

Investigation Report

Global Fund Grants to Bangladesh

National Tuberculosis Control Program

GF-OIG-16-010
29 March 2016
Geneva, Switzerland

Non-compliant expenditures: US\$ 311,637
Proposed recoveries: Not determined
Category: Fraud / Collusion / Mismanagement of Funds

 **The Global Fund**

Office of the Inspector General

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I. Background and Scope

In 2011, fieldwork from an Office of the Inspector General (OIG) audit of grant activities in Bangladesh identified potential irregularities concerning the procurement of medical equipment supplied by Bengal Scientific & Surgical under tuberculosis grant BAN-809-G09-T. The National Tuberculosis Control Program (NTP) was implementing the grant on behalf of the Bangladesh Ministry of Finance, the grant's Principal Recipient. The NTP is a Bangladeshi governmental program under the Directorate General of Health Services, the Bangladesh Ministry of Health and Family Welfare.

Based on the audit's preliminary findings, the OIG initiated an investigation of the procurement tender. Bhuiyan International Corporation, the NTP's new procurement agent, conducted the tender, on behalf of the NTP. It was one of only two tenders conducted under the grant by the agent. The OIG did not investigate the second tender in detail, as it had been rescinded due to a redirection of funding.

Since 2003, the Global Fund has made total investments of US\$ 369 million in Bangladesh for all three diseases as of February 2016. Concerning tuberculosis, Bangladesh ranks sixth out of the world's 22 high-burden tuberculosis countries.

This investigation report is the last of a series of backlogged cases relating to investigations started before 2012 (so-called 'legacy cases') that the Office of the Inspector General is now able to finalize and publish due to increased headcount.

II. Executive Summary

The OIG's investigation confirmed the audit's preliminary findings. The investigators found that the 2011 tender for medical equipment awarded to Bengal Scientific & Surgical, a local Bangladesh supplier, for US\$ 311,637 involved collusion, falsified bid documents, non-existent shell companies, and price manipulation. They found that Bhuiyan International Corporation, the procurement agent that managed the tender on behalf of the NTP, was unqualified for its role and ineffective in interrupting the fraud. Bhuiyan International ceased operations soon after the grant's closure in June 2011.

At least four of the six bidders in the tender were affiliated and had colluded and submitted falsified bids to give the impression of a competitive tendering process. The bids, however, were near identical in appearance and content, proposed identical products at manipulated prices, and contained identical and in some cases fabricated supporting documentation, including manufacturer letters of authorization.

Whilst the OIG investigation confirmed that Bengal Scientific & Surgical delivered the quantity and type of goods ordered under the contract, the prices it charged for the equipment were marked up on average about 150%, or US\$ 186,591, over its direct wholesale costs — an amount it was unable to fully justify and a likely consequence of the collusion and fraud.

Root causes

The procurement agent was unqualified and did not look after the best interests of NTP, its client. The procurement agent's selection by NTP was poorly conducted and problematic with issues and allegations of fraud. The Local Fund Agent's assessment of the proposed procurement agent confirmed its lack of experience and qualified personnel. In light of the risks, but to avoid further delays, the Secretariat endorsed the selection of the agent, but with conditions to address the risks.

Actions taken

Beginning in July 2011, the Secretariat has instituted corrective measures regarding the procurement of all health products and medical equipment for NTP's tuberculosis grants. Health products (including medical equipment) are procured through the Global Drug Facility. Non-health products are procured through an international procurement agent approved by the Global Fund. The use of the local procurement agent has been discontinued. More recently, the Minister, Bangladesh Ministry of Health and Family Welfare, appointed in 2014, began instituting reforms and fundamental corrective measures at the behest of the World Bank and other major development partners to increase the Ministry's financial and grant management capacity, including implementing significant improvements in its procurement processes and oversight.

Prior to this report's publication, the Secretariat was able to conclude on the issue of recoveries based on the report's findings. Taking into account relevant business, policy and legal considerations specific to this case, the Secretariat concluded it would not seek monetary recoveries from the Principal Recipient in relation to this case. The OIG participates in the Secretariat's determination process as an observer and accepts the Secretariat's decision.

Agreed Management Action

There are no proposed Agreed Management Actions. The Secretariat's recoveries process was completed before the issuance of the report. As described above, corrective and remedial actions have been put in place to address and mitigate procurement risks. No further actions specific to the findings of this report are expected.

III. Findings and Agreed Management Actions

01 Fraudulent Bid Proposals and Manipulated Tender

Collusion and fraud pervaded the NTP's procurement of medical equipment in 2011. Additionally, its procurement agent facilitated the fraud, was underqualified for the position and ineffective in its role. Despite serious doubts about the procurement agent's skills and experience, the Local Fund Agent and the Secretariat nevertheless endorsed its selection with conditions to avoid further delays in the procurement schedule and the perceived lack of other qualified providers in the country. At least four of the six bidders for the tender for medical equipment—the first tender by the new procurement agent—submitted falsified bids and/or falsified supporting documentation and manipulated prices. The tender's specifications were tailored for the winning bidder and the evaluation committee ignored obvious patterns between the four bids, which represented red flags for collusion. The OIG investigation concludes that Bhuiyan International Corporation conducted the tender in a manner non-compliant with the grant agreement, which resulted in an abuse and likely waste of program funds.

Selection of Procurement Agent

In implementing its initial tuberculosis grants, NTP had engaged the World Health Organization (WHO) to manage all financial aspects of the grants, including procurement, due to NTP's weak financial management capacity. In 2008, during its Round 5 grant's second phase, the Secretariat implemented a strategy to phase out WHO. The plan called for NTP to engage an independent procurement agent for its Round 8 grant to manage procurements of medical products (excluding medications) until it built its own internal capacity to the satisfaction of the Secretariat.

In September 2010, at the end of the Round 8 grant's first year, the NTP selected Bhuiyan International Corporation, a local company, as its procurement agent following a drawn-out and problematic competitive tender process. Although Bhuiyan International had received only the second-highest overall combined score (technical and financial), it was declared the winner after the Local Fund Agent recommended in its post-tender assessment that the highest-evaluated bidder not be awarded the contract, as it did not possess the requisite procurement experience.

The selection of the procurement agent was marred with issues, missteps, accusations of fraud, and concerns over Bhuiyan International's qualifications. The first effort was re-tendered after the Local Fund Agent identified numerous departures from procurement guidelines and law and a conflict of interest between the NTP procurement staff and the winning bidder.¹ A losing bidder complained of serious irregularities and underhanded dealings with the process. In its assessment of Bhuiyan International after the re-tender, the Local Fund Agent noted numerous issues with the company's proposal and questioned its procurement experience. For example, Bhuiyan International was unable to produce any documents validating its stated procurement experience or present in person the members of its proposed team. Additionally, its proposed procurement specialist had no training or experience in procurement. In light of these risks, the Secretariat endorsed the selection of Bhuiyan International with stated conditions proposed by the Local Fund Agent citing the urgent need to commence program procurements due to the significant delays in the tender thus far and the overall lack of other experienced procurement agents in the country.²

Bhuiyan International completed only two tenders under the grant prior to the grant's closure in June 2011 and ceased business operations soon thereafter.³

¹ Bhuiyan International did not participate in the initial tender.

² The primary required condition was the replacement of Bhuiyan International's proposed team with personnel qualified and experienced in the procurement of health products.

³ The second tender completed by the agent, BIC/NTP-GF1002, was for medical reagents and completed in May 2011, although it was ultimately canceled due to changes in the program's procurement plan for the new grant.

Tender for Medical Equipment

Tender BIC/NTP-GF1001 for four lots of medical equipment was advertised in December 2010. Six bids were submitted as shown in Table 1 (ordered lowest to highest bid price; not all bidders proposed for all lots; DNB=Did Not Bid).

Table 1. Summary of Bid Tender Prices for BIC/NTP-GF1001 (in BDT)

Bidder	Lot A	Lot B	Lot C	Lot D
Bidder 1	DNB	DNB	8,105,400	DNB
R.P. Enterprise	1,200,000	2,585,600	8,292,000	DNB
Bengal Scientific and Surgical Co	1,799,800	4,561,000	13,410,000	1,500,000
M/S Mercantile Trade International	1,978,500	4,960,000	16,380,000	1,710,000
Universal Communication	2,050,000	5,022,600	16,980,000	DNB
Bidder 6	DNB	8,316,000	19,200,000	1,800,000

The two lowest-cost bidders—Bidder 1 and R.P. Enterprise—were declared technically non-responsive and their bids were disqualified.⁴ The OIG concludes that their exclusions were justified, albeit not well explained. The OIG also concludes that prices quoted by the lowest-cost bidders for some items were unreasonably low and not reflective of market prices for equipment meeting the required technical specifications.

After excluding Bidder 1 and R.P. Enterprise, the tender evaluation committee evaluated the proposal from Bengal Scientific & Surgical as the lowest cost, technically responsive bid for each of the four lots. After factoring in the cancellation of Lot A from the tender and an increase in the number of units for Lot C products from 60 to 72, the final contract with Bengal Scientific & Surgical dated 10 March 2011 was valued at BDT 22,153,000 (US\$ 311,637).

Collusion among Affiliated Bidders

The OIG inspected the bid proposals and conducted extensive due diligence on the bidders, including checking business licenses and registrations and physical address locations. Evidence shows that at least three other bidders—R.P. Enterprise, M/S Mercantile Trade International and Universal Communication—were affiliated with Bengal Scientific & Surgical and two of these were fictitious entities used by Bengal Scientific & Surgical for this tender:

- Mercantile Trade holds itself out as an affiliate or branch operation of Bengal Scientific & Surgical; they share common offices, employees and storage facilities;
- R.P. Enterprise and Universal Communications are non-operating shell entities with no registered business operations and the latter using a falsified address;
- The phone numbers, addresses and e-mails of Bengal Scientific & Surgical and R.P. Enterprises as submitted on the bids were identical; and,
- The fax numbers for Bengal Scientific & Surgical, Universal Communications and Mercantile Trade as submitted on the bids were identical.

Evidence also shows that the bids for the four entities were prepared together and used the same or similar fabricated documents, including manufacturer authorizations, as summarized in Table 2. The two bid proposals from the two non-operating shell entities were fabricated in their entirety to appear real:

⁴ As shown in Table 1, these two bidders did not bid for all lots, but were the lowest-price bidder for the lots bid on.

- The tender submissions had identical wording, formatting, fonts and the same words were underlined; they differed only with respect to the company letterhead (which contained many similar components such as address or phone numbers) and proposed prices;
- The tender submissions referred to the same bank guarantee, Bank Guarantee No. #63/BG/2010;
- The bidders proposed identical equipment with identical specifications from the same suppliers for all products, except for aspirators. For those, Mercantile Trade and Universal Communication proposed identical aspirators, as did Bengal Scientific & Surgical and R.P. Enterprises.
- The majority of the letters of authorization submitted by the four bidders were identical, using the same layout, dates and wording. At least three letters were fabricated. For instance, the paragraph numbering for the two paragraphs of one letter submitted by all four bidders ran consecutively from one bid to the next, indicating that the letter was produced within and printed from the same word processing document at the same time. For example, the two paragraphs in the letter submitted by Bengal Scientific & Surgical were numbered (1) and (2). The same two paragraphs in the letter submitted by Mercantile Trade were numbered (3) and (4). The same two paragraphs in the letter submitted by Universal Communications were numbered (5) and (6), and so forth.
- In another instance, the letters of authorization submitted by all four bidders for respirators—from a manufacturer in the United States—and nebulizers—from a manufacturer in Taiwan—appeared fabricated, as they were identical in appearance and wording differing only by the letterhead, date, bidder name and product. Moreover, the letters from both manufacturers were approved by the manager of the nebulizer manufacturer, listing his title and company name. This indicates that the respirator letter was falsified from the nebulizer letter, but in doing so, the author of the fabricated letters had neglected to change the signatory for the respirator letter. This is a clear indicator of document fabrication.

Table 2. Summary of Connecting Factors between Affiliated Bidders and Bids

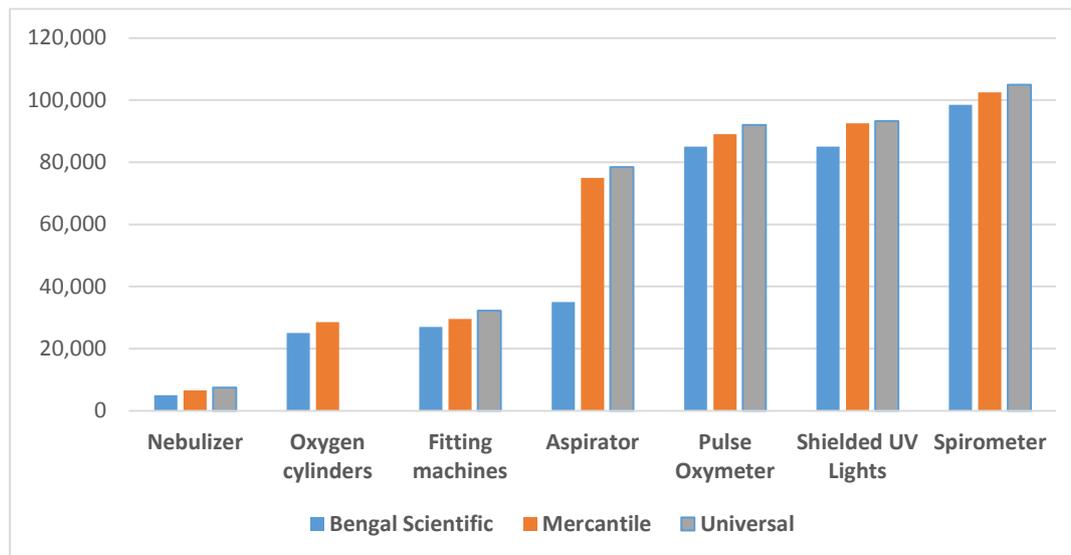
Bidder	Identical Tender Submission Form	Identical Bank Guarantee Reference No.	Identical Equipment Proposed	Identical Letters of Authorization	Identical fax number	Identical phone number, address and email
R.P. Enterprise	✓	✓	✓	✓		✓
Bengal Scientific & Surgical	✓	✓	✓	✓	✓	✓
Mercantile Trade	✓	✓	✓	✓	✓	
Universal Communication	✓	✓	✓	✓	✓	

Manipulation of Bid Prices

The price differences—in some cases substantial—proposed by the four affiliated bidders on identical items from the same manufacturers indicate that the prices across the four bid proposals were simulated and not reflective of competitive market prices.

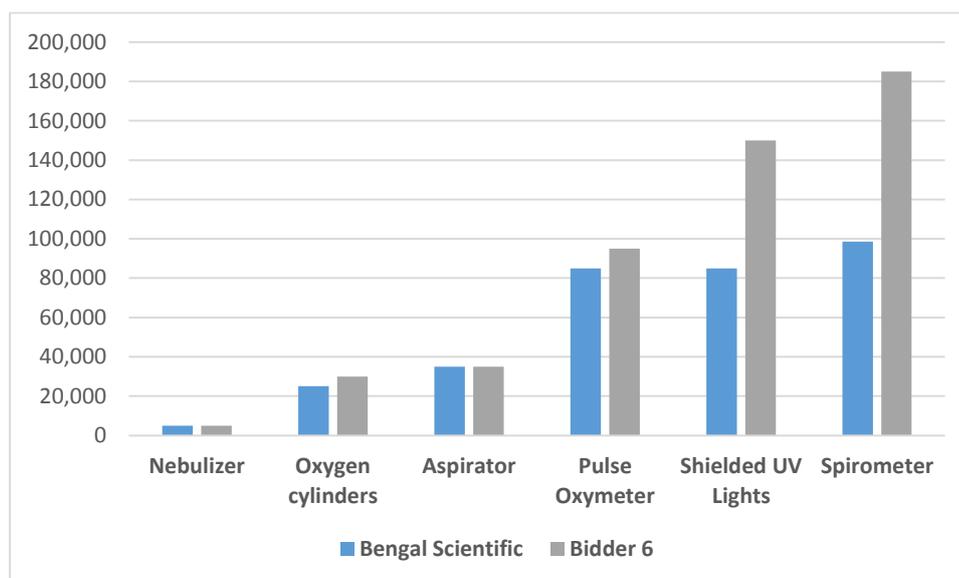
An analysis of individual product prices bid by Bengal Scientific & Surgical, Mercantile and Universal—the three affiliated companies whose financial proposals were evaluated (RP Enterprises had been disqualified)—show patterns consistent with collusion and pricing manipulation, as illustrated in Chart 1.

Chart 1. Comparison of Bid Prices per Unit by Affiliated Bidders (in BDT)⁵



Although no common links could be established between Bengal Scientific & Surgical and Bidder 6 (the highest-priced bidder overall), evidence indicates that Bidder 6 may still have colluded with Bengal Scientific & Surgical in the tender, although not confirmed. A comparison of the price quotes of Bengal Scientific & Surgical and Bidder 6 on individual products show close similarities in their prices except on two products, as shown in Chart 2. For shielded UV lights (lot B) and spirometers (lot C), the prices quoted by Bidder 6 were substantially higher than those quoted by Bengal Scientific & Surgical. This skewed Bidder 6’s overall bid price upward for lots B and C making them non-competitive, which may have been intentional. For example, Bidder 6’s price quote for spirometers was for a model with specifications and features far exceeding those requested in the tender documents, rather than for a more basic model as proposed by Bengal Scientific & Surgical, a simple oversight unexpected of an experienced bidder bidding competitively.

Chart 2. Comparison of Bid Prices per Unit of Bengal Scientific & Surgical to Bidder 6 (in BDT)



⁵ Prices for the respirators are not illustrated, as they were statistically insignificant compared to other products. Universal did not submit a price quote for oxygen cylinders.

Manipulated Bid Tender and Evaluation

Multiple factors indicate that the bid evaluation process overseen by Bhuiyan International was conducted in favor of Bengal Scientific & Surgical. The product specifications required by the tender's Request for Proposals appeared tailored for the products proposed by Bengal Scientific & Surgical, as the technical descriptions are almost identical. The NTP's procurement consultant who also sat on the tender's technical evaluation committee informed the OIG that he was in contact with Bengal Scientific & Surgical during the preparation of its tender. The bid evaluation committee overlooked numerous and obvious errors and similarities between the bids of the four affiliated bidders. The chairman of Bhuiyan International informed the OIG that during the tender process he was aware of the affiliations between the bidders, but did not interrupt the tender.

02 Large Mark-up of Product Prices

Evidence shows that Bengal Scientific & Surgical's quoted product prices for most items in its bid proposal incorporated a large mark-up on the direct wholesale cost it paid for the items. The OIG concludes that the mark-ups were unreasonably high and non-competitive. They were likely a direct consequence of the tender's collusion and fraud and reflect poor use of program funds.

The OIG obtained the documents supporting the direct costs Bengal Scientific & Surgical paid to purchase the goods it ordered from wholesale suppliers and manufacturers. The documents included pro-forma price quotes, invoices, bank payment advices, letters of credit and shipping documents. The OIG compared the price Bengal Scientific & Surgical quoted and charged to the tuberculosis program against the amounts it paid to its suppliers, including in-bound shipping and customs costs when known. As shown in Table 3, the OIG found that Bengal Scientific & Surgical marked-up its direct costs on the products ordered from 31% to 238% for an overall average weighted mark-up of 149%, equivalent to US\$ 186,591 on a contract price of US\$ 311,637.

Table 3 – Calculation of Bengal Scientific & Surgical Mark-up on Equipment Sold to NTP (in BDT except where noted)

Lot	Item	# of Units	Price Per Unit Quoted	Price Per Unit Cost	Mark-up of Cost	% Mark-up
B	Shielded UV Lights	50	85,000	30,396	54,604	180%
B	N95 Respirator	200	475	275	200	73%
B	Fitting machines	8	27,000	15,000	12,000	80%
C	Nebulizer	72	5,000	3,500	1,500	43%
C	Aspirator	72	35,000	14,907	20,093	135%
C	Pulse Oxymeter	72	85,000	25,117	59,883	238%
C	Spirometer	72	98,500	40,516	57,984	143%
D	Oxygen cylinders	60	25,000	19,055	5,945	31%
TOTAL BID (all units) in BDT			22,153,000	8,888,996	13,264,004	149%
TOTAL BID (all units) in USD			USD 311,637	USD 125,046	USD 186,591	149%

When the OIG discussed the company's mark-ups with Bengal Scientific & Surgical, its Managing Director was unable to fully support or justify its excessive mark-ups to the OIG.

A physical inspection by the OIG of the goods delivered by Bengal Scientific & Surgical under the contract showed that it had delivered all the goods as ordered and to the correct specifications.

Given the Secretariat's decision not to seek recoveries in this case, the OIG in this instance did not undertake a determination of the fair market price of the goods and associated reasonable rate of return to the supplier. For this reason, there is no "proposed recoveries" figure from the OIG associated with this report, and we report only the total amount of non-compliant expenditures.

IV. Conclusion

The investigation found evidence of fraud and collusion in the NTP's procurement of medical equipment under the tuberculosis grant it managed on behalf of the Bangladesh Ministry of Finance, the grant's Principal Recipient. Bidders including Bengal Scientific & Surgical submitted falsified documentation and manipulated bid prices. Bhuiyan International Corporation, the NTP's procurement agent, was unqualified for and ineffective in the role and facilitated the fraud through its inaction. The consequence to the program were the purchase of health equipment incorporating large mark-ups on the supplier's direct costs.

The Secretariat has instituted a number of corrective measures since 2011 to address the risks of procuring health and non-health products for tuberculosis grants exposed under grant BAN-809-G09-T. Based on knowledge gained from these findings and from similar investigations by other development partners, the Minister, Bangladesh Ministry of Health and Family Welfare, appointed in 2014 after the events of this report, has committed to addressing weaknesses in the Ministry's capacity by implementing comprehensive and integrated measures towards fiduciary assessment to improve its monitoring, supervision and implementation of program activities.

The Secretariat has already concluded on the issue of recoveries based on the findings of this report and has determined not to pursue a monetary recovery in this matter taking into account relevant business, policy and legal considerations specific to this case. The OIG participates in this process as an observer and accepts the Secretariat's decision.

Annex A: OIG 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.⁶

While the Global Fund does not typically have a direct relationship with the recipients’ suppliers, the scope of the OIG’s work⁷ 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.⁸ The OIG relies on the cooperation of these suppliers to properly discharge its mandate.⁹

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.¹⁰

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 Suppliers¹¹ or the Code of Conduct for Recipients of Global Fund Resources¹² (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.¹³

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

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

⁶ Charter of the Office of the Inspector General (19 March 2013), available at: <http://theglobalfund.org/documents/oig/OIGOfficeOfInspectorGeneralCharteren/>, accessed 01 November 2013.

⁷ Charter of the Office of the Inspector General (19 March 2013) § 2, 9.5 and 9.7.

⁸ *Ibid.*, § 17.1 and 17.2

⁹ 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.

¹⁰ 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.

¹¹ See fn. 16, *supra*

¹² 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.

¹³ Charter of the Office of the Inspector General (19 March 2013) § 8.1

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.¹⁴

The Codes notably provide the following definitions of the relevant concepts of wrongdoings:¹⁵

- “Anti-competitive practice” means any agreement, decision or practice which has as its object or effect the restriction or distortion of competition in any market.
- “Collusive practice” means an arrangement between two or more persons or entities designed to achieve an improper purpose, including influencing improperly the actions of another person or entity.
- “Conflict of Interest”: A conflict of interest arises when a Recipient or Recipient Representative participates in any particular Global Fund matter that may have a direct and predictable effect on a financial or other interest held by: (a) the Recipient; (b) the Recipient Representative; or (c) any person or institution associated with the Recipient or Recipient Representative by contractual, financial, agency, employment or personal relationship. For instance, conflicts of interest may exist when a Recipient or Recipient Representative has a financial or other interest that could affect the conduct of its duties and responsibilities to manage Global Fund Resources. A conflict of interest may also exist if a Recipient or Recipient Representative’s financial or other interest compromises or undermines the trust that Global Fund Resources are managed and utilized in a manner that is transparent, fair, honest and accountable.
- “Corrupt practice” means the offering, promising, giving, receiving or soliciting, directly or indirectly, of anything of value or any other advantage to influence improperly the actions of another person or entity.
- “Fraudulent practice” means any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person or entity to obtain a financial or other benefit or to avoid an obligation.
- “Misappropriation” is the intentional misuse or misdirection of money or property for purposes that are inconsistent with the authorized and intended purpose of the money or assets, including for the benefit of the individual, entity or person they favor, either directly or indirectly.

¹⁴ Code of Conduct for Recipients of Global Fund Resources, section 3.4.

¹⁵ Available at: <http://theglobalfund.org/documents/corporate/CorporateCodeOfConductForRecipientsPolicyen/> and http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/

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.¹⁶ 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.¹⁷

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".¹⁸

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.¹⁹

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."²⁰

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."²¹

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.²²

¹⁶ The STC are revised from time to time, but the provisions quoted below applied to all Principal Recipients at the time of the investigation.

¹⁷ Standard Terms and Conditions (2012.09) at Art. 14(b):

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

¹⁸ Id. at Art. 9(a) and Art 18(f)

¹⁹ Id. at Art. 18(a)

²⁰ Id., at Art. 21 (b)

²¹ Id. at Art. 21(b)

²² Available at: <http://www.theglobalfund.org/documents/corporate/CorporateCodeOfConductForSuppliersPolicyen> ; <http://www.theglobalfund.org/documents/corporate/CorporateCodeOfConductForRecipientsPolicyen>

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.²³ 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.²⁴

Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including expenses made by Sub-recipients and contractors.²⁵

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."²⁶

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."²⁷

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

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

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

²³ Standard Terms and Conditions (2012.09) at Art. 21(d)

²⁴ Id. at Art. 21(e)

²⁵ Id. at Art. 14

²⁶ Id. at Art. 27(b) and (d)

²⁷ Id.

Annex B: Summary of Subject Response

On 6 December 2015, the OIG provided its Letter of Findings to the Minister, Ministry of Health and Family Welfare of the People's Republic of Bangladesh, who responded on behalf of the Ministry and NTP through a formal letter dated 17 December 2015. The present Minister has held the office since 2014, after the events investigated in this report.

The Ministry expressed gratitude and appreciation for the OIG's work in uncovering the issues, as it will apply lessons learned from the investigation to implement comprehensive and integrated measures towards fiduciary assessment to improve its monitoring, supervision and implementation of its programs and its standard of works. The Ministry further expressed its commitment to fair, transparent and accountable form of government with a view to establishing good governance.

While the Ministry provided some minor clarifications from NTP in regards to the tender process, it did not express any disagreements concerning the findings raised. It reported that administrative actions against individuals responsible would be taken as a direct result of the investigation, and that its staff members have been cautioned against conducting possible fraudulent practices for the future.