




LAW ENFORCEMENT SENSITIVE

*Office of Inspector General*

JUN 29 2018

**REFERRAL MEMORANDUM**

**TO:** Angelique Crumbly  
Acting Assistant Administrator  
Bureau for Management

**FROM:** Jonathan Schofield   
Acting Deputy Assistant Inspector General for Investigations  
Office of Inspector General

**SUBJECT:** Vulnerability in Material Support for Terrorism Disclosure Rules

**Purpose**

Preventing organizations that support terrorist activities from obtaining USAID funds continues to be a top investigative priority of the OIG. Such funding, indirect, direct, or from diversions, has the potential to undermine both development and national security objectives, as well as cause significant reputational damage to foreign assistance programs. Examples of recent OIG activities on this issue include:

- Exposing illicit activity involving the diversion of U.S. Government funded food-kits to a terrorist organization in northern Syria, which led to the suspension of a \$44.6 million award;
- Working with the Department of Justice (DOJ) to recover \$700,000 from the American University in Beirut (AUB) under the False Claims Act for falsely certifying to USAID, at the time of award, that it had not provided past material support to U.S.-designated terrorist entities. The investigation determined that AUB had provided training on podcasting, packaging stories for multimedia and different platforms, and presentation of final products to al Nour Radio and al Manar TV—Hezbollah affiliates—thereby providing them with knowledge and insight they could use to more effectively communicate their desired message. Until March 2016, AUB continued to falsely certify to USAID that it had not provided material support to U.S.-designated terrorist entities.

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- Working with DOJ to recover \$2,025,000 from non-government organization Norwegian People's Aid (NPA) under the False Claims Act for falsely certifying to USAID, at the time of award, that it had not provided past material support to U.S.-designated terrorist entities. NPA had, in fact, provided support to a state sponsor of terrorism, Iran, by performing mine clearance activities, which were integral to an Iranian oil development project and which involved the training of Iranian military officials. Further, NPA funded numerous workshops attended by officials from three U.S.-designated terrorist organizations, including Hamas. These prohibited activities occurred as recently as November 2017, and the terrorist organizations used information that they obtained from the workshops to alter their behavior in order to become more attractive to youth and, thereby, benefit from increased youth support.
- In 2018, in coordination with the United States Attorney's Office for the Southern District of New York (SDNY), the OIG began a proactive initiative, examining a sample of USAID implementers for possible ties to terrorist organizations. Within the first week of examination, the OIG identified several grant, cooperative agreement, and contract awardees with possible negative associations.

As part of the OIG's efforts to ensure that USAID funds do not fall into the hands of terrorist entities, we are alerting the Agency to a vulnerability in its ability to discern whether prospective implementers have engaged with designated terrorist organizations. Current Agency policy requires USAID agreement officers to obtain from prospective recipients of grants or cooperative agreements the following certification:

The recipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts. . . .<sup>1</sup>

This mandatory certification, which the Agency has deemed, "an express term and condition of any agreement" in which, "...any violation of it will be grounds for unilateral termination of the agreement by USAID prior to the end of its term,"<sup>2</sup> is not required for prospective contract recipients. This omission deprives the Agency of controls to ensure that its award dollars are not going to contractors that may have assisted terrorist entities.

### **Current Agency Policy for Assistance Awards Requires Implementers to Disclose Past Assistance to Terrorist Entities**

The Agency's current policy for prospective awardees of grants and cooperative agreements requires applicants to certify that they will not, and have not, provided material

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<sup>1</sup> Certifications, Assurances, Representations, and Other Statements of the Recipient: A Mandatory Reference for ADS Chapter 303; <https://www.usaid.gov/sites/default/files/documents/1868/303mav.pdf> Par. 4.

<sup>2</sup> *Id.*

support to terrorist organizations within the past ten years. This policy, first implemented in 2002,<sup>3</sup> served as USAID's response to Executive Order 13244 ("Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism") signed by President George W. Bush after the September 11, 2001 terrorist attacks. The Executive Order prohibits the making or receiving of any contribution of funds, goods, or services to or for the benefit of terrorist organizations and directs Federal agencies to "take all appropriate measures within their authority to carry out the provisions of this order." Per Acquisition and Assistance Policy Directive (AAPD) 04-14, the existing certification was designed to provide USAID with assurances that it was not entering into an assistance agreement with an organization that provides or has provided support to terrorists or for terrorist activity.<sup>4</sup>

In contrast, the Agency does not impose the same restrictions on recipients of USAID contract awards. ADS 302 incorporates FAR 25.701, which prohibits agencies and their contractors and subcontractors from acquiring any supplies or services from entities which are designated by proclamation, Executive Order, Office of Foreign Assets Control (OFAC) regulation, or statute administered by OFAC as prohibited entities due to their association with terrorism.<sup>5</sup> Contracting officers are required to check the OFAC list to ensure that a selected contractor and proposed subcontractors (including known individuals from those organizations) are not on the list. Further, contracts must include FAR 52.225-13, which restricts contractors from making purchases from designated terrorist entities. However, unlike for grants and cooperative agreements, there is no equivalent requirement for contractors to certify that they have not, prior to the date of award, provided material support for terrorist organizations. By not applying the prohibitions to all USAID contractors, USAID exposes itself to contractual relationships with implementers who may have provided material support to terrorist entities. These relationships pose significant reputational risk for USAID.

### **The Absence of a Requirement for Prospective Contractors to Disclose Past Material Support for Terrorism Exposes the Agency to Risk and Reputational Damage**

With no certification requirement for prospective contractors concerning their past assistance to terrorist organizations, the Agency places itself at risk. The certification in place for assistance awards allows the Agency to make an informed decision on the scope and circumstances behind the past assistance and whether such support may be disqualifying. Further, an applicant that conceals, via false certification, its prior association with terrorist entities, is subject to potential criminal, civil, and administrative enforcement remedies, as seen

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<sup>3</sup> AAPD 02-19. AAPD 02-19 was followed by AAPD 04-07 and AAPD 04-14, which was formally incorporated into ADS 303.

<sup>4</sup> This Notice explains that USAID employees could be liable under 18 U.S.C. § 2339A ("Providing material support to terrorists"), § 2339B ("Providing material support or resources to designated foreign terrorist organizations), and § 2339C ("Prohibitions against the financing of terrorism") if they knowingly provide assistance to an organization that, in turn, provides or has provided material support or resources for terrorist acts, or to foreign terrorist organizations, or in violation of United Nations conventions and protocols.

<sup>5</sup> AAPD -02-04, "Implementation of E.O. 13224 – Executive Order on Terrorist Financing"; ADS 302.3.6.13

with the AUB and NPA cases within the past year.<sup>6</sup> Such enforcement, however, is exceedingly difficult if no certification is required. To illustrate, the OIG has identified a contractor, working on a current USAID project in Africa, which is suspected to have provided material support to a U.S.-designated terrorist entity. Under the current policy, USAID had no mechanism prior to award, which requires the contractor to disclose such information. Additionally, had the contractor concealed a past association with a terrorist organization, the government would face hardship in prosecuting the case since no certification was required for the contract recipient.

It appears from the media attention received after the AUB and NPA settlements that the public shares the OIG and Agency's concern about foreign aid funds falling into the hands of terrorist entities. The current loophole in which grantees, but not contractors, must disclose their prior association with terrorist entities creates significant risk, in both program operations and public perception, to the Agency.

**Action Requested**

This matter is being referred to your office for review and any action deemed necessary or appropriate. The OIG requests a response to this referral within 30 days. This memorandum remains the sole property of the Office of Inspector General and may not be further transmitted in print or electronic form without the expressed consent of the Inspector General or her designee.

cc: David Moore, General Counsel  
William R. Steiger, Chief of Staff  
Susan K. Pascocello, Deputy General Counsel

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<sup>6</sup> Presently, there are two additional ongoing False Claims Act cases filed under seal in the Southern District of New York (SDNY) plus two separate ongoing investigations related to a recipient of USAID grant dollars that falsely certified its past involvement with U.S.-designated terrorist entities.