'guaranteed operation at an ambient…and indoor temperature', as detailed in the Diagnostica's bid.

SEP/CNLS in their response to the OIG's findings stated that upon receipt of the refrigerators provided by Diagnostica, the temperatures were checked manually and were found to comply with those indicated in Diagnostica's bid document.

The OIG finds that Diagnostica did not comply with the specifications set out in its bid document. SEP/CNLS failed to verify the associated CE certification and accepted equipment that was different from those in the bid documents submitted by Diagnostica.

3.1.5 SEP/CNLS paid higher than a reasonable market price for the refrigerators

The OIG obtained independent quotations from ZMCLC and other Chinese companies for refrigerators of the same specifications proposed in the two bids submitted by Diagnostica. For both bids, the prices quoted by the suppliers to the OIG were almost half the price charged by Diagnostica.

Moreover, for the first bid (Pride/6/2010), ZMCLC invoices showing their selling prices to Diagnostica established that Diagnostica charged SEP/CNLS more than double their purchase price.

For the second bid (Pride/27/2011), ZMCLC confirmed that they do not manufacture refrigerators which match the specifications submitted by Diagnostica and they have not supplied such refrigerators to Burundi.

Article 18 of the Standard Terms and Conditions of the Global Fund grant agreement (BRN-809-G07-H) states: “No more than a reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to obtain goods and services.”

SEP/CNLS did not obtain an independent market price of the equipment through either contacting original equipment manufacturers or approaching other international suppliers to identify a fair price. This would have allowed them to pay a more than a reasonable price for the refrigerators, as set out in table 1 below:

Table 1- Calculation of higher amount paid for refrigerators:

Tender	Comparison	Product	Price quoted (US$)	Quantity	Amount (US$)
Pride/6 /2010	Diagnostica (As per the final invoice of Diagnostica)	Refrigerators	1,600	86	137,600
		Freezers	11,900	2	23,800
		Subtotal (A)			161,400
	OIG independent verification (as (ZMCLC) invoice to Diagnostica and transportation cost quoted)	Refrigerators	500	86	43,000
		Freezers	4,800	2	9,600
		Freight[6]	6,000	4	24,000
		Custom charges (approx.)			200
		Subtotal (B)			76,800
				Overpricing (A-B)	**84,600**
Pride/2 7/2011	Diagnostica (As per the final invoice of Diagnostica)	Refrigerators	1200	103	123,600
		Penalty for late delivery[7]			-8,899
	OIG independent verification	Subtotal (C)			114,701
		Refrigerators	360[8]	103	37,080
		Freight charges (approx.)[9]	6,000	3	18,000
		Custom charges (approx.)			200
		Subtotal (D)			55,280
				Overpricing (C-D)	**59,421**
				Total Overpricing	**144,021**

In response to the OIG's findings shared with SEP/CNLS through the letter dated 25 April 2014, SEP/CNLS stated that they analyzed the offers presented by the other bidders and that the tender did not require the bidders to submit detailed pricing including profit margins. SEP/CNLS also stated that the shipping cost of a 20 feet container would be US$ 7,000, which was slightly higher than the shipping cost quoted to the OIG by ZMCLC (US$ 6,000).

The OIG finds that due to its inadequate procurement procedures (altering and removing detail specifications in the Procurement and Supply Management plan, non-compliance with the plan, and failure to obtain a reasonable market price of the equipment from the original equipment manufacturers), SEP/CNLS enabled Diagnostica to charge more than double the fair price of the equipment. This resulted in at least US$ 144,021 of overcharging to the grant.

[6] Confirmed by ZMCLC – 4 X 20' containers, each containing 24 units at US$ 6000/ container including inland transport cost from Dar-es-Salaam

[7] Penalty of US$ 8,899.20 charged by SEP/CNLS to Diagnostica for a delay of 72 days in delivery

[8] As per OIG's independent confirmation from a supplier in China producing the same specification as procured by SEP/CNLS

[9] As per OIG's independent confirmation from the supplier in China, shipping cost including inland transport cost from Dar-es-Salaam where one 20 feet container to fit a minimum 36 pieces of a refrigerator even with bigger volume than the one procured in Pride/27/2011

Agreed Action 4: The recoveries committee will assess the amount to be sought for recovery 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.

3.1.6 Unapproved warehouse rental payments to Diagnostica

This investigation found that between February 2011 and January 2013, SEP/CNLS paid Diagnostica US$ 18,000 (US$ 1,000 a month) to rent a warehouse. No competitive tender process was undertaken to select the supplier of this service, SEP/CNLS did not obtain approval from the Global Fund to rent a warehouse and the cost was not included in the approved Grant Agreement budget.

The SEP/CNLS project coordinator stated that they rented the warehouse as there was no space in the national warehouse (CAMEBU) to store the refrigerators procured from Diagnostica prior to their distribution. He further stated that no competitive procedures were carried out by SEP/CNLS to select the warehousing services and they did not obtain prior approval from the Global Fund.

In response to the OIG's findings shared with SEP/CNLS on 25 April 2014, SEP/CNLS stated that they suddenly learnt that there was no space at CAMEBU to store the refrigerators. Although they did not carry out a competitive tender, they checked the market prices, and that the rentals paid to Diagnostica were at reasonable market rate. SEP/CNLS also stated that renting the supplier's warehouse allowed them to let the supplier bear the risk of theft or defect caused due to irregular storage.

This investigation found, contrary to SEP/CNLS claim that it was a sudden decision to rent the warehouse due to unavailability of space at CAMEBU, that the issue was systematic insofar that the rent was paid for a long period, i.e., from February 2011 to January 2013.

Additionally, inefficient planning resulted in SEP/CNLS storing the refrigerators for an extended period, rather than including in the contract that the supplier should distribute the refrigerators to the final beneficiaries soon after their arrival in the supplier's warehouse. SEP/CNLS appears to have failed to learn from its lack of planning in the first tender in 2010 and continued similar rental arrangement for the second tender in 2011. The OIG concludes that these expenditures were non-compliant and it obtained no tangible value from these expenditures.

Agreed Action 4: The recoveries committee will assess the amount to be sought for recovery 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.

3.2 Procurement of unapproved HIV Rapid Diagnostic Test Kits (RDTs)

This investigation found that SEP/CNLS:

- procured Genscreen™ Ultra RDT's between 2007 and 2010 from Bio-Rad, costing approximately US$ 116,522 (refer exhibit 1 for the list of transactions) contrary to the agreed Procurement and Supply Management plan as per the Global Fund grant agreement which specified Genscreen Plus HIV Ag-Ab RDT's; and
- procured 25 Genie III HIV RDTs manufactured by Bio-Rad from Diagnostica in November 2010 costing US$ 4,525 under Round 8 of the Global Fund Grant, contrary to the agreed Procurement and Supply Management plan as per the Global Fund grant agreement which specified Genie II HIV RDTs.

3.2.1 Procurement of Genscreen™ Ultra (Genscreen™ Ultra RDTs)

Article 19 of the Standard Terms and Conditions of the Global Fund's Grant agreement with SEP/CNLS for Round 8 states: "The Principal Recipient shall ensure that the procurement and supply management of Health Products under the Program is carried out in accordance with the approved Procurement and Supply Management Plan to the Global Fund grant agreement. The Principal Recipient must submit any proposed changes to the approved Procurement and Supply Management plan to the Global Fund for approval."

Similarly, Article 19 of the Standard Terms and Conditions of the Global Fund's Grant agreement with SEP/CNLS for Round 5 states: "The Principal recipient will ensure that procurement under the Program is carried out in accordance with the Procurement and Supply Management Plan."

"Genscreen™ ULTRA HIV Ag-Ab with product codes 72386 and 72388, manufactured by Bio-Rad, CE-marked regulatory version, was accepted for the WHO list of prequalified diagnostics and was listed on 08 April 2013. Prior to this date, the product was not eligible for procurement under the WHO prequalification list, one of the important prequalifications the Global Fund recognizes for health product procurements, for all procurements made after the 01 March 2011.

The expert pharmacist at SEP/CNLS stated that no approval was obtained from the Global Fund to procure the Genscreen™ Ultra RDTs. SEP/CNLS also stated that the procurement of these HIV RDTs was based upon the satisfactory outcome of several tests carried of the Genscreen™ Ultra RDTs by SEP/CNLS.

In response to the OIG's findings, SEP/CNLS provided copies of what it claimed to be reports regarding tests carried out in 2008 (refer exhibit 2); however, the test reports did not indicate that the above products were being tested and they included manually written results on plain sheets of paper. Further, the test sheets were not signed and stamped by the local testing authority (National Centre for Blood Transfusion). SEP/CNLS also informed the OIG that the expert pharmacist at SEP/CNLS overlooked the differences between the

two categories of Genscreen™ RDTs "Ultra" and "Plus" when ordering them; only the latter had been approved by the Global Fund in the Procurement and Supply Management plan.

The OIG finds that the procurement of Genscreen™ Ultra RDTs was not approved by the Global Fund as per the agreed Procurement and Supply Management plan to the Grant agreement; moreover, it was not in the WHO prequalification guidelines as detailed above. Further, the documents provided by SEP/CNLS to support their assertion that they had conducted their own tests are not credible. Thus, the OIG finds that the amount of US$ 116,522 for procurement of the Genscreen™ Ultra RDTs by SEP/CNLS is an ineligible expenditure to the Global Fund grant. Notably because of the quality assurance issues in this case, the OIG concludes no tangible value was obtained from the purchase of these RDTs.

Agreed Action 4: The recoveries committee will assess the amount to be sought for recovery 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.

3.2.2 Procurement of Genie III HIV1/HIV2 RDTs (Genie III RDTs)

This investigation found that during 2010 SEP/CNLS procured 25 Genie III HIV RDT kits from Diagnostica for US$4,525. SEP/CNLS stated that the procurement was a single source 'emergency' procurement. The procurement manual of SEP/CNLS contained no procedures for emergency procurements.

The OIG investigation established that SEP/CNLS did not request approval from the Global Fund, as required in the Standard Terms and Conditions of the Global Fund grant agreement, to procure the Genie III HIV RDTs contrary to the agreed Procurement and Supply Management plan. The Global Fund's Quality and Assurance specialist confirmed that the Genie III HIV RDTs were not eligible for procurement under the Global Fund grant, nor were the test kits on the WHO's prequalification list, one of the important prequalification the Global Fund recognizes for health product procurements. Nevertheless, SEP/CNLS' procurement expert and the expert pharmacist stated that due to an urgent requirement for test kits for 'Aids Day' held on 1 December 2010, the procurement of the 25 Genie III HIV RDTs was approved by the SEP/CNLS Director.

In April 2014, the OIG shared its detailed findings with SEP/CNLS. In response to the OIG's findings, SEP/CNLS provided a letter from the Ministry of Public Health and Fight against AIDS, stating that Genie III HIV RDTs were procured because the supplier, Bio-Rad, had ceased manufacturing Genie II HIV RDTs. SEP/CNLS further stated that Genie III HIV RDTs were procured to avoid any consequences to the general population at risk while there were shortages of HIV RDT stock. Genie III were also bought to avoid the requirement to change the national testing algorithm if any other brand of RDT had been purchased.

SEP/CNLS did not seek approval from the Global Fund to change the HIV RDTs from Genie II, as stipulated in the Procurement and Supply Management Plan, to Genie III, which was a

mandatory requirement under the terms of the grant agreement. The documentation provided by SEP/CNLS did not indicate that they attempted to procure other HIV RDTs approved by the Global Fund instead of Genie III HIV RDTs from Diagnostica.

Therefore, the procurement of the Genie III HIV RDTs for US$ 4,525 is considered to be a non-compliant expenditure to the grant agreement between SEP/CNLS and the Global Fund. Notably because of the quality assurance issues in this case, the OIG concludes no tangible value was obtained from the purchase of these RDTs.

Agreed Action 4: The recoveries committee will assess the amount to be sought for recovery 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.

4. Conclusions

This investigation found evidence of fraud, overpricing and irregularities associated with the procurement of refrigerators, freezers and warehousing services by SEP/CNLS from Diagnostica.

Specifically, the OIG found that SEP/CNLS's procurement process was inadequate to manage high-value procurements effectively. This led to fraud and abuse of the Global Fund grants by the supplier Diagnostica which submitted forged certificates in support of its bids, did not deliver equipment that matched the specifications in its bids, and overcharged for the equipment it delivered.

Although the OIG did not find conclusive evidence of corrupt or collusive practices in relation to the procurement between SEP/CNLS and Diagnostica, the irregularities identified by the OIG in relation to these two tenders are indicative of such practices.

This investigation found no direct evidence of corruption related to the procurement of medical products from Bio-Rad by SEP/CNLS. However, the OIG investigation found that SEP/CNLS procured HIV RDTs from Bio-Rad that were not approved by the Global Fund or WHO prequalified.

This investigation found that SEP/CNLS did not comply with the Standard Terms and Conditions of their program grant agreement as detailed below:

- BRN-506-G04-H and BRN-809-G07-H, and in particular Article 19
- BRN-809-G07-H, in particular Article 18

In accordance with the Standard Terms and Conditions of the program grant agreements, the Principal Recipient is accountable for the non-compliant expenditures.

The investigation identified total ineligible expenditure of US$ 415,148 including proposed recoverable expenditures of US$ 283,068 (refer table 2 below).

Table 2 - Summary of ineligible expenditure

Finding	Description	non-compliant expenditure (US$)	Proposed recoveries (US$)
1	Change of medical equipment specifications without pre-approval and procurement of refrigerators which did not meet the required specification at a higher than market price cost.	276,101	144,021
	Unapproved warehouse rent payments to Diagnostica outside of agreed budget activities	18,000	18,000
2	Procurement of non-preapproved Genscreen™ Ultra HIV Ag-Ab RDTs	116,522	116,522
	Procurement of non-preapproved Genie III HIV1/HIV2 RDTs	4,525	4,525
	Total	**415,148**	**283,068**

5. Agreed Actions

The OIG audited Global Fund grants to Burundi in 2011. One of the audit recommendations was that all Principal Recipients, sub-recipients, and grant implementing organizations need to show evidence of value for money for goods and services obtained by ensuring that they are procured through transparent and competitive bidding[10]. Although there has been improvement in processes for the procurement of non-health related goods and services, the OIG recommends that even more robust process controls for high value purchases are implemented.

The Burundi country team has already taken some safeguard measures, including:

- the procurement of pharmaceutical and health products has been outsourced to Pooled Procurement Mechanism in May 2013;
- Principal Recipients have been requested to submit an annual non-health procurement plan for non-objection by the Global Fund; and
- the Country Team has communicated to the Country Coordinating Mechanism and Principal Recipients in April 2014, its decision to implement a fiscal agent on all grants for the Burundi portfolio. This became operational in early September 2014.

Taking into account the findings of this investigation, the progress on the earlier OIG recommendations, as well as the current grant implementation arrangements for the Burundi portfolio, the Secretariat and the OIG agreed to the following agreed actions:

No.	Category	Action	Due date	Owner
1	Procurement and Supply Management Plan	The Country Team will remind the Principal Recipient, SEP/CNLS, of the importance of adherence to the agreed Procurement and Supply Management plan and obtaining documented prior approval from the Global Fund for all deviations from the Procurement and Supply Management plan.	30 November 2014	Head Grant Management
2	Procurement irregularities	The Country Team will instruct the Principal Recipient, SEP/CNLS, to revise and update their procurement manual and define clear guidelines and processes for procurement depending on the materiality of the tender amount. This will include the following: advertisement of tenders, acknowledgement of issue of tender document, acknowledgement of receipt of	31 January 2015	Head Grant Management Division

[10] www.theglobalfund.org/documents/oig/OIG_GFOIG11003AuditBurundi_Report_en/

No.	Category	Action	Due date	Owner
		bids, method of communication to prospective suppliers, guidelines on access to bid documents by staff before they are open in bid committee meetings, prequalification of suppliers, timelines on submission and evaluation of bids, confidentiality of bidder's information, basic supplier's due diligence, process to be followed for technical and financial bid evaluation including verification of bid documents, and detailed guidelines for emergency procurement, etc.;		
3	Misrepresentation	The Secretariat will initiate the Sanctions Panel procedure against the supplier Diagnostica and its key management personnel involved in submitting forged tender documents and overcharging for products delivered. The Country Team will use the lessons learned from this investigation in the current arrangements for local procurements in Burundi (if and where not already done so). For instance: - The Country Team will reiterate to the Principal Recipients and Sub-recipients to include the Global Fund's Code of Conduct for Suppliers in the conditions of contracts established with the suppliers. The Country Team will advertise to a broader audience of Principal Recipient and Sub-recipient staff members the Global Fund's procedures for reporting fraud and abuse to the OIG and its underlying whistleblowing policy.	15 December 2014	Head Grant Management Division

No.	Category	Action	Due date	Owner
4	Mismanagement	The recoveries committee will assess the amount to be sought for recovery 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.	15 December 2014	Recoveries Committee

Annex A: Exhibits

Exhibit 1:

Table detailing the different tenders in which Genscreen Ultra HIV Ag-Ab were procured:

Tender number and Round	Total Tender Amount[11]	Number of Genscreen Ultra HIV Ag-Ab Kits	Amount Quoted for Genscreen Ultra HIV Ag-Ab	Currency Quoted	Average conversion rate for the year Euro to US$[12]	Amount Genscreen Ultra HIV Ag-Ab in US$	Year
Round 5 APRODIS/030/2007	38,228.60	6 kits of 96 tests	1,136	Euro	1.3705	1,557	2007
Round 5 APRODIS/030/2007	204,409	50 kits of 480 tests	50,302	Euro	1.3705	68,938	2007
Round 5 APRODIS/BAB/32/2010	150,307	10 kits of 480 tests	15,140	US$	-	15,140	2010
Round 8 PRIDE/BAB/693/2010	316,272.96	20 kits of 480 tests	30,886	US$	-	30,886	2010
					Total	**116,522**	

[11] The total tender amount includes other products and the amount of Genscreen Ultra HIV Ag-Ab purchased
[12] Period average for the year has been considered based on the mid-point of the historical price as provided by www.Oanda.com

Exhibit 2:

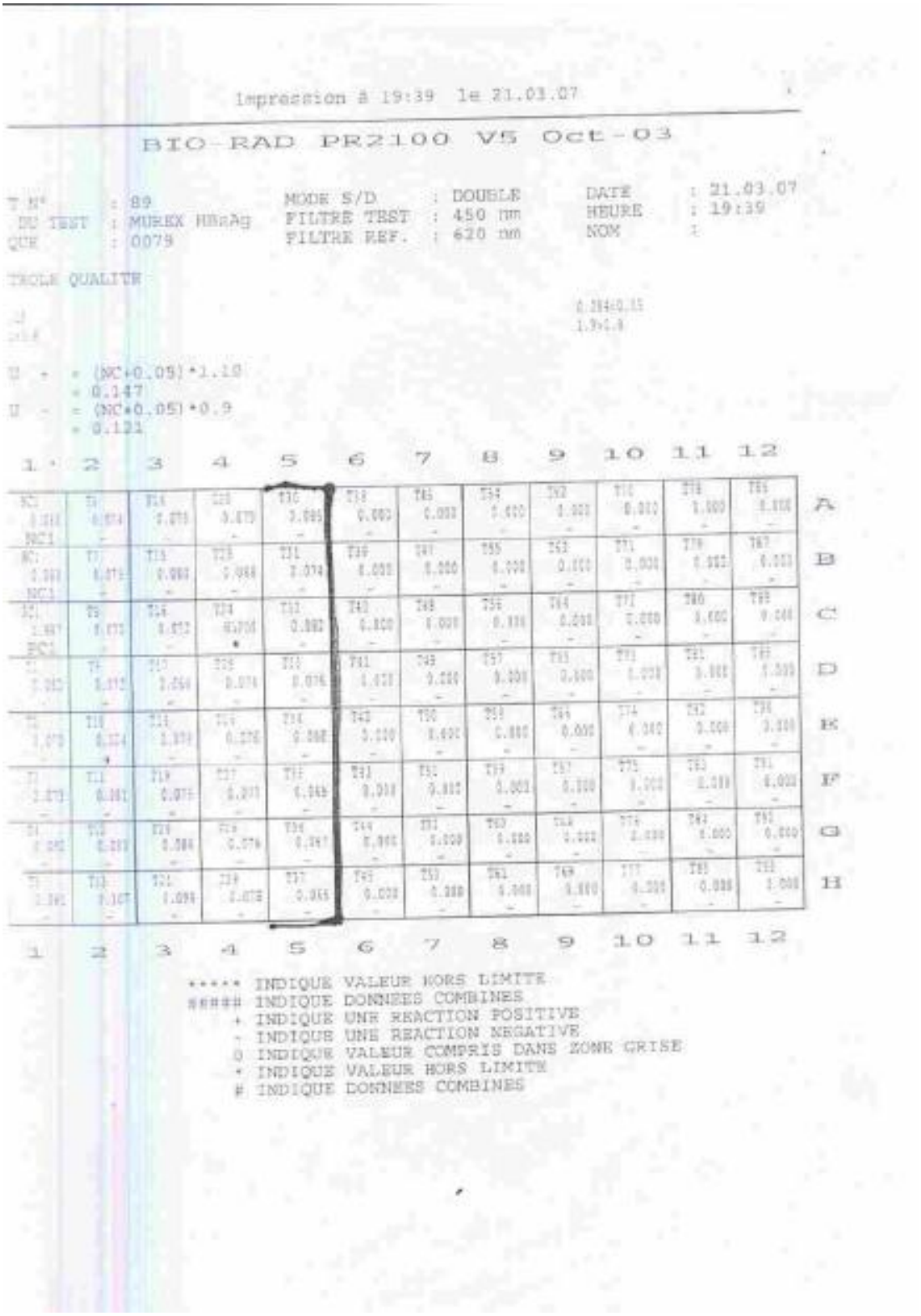
Extracts of test reports shared by SEP/CNLS:

TABLEAU COMPARATIF ELISA (BIORAD) / NUZOX (ABBOT)

	HCV		Ag HBs		HCV	
	Grand (Biorad)	NUZOX	Mond (Biorad)	NUZOX	Mono (Abbot)	NUZ
158	—	—	—	—	—	—
159	—	—	—	—	—	—
160	—	—	—	—	—	—
161	—	—	—	—	—	—
162	—	—	—	—	—	—
163	—	—	—	—	—	—
164	—	—	—	—	—	—
165	—	—	—	—	—	—
166	—	—	—	—	—	—
167	D	—	—	—	—	—
168	—	—	—	+	—	+
169	—	—	—	—	—	—
170	—	—	—	—	—	—
171	—	—	—	—	—	—
172	—	—	—	—	—	—
173	—	—	—	—	—	—
174	—	—	—	—	—	—
175	—	+	—	—	D	+
176	—	—	—	—	—	+
177	—	—	—	—	—	—
178	—	—	—	—	—	—

Exhibit 2 (continued):

Extracts of test reports shared by SEP/CNLS



Impression à 19:39 le 21.03.07

BIO-RAD PR2100 V5 Oct-03

T N°	: 89	MODE S/D	: DOUBLE	DATE	: 21.03.07
DU TEST	: MUREX HBsAg	FILTRE TEST	: 450 nm	HEURE	: 19:39
QUE	: 0079	FILTRE REF.	: 620 nm	NOM	:

TACLE QUALITE

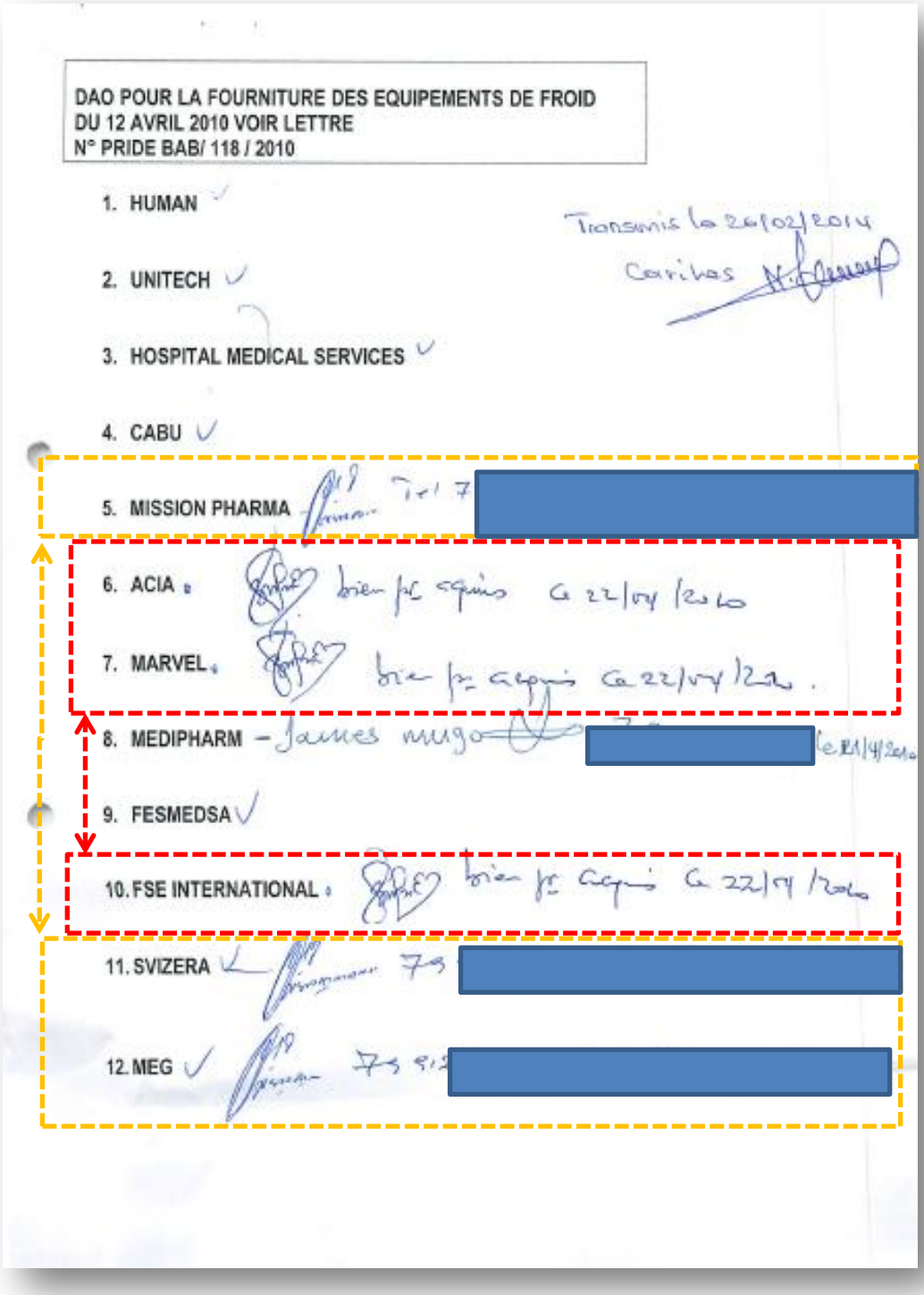
U + = (NC+0.05)*1.10
= 0.147
U - = (NC+0.05)*0.9
= 0.121

	1	2	3	4	5	6	7	8	9	10	11	12	
	NC1												A
	NC1												B
	NC1												C
													D
													E
													F
													G
													H
	1	2	3	4	5	6	7	8	9	10	11	12	

***** INDIQUE VALEUR HORS LIMITE
INDIQUE DONNEES COMBINES
+ INDIQUE UNE REACTION POSITIVE
- INDIQUE UNE REACTION NEGATIVE
0 INDIQUE VALEUR COMPRIS DANS ZONE GRISE
* INDIQUE VALEUR HORS LIMITE
# INDIQUE DONNEES COMBINES

Exhibit 3:

Register of acknowledgement of receipt of tender documents:



DAO POUR LA FOURNITURE DES EQUIPEMENTS DE FROID
DU 12 AVRIL 2010 VOIR LETTRE
N° PRIDE BAB/ 118 / 2010

1. HUMAN
2. UNITECH
3. HOSPITAL MEDICAL SERVICES
4. CABU
5. MISSION PHARMA
6. ACIA
7. MARVEL
8. MEDIPHARM
9. FESMEDSA
10. FSE INTERNATIONAL
11. SVIZERA
12. MEG

Transmis le 26/02/2014
Caritas

[redacted]

bien lu et acquis le 22/04/2010

bien lu et acquis le 22/04/2010.

James Mugo [redacted]

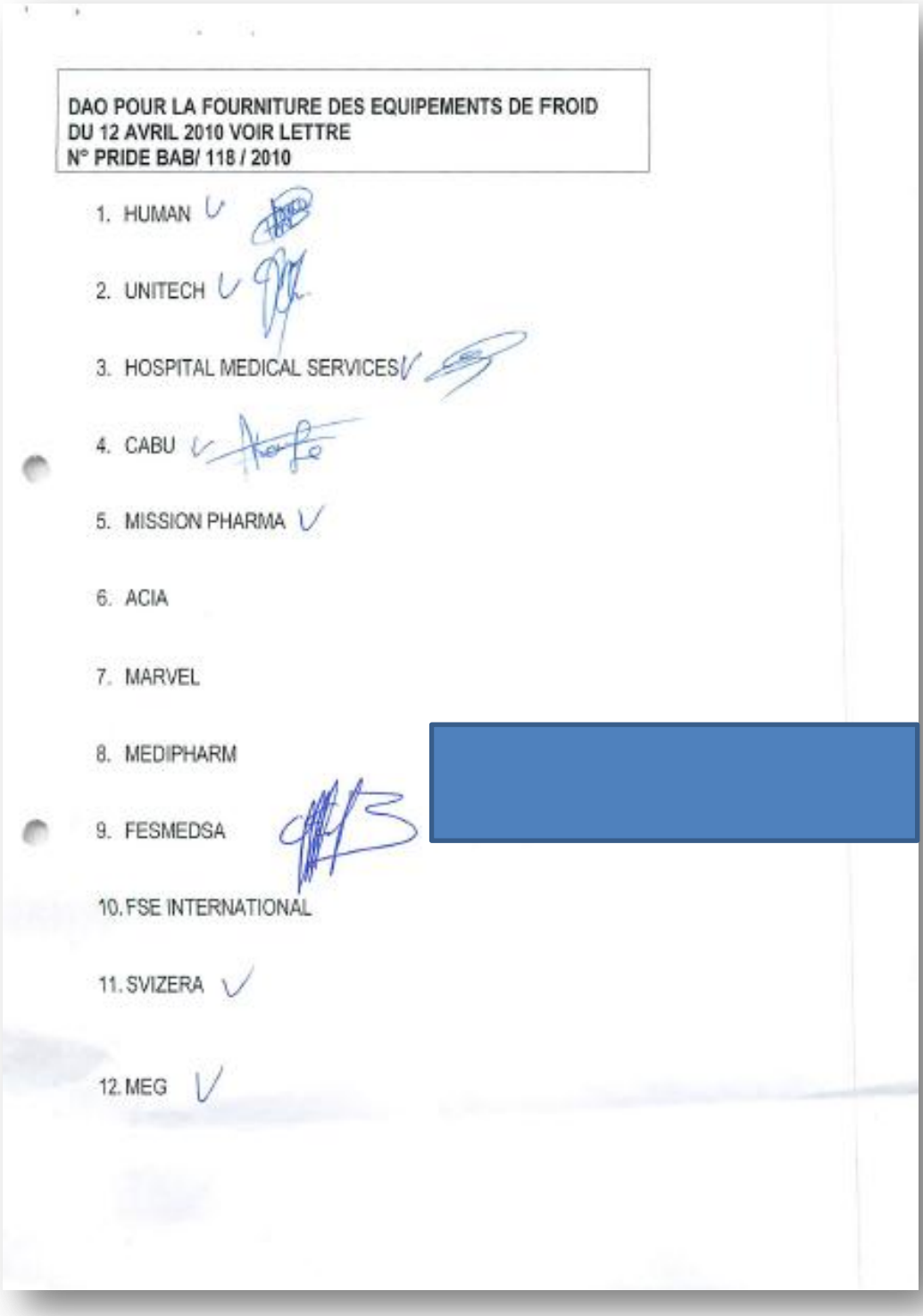
bien lu et acquis le 22/04/2010

[redacted]

[redacted]

Exhibit 3 (continued):

Register of acknowledgement of receipt of tender documents



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1. HUMAN
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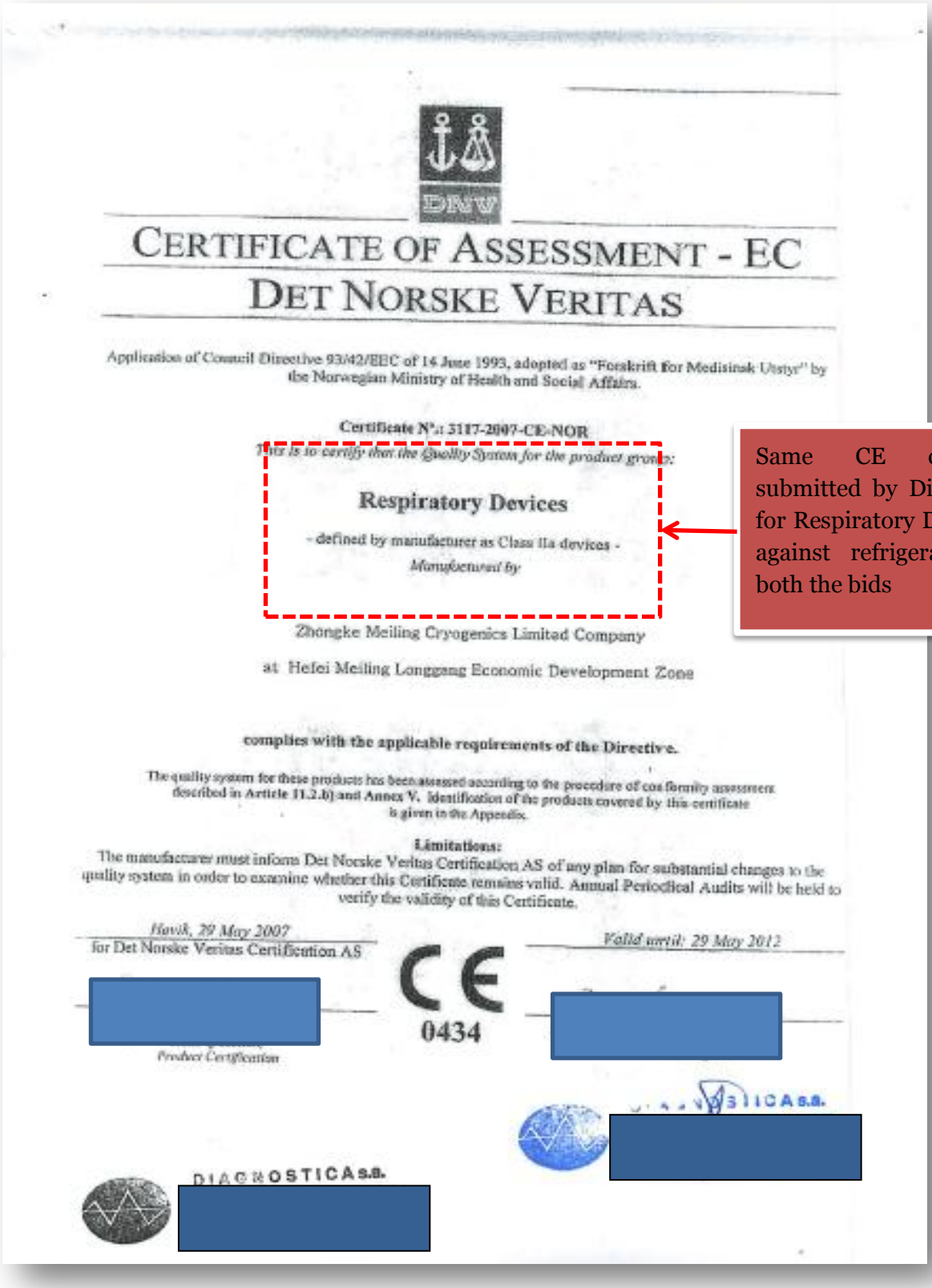
6. ACIA
7. MARVEL
8. MEDIPHARM
9. FESMEDSA
10. FSE INTERNATIONAL
11. SVIZERA
12. MEG

Exhibit 4:

Fake CE certificate provided by Diagnostica:



CERTIFICATE OF ASSESSMENT - EC

DET NORSKE VERITAS

Application of Council Directive 93/42/EEC of 14 June 1993, adopted as "Forskrift for Medisinsk Utstyr" by the Norwegian Ministry of Health and Social Affairs.

Certificate N°.: 3117-2007-CE-NOR

This is to certify that the Quality System for the product group:

Respiratory Devices

- defined by manufacturer as Class IIa devices -

Manufactured by

Zhongke Meiling Cryogenics Limited Company

at Hefei Meiling Longgang Economic Development Zone

complies with the applicable requirements of the Directive.

The quality system for these products has been assessed according to the procedure of conformity assessment described in Article 11.2.b) and Annex V. Identification of the products covered by this certificate is given in the Appendix.

Limitations:

The manufacturer must inform Det Norske Veritas Certification AS of any plan for substantial changes to the quality system in order to examine whether this Certificate remains valid. Annual Periodical Audits will be held to verify the validity of this Certificate.

Høvik, 29 May 2007
for Det Norske Veritas Certification AS

[redacted]

Product Certification

CE
0434

Valid until: 29 May 2012

[redacted]

DIAGNOSTICA s.a.

[redacted]

DIAGNOSTICA s.a.

[redacted]

Same CE certificate submitted by Diagnostica for Respiratory Devices as against refrigerators for both the bids

Exhibit 4 (continued):

Confirmation from the certifying authority

Annex B: 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.[13]

While the Global Fund does not typically have a direct relationship with the recipients' suppliers, the scope of the OIG's work[14] 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.[15] The OIG relies on the cooperation of these suppliers to properly discharge its mandate.[16]

Investigation methodology in this report included: a forensic review of red flag transactions; interviews; vendor and delivery verifications; imaging and analysis of computer forensic evidence; and a pricing analysis.

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.[17]

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 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

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[13] 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.
[14] Charter of the Office of the Inspector General (19 March 2013) § 2, 9.5 and 9.7.
[15] Ibid., § 17.1 and 17.2.
[16] 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.
[17] These principles comply with the *Uniform Guidelines for Investigations*, Conference of International Investigators, June 2009; available at http://www.un.org/Depts/oios/pages/uniformguidlines.html, accessed 01 November 2013.

Suppliers[18] or the Code of Conduct for Recipients of Global Fund Resources[19] (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.[20]

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.[21]

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[18] See fn. 16, supra.
[19] 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.
[20] Charter of the Office of the Inspector General (19 March 2013) § 8.1
[21] 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:[22]

- "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

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

[22] Available at http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForRecipients_Policy_en/ and http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/

Global Fund. Such non-compliance is based on the provisions of the STC.[23] 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).[24]

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".[25]

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.[26]

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."[27]

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."[28]

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

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[23] The STC are revised from time to time, but the provisions quoted below applied to all PRs at the time of the investigation.
[24] Standard Terms and Conditions (2012.09) at Art. 14(b): http://www.theglobalfund.org/documents/core/grants/Core_StandardTermsAndConditions_Agreement_en
[25] Id. at Art. 9(a) and Art 18(f)
[26] Id. at Art. 18(a)
[27] Id., at Art. 21 (b).
[28] Id. at Art. 21(b)

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.[29]

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.[30] 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.[31]

Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including expenses made by Sub-recipients and contractors.[32]

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."[33]

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."[34]

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.

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[29] Available at http://www.theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en ; http://www.theglobalfund.org/documents/corporate/Corporate_CodeOfConductForRecipients_Policy_en

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

[31] Id. at Art. 21(e)

[32] Id. at Art. 14

[33] Id. at Art. 27(b) and (d)

[34] Id.

Additional sanctions, including with respect to Suppliers, may be determined pursuant to the Sanction Procedure of the Global Fund, for breaches to the Codes[35].

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.

[35] This would notably be the case when a report found credible and substantive evidence of a breach of the Supplier Code of Conduct, including, but not limited to, corrupt, fraudulent, collusive, anti-competitive or coercive practices in competing for, or performing, a Global Fund-financed contract. The findings related to the supplier would then be considered by the Secretariat.