



Investigation Report

Global Fund Grants to Egypt National AIDS Programme, the Ministry of Health and Population

GF-15-015
24 September 2015
Geneva, Switzerland

Non-compliant Expenditure: \$668,877
Proposed recoveries: \$668,877
Categories – Collusion / Fraud/ Non-Compliance with Grant Agreements

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I. Background and Scope

As at 31 August 2015, the Global Fund has made commitments under three HIV/AIDS and tuberculosis grants to Egypt totaling US\$ 30.59 million, with disbursements of US\$ 22.09 million.

The HIV program grant in Egypt, number EGY-608-G03-H (the HIV grant), mainly focuses on (a) prevention activities for Most at Risk Populations and (b) provision for treatment, care and support for People Living with HIV/AIDS. The total commitment under the grant is US\$ 9.72 million, of which US\$ 9.15 million has been disbursed. There is currently no training component under the HIV grant, as the scope of the grant is critical lifesaving activities.

In late 2012, the Global Fund identified concerns in the quality and reliability of the Local Fund Agent's work. Subsequently, the Secretariat sent a performance letter to the Local Fund Agent pointing out the issues with the quality of data, independence and accountability of information provided, which coincided with the Local Fund Agent's resignation from the Global Fund.

The Secretariat tasked the new Local Fund Agent to undertake a review of transactions for quarters 19 and 20 (October 2012 to March 2013) of Round 6 of the HIV grant. The Local Fund Agent's review highlighted irregularities in expenditures relating to: hotel accommodation; hiring of vehicles and halls; catering; t-shirts; stationery; brochures; banners; office supplies; silver medals; car repairs; and miscellaneous expenses.

The review identified extensive red flags of fraud and other irregularities, specifically: no adequate accounting records/processes; expenditures with unreliable or no supporting documentation; and transactions with a lack of supporting documentation to identify and verify beneficiaries. The Secretariat referred the matter to the OIG for further investigation.

Therefore, the investigation focused on the categories of expenditures highlighted by the Local Fund Agent's review. The scope was extended to the entire grant period, April 2008 to March 2013. This comprised approximately 15% of the total HIV grant. The amount of expenditures reviewed during the investigation totaled EGP 4,811,723 /US\$866,110.

II. Executive Summary

The OIG investigation found evidence of fraudulent practices and other procurement irregularities by the NAP between 2008 and 2012, which compromised contracts totaling EGP 3,849,494 (USD 668,877).¹ The OIG considers this sum to be non-compliant expenditure.

Specifically, the investigation found fraudulent procurement of t-shirts; the suppliers used by the NAP were untraceable at the addresses shown in their invoices. The OIG also identified similarities in losing bidders' quotations and found that five main losing bidders out of six could not be traced. The OIG identified irregularities in the supporting documentation for these transactions, including: evidence that a number of the suppliers were related entities, similarities in handwriting on the invoices from different suppliers, and multiple irregularities in the dates of quotations, invoices and delivery documentation.

The OIG could not verify supporting documentation relating to hotel expenditures recorded by the NAP, as the OIG was denied access by the three major hotels used by NAP and the MOHP did not assist. Additionally, among other irregularities presented in the Findings section of this report, the OIG found that several hotel invoices submitted by the NAP did not include the names of the individuals staying at or using the hotel facilities.

The investigation found that the main supplier used by the NAP for vehicle rentals was not traceable at the addresses shown in its invoices. Additionally, the NAP did not carry out an open and competitive bidding process to hire this vehicle rental supplier as required by article 89/1998 of the Tenders Law of Egypt.

Several irregularities in stationery purchases and catering expenditure were also recorded. For catering expenditures, the investigation found several inconsistencies in the dates of the supplier invoices. The NAP's Finance Manager and Accounts Administration Officer managed most of the everyday processes at the Principal Recipient and there was a lack of segregation of duties in their roles, which they exploited. This facilitated the fraudulent and irregular practices identified during this investigation. The NAP Executive Manager's failure to exercise effective oversight over the monitoring and evaluation of the grant implementation activities and financial recordkeeping by NAP further facilitated the fraud and other irregular practices identified in this investigation.

Root Causes:

The Local Fund Agent at that time did not flag to the Secretariat that NAP was conducting multiple procurements for identical goods/services in a piecemeal way rather than through a single pooled procurement. This was intentional on the part of NAP as it allowed the recipient to avoid going through the central procurement unit of MOHP, to select vendors without advertising externally and to make payments in cash rather than by check. This made it difficult to verify independently such transactions and created the opportunity for fraudulent and irregular practices.

Segregation of duties was not well defined at the NAP. The Finance Manager and the Accounts Administration Officer both participated in procurement related activities, coordinated training activities and handled vendor payments.

The investigation established that the NAP did not maintain complete records of individuals staying at the hotels for trainings or workshops. The NAP also paid the hotels in cash. Accounting records lacked basic details making it impossible to carry out a complete reconciliation of the NAP books of accounts by an independent reviewer.

¹ The USD conversion is based on exchange rate of 1 EGP = 0.1307 USD. For the purpose of foreign exchange conversion in the final report, the OIG will apply average exchange rate for the year in which respective transaction has occurred as per the Oanda database (www.oanda.com)

Action taken by the Secretariat:

- As requested by the Secretariat, NAP has ceased all non-core program activities (training, workshops, seminars, etc.), with the exception of life-saving activities (provisions of anti-retroviral and testing only). Salary payments are now limited to critical staff only (a Program Manager, a Monitoring & Evaluation officer, a Procurement and Supply Chain Management Officer and a Finance Officer). No additional allowances will be paid to staff for conducting activities under the grant which are considered part of their normal roles and responsibilities.
- The procurement of health products continues to be handled through UNICEF with funds transferred directly from the Global Fund.
- The Global Fund Executive Director has invoked the Additional Safeguard Measures² on the Egypt portfolio. This allows the Global Fund to continue providing services to people with HIV and tuberculosis while putting in place additional specific fiscal, financial and procurement safeguards to protect grant funds. The Principal Recipient was asked to put in place a functioning financial management system including developing a comprehensive manual of financial procedures, to be approved by the Global Fund.
- The NAP was required to take action on the preliminary findings from the review of Q19 and Q20 expenditures. As a result, the government has changed the national program manager. An expert committee was set up to review the issues raised and the Country Coordinating Mechanism for Egypt was reformed.

Agreed management actions:

Following its investigation, the OIG and the Secretariat agreed to the following actions, which are set out in detail in Section V. These include:

1. 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.
2. Take appropriate action towards the individuals identified in this report, for example, restricting those individuals from occupying any positions related to the implementation of Global Fund grants.
3. Instruct NAP to adopt a no-cash policy for all expenses above EGP 2,000 and outsource all major health product procurements to UNICEF. Review the procurement arrangements in place, and based on the review take appropriate measures to address the gaps identified in high value expenses, hotel selection procedures and segregation of duties at NAP.
4. Evaluate the feasibility of appointing an independent Fiscal Agent for extension, if any, or signing of a new grant. The Fiscal Agent will review all expenditures before the payment is made and in cases of high value transactions the Fiscal Agent will be involved at different stages of the procurement process.

² http://www.theglobalfund.org/documents/board/07/BM07_07GPCReportAnnex4_Annex_en/

III. Findings

The categories of transactions reviewed by the OIG for the period 2008 to 2012, i.e., Q1 to Q18³ of the grant period (refer to annex A.1). Of these transactions, the investigation found evidence of fraudulent and collusive practices and other irregularities in the procurement of t-shirts, office supplies, catering, hotel accommodations and vehicles amounting to EGP 3,849,494 (US\$ 668,877).

01 Fraudulent procurement of t-shirts, office supplies and silver medals

NAP claimed to have procured t-shirts, printing brochures, office supplies, banners and silver medals from 16 suppliers, amounting to EGP 767,705 see table 1. Of these transactions, the investigation found that 72%, i.e., **EGP 549,090**, were fraudulent and non-compliant expenditures.

Of the above EGP 767,705, 62%, i.e., EGP 479,400, of the transactions were from two suppliers: Global for General Supplies (Global); and El Taysir for General Supplies (El Taysir). The supplier El Fagalla El Gedida was also identified as having been used for fraudulent office supplies transactions.

Table 1: Total breakdown of procurements reviewed by supplier

Name of vendor	T-Shirt	Printing Brochures	Office Supplies	Banners	Silver medals	Total (EGP)
Global for General Supplies	248,700					248,700
El Taysir for General Supplies	228,300				2,400	230,700
Other T shirt suppliers	80,250					80,250
Printing Brochures suppliers		122,050				122,050
Banner suppliers				16,080		16,080
El Fagalla El Gedida			69,690			69,690
Other Office Supplies Suppliers			235			235
Grand Total	557,250	122,050	69,925	16,080	2,400	767,705

Untraceable suppliers and evidence of related entities

The two largest suppliers, Global and El Taysir, were not traceable at the addresses shown on their invoices. The telephone number, fax number and one mobile number in the invoices of El Taysir and Global were the same, indicating that the two entities are related. Furthermore, there was no evidence of El Taysir being registered at the Department of Companies and neither was it registered for taxation.

The OIG also found that the individual who acknowledged the payment receipt on behalf of Global, also signed the payment receipt on behalf of El Fagalla El Gedida for office supplies, indicating that the two suppliers are related. In another instance, the OIG found that a quotation for El Taysir dated 2 March 2011 was also signed by the same individual.

NAP recorded transactions for EGP 69,690 with El Fagalla El Gedida. This company was not traceable at the address shown on its invoices.

³ The observations from Quarter 19 and Quarter 20's review by the Secretariat have been dealt with separately by the Global Fund Secretariat.

In the majority of the procurements related to El Taysir and Global, the same six losing bidders were noted: Al-Iman Pharm for Supplies, Al Safa Al Marwa Advertisement, Al-Salam, Golden Touch Trading Company, Kazryeen Factory and Al-Zayyat. In all of the procurements reviewed by the OIG, these bidders never won a tender (refer to table 2 below).

Table 2: Bidders who never won a tender

Name of Losing bidder	No of Losing bids	No of winning bids
Golden Touch Trading Company	35	Nil
Al-Iman Pharm for Supplies	32	Nil
Al Safa Al Marwa Advertisement	31	Nil
Kazryeen Factory	30	Nil
Al-Salam	25	Nil
Al-Zayyat	22	Nil

Of the six losing bidders referred to in table 2 above, five (Golden Touch for trading, Al-Iman Pharm for Supplies, Al Safa Al Marwa Advertisement, Al-Salam and Al-Zayyat) were not traceable at the addresses shown on their quotations, neither were they registered at the Department of Companies or with the tax authorities.

Irregularities in supporting documentation

For 45 transactions related to El Taysir and Global totaling EGP 230,900, the investigation found that either:

- the quotation dates from winning bidders were altered; or
- the bid decision dates were altered; or
- the bid decision date was after the date of the invoice; or
- the bid decision date was before the date of the quotations from different bidders; or
- the invoices, quotations or the bid decisions dates were undated.

In most of these cases, the handwriting in the losing bidders' quotations was identical.

The OIG concludes that in all these cases the bid documentation was created after the transactions with Global or El Taysir had already been recorded by NAP (refer to annex A.2).

The investigation also found that for seven procurements where either El Taysir or Global were given the contract amounting to EGP 26,600, either the bid decision report was dated prior to the quotation or after the invoice date from the supplier. This indicates that the bid evaluation was carried out after the bid had already been allotted to the two suppliers (refer to annex A.3 for list of transactions). In one additional instance where El Taysir was selected as the winning bidder, the invoice of El Taysir for EGP 3,300 was dated prior to its quotation.

The investigation also found that for 16 procurements totaling EGP 53,500 where El Taysir and Global were the winning bidders, the quotations were undated. This included seven instances where the invoice from El Taysir was undated. Additionally, for seven instances amounting to EGP 23,600, the bid decision report was also undated. Furthermore, seven invoices from El Taysir totaling EGP 23,100 were undated and 18 quotations submitted by El Taysir were undated.

The investigation also found that the format of the quotations submitted by Golden Touch, Al-Salam and Al-Anduleseyeh (another losing bidder) shared identical elements including the terms and conditions mentioned therein. Moreover, the handwriting on the quotations of Golden Touch appeared to be similar to handwriting on the invoices of El Taysir.

The investigation found irregularities in supporting documentation establishing proof of delivery of goods:

- documentation validating delivery of these goods from the suppliers was unavailable at NAP

- records of the receipt of the goods in the MOHP central warehouse were unavailable at MOHP
- records of beneficiaries and their identification details were unavailable at NAP

The OIG also found that the winning bidders consistently quoted a similar amount and the losing bidders consistently quoted higher amounts, which were never the lowest in the bid evaluation. The Finance Manager of NAP informed the OIG that he had shared the t-shirt budget limits with the winning bidders and thus they kept their bid prices at the budgeted levels. He further informed that those budgets were not shared with the bidders who lost.

Providing privileged information allowed suppliers to quote the best prices. This placed other bidders at a disadvantage and is considered to be collusive practice.

Additionally, the investigation found that the above suppliers were paid in cash and subsequently, an independent audit trail for the verification of beneficiaries was unavailable at NAP.

NAP's Finance Manager and Accounts Administration Officer told the OIG that these suppliers were identified through recommendations made by MOHP; however, evidence to support these statements was not shared with the OIG.

Lack of documentation for inventory delivery, management and traceability

The investigation found that NAP did not maintain t-shirt inventory documentation. The OIG's discussions with NAP and MOHP employees identified several irregularities in the processes followed for receiving and distributing t-shirts.

The NAP's Accounts Administration officer told the OIG that the MOHP employee at the AIDS hotline office in Imbaba in Cairo was responsible for carrying out the management of the t-shirt stock in that office. He also told the OIG that a committee receives the t-shirts, but the OIG was unable to corroborate this assertion. In an attempt to verify this account, the OIG visited the AIDS hotline office and found that around 150 t-shirts were wrapped and stored there. The t-shirts did not indicate the name of the supplier from which they had been procured. No records indicating when these t-shirts were procured were available.

Contrary to the account given by NAP's Accounts Administration officer, the MOHP employee at the AIDS hotline office told the OIG that the MOHP employee was not involved in receiving the deliveries or the management of the t-shirts inventory. The MOHP employee confirmed that when a delivery of t-shirts was scheduled, the supplier representatives contacted the NAP Accounts Administration officer who would then visit the AIDS hotline office to receive the delivery of the t-shirts from the suppliers.

Additionally, contrary to the NAP's Accounts Administration officer, the NAP's Finance Manager told the OIG that a MOHP employee at the MOHP central warehouse received the t-shirts. This same person also carried out the quality check of the t-shirts.

The MOHP employee told the OIG that the central warehouse of MOHP has never received any deliveries of t-shirts either for, or from, NAP, and that he was not involved in receiving any t-shirts procured by NAP. He stated that he had never visited the AIDS hotline office to receive or distribute t-shirts and had only visited it to verify computers purchased with grant funds that are stored there.

The lack of documentation and the irregularities identified in the processes detailed by the employees of NAP and MOHP confirm that the t-shirts were not delivered. The value of these t-shirts is therefore considered as a non-compliant expenditure.

Violation of Article 89/1998 of the Tenders Law of Egypt:

The investigation found that the purchases of t-shirts were recorded through multiple, separate and small procurements rather than a few consolidated purchases. For example, in 2009, NAP recorded 40 transactions amounting to EGP 132,200, each for EGP 3,300, with El Taysir categorized under

'General Supplies'. Similarly, in 2010, 30 transactions were recorded with El Taysir for 'General Supplies' mostly for EGP 4,000 each. Additionally, NAP also recorded 23 transactions in 2010 with the supplier Global for EGP 125,200 of which 22 transactions were for EGP 4,000 and one transaction for EGP 37,200.

The OIG's discussions with MOHP employees confirmed that MOHP's financial and administrative regulations require that the budgeted procurement activities over EGP 50,000 per year for the same products and/or services should be carried out by the MOHP's central procurement department and not by individual program teams like NAP. Such procurements should also follow the general guidelines detailed in article 89/1998 of the Tenders Law of Egypt.

Contrary to the procurement practice at NAP, the Article 46 and 47 of the Tenders Law of Egypt states that the invitation to bid for such procurements shall be addressed by registered letters comprising all data and particulars that shall be mentioned in the announcement. These invitations should be addressed to largest possible number of suppliers whose names are approved by the authority concerned.

The MOHP employees also told the OIG that payments for such procurements should be carried out only by check, as per the MOHP policies. It was further informed that splitting contracts into smaller procurements to avoid procurement by the central procurement department of MOHP is an administrative policy violation. Furthermore, no coherent explanation was provided by the NAP finance manager as to why they split the procurement of the t-shirts into so many small individual procurements.

The OIG considers that by splitting the procurement of the t-shirts into multiple small procurements, NAP intended to avoid the scrutiny of MOHP's central procurement department in order to facilitate its fraudulent scheme. The OIG also notes that dividing the procurement of goods into multiple smaller bids is an uneconomical way of conducting procurements as it reduces the ability of the procurer to negotiate a lower price from suppliers.

Based on the findings, the OIG concludes that the transactions with El Taysir for General Supplies, Global for General Supplies and El Fagalla El Gedida amounting to EGP 549,090 (US\$ 95,371) were fraudulent transactions and are therefore non-compliant expenditures under the terms and conditions of the grant agreement.

Agreed management action 1 – 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 instruct NAP to adopt a no cash policy for all expenses above EGP 2,000 and all major procurement will be outsourced to UNICEF. The Secretariat will review the procurement arrangements in place, and based on the review take appropriate measures to address the gaps identified in high value expenses, hotel selection procedures and segregation of duties at NAP.

Agreed management action 3 - The Secretariat will evaluate the feasibility of appointing an independent Fiscal agent for extension, if any, or signing of a new grant. The fiscal agent will review all expenditures before the payment is made and in cases of high value transactions the Fiscal agent will be involved at different stages of the procurement process.

02 Finding 2 – Non-compliant hotel expenditures

The OIG’s investigation examined the records of transactions with hotels in Egypt which NAP claimed were connected with carrying out training-related and other grant activities. Of the total of EGP 3,009,194 transactions reviewed by the OIG for these hotels, 85% (i.e., EGP 2,563,355) were related to three hotels; namely: Azur Grand Hotel (Azur); Hotel Palma Abu-Sultan (Palma); and Mercure Ismailia (Mercure) (refer to table 3 below).

Table 3: Hotels selected for training

Name of supplier	Total (EGP)	%
Azur Grand Hotel	1,186,695	39%
Hotel Palma Abu-Sultan	924,285	31%
Mercure Ismailia	452,374	15%
12 Other Hotel suppliers	445,840	15%
Grand Total	3,009,194	100%

NAP’s Finance Manager told the OIG that competitive bidding procedures were not carried out for the selection of the hotels as this is not considered to be procurement, and that the selection of the hotels was based on the recommendations from the MOHP. The NAP Finance Manager further stated that NAP consulted with other hotels with regards to availability and room rates, however, no documentation of such consultations were provided by NAP. The NAP Finance Manager was unable to provide any documentary evidence to support these statements.

Furthermore, contradicting the NAP Finance Manager, the MOHP Finance Administrator at MOHP told the OIG that MOHP had not referred any hotels to NAP and that NAP selected hotels based on their own judgment.

Irregularities in the invoicing included: approximately 80% of the transactions relating to the three hotels did not include the name of the individuals staying at or using the services of the hotel.

The investigation found that for invoice number 25921 from Azur for EGP 10,550, relating to a ‘surveillance workshop’ held in April 2009, the invoice number was not in chronological order compared to other invoices issued during the same period. In addition, the format of this invoice differed from the format of other invoices from Azur. The invoice was authorized by NAP’s Executive Manager, Finance Manager and the Accounts Administration Officer.

The investigation found that two consecutive invoices issued by Azur with invoice numbers 567 and 568 were provided for stays which were 13 days apart (refer to table 4 below) indicating that multiple invoices were pre-dated and prepared on the same day.

Table 4: Invoices with consecutive numbers prepared 13 days apart

Hotel	Invoice #	Check-in Date	Check-out Date	Amount (EGP)
Azur Grand Hotel	567	5-Feb-2012	7-Feb-2012	18,900
	568	18-Feb-2012	20-Feb-2012	21,600

The format of an invoice of Mercure for ‘Follow up and Evaluation workshop’ dated 16 July 2009 for EGP 37,005 had a different chronological order of invoice number as compared to other invoice numbers during the same period. This invoice was signed by the Front Office Supervisor whereas other invoices were signed by the Credit Manager of the hotel. This invoice also did not contain the PO Box number and a note relating to the invoice settlement conditions as compared to other Mercure invoices. The invoice was authorized by the NAP Accounts Administration Officer and the Accounts Assistant.

For Hotel Palma, the investigation found that eight invoices during a period of two months (from 28 April 2009 to 29 June 2009) were serially numbered, which suggests that the hotel did not have any business other than that from NAP. The Finance Manager and Accounts Administration Officer of NAP signed these invoices. Moreover, the invoice numbering format for the invoice number 5145 for EGP 14,960 was different compared to the other invoice numbering format used by Hotel Palma during the same period.

The OIG investigation found that payments to hotels were made in cash by NAP. The NAP employees provided inconsistent explanations to the OIG for the procedure and place of payment. The NAP Finance Manager stated that the payments to hotels were made in NAP's premises; however, the Accounts Administration officer at NAP stated that the payments were made directly by the project coordinators at the hotel after the workshops.

The OIG visited the three hotel suppliers (Azur, Palma and Mercure) to obtain copies of relevant supporting documentation, including copies of invoices, guest lists, etc., in order to validate independently the stay of NAP representatives and other beneficiaries, if any, at these hotels.

In one instance, the executive of the Hotel Palma showed the OIG an onsite archive which contained a limited number of guest registration records of MOHP employees staying at the hotel; however, no relevant system to trace the guest registration record with the invoices issued by the hotel were made available by the hotel. In accordance with the Code of Conduct for Suppliers⁴ of the Global Fund, the OIG asked the three hotels to provide all the relevant data; however, no further response has been received to date from any of the hotels.

The Mercure hotel did request a letter from the MOHP to provide assurance that the OIG's independent verification was supported by the MOHP. However, no cooperation was received from MOHP in providing this letter of assurance to these hotels.

The investigation also found that invoices for the Egyptian Family Planning Association and Hotel Delta for EGP 18,500 and EGP 4,488 respectively did not include any authorization in the form of signatures from the NAP representatives.

Due to the lack of verifiable supporting documentation, the OIG finds that the expenditures relating to these three hotels totaling EGP 2,563,355 (US\$ 445,253) is non-compliant.

Agreed management action 4 - Based on the findings of this report, related to non-compliant hotel expenditure for the three hotels, the Secretariat will address the supplier misconduct in accordance with the Secretariat's policy on supplier misconduct and the 'Sanctions Panel Procedure relating to the Code of Conduct for Suppliers'.

⁴ http://www.theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en

03 Finding 3 – Fraudulent vehicle rental

The OIG’s investigation found that NAP recorded vehicle rental transactions allegedly to support its training-related activities. NAP generally used two rental companies: El Nile Vehicle Rental and Misr Tourism Agency. The OIG investigation reviewed a total of EGP 161,015 of vehicle rental expenditures of which almost 95% was related to these two companies (refer to table 5 below).

Table 5: One main supplier for vehicles

Name of supplier	Total	% of total
El Nile Vehicle Rental	121,456	75.4%
Other Vehicle rental suppliers	39,559	24.6%
Total	161,015	100.0%

The investigation found that the car rental company, El Nile Vehicle Rental (El Nile), used by NAP for a total EGP 121,456 was not traceable at the addresses shown in its invoices.

Additionally, NAP recorded 33 transactions totaling EGP 75,056 with El Nile for vehicle rentals in 2009 when no competitive bidding process was carried out.

As the procurement activities were over EGP 50,000 per year, the procurement should have been carried out by the MOHP’s central procurement department, adhering to article 89/1998 of the Tenders Law of Egypt. The MOHP employee also stated that payments for such procurements should be made only by check as per the MOHP policies and that such splitting of contracts into smaller procurements to avoid procurement by the central procurement department of MOHP is an administrative policy violation.

The OIG was not provided with any vehicle rental logs indicating the usage, purpose and need for the car rentals. Therefore, the OIG concludes that the transactions with El Nile Vehicle for EGP 121,456 (US\$ 21,556) are fraudulent transactions and are therefore non-compliant expenditures under the terms and conditions of the grant agreement.

04 Finding 4 – Irregularities in stationery procurement

The investigation found that NAP recorded transactions of stationery procurement allegedly to support its training-related grant activities. The majority of the 278 transactions totaling EGP 291,420 were with two suppliers: El A'temad Stationery and MR Stationery (refer to table 6 below).

Table 6: Two main stationery suppliers

Name of supplier	2008	2009	2010	2011	2012	N/A	Total	% of total
El A'temad Stationery	57,960	31,865	55,294	53,755	44,692	1,209	244,774	84.0%
MR Stationery	1,389	33,976			10,000		45,365	15.6%
Other stationery supplier			1,282				1,282	0.4%
Total	59,349	65,841	56,575	53,755	54,692	1,209	291,420	100.0%

The OIG’s investigation found that El A'temad and MR stationery were not traceable at the addresses shown in their invoices. Another address of MR Stationery shop was obtained from NAP. On visiting the address provided by NAP, the OIG found a different supplier named El Mokhtar.

The shop owner informed the OIG that the invoices of El A'temad and MR Stationery were both issued from his premises, which indicated that they were related entities. The shop owner also stated that he usually communicated with the Accounts Administration Officer at NAP. Additionally, the shop owner also shared a blank invoice of El A'temad with the OIG.

The investigation also found that there was no supporting documentation available to validate the delivery of stationery purchased and names of the beneficiaries who utilized the stationery. The OIG's discussion with the AIDS hotline office secretary and another MOHP employee at the central MOHP stores confirmed that the stationery was not delivered to either location.

Additionally, the Finance Manager and the Accounts Administration Officer of NAP told the OIG that the stationery was delivered directly to the NAP's office, or the NAP Accounts Administration Officer visited the stationery shop to receive the delivery. No documentation was available at NAP, which related to how the stationery was delivered and distributed or any acknowledgement from the beneficiaries who received the stationery.

Of the total 278 transactions for stationery reviewed by the OIG, 54 transactions from the period 2011 to 2012 were for EGP 500 each. No coherent explanation as to why the amount remained the same over this period was provided by NAP.

The OIG found that, for El A'temad and MR Stationery, NAP recorded transactions totaling more than EGP 50,000 from 2008 to 2012; however, no competitive bidding process was carried out for these transactions.

The OIG therefore concludes that the transactions with El A'temad and MR Stationaries for EGP EGP 291,420 (US\$ 50,707) are non-compliant expenditure.⁵

05 Finding 5 – Irregularities in catering expenditures

The investigation found that NAP recorded catering transactions for EGP 582,389 during the period reviewed by the OIG. Of the 79 transactions reviewed for Mo'men, the investigation found that for 12 transactions amounting to EGP 73,138, the supplier invoice did not show a date or the date shown had been altered.

The investigation also found that, of the 79 transactions with Mo'men in the period 2009 to 2012, the invoices were mostly issued for EGP 6,900 (18 transactions) or EGP 1,800 (40 transactions) each. NAP provided no documentation or coherent explanation as to why these invoices remained the same amount over this period.

The Mo'men invoices were issued from several locations for different events; however, no documentation indicating how such an activity was managed and how the distribution of meals was carried out by NAP was available. Moreover, the investigation also found that no documentation to validate the names of beneficiaries who received the catering services was made available by NAP.

The OIG found that, for Mo'men Restaurant, NAP recorded transactions for more than EGP 50,000 in each of the years 2010 and 2012; however, no competitive bidding process was carried out for these transactions.

As the procurement activities were over EGP 50,000 per year, the procurement should have been carried out by the MOHP's central procurement department, adhering to article 89/1998 of the Tenders Law of Egypt. The MOHP employee also stated that payments for such procurements should be made only by check as per the MOHP policies and that such splitting of contracts into smaller procurements to avoid procurement by the central procurement department of MOHP is an administrative policy violation.

The OIG therefore concludes that the transactions with Mo'men Restaurant for EGP 324,173 (US\$ 55,990) are non-compliant expenditures.

⁵ As per the Article 18 and 21 of the Grant Agreement.

o6 Finding 6 – Other irregularities

Lack of segregation of duties

The OIG investigation found that the Finance Manager of NAP was not only responsible for accounting, but also participated in the procurement related activities involving the identification and selection of suppliers. Similarly, the NAP Accounts Administration Officer was not only responsible for administration related work but also for procurement related activities, involving the identification of suppliers, making payments, and receiving products, etc. This enabled the Finance Manager of NAP and the Accounts Administration Officer to exploit the system and commit the fraud.

Moreover, the Finance Manager and the Accounts Administration Officer were both also paid per diems and other expenditures for traveling to different governorates for carrying out project coordination activities when it is unclear why they would need to travel outside of Cairo.

Agreed management action 5 - Based on the findings of this report, the Secretariat will take appropriate action towards the individuals identified in this report, for example, restricting those individuals from occupying any positions related to the implementation of Global Fund grants.

Inadequate accounting records and lack of oversight

Accounting records maintained at NAP were kept in an excel spreadsheet and lacked basic details like check numbers, supplier names or beneficiary names, etc. This indicates that either the Finance Manager of NAP lacked the requisite knowledge of accounting, or deliberately kept minimal records so that a complete reconciliation of the books of accounts could not be carried out by an independent reviewer.

The OIG found that NAP's Executive Manager for most of the grant period was also the immediate supervisor to both the Finance Manager and the Accounts Administration Manager. He also authorized several vouchers and invoices in his supervisory role.

NAP's Executive Manager left NAP around November 2013 during the conclusion of the Secretariat review of transactions related to Quarter 19 and 20 of the grant in contentious circumstances. The OIG did not meet with NAP's Executive Manager as no contact details were available.

The OIG concluded that NAP's Executive Manager did not exercise effective oversight over the monitoring and evaluation of the grant implementation activities and financial record keeping by NAP. This facilitated the fraud and other irregular practices identified by this investigation.

Agreed management action 6 - Secretariat will instruct NAP to maintain books of records in an electronic financial accounting system. The accounting records will include but not limited to: the nature of expenditure; vendor name; vendor address; vendor representative name; check number; quantity and price of procurement; etc.

IV. Conclusion

The OIG's investigation concluded that there had been fraudulent practices and other procurement irregularities between 2008 and 2012 concerning t-shirts, office supplies, silver medals, hotel expenditure, vehicle rental, stationery and catering expenses. The fraud and other irregularities identified by the OIG compromised contracts totaling EGP 3,849,494 (USD 668,877), which the OIG considers to be non-compliant expenditure (refer to Table 7).

The wrongdoing was largely due to a lack of segregation of duties of NAP staff, inadequate accounting records and a lack of oversight by NAP management personnel. Furthermore, the Local Fund Agent did not flag the irregular procurement practices identified at NAP.

To allow the Global Fund to continue providing services to people with HIV and tuberculosis in Egypt the Global Fund has put in place the Additional Safeguard Measures. The Global Fund has requested that NAP cease all non-core program activities such as training, workshops and seminars, and it is therefore only undertaking life-saving activities.

The OIG recommends that USD 668,877 be recovered. The Global Fund will also take a number of corrective actions including ensuring that the individuals identified in this report are no longer involved in implementing Global Fund grants, a no cash policy for all expenses above EGP 2,000 at NAP and outsourcing major procurements of health products to UNICEF.

Table 7: Summary of non-compliant expenditure

Findings #	Description	Non-Compliant Expenditure	
		EGP	USD*
1	Fraudulent procurement of t-shirts, office supplies and silver medal	549,090	95,371
2	Denial of access to the OIG and consequent inability to verify hotels expenditure documentation independently	2,563,355	445,253
3	Fraudulent vehicle rental	121,456	21,556
4	Irregularities in stationery procurement	291,420	50,707
5	Irregularities in Catering expenditures	324,173	55,990
	Total	3,849,494	668,877

V. Table of Agreed Management Actions

Taking into account the findings of this investigation as well as the current grant implementation arrangements for the Egypt portfolio, the Secretariat and the OIG will agree to the following agreed actions:

#	Category	Agreed management action	Target date	Owner
1	Financial & Fiduciary Risks	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.	31 Dec 2015	Recoveries Committee
2	Financial & Fiduciary Risks	The Secretariat will instruct NAP to adopt no cash policy for all expenses above EGP 2,000 and all major procurement will be outsourced to UNICEF. The Secretariat will review the procurement arrangements in place, and based on the review take appropriate measures to address the gaps identified in high value expenses, hotel selection procedures and segregation of duties at NAP.	30 Jun 2016	Head of Grant Management
3	Governance, Oversight & Management Risks	The Secretariat will evaluate the feasibility of appointing an independent Fiscal agent for extension, if any, or signing of a new grant. The fiscal agent will review all expenditures before the payment is made and in cases of high value transactions the Fiscal agent will be involved at different stages of the procurement process.	31 Mar 2016	Head of Grant Management
4	Financial & Fiduciary Risks	Based on the findings of this report, related to non-compliant hotel expenditure for the three hotels, the Secretariat will address the supplier misconduct in accordance with the Secretariat's policy on supplier misconduct and the 'Sanctions Panel Procedure relating to the Code of Conduct for Suppliers'.	31 Dec 2015	Head of Grant Management
5	Governance, Oversight & Management Risks	Based on the findings of this report, the Secretariat will take appropriate action towards the individuals identified in this report, for example, restricting those individuals from occupying any positions	31 Dec 2015	Head of Grant Management

#	Category	Agreed management action	Target date	Owner
		related to the implementation of Global Fund grants.		
6	Financial & Fiduciary Risks	Secretariat will instruct NAP to maintain books of records in an electronic financial accounting system. The accounting records will include but not limited to: the nature of expenditure; vendor name; vendor address; vendor representative name; check number; quantity and price of procurement; etc.	30 Jun 2016	Head of Grant Management

VI. Annex A: Tables of transactions

Annex A.1: Summary of expenses reviewed

Broad Expense category	2008	2009	2010	2011	2012	Date unavailable [@]	Total (EGP)	Total (USD)
Hotel Accommodation		1,078,941	1,023,433	591,093	315,727		3,009,194	523,752
Catering	68,760	62,100	258,827	51,005	99,985	41,712	582,389	101,364
T-Shirt	21,800	136,450	237,500	85,500	76,000		557,250	96,957
Stationary	59,349	65,841	56,575	53,755	54,692	1,209	291,420	50,707
Vehicle Rental	13,700	81,556	46,759	6,400	1,600	11,000	161,015	28,544
Hall Rent	3,000	16,809	104,998				124,808	22,049
Printing Brochures			83,500		38,550		122,050	21,027
Office Supplies			29,335		40,590		69,925	11,817
Car Repairs				24,162	1,450	9,638	35,250	5,958
Banners	5,000		5,080	6,000			16,080	2,811
Sound system	2,500		8,500	3,500			14,500	2,539
Others	7,500		4,500		200	1,000	13,200	2,365
Silver medals			2,400				2,400	423
Custom Clearance					1,255		1,255	206
Total	181,608	1,441,697	1,861,408	821,415	630,049	64,558	5,000,736⁶	870,519

[@]Supplier invoices undated

⁶ Refer to "Annex A.3.xlsx" for the total list of transactions reviewed by the OIG.

Annex A.2 - List of transactions where bid documents were created after the transactions were recorded with Global and El Taysir:

#	Date	Name of supplier	Amount (EGP)	Losing Bidder 1	Losing Bidder 2
1	1-Nov-08	El Taysir for General Supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
2	1-Jun-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
3	20-Jun-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al-Zayyat
4	27-Jun-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
5	30-Jun-09	El Taysir for General supplies	3,300	Al Iman Pharm for Supplies	Al-Zayyat
6	20-Jul-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
7	7-Aug-09	El Taysir for General supplies	3,300	Al Iman Pharm for Supplies	Al-Zayyat
8	1-Sep-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al-Zayyat
9	1-Sep-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
10	1-Sep-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al-Zayyat
11	20-Sep-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
12	21-Sep-09	El Taysir for General Supplies	3,300	Al Iman Pharm for Supplies	Al-Zayyat
13	21-Sep-09	El Taysir for General Supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
14	21-Sep-09	El Taysir for General Supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
15	24-Sep-09	El Taysir for General supplies	3,300	Al Iman Pharm for Supplies	Al-Zayyat
16	26-Sep-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al-Zayyat
17	27-Sep-09	El Taysir for General Supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
18	28-Sep-09	El Taysir for General supplies	3,300	Al Iman Pharm for Supplies	Al-Zayyat
19	7-Oct-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al-Zayyat
20	1-Dec-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
21	1-Dec-09	El Taysir for General Supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies
22	1-Dec-09	El Taysir for General Supplies	3,300	Kazryeen Factory	Al-Zayyat
23	1-Dec-09	El Taysir for General Supplies	3,300	Al Iman Pharm for Supplies	Al-Zayyat
24	1-Dec-09	El Taysir for General Supplies	3,300	Kazryeen Factory	Al-Zayyat
25	13-Dec-09	El Taysir for General Supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies

#	Date	Name of supplier	Amount (EGP)	Losing Bidder 1	Losing Bidder 2
26	23-Dec-09	El Taysir for General supplies	3,300	Kazryeen Factory	Al-Zayyat
27	14-Feb-10	El Taysir for General Supplies	3,600	Golden Touch	Al Safa Al Marwa
28	14-Feb-10	El Taysir for General Supplies	400	Golden Touch	Al Safa Al Marwa
29	9-Mar-10	El Taysir for General Supplies	3,600	Golden Touch	Al Safa Al Marwa
30	9-Mar-10	El Taysir for General Supplies	400	Golden Touch	Al Safa Al Marwa
31	14-Mar-10	El Taysir for General Supplies	3,600	Summer Land	Al-anduleseyeh
32	6-May-10	Global for General Supplies	4,000	Golden Touch	Al-Salam
33	27-May-10	Global for General Supplies	4,000	Golden Touch	Al Safa Al Marwa
34	17-Jun-10	Global for General Supplies	4,000	Golden Touch	Al Safa Al Marwa
35	27-Aug-10	Global for General Supplies	4,000	Al-Salam	Al Safa Al Marwa
36	30-Aug-10	Global for General Supplies	4,000	Golden Touch	Al Safa Al Marwa
37	30-Aug-10	Global for General Supplies	4,000	Al-Salam	Al Safa Al Marwa
38	21-Sep-10	Global for General Supplies	4,000	Golden Touch	Al-Salam
39	21-Sep-10	Global for General Supplies	4,000	Golden Touch	Al Safa Al Marwa
40	23-Sep-10	Global for General Supplies	4,000	Golden Touch	Al-Salam
41	6-Oct-10	Global for General Supplies	4,000	Golden Touch	Al-Salam
42	6-Oct-10	Global for General Supplies	4,000	Golden Touch	Al-Salam
43	9-Dec-10	Global for General Supplies	4,000	Golden Touch	Al Safa Al Marwa
44	3-Oct-11	Global for General Supplies	36,000	Golden Touch	Al-Salam
45	15-Nov-11	Global for General Supplies	49,500	Flex Print	Al-Samadi
		Total	230,900		

Annex A.3 – List of seven transactions with irregularities in bid decision date versus invoice or quotation dates:

S. No.	Date	Name of vendor	Amount (EGP)	Losing Bidder 1	Losing Bidder 2	Comments
1	21/09/2010	Global for General Supplies	4,000	Golden Touch	Al-Salam	Bid decision date falls before the quotations date
2	30/08/2010	Global for General Supplies	4,000	Al-Salam	Al Safa Al Marwa	The bid decision date is approximately 1 month after the invoice date
3	27/08/2010	Global for General Supplies	4,000	Al-Salam	Al Safa Al Marwa	bid decision date is prior to the quotations' date
4	06/10/2010	Global for General Supplies	4,000	Golden Touch	Al-Salam	Bid decision date is prior to the quotation date.
5	06/05/2010	Global for General Supplies	4,000	Golden Touch	Al-Salam	The bid decision memo date falls three days after the invoice date
6	24/09/2009	El Taysir for General supplies	3,300	Al Iman Pharm for Supplies	Al-Zayyat	The invoice date is prior to the bid decision date
7	13-Dec-09	El Taysir for General Supplies	3,300	Kazryeen Factory	Al Iman Pharm for Supplies	The date of the bid decision memo falls after the vendor invoice date

VII. 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.⁷

While the Global Fund does not typically have a direct relationship with the recipients’ suppliers, the scope of the OIG’s work⁸ 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.⁹ The OIG relies on the cooperation of these suppliers to properly discharge its mandate.¹⁰

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.¹¹

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 expenditures deemed non-compliant for considerations of recovery, recommended administrative action related to grant management and recommendations for action under the Code of Conduct for Suppliers¹² or the Code of Conduct for Recipients of Global Fund Resources¹³ (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.¹⁴

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

⁷ Charter of the Office of the Inspector General (19 March 2013), available at:

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

⁸ Charter of the Office of the Inspector General (19 March 2013) § 2, 9.5 and 9.7.

⁹ *Ibid.*, § 17.1 and 17.2

¹⁰ 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.

¹¹ 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.

¹² See fn. 16, *supra*

¹³ 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.

¹⁴ 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.¹⁵

The Codes notably provide the following definitions of the relevant concepts of wrongdoings:¹⁶

- “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.

¹⁵ Code of Conduct for Recipients of Global Fund Resources, section 3.4.

¹⁶ 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 expenditures for funding by the Global Fund. Such non-compliance is based on the provisions of the STC.¹⁷ 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.¹⁸

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”.¹⁹

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 expenditures 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 expenditures are made in line with approved budgets and work plans, and properly accounted for in the program’s books and records, such expenditures 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.²⁰

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.”²¹

¹⁷ The STC are revised from time to time, but the provisions quoted below applied to all Principal Recipients at the time of the investigation.

¹⁸ Standard Terms and Conditions (2012.09) at Art. 14(b):

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

¹⁹ Id. at Art. 9(a) and Art 18(f)

²⁰ Id. at Art. 18(a)

²¹ 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.”²²

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.²³

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.²⁴ 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.²⁵

Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including expenditures made by Sub-recipients and contractors.²⁶

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.”²⁷

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.”²⁸

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.

²² Id. at Art. 21(b)

²³ Available at: <http://www.theglobalfund.org/documents/corporate/CorporateCodeOfConductForSuppliersPolicyen> ; <http://www.theglobalfund.org/documents/corporate/CorporateCodeOfConductForRecipientsPolicyen>

²⁴ Standard Terms and Conditions (2012.09) at Art. 21(d)

²⁵ Id. at Art. 21(e)

²⁶ Id. at Art. 14

²⁷ Id. at Art. 27(b) and (d)

²⁸ 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 expenditures, fraudulent expenditures, or otherwise irregular expenditures 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.