



Office of Inspector General

April 14, 2014

Mr. John Groarke
USAID/Haiti Mission Director
Boulevard 15 Octobre, Tabarre 41
Port-au-Prince, Haiti

Dear Mr. Groarke:

In addition to the matters discussed in the attached audit report, auditors identified two concerns addressed in this management letter. They relate to certain best practices that we believe the mission should consider implementing to reduce risks during construction projects.

Attachment 1 presents the issues in detail. While a formal mission response is not required, we do intend to assess mission actions to mitigate risks as part of any future infrastructure audit.

We appreciate your attention to these concerns, and thank you again for the mission's assistance and consideration during the audit.

Sincerely,

Jon Chasson /s/
Regional Inspector General

Enclosure
cc: USAID/Haiti Controller, Claire Johnson

Concern 1. Testing of Materials Needs Improvement

USAID/Haiti executed construction contracts with CEMEX and THOR Construction Inc. and required both contractors to develop their own quality control plans. However, CEMEX and THOR's quality control plans did not provide clear instructions for testing materials. Neither company's quality control plan listed certified independent laboratories to perform the tests or provided the frequency with which to conduct them. As a result, testing was sporadic and did not provide effective quality control. Testing shortcomings were most evident in concrete and reinforcing bar (a steel bar embedded in a concrete structure to support tension loads, allowing a building to withstand environmental conditions).

- *Concrete testing.* For DLA 1.5, CEMEX used its own laboratory to conduct the concrete tests. CEMEX was not only the construction contractor, but also the supplier of the concrete. The construction management contractor, PHS Group Inc., conducted periodic, random tests of the concrete. However, the test results differed from those obtained by CEMEX's laboratories. For Caracol-EKAM, THOR did not test the concrete it used, depending instead on its suppliers to do the testing. The construction management contractor, CEEPCO Contracting LLC, did random testing using a certified laboratory.
- *Reinforcing bar testing.* Because Haiti has no facilities to perform reinforcing bar tests, the contractors relied on their foreign suppliers for testing. For DLA 1.5, neither CEMEX nor PHS obtained any samples or performed any tests on the reinforcing bars used. For Caracol-EKAM, CEEPCO, the construction management contractor, obtained samples but did not send them out for testing (in Miami) until August 2013, after our site visits.

The mission noted there is no specific requirement to test the cement at an independent laboratory, and it buys certified steel. While there are no specific requirements following best practices from other missions and agencies would require additional testing using an independent, certified laboratory—versus depending on test results from suppliers from foreign company that do not have the same controls that the United States does—would provide greater quality assurance and prevent the use of substandard material in USAID-funded construction projects. USAID emphasizes sustainability, and substandard material could jeopardize the integrity of the structures.

For future construction projects, the mission should require contractors to use certified laboratories to test materials indicating the minimum frequency of testing for all materials, independent of the supplier's tests.

Concern 2. Key Construction Clauses Should Be Included in Future Contracts

Best practices call for building safeguards into construction contracts. To help mitigate loss to the U.S. Government in the event that a contractor fails to fulfill its obligations, contracts should include the following:

- A *performance bond*, a guarantee that a contractor obtains from a bank or an insurance company to pay the customer (in this case USAID)— if the contractor does not complete a project satisfactorily.
- A *payment bond*, obtained in the same manner as a performance bond and guarantees that the contractor will pay the labor and material costs to its subcontractors.
- A *provision for liquidated damages*, requires the construction contractor to pay the government an estimated daily rate for each day of delay.
- A *retainage*, an amount withheld until all contract requirements have been met or until the contracting officer is satisfied with the work.

The Federal Acquisition Regulation (FAR) provides guidance on practices that contracting officers may use to limit risk of nonperformance for construction contracts. For example, FAR 28.102-1 states that construction contracts issued by the federal government must be backed by performance and payment bonds, although this requirement may be waived for work in foreign countries. FAR 11.501 states that “the contracting officer must consider the potential impact on pricing, competition, and contract administration before using a liquidated damages clause,” and FAR 52.232-5 states that “if satisfactory progress has not been made, the contracting officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved.”

The construction contracts with THOR and CEMEX did not include all of these safeguards, as noted below:

- Although CEMEX obtained bonds for 100 percent of its award, it had not increased the bond amounts to reflect the increase in award amount in January 2013.
- Because THOR had difficulty obtaining a performance bond for the large value of its award, the mission agreed to reduce the bond requirement to 50 percent (for the first phase), with the expectation that THOR would complete 50 percent of the 750 houses in Caracol-EKAM. However, THOR had not met this condition, nor was the bond increased in a timely manner when the award amount increased.
- THOR’s current performance and payment bond values are 50 percent of the old award value; they have not been modified to reflect the May 2013 increase in award amounts.

Furthermore, the contracts with THOR and CEMEX did not include a daily rate for liquidated damages or the provision for a retainage. Mission staff explained that liquidated damages and retainages, while commonly required for private sector construction projects, are not necessarily feasible for foreign assistance projects because the loss to USAID would be difficult to calculate. However, the U.S. Army Corps of Engineers, which has extensive construction experience in foreign countries, always includes these provisions to protect the U.S. Government’s interests. We noted that another USAID construction project included the daily rate of liquidated damages and retainage clause for even smaller works. Furthermore, one of the awards to CEEPSCO for new settlements contained an estimated daily rate to be paid for each day the contractor was delayed, as well as provisions related to liquidated damages.

According to the mission's contracting officer, USAID has few policies and procedures for construction contracts, most of them at the discretion of the contracting officer. We believe that the mission would benefit from clear procedures and policies for handling these types of contracts to reduce USAID's risk of losses from its contractors.

The mission should consider developing a mission policy on construction contracts that requires contracting officials to (1) follow specific procedures for determining relevant clauses to include, (2) document all determinations for including or excluding construction clauses and provisions, (3) include a daily rate if the liquidated damages clause is used, and (4) promptly modify performance and payment bonds to reflect changes in award amounts.