

Investigation Report

Global Fund Grants to the Republic of Yemen National Tuberculosis Control Program

GF-OIG-15-001
19 January 2015
Geneva, Switzerland

Non-compliant expenditures	USD 664,365
Proposed recoveries	USD 15,712
Categories	Corruption / Inappropriate Gratuities Fraud / Misrepresentation of information Collusion Mis-management Issues / Waste and abuse Non-compliance with laws / Grant agreements

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I. Background and Scope

The Global Fund has issued eight grants in Yemen to-date addressing all three diseases for a total commitment of USD 76.8 million and disbursements of USD 67.8 million. This includes two grants for tuberculosis, from Round 4 and Round 9, totaling USD 20.0 million.

In June 2013, the Office of Inspector General (OIG) initiated an investigation into the Round 4 tuberculosis grant. The grant was entered into in March 2005 (the “Grant Agreement”) with the National Tuberculosis Control Program (NTCP) in Yemen, as the Principal Recipient (PR), to increase treatment success rates and case detection (the “Grant”).¹ The Global Fund disbursed USD 6.0 million under the Grant in two phases from 2005 to 2010, and the Grant is now closed.

The investigation centered on concerns about the integrity of contracts awarded under the Grant in 2009 and 2010 to Lab Technology Centre, or Lab-Tec, based in Oman. Lab-Tec was allegedly representing itself as an IDA Foundation (IDA) representative in Yemen, so that it could win contracts as an international procurement partner, a condition of the Grant’s terms. The IDA Foundation is the world’s leading not-for-profit supplier of essential, quality-assured medicines and medical supplies to low- and medium- income countries.

NTCP awarded Lab-Tec four contracts in 2009 and 2010 for a total of USD 680,115 to supply lab equipment, lab reagents, computers and vehicles. As an IDA Foundation agent, however, Lab-Tec would have only been authorized to supply second line multi-drug resistant (MDR) tuberculosis drugs, and the IDA Foundation does not supply computers or vehicles.

Since 2011, the security threat in Yemen has created a challenging operating environment and international organizations are finding it increasingly difficult to maintain an in country presence. Recently, the monitoring of Global Fund grant programs have been impacted, due to travel restrictions affecting Global Fund staff. The Global Fund’s Local Fund Agent is similarly affected with staff unable to travel safely outside the capital Sana’a, and movement within the city often limited.

¹YEM-405-G04-T; Grant Agreement between the Global Fund to Fight AIDS, Tuberculosis and Malaria and the National Tuberculosis Control Program, Republic of Yemen (29 Mar. 2005).

II. Executive Summary

Based on the facts and evidence found, the OIG concludes that NTCP and Lab-Tec colluded to falsely present Lab Tec as an authorized IDA agent in Yemen, so that NTCP could:

- a) satisfy the Global Fund's requirement that it conduct health and non-health procurements through an international procurement agent, and
- b) steer sole-sourced contracts to Lab-Tec. Two NTCP staff members also solicited, and Lab-Tec paid, inappropriate gratuities of USD 7,300 in relation to the awarded contracts. NTCP no longer employs these individuals.

NTCP and Lab-Tec's mis-representation of information and their exchange of inappropriate gratuities render NTCP's procurement of the Lab-Tec contracts and the amounts paid under the contracts of USD 664,365 as non-compliant with the Grant Agreement. The sole-sourced contracts also resulted in NTCP paying higher than reasonable prices for some of the goods provided under the Lab-Tec contracts estimated at USD 15,712.

NTCP, in steering contracts to Lab-Tec, disregarded the requirement for the international procurement agent to be a UN agency, which was originally imposed by the Grant Agreement. At the Grant's inception, the Local Fund Agent (LFA) had determined that NTCP lacked adequate competence and capacity to conduct procurements. Therefore, NTCP was required to outsource procurement of medical and diagnostic equipment to the World Health Organization (WHO) or the United Nations Children's Fund (UNICEF) and procurement of vehicles to the United Nations Development Programme (UNDP). During Phase II of the Grant, NTCP sought to conduct all procurements itself. The Secretariat denied the request and maintained its requirement for NTCP to engage an international procurement agent to conduct procurements. NTCP selected the Global Drug Facility and Lab-Tec to replace the WHO and UNDP as its international procurement partners and falsely presented Lab-Tec as the Yemen representative of the IDA Foundation, which could supply vehicles, computers and lab equipment. The Secretariat did not object to this approach because the Global Drug Facility was hosted by WHO.

Over four years has passed since the Lab-Tec contracts were awarded and the Grant has now closed. During that period two new grants to Yemen were initiated, but political and social conditions have deteriorated and security concerns have increased the difficulties of monitoring on-going grant activities.

Secretariat actions

In response to these developing challenges and the OIG's recent investigation findings, the Secretariat has been implementing changes in grant operations and requiring additional safeguards to mitigate risks to on-going grants. Collectively, these actions are designed to better ensure that grants fund only essential, low-risk activities and that all activities and expenditures are pre-approved by the Secretariat, prior to disbursement.

The procurement of health and non-health products has been re-directed to UN agencies or is done through the Global Fund Pooled Procurement Mechanism (PPM). The scope of the LFA has been expanded to provide closer oversight in country, as possible, and in December 2013 the Secretariat invoked the Additional Safeguards Policy, which permits it to nominate a new PR and to directly contract external auditors for the audits of all grants. The OIG endorses these steps and is working with the Secretariat to monitor and respond to on-going risks, challenges and grant activities.

Agreed Management Actions

As a result of its investigative findings, the OIG has proposed formal actions agreed to by the Secretariat to be implemented as set out in Section 5:

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

- The Secretariat will address the misconduct by the supplier, Lab Technology Centre, in accordance with the Global Fund's policy on supplier misconduct and the Sanctions Panel Procedure.
- The Global Fund Secretariat will identify an international partner to replace NTCP as the PR.

III. Findings and Agreed Management Actions

01 Requirement for NTCP to Use a Procurement Agent

Prior to the Grant, the Global Fund concluded that NTCP lacked the resources and competence to carry out procurements. NTCP, therefore, agreed as a condition of the Grant and Grant Agreement to engage as its procurement agents the World Health Organization (WHO) for all health products and the United Nations Development Program (UNDP) and the UN's Inter-Agency Procurement Services Office (IAPSO) for all non-health products. NTCP was subsequently allowed by the Global Fund to procure non-health products through WHO, and procured through it vehicles and computers in 2006 and 2007, during Phase 1 of the Grant.

During Phase 2 of the Grant, which began in July 2007, NTCP sought to remove its procurement restriction by requesting authorization from the Global Fund to conduct its own procurements of both health and non-health products for the final two years of the Grant. NTCP cited major delivery delays with the WHO as the reason for the request. The Local Fund Agent advised against this given the difficult local environment in Yemen and NTCP's continued insufficient capacity to conduct procurements. The Global Fund, therefore, maintained the requirement that NTCP engage an "international procurement agent" to conduct procurements, but stated that such entity did not necessarily have to be the WHO. Additionally, Yemen national procurement law, followed by NTCP, allows for sole-sourcing procurement through a UN organization, such as the WHO.

To meet these requirements, NTCP identified the Global Drug Facility and Lab Technology Centre, or Lab-Tec, a regional trading company based in Oman, to replace WHO as its procurement agent for health and non-health products. To qualify Lab-Tec as an acceptable procurement agent under NTCP's revised procurement terms and national procurement law, NTCP and Lab-Tec falsely held Lab-Tec out as an authorized local agent for the IDA Foundation, an international non-profit organization based in the Netherlands that supplies drugs and medical supplies to low and medium-income countries. Although the IDA Foundation is not a UN organization, it is an internationally recognized procurement agent. It is also an exclusive procurement agent for the Global Drug Facility (which was hosted by WHO) for the supply of second line anti-tuberculosis drugs.

02 Misrepresentations of Material Facts

From July 2009 to September 2010, the final two years of the Grant, NTCP entered into four sole-sourced contracts with Lab-Tec totaling USD 680,115 for vehicles, computer equipment, lab equipment and medical materials such as reagents. Information about the four contracts is in Table A.

Based on the evidence, the OIG investigation concludes that NTCP and Lab-Tec falsely held Lab-Tec out as an authorized local IDA Foundation agent to give the appearance of compliance with the Global Fund's requirement for NTCP to engage an international procurement agent to conduct procurements, so that NTCP could steer Lab-Tec the sole-sourced contracts. For example, the former NTCP program director instructed the owner of Lab-Tec to place the IDA Foundation's logo onto Lab-Tec's quotations. Indeed, Lab-Tec's quotations and contracts with NTCP for computer equipment and cars in 2009 and 2010 bore what appeared to be the IDA Foundation's logo and referred to Lab-Tec as an IDA Foundation agent. The word "Foundation," however, in the logo on the quotations and contracts was incorrectly spelled as "Foudation" [sic]. In April 2010, about nine months after the first Lab-Tec contract, the IDA Foundation ordered Lab-Tec to stop using its logo on its stationery, as it created confusion, which the owner of Lab-Tec confirmed, although NTCP continued to steer two more contracts to Lab-Tec and referred to Lab-Tec as IDA.

Lab-Tec did not manufacture any of the products under the contracts but served as a broker, procuring goods from suppliers and selling these goods to NTCP at a mark-up. Only a small amount of the medical materials purchased in 2010 for USD 47,470 was actually procured by Lab-Tec from the IDA Foundation. The other goods and medical materials were procured from various dealers and wholesalers located throughout the region or Europe and India, as shown in Table A.

Table A: Contracts between NTCP and Lab-Tec

#	Contract Date	Goods (Units)	Upstream Supplier; Country of Source	Contract Value (USD)
1.	August 2009	Suzuki Jimny (10); Suzuki Grand Vitara (4)	Automotive Dealer; UAE	262,140
		HP laptops (9); HP desktops (17); HP portable printers (9)	Computer Retailer; UAE	43,894
2.	February 2010	Suzuki Jimny (4); Suzuki Grand Vitara (2)	Automotive Dealer; UAE	124,795
		Compaq laptops (10); HP desktops (20); HP printers (20); HP mobile printer (10);	Computer Retailer; UAE	60,900
3.	June 2010	Lab detection kits and supplies	Local Dealer; Belgium	164,586#
		Lab reagents and test tubes	Supplier; India	
		Lab reagents	Supplier; Egypt	
		Lab materials and supplies	IDA Foundation; Netherlands	
4.	June 2010	Olympus CX-21 microscopes (14)	Local Dealer; Germany	23,800
TOTAL				680,115
TOTAL PAID				664,365#

NTCP paid only USD 148,836 against this contract on the grounds that the delivery of certain items did not meet technical specifications or were not delivered and NTCP's refusal to pay Lab-Tec's 24% mark-up on goods it procured from the IDA Foundation.

The OIG concludes that the four contracts for USD 680,115 were procured in violation of the Grant Agreement and that the value paid under the contracts of USD 664,365 represents non-compliant expenditures under the Grant Agreement.

03 Inappropriate Gratuities Paid to NTCP Staff

Based on the evidence, the OIG concludes that NTCP and Lab-Tec conducted the false misrepresentations in exchange for Lab-Tec paying NTCP staff inappropriate gratuities. The OIG's investigation confirmed several payments and has indications that more were made. The OIG found that Lab-Tec paid USD 5,000 to the personal bank account of the former NTCP program assistant, as a pre-condition to NTCP releasing payment to Lab-Tec for the June 2010 contract, according to the owner of Lab-Tec. To substantiate his statements, the owner of Lab-Tec provided the OIG with a copy of the bank wire transfer order dated 25 October 2010 transferring USD 5,000 to the personal bank account of the former NTCP program assistant. The investigation also found Lab-Tec made an additional payment by bank wire transfer on 17 February 2010, to the former NTCP program assistant for USD 1,300. The former NTCP program assistant admitted receiving the payment. Additionally, the investigation uncovered a bank wire transfer order from Lab-Tec indicating the company paid USD 1,000 to the personal bank account of the former NTCP program director on or around 17 February 2010. The OIG was not able to interview the former NTCP program director about this payment because he declined the OIG's request for a meeting.

Under the Grant Agreement, the PR may not solicit or receive any gratuity or any item of value, or misrepresent or omit facts to influence the action of any person involved in the procurement process or

contract execution.² In the event of a violation by the PR of any provision of the Grant Agreement, the Global Fund may require the PR to refund any disbursement of the Grant.³ The OIG identifies inappropriate gratuities of USD 7,300 as a proposed recoverable amount related to inappropriate gratuities.

In addition to seeking recoveries of non-compliant expenditures, the Global Fund may sanction a supplier, including debarring the supplier from participating in any Global Fund financed activity, if the supplier has engaged in corrupt, collusive or anti-competitive practice in competing for or in executing a Global Fund financed contract.⁴

Agreed Management Action 1: Based on the findings of this report, the Secretariat will finalize and pursue, from all entities responsible, an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.

Agreed Management Action 2: The Secretariat will address the misconduct by the supplier, Lab Technology Centre, in accordance with the Global Fund's policy on supplier misconduct and the Sanctions Panel Procedure.

04 Analysis of Lab-Tec's Pricing

The Grant Agreement required NTCP to pay no more than a reasonable price for goods and services, as determined, for example, by a comparison of price quotations and market prices.⁵ The Lab-Tec contracts were sole-sourced to a local broker instead of WHO, which avoided the possibility of genuine competition and could not assure reasonable prices. In addition, Lab-Tec was found to have paid inappropriate gratuities to NTCP staff in exchange for the contracts. The OIG, therefore, conducted an analysis, where possible, of the unit prices NTCP paid for the goods under the four Lab-Tec contracts to determine if more than a reasonable unit price was paid, in violation of the Grant Agreement.

Based on its analysis, the OIG concludes that NTCP paid more than reasonable prices for some of the goods procured and, thus, was not in compliance with the Grant Agreement for the procurement of those goods. The amount of the inflated price over and above a reasonable price is a use of Grant funds that is not in compliance with the Grant Agreement, which allows for the recovery of such non-compliant expenditures.⁶

For its analysis, the OIG compared and analyzed Lab-Tec's contracted unit prices to unit prices of similar products i) procured by NTCP under Phase 1 of the same grant from WHO, ii) bid by WHO and Lab-Tec for an NTCP contract in 2012 under a Round 9 tuberculosis grant, and iii) listed at past and current market prices. The OIG also analyzed and considered Lab-Tec's profit margins, where possible, it made on the contracts based on the costs it paid for the goods to its upstream suppliers.

The OIG's conclusions and proposed recovery amounts for each type of good procured follows and are summarized in Table B. The detailed description of the work is in **Annex B, Exhibits 2 to 5**:

- Vehicles. NTCP procured from Lab-Tec a total of six Suzuki brand Grand Vitara vehicles in 2009 and 2010 for USD 153,790.⁷ The OIG concludes that the unit prices charged by Lab-Tec were more than reasonable prices and proposes a recoverable amount of USD 8,250 for the six vehicles procured.

NTCP also procured from Lab-Tec a total of 14 Suzuki brand Jimny vehicles in 2009 and 2010 for USD 216,620. Although there is evidence that Lab-Tec earned a generous profit margin from the sale (32%), the OIG concludes that the evidence did not sufficiently indicate that the prices paid by

² Grant Agreement, YEM-405-G04-T (amended and restated), Art. 21(b)(iii) (20 Aug. 2007).

³ Id. at Art. 27(ii).

⁴ Sanctions Procedures Relating to the Code of Conduct for Suppliers, Art. 5 (15 July 2013).

⁵ Grant Agreement, YEM-405-G04-T (Amended and Restated), Art. 18(a)(vi).

⁶ Id. at Art. 27(ii).

⁷ All unit prices and total prices referred to in this section exclude transportation costs.

NTCP were more than reasonable, and does not propose any recoverable amount from this procurement. See **Annex B, Exhibit 2**.

- Computers. NTCP procured 37 desktop computers and 19 laptop computers in 2009 and 2010 for a total of USD 69,800. Although the OIG observed some indications of inflated prices for the computers and there is evidence that Lab-Tec earned a generous profit margin from at least part of the sale, the evidence did not sufficiently indicate that NTCP paid more than reasonable prices, and the OIG does not propose any recoverable amount from the procurements. See **Annex B, Exhibit 3**.
- Microscopes. NTCP procured from Lab-Tec 14 laboratory microscopes in 2010 for USD 23,800. The OIG concludes that the unit prices paid by NTCP were more than reasonable prices and proposes a recoverable amount of USD 7,462 for the microscopes procured. See **Annex B, Exhibit 4**.
- Medical Materials. NTCP procured from Lab-Tec a large variety of medical materials in 2010 for a total value of USD 164,586. The materials were sourced from four different upstream suppliers from four different countries. The OIG analyzed the unit prices associated with the materials purchased from two of the four suppliers for a total of USD 151,060, or the majority, of the total materials procured.
 - For the materials Lab-Tec procured from the IDA Foundation in the Netherlands for USD 47,471, OIG found that NTCP ultimately paid the price the IDA Foundation charged to Lab-Tec, rather than Lab-Tec's higher contracted price, marked-up with a 24% profit margin. Thus, the OIG concludes that NTCP did not pay more than reasonable prices, and proposes no recoverable amount for these goods.
 - For the materials Lab-Tec procured from Bainounah for USD 103,590, the OIG concludes that the unit prices paid by NTCP for these goods did not sufficiently indicate that the prices were more than reasonable, and does not propose any recoverable amount from the procurement. See **Annex B, Exhibit 5**.

The OIG estimates the total amount paid by NTCP in excess of reasonable prices for goods procured for more than reasonable prices to be USD 15,712, as summarized in Table B.

Table B: Summary of OIG Pricing Analysis of Lab-Tec NTCP Contracts

Goods	Supplier / Country of Source	Lab-Tec's Sell Price (USD)#	Unreasonable Amount (USD)
Suzuki Grand Vitaras	Automotive Dealer / UAE	153,790	8,250
Suzuki Jimnys	Automotive Dealer / UAE	216,620	
Desktop and Laptop Computers*	Computer Retailers / UAE	69,800	
Laboratory microscopes	Local Dealer / Germany	23,800	7,462
Medical Materials	Local Dealer / Belgium	103,500	
Medical Materials	IDA Foundation	47,471	
Medical Materials	Dealers in India and Egypt	7,379	
TOTAL		622,360	15,712

Note: All amounts exclude transportation costs.

* Excludes printers. See Annex B, Exhibit 3.

It is known in procurement cases involving inappropriate gratuities that suppliers will recoup such payments from excessive profit margins earned by inflating the prices of procured goods and services. It is also known that suppliers will often also provide lower-cost substitute goods or deliver fewer quantities than contracted.

In this instant, the OIG found that Lab-Tec earned generous profit margins from some of the goods. See **Annex B, Exhibits 2 to 5**. It also concludes that NTCP paid more than reasonable prices for some of the goods. What was inconclusive, however, is whether the prices paid by NTCP—for the goods for which more than reasonable prices could not be firmly established—would have been lower had the goods been procured through a competitive tender or from an approved international procurement agent, such as WHO. A full recoverable amount comprehensive to the four contracts, therefore, cannot be readily determined.

The OIG came across no evidence indicating that Lab-Tec provided lower-cost or quality substitute products or delivered fewer quantities of goods than contracted.

The OIG, therefore, proposes a total recoverable amount of USD 15,712; which is the greater of NTCP's overpayment for some goods of USD 15,712 and the confirmed inappropriate gratuities of USD 7,300.

Agreed Management Action 1: Based on the findings of this report, the Secretariat will finalize and pursue, from all entities responsible, an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.

05 Actions taken

Throughout the investigation, the OIG met regularly with the Secretariat to share information which could aid the team to address risks to the Grant funds. In response to developing challenges of operating in Yemen and monitoring grant activity in country and the recent OIG findings, the Secretariat has been implementing measures agreed to by the OIG to mitigate risks of misuse of funds. These measures are as follows:

Effective 30 September 2013, the Secretariat required NTCP to cease implementing non-essential activities and to seek pre-approval for all activities to be undertaken (prior to incurring any expenditure). NTCP has complied with this directive.

All grants must be dedicated to essential activities only. During the Country Dialogue, which took place from 4-8 May 2014, the Secretariat advised the NTCP to focus on essential activities in their Concept Note submission for the allocation period 2014-2016.

Effective as of 19 December 2013, the Secretariat invoked the Additional Safeguards Policy (ASP) for the management of grants in Yemen. The ASP permits the Secretariat to nominate a new PR and to directly contract external auditors for the audit of the financial year.

The Secretariat expanded the LFA's scope to include the following: (a) ensuring proper bank reconciliations for the grant is done on a monthly basis; (b) reviewing grant activities to be carried out each month as agreed through the pre-approval procedure implemented by the Secretariat; and (c) reviewing local procurements of goods and services conducted by NTCP.

The Secretariat uses the disbursement mechanism of cash transfers to limit cash available in country. This allows for infrequent disbursement decisions, but more frequent cash transfers, which enables the Secretariat to monitor the pace of implementation and to limit the cash in country.

The procurement of pharmaceuticals (second line tuberculosis drugs) is to be outsourced to the WHO/Global Drug Facility (GDF). Payments will be made from the Global Fund directly to the IDA Foundation, the procurement agent. The Secretariat has also required the PR to outsource the procurement of non-health products through the WHO or any other organization authorized by the Global Fund.

Agreed Management Action 3: The Global Fund Secretariat will identify an international partner to replace NTCP as the PR. (In a recent meeting between the OIG and the Secretariat, the necessity of replacing the PR was further stressed and the Secretariat acknowledged the urgency of identifying a suitable partner for such replacement).

IV. Conclusion

The investigation highlighted that NTCP misled the Global Fund by falsely claiming Lab-Tec was authorized to supply vehicles, computers and lab equipment as an authorized IDA Foundation agent in Yemen. Had the Global Fund known this information, NTCP would not have been permitted to conduct procurements through Lab-Tec, but rather through the WHO or UNDP. Bank wire transfers executed by Lab-Tec showed payments, or attempted payments, from Lab-Tec to the personal bank accounts of the former NTCP program director and the former NTCP program assistant. The evidence also indicated that NTCP paid more than 'reasonable' prices on some of the goods procured under the Lab-Tec contracts.

V. Table of Agreed Management Actions

No.	Category	Action	Due date	Owner
1.	Recovery of funds	Based on the findings of this report, the Secretariat will finalize and pursue, from all entities responsible, an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.	30 June 2015	Recoveries Committee
2.	Programmatic and Performance Risk	The Secretariat will address the misconduct by the supplier, Lab Technology Centre, in accordance with the Global Fund's policy on supplier misconduct and the Sanctions Panel Procedure.	30 June 2015	Head, Grant Management Division
3.	Programmatic and Performance Risk	The Global Fund Secretariat will identify an international partner to replace NTCP as the PR.	31 Dec ember 2015	Head, Grant Management Division

VI. Annexes

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.⁸

While the Global Fund does not typically have a direct relationship with the recipients’ suppliers, the scope of the OIG’s work⁹ 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.¹⁰ The OIG relies on the cooperation of these suppliers to properly discharge its mandate.¹¹

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.¹²

The OIG finds, assesses and reports on facts. On that basis, it makes determination on the compliance of expenditures with the grant agreements and details risk-prioritized Agreed Management Actions. Such Agreed Management Actions may notably include the identification of expenses deemed non-compliant for considerations of recovery, recommended administrative action related to grant management and recommendations for action under the Code of Conduct for Suppliers¹³ or the Code of Conduct for Recipients of Global Fund Resources¹⁴ (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.¹⁵

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

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

⁸ 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.

⁹ Charter of the Office of the Inspector General (19 March 2013) § 2, 9.5 and 9.7.

¹⁰ *Ibid.*, § 17.1 and 17.2.

¹¹ 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.

¹² 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.

¹³ See fn. **Error! Bookmark not defined.**, *supra*.

¹⁴ 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.

¹⁵ Charter of the Office of the Inspector General (19 March 2013) § 8.1

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

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

Applicable Concepts of Fraud and Abuse

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

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

Such agreements with Sub-recipients must notably include pass-through access rights and commitments to comply with the Codes. The Codes clarify the way in which recipients are expected to abide by the values of transparency, accountability and integrity which are critical to the success of funded programs. Specifically, the Code of Conduct for Recipients prohibits recipients from engaging in corruption, which includes the payment of bribes and kickbacks in relation to procurement activities¹⁶

The Codes notably provide the following definitions of the relevant concepts of wrongdoings:¹⁷

- “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.

¹⁶ Code of Conduct for Recipients of Global Fund Resources, section 3.4.

¹⁷ Available at: http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForRecipients_Policy_en/ and http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/

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 Global Fund. Such non-compliance is based on the provisions of the STC.¹⁸ 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).¹⁹

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".²⁰

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.²¹

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."²²

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."²³

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.²⁴

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.²⁵ 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

¹⁸ The STC are revised from time to time, but the provisions quoted below applied to all PRs at the time of the investigation.

¹⁹ Standard Terms and Conditions (2012.09) at Art. 14(b):

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

²⁰ Id. at Art. 9(a) and Art 18(f)

²¹ Id. at Art. 18(a)

²² Id., at Art. 21 (b)

²³ Id. at Art. 21(b)

²⁴ Available at: http://www.theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en ;

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

²⁵ Standard Terms and Conditions (2012.09) at Art. 21(d)

communication of the Code of Conduct for Recipients to all Sub-recipients, as well as mandatory application through the Sub-recipient agreements.²⁶

Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including expenses made by Sub-recipients and contractors.²⁷

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.”²⁸

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.”²⁹

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

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

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

²⁶ Id. at Art. 21(e)

²⁷ Id. at Art. 14

²⁸ Id. at Art. 27(b) and (d)

²⁹ Id.

Annex B: Exhibits

Exhibit B-1: IDA Logo on Lab-Tec's Invoice as Compared to IDA Foundation Letterhead

Lab-Tec Invoice (sample)



Date : 23/12/09
PI : LT/LTC/001

Bill To:
**"National TB Program"
Ministry of Health and People
Republic of Yemen**

INVOICE

No.	Specifications	QTY	Estimated Price In USD	Insurance and freight	Total
1	SUZUKI JIMNY JX M/T(MRK 5CA),2010 MY	10	15188	6000	157880

IDA Foundation Letterhead (sample)



1027 AA Amsterdam
P.O. Box 37098
1030 AB Amsterdam
The Netherlands

phone: +31 20 4033051
fax: +31 20 4031854
info@idafoundation.org
www.idafoundation.org

RE: IDA Foundation Representative in EMRO

Amsterdam, April 2010

To whom it may concern,

Recently IDA Foundation has been made aware that within the EMRO region there is confusion about IDA's relationship with Dr. Hassan of Lab-Tec based in Oman with regards to supplying quality assured products to MDR TB projects in the EMRO region. Therefore IDA Foundation herewith releases the following official statement:

Dr. Hassan of Lab-Tec is the IDA representative for the designated area Oman, Saudi Arabia and United Arab Emirates. However by mistake Lab-Tec has been using the IDA logo on all correspondence to all Lab Tec customers in the Middle East and North Africa. With immediate effect this has been rectified; Lab-Tec will no longer use the IDA logo on any correspondence.

Exhibit B-2 – Pricing Analysis for Vehicles

NTCP procured vehicles from Lab-Tec in 2009 and 2010. In 2009, NTCP procured four Suzuki Grand Vitara 4-wheel drive vehicles for US\$ and 10 Suzuki Jimny vehicles. In 2010, NTCP procured two more Suzuki Grand Vitaras and four more Suzuki Jimnys. Lab-Tec purchased all of the vehicles from Desert Automotive LLC of Oman, which shipped the vehicles to Yemen from the United Arab Emirates. The unit prices paid by NTCP for each of the vehicles are shown in Table B-2-1.

Table B-2-1. Summary of Vehicles Procured by NTCP from Lab-Tec in 2009 and 2010 (amounts in US\$)

Contract Year	Vehicle	Unit Price, Ex Shipping (US\$)	Contract Value (US\$)	Lab-Tec Cost (US\$)	Lab-Tec Mark-up (%)
2009	4 Grand Vitara – 2009 model	25,090	100,360	198,500	32%
2009	10 Jimny – 2010 model	15,188	151,880		
	Shipping		9,900		
	Total		262,140		
2010	2 Grand Vitara – 2011 model	26,715	53,430	n/a	n/a
2010	4 Jimny – 2011 model	16,185	64,740	n/a	n/a
	Shipping		6,625		
	Total		124,795		

As part of its investigation, the OIG conducted an analysis of prices paid by NTCP to Lab-Tec for the vehicles. In conducting its analysis, the OIG considered unit prices for similar vehicles i) paid by NTCP to WHO in 2006 and 2007 under the same grant for Jimnys, and ii) as suggested by the manufacturer (Manufacturer Suggested Retail Price (MSRP)) for 2007 to 2013 model years. The OIG also considered the cost Lab-Tec paid for the vehicles from its supplier in 2009 and current prices in the on-line marketplace. In 2009, Lab-Tec marked up the price of its vehicles sold by an average of 32% (unit price paid by Lab-Tec to its source was available only in total, and not by model).

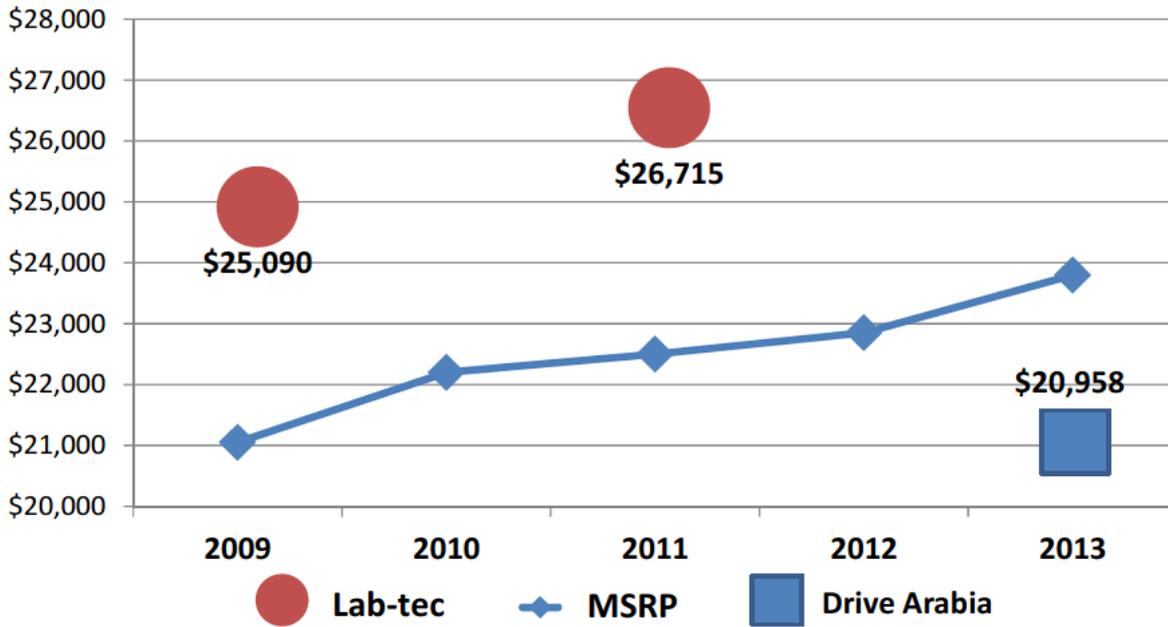
The MSRP is the price the manufacturer suggests to its dealers at which to sell vehicles. It is a reference point only. Vehicles are rarely sold to the retail customer at MSRP, but at some discount, such as 3% to 10%, or more. The dealer will discount the actual price from the MSRP based on vehicle supply and demand, volume, manufacturer's incentives to the dealer such as rebates, regional considerations, foreign exchange rate, competition, and other factors. For example, the Jimnys sold by WHO to NTCP in 2007 were sold to NTCP at a unit price of approximately 65% of MSRP. A 2013 new Grand Vitara on Drive Arabia.com is listed for sale at 88% of MSRP and a 2013 Jimny is listed at 89% of MSRP.

Grand Vitara

Chart B-2-1 illustrates the unit prices of Grand Vitaras considered for the OIG analysis by the vehicle's model year (and not the year purchased).

The MSRP for the vehicle increased from 2009 to 2013, but at a slow rate, ranging from a low of US\$21,049 for 2009 models to US\$23,800 for 2013 models. The unit prices charged NTCP by Lab-Tec were 19% higher than the vehicle's MSRP for each of the two vehicle contracts with NTCP.

Chart B-2-1. Comparison of Unit Prices for Grand Vitaras (in US\$)



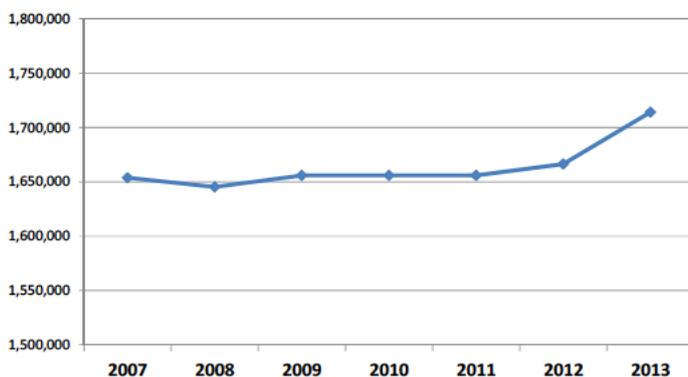
Note: Years represent model years of the vehicle and not year of purchase.

The OIG concludes, based on its analysis, that the prices paid by NTCP for the Grand Vitara vehicles were unreasonably high, and proposes a recoverable amount of **US\$8,250** for the procurement of the six Grand Vitaras, which represents the unit price paid in excess of the vehicle’s MSRP for each respective model year.

Jimny

Chart B-2-2 illustrates the MSRP unit prices of Jimnys for the 2007 to 2013 model years (prices are expressed in YEN).

Chart B-2-2. MSRP Unit Prices for Jimnys (in YEN)



The MSRP for Jimnys also stayed relatively flat from the 2007 to 2013 model years. This data would suggest that current market prices would be fairly representative of market prices in earlier years. During this period, however, the Yen strengthened considerably against the US\$ and the UAE Dirham, as shown in Chart B-2-3. This phenomenon likely significantly affected the vehicle’s final price in US\$, since the vehicles were manufactured in Japan, but sold to NTCP in US\$.

Chart B-2-3. Foreign Exchange Rates of US\$ and UAE Dirham against the Japanese Yen

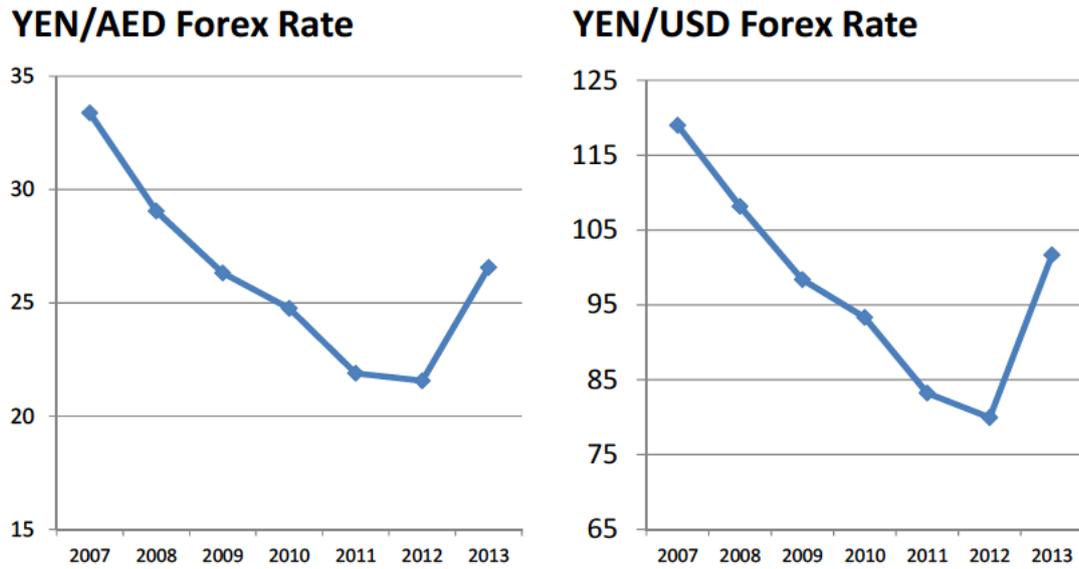
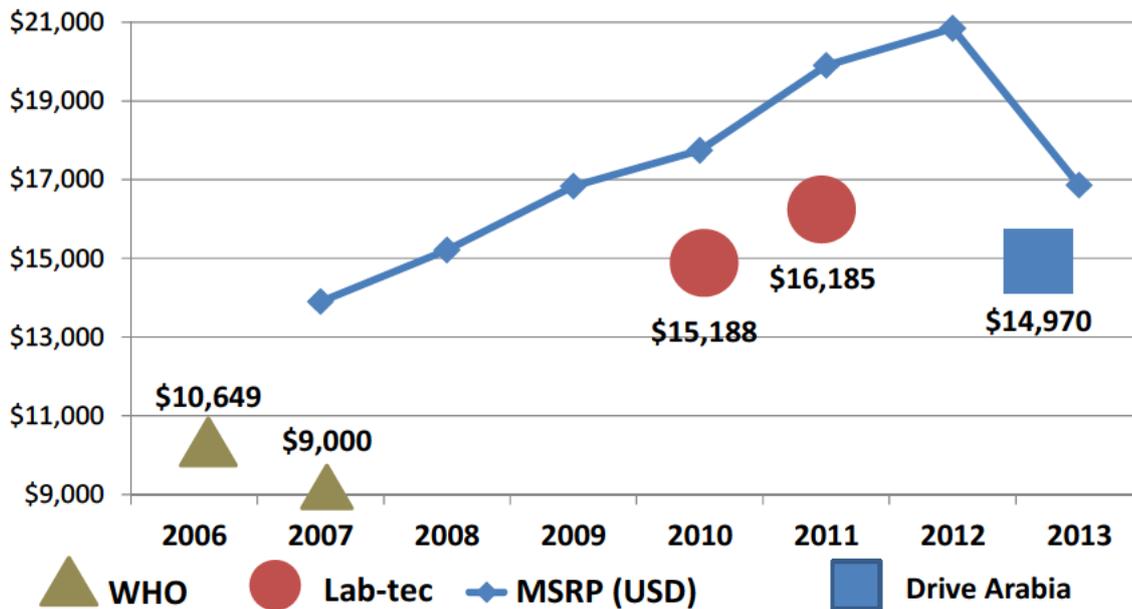


Chart B-2-4 illustrates the unit prices of Jimnys considered for the OIG analysis by the vehicle’s model year (and not the year purchased). The MSRP data was converted from Yen to US\$ at the prevailing foreign exchange rates.

Chart B-2-4. Comparison of Unit Prices for Jimnys (in US\$)



The unit prices charged NTCP by Lab-Tec for the Jimnys were less than the vehicle’s MSRP for each model year, at 86% and 81% of MSRP for 2010 and 2011, respectively. The prices were also not significantly different than the current on-line market price for 2013 models sourced from the UAE: US\$15,188 and US\$16,185 versus US\$14,970.

The OIG, therefore, concludes that the unit prices paid by NTCP for the vehicles were not unreasonable, and proposes no recoverable amount for the Jimnys.

Exhibit 3 – Pricing Analysis for Computers

NTCP procured computers and printers from Lab-Tec in 2009 and 2010. In 2009, NTCP procured 17 desktop computers, nine laptop computers, and 26 printers for US\$43,894. In 2010, NTCP procured 20 desktop computers, 10 laptop computers, and 30 printers for US\$60,900. All computers and printers were Hewlett Packard (HP) brand. The unit prices paid by NTCP for the products are shown in Table B-3-1.

Table B-3-1. Summary of Computer and Printers Procured by NTCP from Lab-Tec in 2009 and 2010 (in US\$)

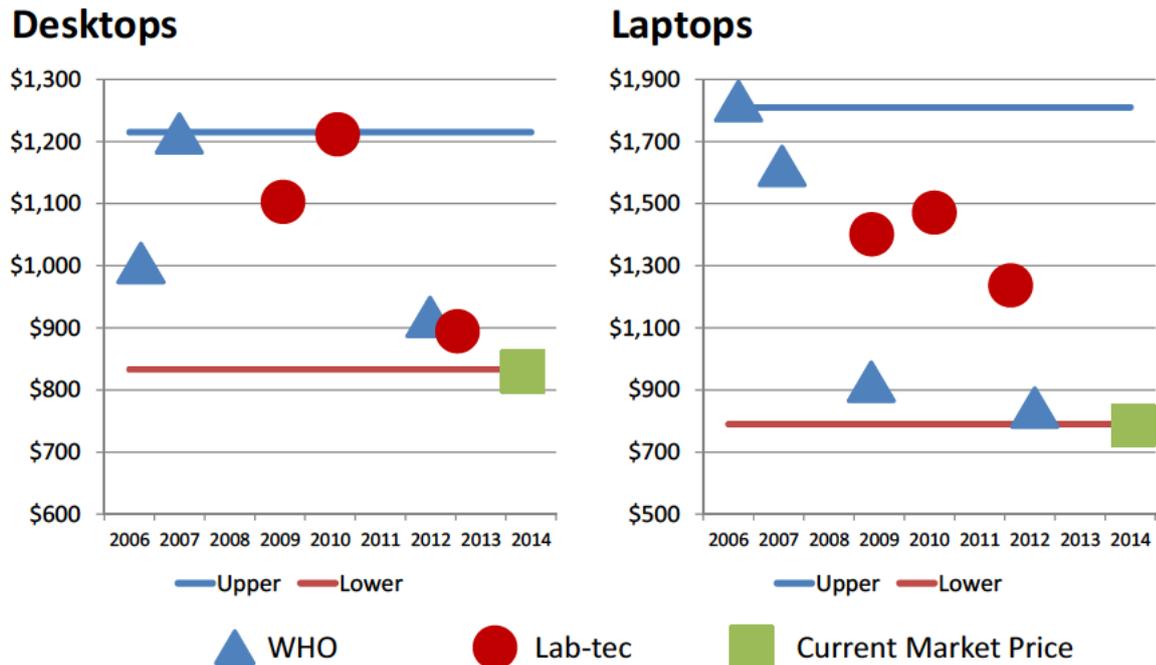
Contract Year	Equipment	Unit Price, Ex Shipping (US\$)	Contract Value (US\$)	Lab-Tec Cost (US\$)	Lab-Tec Mark-up (%)
2009	HP Desktops (17 units)	1,100	18,700	21,418	104%
	HP Laptops (9 units)	1,400	12,600		
	HP LaserJet printers (17 units)	498	8,466		
	HP Desk Jet printers (9 units)	392	3,528		
	Shipping		600		
	Total		43,894		
2010	HP Desktops (20 units)	1,200	24,000	n/a	n/a
	HP Laptops (10 units)	1,450	14,500		
	HP LaserJet printer (20 units)	800	16,000		
	HP Desk Jet printer (10 units)	440	4,400		
	Shipping		2,000		
	Total		60,900		

As part of its investigation, the OIG conducted an analysis of prices paid by NTCP to Lab-Tec for the computers (it did not conduct a similar exercise for the printers due to the results of the computer components). In conducting its analysis, the OIG considered unit prices for similar desktop and laptop computers i) paid by NTCP to WHO in 2006 and 2007 under the same grant for HP and Dell computers, respectively, and ii) bid by WHO and Lab-Tec in a competitive tender for a round 9 grant in Yemen in 2012 for HP desktops and laptops. The OIG also considered the cost Lab-Tec paid for its computers for the 2009 contract (the prices it paid for the 2010 contract was not determined) and current prices in the on-line marketplace.

The desktop and laptop computers provided by WHO to NTCP under the Round 4 grant in 2006 and 2007 had similar specifications to the computers provided by Lab-Tec in 2009 and 2010. Similarly, the computers bid on by WHO and Lab-Tec in 2012 under the Round 9 grant were also similar, as were the computers representing the current on-line market prices. The market price data was from a retailer in the UAE, the same geographical location as Lab-Tec's computer supplier, to minimize regional price differences.

Chart B-3-1 illustrates the unit prices of desktop and laptop computers considered for the OIG analysis.

Chart B-3-1. Comparison of Unit Prices for Desktop and Laptop Computers (in US\$)



Desktop Computers. As shown in Chart B-3-1, the unit prices charged by Lab-Tec to NTCP via its sole-source contract were not dissimilar to, nor higher than, the prices charged by WHO to NTCP in 2006 and 2007. In 2007, WHO sold NTCP 26 Dell desktop computers for a unit price of US\$1,215 each. In 2009 and 2010, Lab-Tec sold NTCP 37 HP desktop computers for unit prices of US\$1,100 and \$1,200 each, respectively.

Unit prices bid by WHO and Lab-Tec in 2012, as part of a competitive bidding process, of US\$948 and US\$890, respectively, were about 25% lower than prices in 2010, but seem to reflect the trend in market prices, as shown by the 2014 market price sample from a UAE retailer of US\$833.

Laptop Computers. As shown in Chart B-3-1, the unit price data for laptop computers shows a result similar to the result for desktop computers. The prices charged by Lab-Tec in 2009 and 2010, of US\$1,400 and US\$1,450, respectively, were less than the unit prices charged by WHO under the same grant in 2006 and 2007, of US\$1,810 and US\$1,652, respectively, and followed the downward trend of prices shown by 2012 bid prices and current market prices, as shown in the Chart. OIG notes, however, that Lab-Tec’s prices, however, of US\$1,400 and US\$1,450, in 2009 and 2010, respectively, were substantially higher than the unit prices offered by WHO in 2009 of US\$963 for Dell laptops to Yemen’s National Malaria Control Program. The particulars of that procurement, however, and how similar or dissimilar it was to the procurements for the NTB were not determined.

In 2009, evidence indicates that Lab-Tec marked up the price of the computers and printers by 104%, although the evidence is not conclusive.

Based on its analysis, the OIG concludes that the prices charged by Lab-Tec were not unreasonable, and proposes no recoverable amount for desktop or laptop computers.

Exhibit 4 – Pricing Analysis for Microscopes

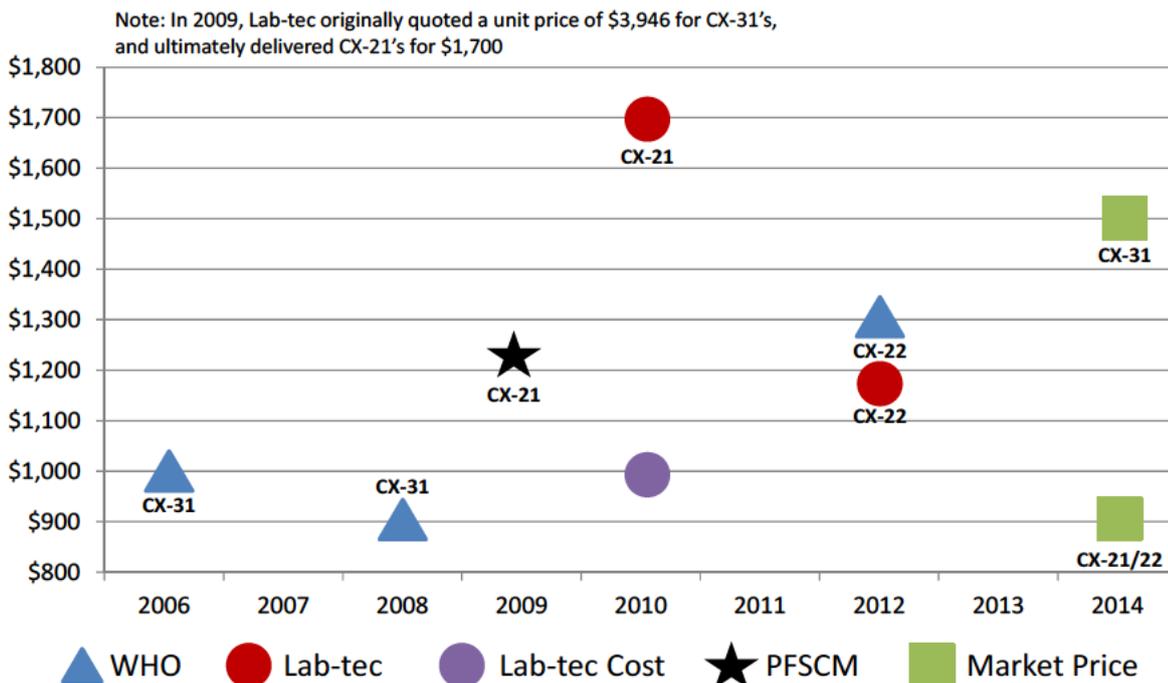
In 2010, NTCP procured 14 Olympus brand model CX-21 microscopes from Lab-Tec for US\$23,800, or US\$1,700 per unit. The microscopes were sourced from Olympus Europa Holding GmbH in Germany, through Bainounah, a local Yemen dealer.

As part of its investigation, the OIG conducted an analysis of prices paid by NTCP to Lab-Tec in 2010. In conducting its analysis, the OIG considered prices for similar microscopes i) paid by NTCP to WHO in 2006 and 2008 under the same grant for model CX-31 scopes, ii) quoted and paid by NTCP to Partnership For Supply Chain Management in 2009 for model CX-21 scopes, and iii) bid by WHO and Lab-Tec in a competitive tender for a round 9 grant in Yemen in 2012 for model CX-22 scopes. The OIG also considered the cost Lab-Tec paid for the microscopes from its supplier and current prices in the on-line marketplace.

The CX-21 and CX-22 model microscopes are basic microscopes part of Olympus’ CX-2 series primarily used for educational microscopy and routine laboratory purposes, according to Olympus. The two models are comparably priced. The CX-31 model is larger, has more advanced optics and features, and is priced about 68% higher than the CX-2 series models.

Chart B-4-1 illustrates the microscope prices considered for the OIG analysis.

Chart B-4-1. Comparison of Paid and Bid Prices for Selected Medical Materials (amounts represent price per unit in US\$)



The analysis shows that prices for microscopes (all models) rose steadily from 2006 to 2014. It shows the prices from 2009 (PFSCM) and 2012 (WHO and Lab-Tec) for CX-2 series models was similar at between US\$1,190 and US\$1,300 per unit, and from 32% to 44% higher than current on-line pricing. It also shows that the price paid by NTCP to Lab-Tec in 2010 for model CX-21 microscopes of US\$1,700 was substantially higher than all other prices considered by the analysis, regardless of the scope’s model or year placed into service, including the higher-priced CX-31 model.

The OIG notes that Lab-Tec’s original prices quoted to NTCP in 2009 for the microscopes it ultimately sold to NTCP in 2010 were considerably higher, even though for a higher quality microscope model. The price originally quoted was US\$3,945 per unit for a CX-31 model Olympus microscope, versus the 2010 contracted price of US\$1,700 per unit for the CX-21 model, a percentage difference of 132%. For comparative purposes,

the current market price of a CX-31 model is about 68% higher than a CX-21 model. Moreover, the CX-31 model was sold to NTCP by the WHO in 2006 and 2008 for US\$987 and US\$879 per unit, respectively. The reason for Lab-Tec dropping its price quote to more reasonable levels was not determined.

The OIG also notes that the unit price charged by Lab-Tec of US\$1,700 was substantially, or 70%, higher than the unit price it paid for the scopes from its supplier of US\$1,001. For comparative purposes, the unit price charged NTCP by the PFSCM for the same model of microscope in 2009 was US\$1,190, or 19% higher than the Lab-Tec's cost in 2010. The unit price estimated by NTCP for the microscope purchase in 2010 was US\$1,150. And the unit price quoted by Lab-Tec in 2012 for CX-22 microscopes was US\$1,167.

According to the owner of Lab-Tec, its high mark-up on the microscopes was necessary due to a maintenance and guarantee agreement with Bainounah, a local company in Yemen, which increased its costs. The owner, however, would not provide the OIG with any specifics of the additional costs or the agreement itself. Moreover, a review of documents connected to NTCP's purchase of the microscopes from Lab-Tec and NTCP's purchase of the same brand microscope in 2008, did not indicate any such maintenance and guarantee agreement with the supplier. For this reason, the OIG finds the owner's explanation doubtful and his high mark-up unexplained.

Overall, based on its pricing analysis, the OIG concludes that the prices NTCP paid for microscopes was unreasonable, and proposes a recoverable amount of **US\$7,462**, which represents the difference between the unit price paid by NTCP to Lab-Tec in 2010 for CX-21 scopes and the unit price Lab-Tec quoted NTCP in 2012 of US\$1,167, and which is similar to the unit price NTCP paid to PFSCM in 2009 (quoted in 2009, paid in 2010) for CX-21 scopes.

Exhibit 5 – Pricing Analysis for Medical Materials

In 2010, NTCP procured a large variety of medical materials from Lab-Tec for a total value of US\$164,586. The materials were sourced from four different suppliers at the contracted value amounts as shown below in Table B-5-1.

Table B-5-1. Summary of Medical Materials Procured by NTCP from Lab-Tec in 2010 (amounts in US\$)

Upstream Supplier	Country	Contract Value (US\$)	Amount Paid (US\$)	Lab-Tec Cost (US\$)	Lab-Tec Mark-up (%)
Bainounah (for Becton Dickinson)	Yemen (Belgium)	103,590	100,885	83,497	24%
IDA Foundation	Netherlands	47,471	38,447	38,447	23.5% (0%)
Bindesh Corporation	India	6,317	737	n/a	n/a
Sigma-Aldrich	Egypt	1,062	1,062	675	57%
Transportation and Insurance		6,146	7,705		
TOTAL		164,586	148,836		

As shown in the table, the actual amount NTCP paid to Lab-Tec for the materials was reduced by US\$15,750 to US\$148,836 due to: i) NTCP disallowing Lab-Tec its mark-up on materials sourced from IDA Foundation (US\$9,024), ii) undelivered goods from Bainounah and Bindesh (US\$2,725), and iii) goods not meeting technical specifications from Bindesh (US\$5,560), net of an adjustment for transportation and insurance (US\$-1,559).

As part of its investigation, the OIG conducted an analysis of prices on selected medical materials, as relevant and as described below. The pricing analysis considered only the materials sourced from Bainounah. The analysis did not include or consider materials sourced from i) the IDA Foundation in the Netherlands, as Lab-Tec's mark-up on these goods was ultimately disallowed by NTCP, ii) Sigma-Aldrich, as the value of these goods were immaterial to the overall contract, or iii) Bindesh Corporation, as NTCP did not pay for the vast majority of these goods as they were not received or did not meet technical specifications.

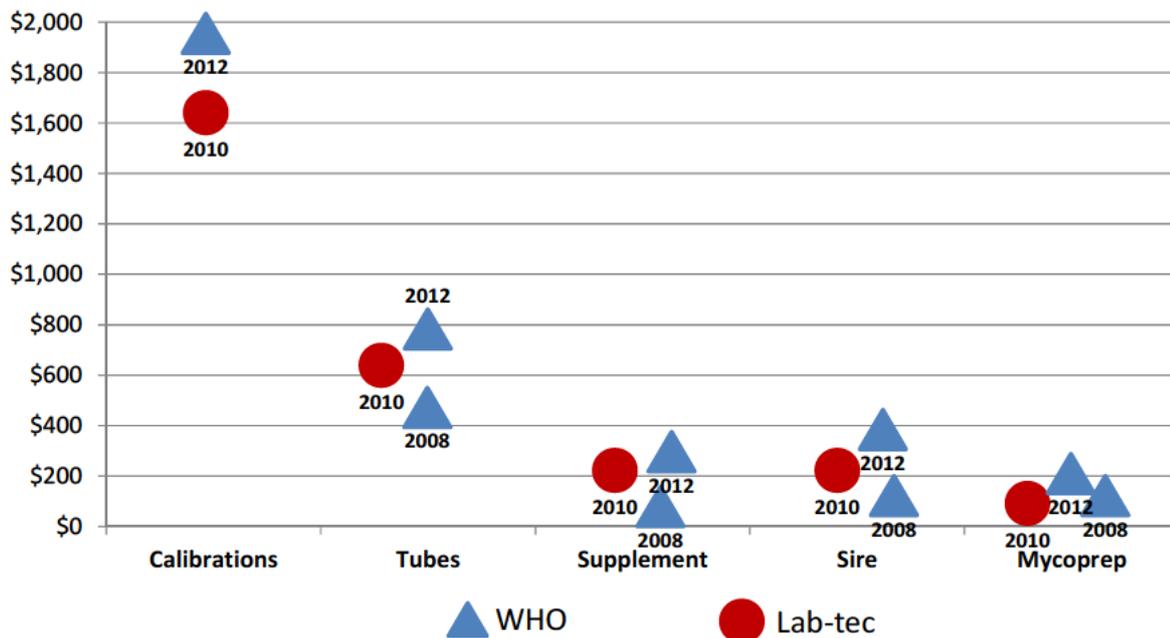
Overall, based on its pricing analysis, the OIG concludes that the prices NTCP paid for medical materials do not appear to be unreasonable, and it proposes no recoverable amounts related to the pricing of these goods.

Pricing Analysis on Materials Sourced from Bainounah:

In conducting its pricing analysis on the medical materials procured by NTCP from Lab-Tec in 2010 sourced from Bainounah, the OIG considered prices for similar medical materials paid by NTCP to WHO in 2006 and 2008 under the same grant, and prices bid by WHO and Lab-Tec in a competitive tender for a round 9 grant in Yemen in 2012. The OIG also considered the cost Lab-Tec paid for the materials from its supplier.

Chart B-5-1 illustrates the prices paid by NTCP in 2008 and 2010, or bid by WHO and Lab-Tec in 2012 for five of the nine products sourced from Bainounah, for a total contract value of US\$45,388 in 2010. As shown in the chart, prices per unit rose considerably across all five products from 2008 to 2012. The prices NTCP paid to Lab-Tec for the goods in 2010 fell consistently between the prices paid or quoted for the goods in 2008 (and 2006) and 2012.

Chart 5-B-1. Comparison of Paid and Bid Prices for Selected Medical Materials (amounts represent price per unit in US\$)



The OIG notes that the prices NTCP paid to WHO for these medical materials in 2008 were very similar to the prices it paid to WHO for the same goods in 2006; thus, only the 2008 prices are included in the graph as a proxy for both years. The OIG also notes that the prices per unit bid in 2012 by WHO and Lab-Tec for similar products also procured in 2010 were almost identical, differing by less than 0.5%; thus the WHO prices are shown in the chart as a proxy for both price bids.

As part of its analysis, the OIG also obtained and examined the invoice Bainounah issued to Lab-Tec which represented the prices Lab-Tec paid for all nine goods purchased, and determined that Lab-Tec’s percentage mark-up on the goods averaged 24%, which is high for drop-shipped imported goods, but not unreasonable.

The OIG notes that Lab-Tec’s original prices quoted to NTCP in 2009 for these goods it ultimately sold to NTCP in 2010 were considerably higher, by 15% to 41%. The reason for it dropping its price quote to more reasonable levels was not determined.

Annex C: Summary of Subject Responses

The OIG provided NTCP an opportunity to review and comment on its findings prior to the finalization of this report. The OIG sent a statement of findings to NTCP on 1 July 2014, to which NTCP has commented. These comments were received on 18 July 2014.

NTCP stated that it never represented to the Global Fund that Lab-Tec was an IDA Foundation representative in Yemen, but rather it represented Lab-Tec as a “regional agent.” NTCP stated further that it could not verify whether the former director of NTCP instructed Lab-Tec to place IDA’s logo on its quotations, but that in any case Lab-Tec bore full responsibility because it could have refused the former director’s request. Finally, NTCP questioned whether transportation, freight and maintenance costs were considered in the OIG’s analysis of Lab-Tec’s quotations.

After a thorough and careful review, the OIG has determined that none of the NTCP’s comments warranted a modification to any of the material findings of this Report.