



Investigation Report

Global Fund Grants in Ukraine

The International Charitable Foundation

“International HIV/AIDS Alliance in Ukraine”

GF-OIG-15-012
25 August 2015
Geneva, Switzerland

Categories:

Collusion – bidding and tender irregularities
– conflict of interest
Non-compliance with Grant agreements



The Global Fund

Office of the Inspector General

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I. Background and Scope

As of 1 July 2015, the Global Fund has made commitments to Ukraine under fifteen grants totaling US\$ 486.5 million, of which US\$ 429.16 million has been disbursed. Ukraine has three Principal Recipients of Global Fund grants: the International Charitable Foundation “International HIV/AIDS Alliance in Ukraine” (the Alliance Ukraine), the All-Ukrainian Network of People Living with HIV/AIDS, and the Ukraine Health Ministry’s Center for Socially Dangerous Disease Control. Each Principal Recipient is currently managing one active grant, under the Global Fund’s new funding model, covering a three-year period, from 2015-2017, to fight HIV/AIDS and tuberculosis (TB).

Ukraine has the second-highest HIV prevalence rate in Eastern Europe and also carries a high burden of multi-drug resistant tuberculosis. Ukraine is also facing significant political and financial challenges amid a recent armed conflict within its borders and a fragile economic backdrop. Despite this, the country is working hard to reduce the prevalence of HIV and TB.

The Alliance Ukraine has been a Principal Recipient of Global Fund grants since March 2004. Under Grant UKR-011-Go8-H, which was active from 1 January 2012 to 31 December 2014, the Global Fund disbursed US\$ 64.7 million to the Alliance Ukraine.

In April 2015, the Office of the Inspector General (the OIG) initiated an investigation into allegations of misconduct by the Finance Director of the Alliance Ukraine (the Finance Director). The OIG investigation focused on a complaint formally reported to the Executive Director of the Alliance Ukraine on 16 December 2014, which contained conflict of interest allegations against the Finance Director of the Alliance Ukraine.

The Alliance Ukraine recruited the Finance Director in December 2009. From January 2013 to February 2015, the Alliance Ukraine had a contractual relationship with Veselka LLC (Veselka), a local supplier of event management services. To fulfil the Global Fund’s requirement to procure services free of value added tax, the Alliance Ukraine also signed separate contracts with two private entrepreneurs affiliated with Veselka.¹ One of the private entrepreneurs was the Finance Director’s sister and the wife of Veselka’s owner.

The OIG’s investigation also included in its scope the timing of the Alliance Ukraine’s disclosure of the complaint to the Global Fund.

¹ As of 25 April 2013, under the Tax Code of Ukraine, supplies of goods and services financed by Global Fund grants should be exempt from value added tax (VAT). Private entrepreneurs are exempted from paying VAT in Ukraine. Therefore, by issuing invoices for its services through private entrepreneurs, Veselka was able to provide its services to the Alliance Ukraine free of VAT, in line with the Global Fund’s and the Ukrainian Tax Code’s requirements.

II. Executive Summary

The OIG investigation confirmed that the Finance Director failed to adhere to the Conflicts of Interest Policy and Code of Ethics of the Alliance Ukraine by not declaring his family connections to, and regular communications with, Veselka.

The OIG investigation found that on one occasion the Finance Director intervened during the internal bidding process, involving three events management suppliers, and used his official position to influence its outcome to favor Veselka. The OIG also concluded that on multiple occasions, following the award of internal bidding contracts, the Finance Director provided Veselka with the financial proposals of its bidding competitors. The Finance Director therefore also failed to adhere to the Rules of Internal Labor Regulations of the Alliance Ukraine, which prohibits the disclosure of sensitive or confidential information gained from official functions.

Whilst the Finance Director encouraged Veselka to participate in the events management tender, he did not influence the tender evaluation committee's decision in favor of selecting Veselka as one of the three events management suppliers used by the Alliance Ukraine. The OIG verified that Veselka delivered and did not overcharge for its services. Therefore, the OIG will not recommend the recovery of the value of the contracts awarded to Veselka.

The OIG investigation identified that the Alliance Ukraine did not comply with the Standard Terms and Conditions of the Grant Agreement between the Global Fund and Alliance Ukraine in respect of conflicts of interest when it did not immediately report the complaint it received in December 2014 to the Global Fund. It was four months later that the Global Fund was informed of the conflict of interest.

This delay in reporting put at risk evidence of the wrongdoing and meant that the Global Fund and OIG were not able to intervene earlier to prevent or disrupt it. Reporting the conflict of interest earlier would have led to a more efficient and timely closure of the issue.

Root causes

The Alliance Ukraine did not adequately enforce its Conflict of Interests Policy as no "declarations of interest" were submitted by its employees, including the Finance Director, on an annual basis, or when specifically required by the policy.

The Finance Director showed a lack of judgment in not declaring his family relationship with Veselka and by using his official functions to favor the supplier. As such, his conduct did not meet the standards of integrity expected of an Alliance Ukraine employee, as stipulated in its Code of Ethics.

The Alliance Ukraine overlooked the Standard Terms and Conditions of the Grant Agreement when it did not immediately disclose the Finance Director's actual, apparent or potential conflict of interest directly to the Global Fund. Instead, it followed its own internal policy and procedures of investigating and reporting the suspected conflict of interest, which were not aligned with the Standard Terms and Conditions of the Grant Agreement.

Actions taken by the Alliance Ukraine

The Alliance Ukraine fully cooperated with the OIG during its investigation.

To address the issues identified by the OIG during the course of its investigation, the Alliance Ukraine informed the Global Fund that it has taken the following actions:

- terminated the Finance Director's employment with the Alliance Ukraine as of 11 June 2015 for gross misconduct;

- raised awareness amongst its employees on the requirements of its Ethics and Compliance policies by circulating relevant policy documents and organizing training events;
- reinforced compliance with the Alliance Ukraine's Conflict of Interests Policy by introducing a revised conflict of interest declaration form for submission by its senior and middle managers on an annual basis and by making changes to the wording regarding the terms 'associated individuals' and 'covered persons';
- committed to review, by July 2015, all the Alliance Ukraine's contractual obligations with the existing donors in order to identify and clarify any inconsistencies, particularly in the areas of reporting conflict of interests, whistleblowing, risk management and audit, and to develop by the end of August 2015 an action plan to remediate any inconsistencies found; and
- issued formal written reprimands to the following Alliance Ukraine employees:
 - the Head of the Administrative Unit for sending confidential information to a third party and for not disclosing the incident to the Executive Director or Advisor on Internal Audit, Risk Management and Compliance;
 - the Advisor on Internal Audit, Risk Management, and Compliance for failing to identify all important facts in the course of the internal investigation, and not notifying the Executive Director of the requirement to report immediately conflict of interests to donors as required by the Grant Agreement;
 - the Head of Legal for not notifying the Executive Director of the Alliance Ukraine's contractual obligation under the Grant Agreement to report conflict of interests immediately to the Global Fund; and
 - the Executive Director of the Alliance Ukraine for not complying with the terms of the Grant Agreement that requires immediate disclosure of any actual, apparent or potential conflict of interest directly to the Global Fund.

Agreed Management Actions

In addition to the actions taken by the Alliance Ukraine, the Secretariat will:

- Consider taking appropriate actions and/or restriction measures towards individuals and entities identified in this report, as deemed appropriate.
- Request that the Alliance Ukraine amend its internal policy on Conflict of Interests so that it aligns with the requirements of the Standard Terms and Conditions of the Grant Agreement with Global Fund and reiterate to its management the importance of complying with all terms of the Grant Agreement.

III. Findings and Agreed Management Actions

01 The Finance Director's failure to comply with relevant policies and procedures with regards to the disclosure of his conflict of interest with Veselka

The Alliance Ukraine first employed the Finance Director in December 2009. From January 2013 to February 2015, the Alliance Ukraine was engaged in a contractual relationship with both Veselka and the Finance Director's sister in her capacity of a private entrepreneur affiliated with Veselka. Veselka's owner is the husband of the Finance Director's sister.

According to information provided to the OIG from the Alliance Ukraine, the total amount paid by the Alliance Ukraine from Global Fund funds to Veselka was UAH 3,979,500 (approximately US\$ 190,000²).

Finance Director's involvement in the initial tender process and communications with Veselka

The Alliance Ukraine used a competitive tender process in Quarter 4 2012, Quarter 1 2014 and Quarter 1 2015, to select three suppliers to organize its events in Ukraine and abroad. Veselka participated in these three competitive tender processes and was one of the three winning bidders in the first two tender processes in 2012 and 2014. In 2015, it was one of the losing bidders.³

In an interview with OIG investigators, the Finance Director told the OIG that he first became aware of Veselka approximately 7 or 8 years ago after his sister married the owner. The Finance Director knew that Veselka was involved in travel agency-type services; however, he was not aware of the details of Veselka's operations or its expertise.

The Finance Director said he had visited Veselka's office and encouraged its owner to participate in the 2012 tender. The Finance Director asserted to the OIG that he was neither pursuing his personal, nor his sister's nor her husband's interests, when he invited Veselka to participate in the tender process. He told the OIG that his only intention was to increase the number of qualified and reliable bidders in the tender process.

During the interview, the Finance Director emphasized that he had no knowledge of how the tenders were progressing and that he did not communicate any information that could have helped someone to win the tender. He had never provided any information about the tender to Veselka's owner. However, the OIG found an email communication between the Finance Director and the owner of Veselka which shows that the Finance Director kept Veselka's owner apprised of the progress of the tender (refer to Exhibit 1 in Annex B: Exhibits).

The OIG investigation did not find evidence that the Finance Director actively participated in the tender evaluation process for the 2012 and 2014 tenders, nor that he had access to, or participated in, the evaluations of the bids received from the interested suppliers. Furthermore, there was no evidence that the Finance Director influenced the tender evaluation committee decision during the process to select the events management suppliers.

The OIG's interviews with representatives of the program units of the Alliance Ukraine who requested the highest number of events organized by Veselka, established that when Veselka first started to arrange events it was the least experienced vendor among the three suppliers of events management services and there was some negative feedback in its performance. However, after it had obtained some experience of arranging events for the Alliance Ukraine, Veselka's performance

² At 4 June 2015 exchange rates.

³ The Alliance Ukraine TEC reports 27 September 2012, 13 January 2014 and 15 January 2015.

subsequently improved. As such, when the Alliance Ukraine initially selected Veselka, it was a technically compliant bidder.

The Finance Director's contact with Veselka during the internal bidding process

The Alliance Ukraine calls upon three suppliers of events management services to organize events with a value below US\$ 10,000 on a monthly rotation basis. Contracts for events with a budget of US\$ 10,000 and above are awarded through an internal bidding process conducted with the same three suppliers, which is administered by the Administration Unit of the Alliance Ukraine.

The OIG's investigation established that the Administration Unit's employees communicated with the three events management suppliers via e-mail to announce the internal bidding process, solicit their bid proposals, and following the evaluation of their bids, notify them of the results. The Administration Unit is responsible for the evaluation of the bid proposals in consultation with the event requestor, usually a representative of the program units of the Alliance Ukraine. The Administration Unit usually considered the most economical proposal to select the winner of the internal bidding process.

The OIG found evidence that the Finance Director asked for copies of all correspondence sent and received by the Administration Unit in relation to the internal bidding process. Furthermore, he requested the Administration Unit to forward to him some specific financial proposals from the bidders. The Finance Director told the OIG that he felt that the existing providers of events management services were not credible. He suspected that there might have been collusion between the existing events management suppliers and employees of the Alliance Ukraine, and felt that he could trust Veselka as it was a new supplier.

The Finance Director said he therefore encouraged Veselka's Events Manager, who was responsible for the execution of the Alliance Ukraine contract, to report directly to him any issues that she identified with the internal bidding process. The Finance Director said that this was to enable him to understand any weaknesses in the bid evaluations process and the comparability and adequacy of the assumptions used to budget the events.

The Finance Director confirmed that on up to six occasions he had sent the financial proposals of its competitors in the internal bidding process from his official e-mail to Veselka's Events Manager. He told the OIG he had shared all except one of the financial proposals from the other bidders with Veselka after the successful bidder had been announced. The Finance Director told the OIG that he had not intended to provide Veselka with any assistance to win the bidding process.

The OIG investigation identified an e-mail dated 12 February 2013, which the Finance Director had forwarded to Veselka's owner from his Alliance Ukraine e-mail account. The Finance Director claimed that the e-mail, which contained results of an internal bidding evaluation for the event lost by Veselka, was to obtain feedback from Veselka's owner about the internal bidding process.

The Finance Director also acknowledged that he had asked an employee of the Administration Unit to share the financial proposals from other bidders with Veselka; however, the employee told him that it was inappropriate and had refused.

While the Finance Director affirmed that he had communicated with Veselka's Events Manager on no more than five or six occasions, there was evidence of more frequent communications. The OIG also found evidence that the Finance Director maintained contact with Veselka following his suspension on 14 April 2015 and that he had visited Veselka's offices on the day the OIG arrived in Kiev to undertake its investigation fieldwork.

In its interviews with the Finance Director, the OIG established that on one occasion in November 2014, Veselka's Events Manager had informed the Director of her suspicion of collusion in the results of an internal bidding process for an event. According to the Finance Director, she told him that

Veselka had included a good discount in its financial proposal; nevertheless, Veselka had still not won the internal bidding process.

The OIG found that the Finance Director intervened in the award of the contract for this event and had requested that the Administration Unit verify the results of the financial proposals' evaluation. The OIG also established that on that occasion the Head of the Administration Unit had forwarded the financial proposals of the other two bidders to Veselka before the winner was selected.

The Finance Director denied asking the Head of the Administration Unit to forward the financial proposals to Veselka. However, he clarified that he had asked her to, "...resolve the case under which Veselka questioned the internal bidding, including by way of sharing with Veselka the financial proposals for the assessment". The Head of the Administration Unit provided the OIG with a copy of the e-mail chain to illustrate how she had forwarded the proposals to Veselka. She stated that the Finance Director had instructed her to send them to Veselka.

A specialist within the Administration Unit responsible for administering the internal bidding process for this event, told the OIG that Veselka's first financial proposal for this event was the lowest of the three suppliers; however, its proposal had contained some discrepancies. For example, it had not included the cost of an Events Manager, which Veselka usually included in its proposals. After addressing this discrepancy by including this cost in the proposal, Veselka's bid was no longer the cheapest.

In its interview with the specialist, the OIG established that she had discussed the bidding evaluation results with the requestor of the event who had said that she preferred to award the event to the most competitive bidder. However, as soon as the specialist informed the new winning supplier of the bidding evaluation results, which was no longer Veselka, the Finance Director instructed her by email to put the award of the event contract on hold.

The specialist said the Finance Director had invited the Head of the Administration Unit into his office to discuss this matter; however, she was not aware of the outcome of their discussions. She recalled that there were further discussions with Veselka, which resulted in the removal of the cost of the Events Manager from its financial proposal, and which the Administration Unit accepted, and consequently Veselka again became the lowest-priced supplier in the bidding process and was named as the winning bidder.

The evidence therefore confirms that on at least one occasion the Finance Director intervened in the internal bidding process of the Alliance Ukraine and used his official position to influence its results to favor Veselka.

During its mission to Kiev, the OIG visited Veselka's offices and met with Veselka's Events Manager. She told the OIG that before Veselka started working with the Alliance Ukraine, the owner of Veselka told her that if she had any issues related to their cooperation with the Alliance Ukraine she should call the Finance Director directly.

Veselka's Events Manager acknowledged communicating with the Finance Director by e-mail and phone regarding Veselka's operations. She also corroborated the Finance Director's account of their suspicions that the Alliance Ukraine's Administration Unit was treating Veselka unfairly during the internal bidding processes.

The OIG interview further confirmed that the Events Manager had raised her concerns with the Finance Director directly by giving him an example of an event when Veselka could not make a reservation in the hotel stipulated by the event request. She said that the hotel had told them it was fully booked at the time Veselka received the event request from the Alliance Ukraine; however, one of Veselka's competitors, and the subsequent winner of the internal bidding process for the event, ended up holding the event in the same hotel.

She told the OIG that on approximately five separate occasions she had asked the Finance Director to provide her with the financial proposals of Veselka's competitors as a reference to help her understand why Veselka had not been successful during the internal bidding process. She acknowledged receiving the proposals from him directly.

Veselka's Events Manager emphasized that the Finance Director had provided her with the financial proposals after the Administration Unit had selected the winning bidder. She said the Finance Director had sent her a financial proposal from one of their competitors before the selection of the winning bidder on only one occasion, a statement that the Finance Director corroborated. She could not recall the specific event, but assumed that the Finance Director might have sent her this proposal by mistake.

To support her statement that the communications with the Finance Director were intended to help Veselka to be more competitive in the internal bidding process, she provided the OIG with an e-mail dated 18 April 2014 in which, upon the Finance Director's request, she had sent him a draft calculation of Veselka's prices for an event with and without VAT.

The owner of Veselka and his wife were not available to answer the OIG inquiries during its investigation. Veselka's Events Manager told the OIG that the Finance Director's sister was never involved in any of Veselka's activities and only signed invoices for the events invoiced in her name as a private entrepreneur affiliated with Veselka. The Finance Director corroborated this account, adding that his sister did not benefit financially from her role as a private entrepreneur with Veselka.

In his interview with the OIG, the Finance Director demonstrated a good knowledge of what constitutes a conflict of interest. He acknowledged that he was aware of his responsibility to submit his conflict of interest declaration on an annual basis and make a declaration every time a potential or actual conflict arose. He was also aware that the Rules of Internal Labor Regulations of the Alliance Ukraine forbid the disclosure of sensitive or confidential information gained from his official functions.⁴

When asked why he had not declared his conflict of interest with Veselka, he told the OIG that, according to his interpretation of the relevant Global Fund policy, his circumstances did not constitute a conflict of interest because his sister's relationship - with Veselka did not contravene the policy.

The Global Fund's Policy on Ethics and Conflict of Interest referred to by the Finance Director is not applicable to Principal Recipient's employees.

Furthermore, Article 21 (anti-corruption and conflicts of interest) of the Standard Terms and Conditions to the Grant Agreement with the Alliance Ukraine specifies that it is forbidden for the PR employees to: "*participate in the selection, award or administration of a contract, grant or other benefit or transaction funded by the Grant, in which the person, members of the person's immediate family of his or her business partners, or organizations controlled by or substantially involving such person, has or have financial interest*".

Moreover, the Alliance Ukraine's Conflict of Interest Policy states that an actual conflict of interest arises when its employee participates personally and in an official capacity in a matter in which, to his knowledge, he or an Associated Person (which includes a sister)⁵ has a financial interest, resulting in a direct effect on that interest.⁶

The Finance Director told the OIG that he had considered declaring his family relations with Veselka when he approved the first invoice submitted in his sister's name to the Alliance Ukraine from

⁴ The Alliance Ukraine Rules of Internal Labor Regulations, Article 4.2.17 (4 January 2005).

⁵ Associated Person - means an employee's parent, spouse, domestic partner, child, brother, sister, business partner or a natural person by whom an employee is employed or with whom s/he is negotiating or has an arrangement concerning prospective employment.

⁶ The Alliance Ukraine Conflict of Interest Policy (13 April 2009).

Veselka. As stated in the Article 13 ‘Duty of Disclosure’ of the Code of Ethics of the Alliance Ukraine, if an Alliance Ukraine employee is in a doubt about making a disclosure he/she should discuss the matter with the line manager and/or HR team.⁷

The Finance Director told the investigators that the Executive Director was supposed to have been aware that he had links to Veselka; however, in his interview with the OIG, the Executive Director said he did not have any knowledge of the Finance Director’s links with Veselka prior to receiving the complaint in December 2014.

The OIG investigation found that the Finance Director’s conduct was in breach of the Alliance Ukraine’s Conflicts of Interest Policy when he concealed his family connections to Veselka. The OIG investigation also found that the Finance Director engaged in collusive practices, breached the Rules of Internal Labor Regulations of the Alliance Ukraine when he used his position to intervene in the internal bidding, and provided copies of other supplier’s financial proposals to Veselka, thereby giving it unfair assistance in the internal bidding process.

Agreed Management Action 1: The Secretariat will consider taking appropriate actions and/or restriction measures towards individuals and entities identified in the report, as deemed appropriate.

02 The Alliance Ukraine’s non-compliance with the Grant Agreement on disclosure of information to the Global Fund

The Alliance Ukraine’s response to the conflict of interest allegation against the Finance Director

Upon receiving the complaint on 16 December 2014, the Executive Director told the OIG that he confronted the Finance Director with the allegations. According to the Executive Director, the Finance Director confirmed his relationship with his brother-in-law – the owner of Veselka – and his sister as a private entrepreneur associated with Veselka.

The Executive Director also said that he informed the Finance Director that there would be an investigation into the matter and took a number of immediate steps, including the suspension of the Finance Director’s authority to approve any invoices relating to Veselka.

On 15 January 2015, the Alliance Ukraine Ethics Committee (AUEC) reviewed documents and information in relation to the conflict of interest matter involving the Finance Director. The AUEC concluded that during the 2012 tender the Finance Director had a potential conflict of interest and during the 2014 tender had an actual conflict of interest, but that he did not influence the results of the two tenders.⁸

Based on its conclusions, the AUEC made a recommendation to discipline the Finance Director with a written reprimand for not disclosing his existing conflict of interest, which the Executive Director did on 16 January 2015. The Executive Director also said that the written reprimand was an interim measure to discipline the Finance Director for not disclosing the conflict of interest, and that at that stage they did not have evidence of the Finance Director committing more serious violations. From 16 January 2015 to 14 April 2015, the Finance Director continued in his role in the Alliance Ukraine.

The OIG investigation established that on 10 April 2015, the Executive Director received a call from the International HIV/AIDS Alliance Secretariat based in Brighton, UK (the Alliance UK), during which they informed him that the Alliance UK had also received the complaint against the Finance Director.

⁷ The Alliance Ukraine Code of Ethics (13 April 2009).

⁸ The Alliance Ukraine AEC protocol #1/15 (15 January 2015).

The Executive Director told the OIG that the Alliance UK's view of the gravity of the allegation changed his own perception of the seriousness of the allegation, and on the recommendation of the Alliance UK, the Executive Director informed the Global Fund of the allegation against the Finance Director on 10 April 2015. Also on the advice of the Alliance UK, on the same day he issued an order to suspend the Finance Director from his duties effective from 14 April 2015.⁹

On 17 April 2015, the Alliance Ukraine completed its internal investigation into the allegations against the Finance Director.¹⁰ According to the final internal report, the investigation found no evidence of procurement fraud and concluded that the tender conducted in 2012 and 2014 by the Alliance Ukraine, which involved Veselka, complied with the applicable procurement procedures.

The Alliance Ukraine internal investigation report also contains reference to the AUEC conclusion in relation to the Finance Director's conflict of interest and provides a summary of the inquiries undertaken to verify if the Finance Director executed any improper influence over the processes which led to the selection of Veselka as a supplier to the Alliance Ukraine.

The OIG found evidence that during the internal investigation the Alliance Ukraine attempted to assess the transparency of the internal bidding processes involving Veselka and had full access to evidence indicating that the Finance Director was personally involved in the internal bidding processes; however, the final investigation report contained no findings in this regard. Furthermore, it appears that the Alliance Ukraine did not attempt to contact Veselka or formally interview any of the Alliance Ukraine employees involved.

While the OIG did not find any evidence that there was a deliberate attempt to cover up any misconduct by the Finance Director, the OIG concludes that the internal investigation conducted by the Alliance Ukraine failed to identify key information.

Alliance Ukraine's delay in reporting the allegations against the Finance Director to the Global Fund

The Grant Agreement and the Code of Conduct of Global Fund Recipients stipulates that the Principal Recipient should report immediately any complaints relating to conflicts of interest to the Global Fund. When asked why the Alliance Ukraine had not done so, the Executive Director said he was not aware of such a requirement of the Grant Agreement at the time of receiving the complaint, nor was he informed of them by his subordinates whom he considered should have been aware of such a requirement.

The Executive Director also told the OIG that the Alliance Ukraine followed its existing practice whereby it would only report complaints to donors if an internal investigation found evidence to support the allegation. Specifically, the Conflict of Interest Policy of the Alliance Ukraine states that the Alliance Ukraine shall report a conflict of interest to the donor after all necessary and relevant investigations and decisions have been made.¹¹

This clause of the Conflict of Interest Policy of the Alliance Ukraine is in contradiction with the Article 21 (C) of the Grant Agreement's STC between the Global Fund and Alliance Ukraine signed in December 2011, which obliges the Alliance Ukraine to report immediately any potential, apparent or actual conflict of interests to the Global Fund.

The OIG investigation found that, on receipt of the complaint in mid-December 2014, the Alliance Ukraine was in possession of credible information of the Finance Director's family relations with Veselka's owner and his wife, who is also the Finance Director's sister. Further, that in mid-January 2015, the Alliance Ukraine AUEC concluded that the Finance Director had undeclared potential and actual conflicts of interests during the tenders which resulted in the appointment of Veselka as a

⁹ The Alliance Ukraine internal order #30 (10 April 2015).

¹⁰ The Alliance Ukraine Internal Investigation Report (17 April 2015).

¹¹ The Alliance Ukraine Conflict of Interest Policy, article #6.2(13 April 2009).

supplier to the Alliance Ukraine. Nevertheless, it took the Alliance Ukraine some four months to inform the Global Fund of the allegation against the Finance Director. As such, the Alliance Ukraine was in breach of the Grant Agreement.

The OIG's investigation also established that the Alliance Ukraine did not collect "the declarations of interest" on an annual basis or when specifically required by the Conflict of Interests Policy of the Alliance Ukraine¹² and it therefore finds that its enforcement of compliance with this policy was inadequate.

Agreed Management Action 2: The Secretariat will request the Alliance Ukraine amend its internal policy on the Conflict of Interests to adhere the standards set forth in the Standard Terms and Conditions of the Grant Agreement between the Global Fund and Alliance Ukraine and reiterate to the Alliance Ukraine management the importance of complying with the Grant Agreement requirements.

¹² The Alliance Ukraine Conflict of Interest Policy, article #4.2(13 April 2009).

IV. Conclusion

The investigation found that the Finance Director breached the Alliance Ukraine's Conflict of Interest Policy when he chose not to declare information about his family relations with Veselka.

The investigation confirmed that the Finance Director had engaged in collusive practices when he shared other suppliers' financial proposals with Veselka, thereby contravening the Rules of Internal Labor Regulations of the Alliance Ukraine.

The Finance Director's conduct went undetected by the Alliance Ukraine, which inadequately enforced compliance with its Conflict of Interests Policy. The Alliance Ukraine since then has taken action to strengthen its conflict of interest oversight and compliance with the Standard Terms and Conditions of the Grant Agreement with the Global Fund.

The OIG investigation also found that the Alliance Ukraine did not adhere to the Standard Terms and Conditions of the Grant Agreement, when it delayed reporting to the Global Fund the complaint it had received in December 2014.

The OIG verified that Veselka delivered and did not overcharge for its services. Therefore, the OIG will not recommend the recovery of the value of the contracts awarded to Veselka.

V. Table of Agreed Management Actions

No	Category	Agreed Management Action	Due date	Owner
1	Governance, Oversight and Management Risks	The Secretariat will consider taking appropriate actions and/or restriction measures towards entities and individuals identified in the report, as deemed appropriate.	1 October 2015	Head of Grant Management Division
2	Governance, Oversight and Management Risks	The Secretariat will request the Alliance Ukraine to amend its internal policy on the Conflict of Interests to adhere the standards set forth in the Standard Terms and Conditions of the Grant agreement between the Global Fund and Alliance Ukraine and reiterate to the Alliance Ukraine management the importance of complying with the terms of the Grant Agreement.	1 October 2015	Head of Grant Management Division

Annex A: Summary of Subject Responses

On 4 June 2015, the OIG provided the Alliance Ukraine and the Finance Director with a copy of its statement of findings from this investigation. The OIG's statement of findings represented the full record of all relevant facts and findings considered in support of this final report.

The Finance Director responded to the OIG's findings on 8 June 2015.

The Alliance Ukraine responded to the OIG's findings on 22 June 2015 together with a Management Action letter, which detailed the steps taken by the Alliance Ukraine in response to the findings of this investigation.

The OIG duly considered all points made by the respondents and appropriate revisions were made to its findings in this final report. The OIG then proceeded to the next stage of the investigation as per its Stakeholder Engagement Model.

Annex B: Exhibits

Exhibit 1. The Finance Director's e-mail exchange with the owner of Veselka on 18 September 2012.

HA: Thailand

From: [REDACTED]
To: [REDACTED]
Date: Tue, 18 Sep 2012 17:28:24 +0300

Привет!

Все хорошо. Но в Украине лучше.
Предварительно отобрали 6 фирм. Вас также. В среду выберем 3х. Тогда точно скажу. На рабочую почту не пиши. Лучше смс

От: [REDACTED]
Отправлено: 18 сентября 2012 г. 10:23
Кому: [REDACTED]
Тема: Thailand

[REDACTED]
Как у тебе дело в Тайланде ?
Питания подходит тебе или нет ?
Хочу спросить информацию о тенде !
Спасибо
[REDACTED]

Translation of the above e-mail exchange from Russian to English:

The owner of Veselka wrote to the Finance Director on 18 September 2012:

"[REDACTED] Hi! How are you doing in Thailand? Food is acceptable for you or not? I would like to ask you information about the tender! Thank you [REDACTED]."

The Finance Director replied to the owner of Veselka on 18 September 2012:

"Hi, all is well, but it is better in Ukraine. Preliminary selected six companies. Yours as well. On Wednesday will select three. Then will let you know exactly. Do not write to my work email. Better SMS."

Annex C: 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 work¹⁴ 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

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 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 Suppliers¹⁸ or the Code of Conduct for Recipients of Global Fund Resources¹⁹ (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 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

¹³ Charter of the Office of the Inspector General (19 March 2013), available at:

<http://theglobalfund.org/documents/oig/OIGOfficeOfInspectorGeneralCharteren/>, accessed 01 November 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/CorporateCodeOfConductForSuppliersPolicyen/>, 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/uniformguidelines.html>, accessed 01 November 2013.

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/CorporateCodeOfConductForRecipientsPolicyen/>, 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

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.

01 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

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.

²¹ Code of Conduct for Recipients of Global Fund Resources, section 3.4.

²² Available at: <http://theglobalfund.org/documents/corporate/CorporateCodeOfConductForRecipientsPolicyen/> and http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/

- “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.

02 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.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 as well as Principal Recipients.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

²³ The STC are revised from time to time, but the provisions quoted below applied to all Principal Recipients at the time of the investigation.

²⁴ Standard Terms and Conditions (2012.09) at Art. 14(b):

<http://www.theglobalfund.org/documents/core/grants/CoreStandardTermsAndConditionsAgreementen>

²⁵ Id. at Art. 9(a) and Art 18(f)

²⁶ Id. at Art. 18(a)

²⁷ Id., at Art. 21 (b)

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 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.

03 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.

²⁸ Id. at Art. 21(b)

²⁹ Available at: <http://www.theglobalfund.org/documents/corporate/CorporateCodeOfConductForSuppliersPolicyen> ; <http://www.theglobalfund.org/documents/corporate/CorporateCodeOfConductForRecipientsPolicyen>

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.

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.