



Office of Inspector General

July 18, 2010

MEMORANDUM

FOR: USAID/Egypt Acting Mission Director, Richard Rousseau

FROM: Regional Inspector General/Cairo, Jacqueline Bell /s/

SUBJECT: Risk Assessment of the Impact of BearingPoint's Restructuring on USAID/Egypt Programs (Report No. 6-263-10-001-S)

This memorandum transmits our final memorandum on the subject review. In finalizing the report, we considered your comments on the draft review report and have included the comments in their entirety in appendix II.

Thank you for the cooperation and courtesy extended to the audit team during this audit.

Background

In fiscal year (FY) 2009, BearingPoint, Inc., was one of the 100 largest federal contractors, with more than \$1.3 billion in active contracts. The company's Government contracts included program management and support projects and technical assistance activities for clients ranging from the Navy to the National Institutes of Health. USAID was one of the largest purchasers of services from BearingPoint in FY 2009, with more than \$850 million in active contracts. Despite these contracts, BearingPoint filed for relief under Chapter 11 of the U.S. Bankruptcy Code¹ in February 2009. In May 2009, BearingPoint sold the majority of its Public Services Unit, including contracts with USAID, to Deloitte Consulting LLP (Deloitte). In August 2009, the Defense Contract Management Agency (DCMA)² issued a novation agreement to recognize Deloitte as BearingPoint's successor in interest to selected contracts.³ In September 2009, USAID issued its own novation agreement to retroactively recognize Deloitte as BearingPoint's successor in interest to multiple USAID contracts. Under the novation agreement, Deloitte agreed to perform the novated contracts in accordance with the terms contained in the contracts and assumed all obligations and liabilities associated with the contracts. In turn, USAID and other affected agencies agreed to recognize Deloitte as the "successor in interest" to all relevant contracts.

Among the contracts affected by the bankruptcy and subsequent sale of BearingPoint was one USAID/Egypt project, the Technical Assistance for Policy Reform II (TAPR-II) project. USAID/Egypt awarded the TAPR-II contract to BearingPoint in October 2005 as a cost-plus-fixed-fee contract⁴ valued at approximately \$130.6 million. The contractor designed the 5-year project to provide technical assistance related to economic policy formation and private-sector development, along with related training, grants, and commodity support, to the Government of Egypt. The project includes seven components: (1) trade environment, (2) financial sector modernization, (3) macroeconomic stability, (4) enabling policy environment for business, (5) facilitating services for the private sector, (6) human resources, and (7) program support. The project was in its fourth year at the time of BearingPoint's restructuring and eventual sale. At

¹ Codified in Title 11 of the U.S. Code, commonly referred to as the Bankruptcy Code.

² DCMA is a Department of Defense agency that provides contracting support to multiple Federal agencies. This support includes development of contract solicitations, drafting of contracts, and management of contractor performance.

³ A novation is the substitution of a new contract, debt, or obligation for an existing one (*Black's Law Dictionary* 735, abridged 6th ed., 1991). In this case, the novation had the effect of substituting a new party that was not a party to the original duty (Deloitte) and discharging an original party (BearingPoint). Federal Acquisition Regulation 42.1204, "Applicability of Novation Agreements," provides guidance on Government recognition of a third party as the successor in interest to a government contract.

⁴ A cost-plus-fixed-fee contract is a contract that provides for payment of allowable incurred costs, to the extent prescribed in the contract, using an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed without the approval of the contracting officer. In addition, a cost-plus-fixed-fee contract provides for payment of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract.

the time of the restructuring, USAID/Egypt had expended approximately \$93 million for the TAPR-II project. By the time Agency officials signed the USAID novation agreement, USAID/Egypt had expended, in total, approximately \$101.4 million for TAPR-II.

While many contracts, including TAPR-II, were included in the DCMA and USAID novation agreements, there were contracts between BearingPoint and USAID that were not novated to Deloitte. In January 2010, BearingPoint and USAID came to a settlement related to claims for 391 contracts and subcontracts existing between BearingPoint and the Agency before the February 2009 bankruptcy filing that were not novated, including 20 USAID/Egypt contracts. Under the settlement, the parties agreed to close out the remaining contracts to avoid the “expense, effort, and distraction required to complete the outstanding audits of BearingPoint’s incurred costs.” USAID agreed not to pursue BearingPoint for additional claims related to the specified contracts and, in turn, USAID would not be liable to BearingPoint for any other payments. Following this settlement, USAID’s Office of Acquisition and Assistance (OAA) sent by e-mail to USAID missions information on the settlement and a list of contracts to be closed out. This e-mail identified 20 USAID/Egypt contracts that were active between 1995 and 2004 and valued at \$26.8 million, of which approximately \$720,000 remained unliquidated.⁵ OAA’s e-mail reiterated that the settlement required USAID to close out each contract at the amounts billed for direct and indirect costs. OAA instructed USAID/Egypt not to ask BearingPoint to provide any information, documentation, or other materials to assist in the closeout process based on the settlement agreement.

**Risk Assessment
and Control
Activities in a
Control
Environment**

The purpose of this assessment was to identify any significant areas of vulnerability in USAID/Egypt’s administrative and program operations related to BearingPoint’s restructuring and eventual sale to Deloitte. This would allow the mission to take appropriate steps to address any identified vulnerabilities.

According to the Government Accountability Office (GAO) *Standards for Internal Control in the Federal Government*, internal controls should provide reasonable assurance of compliance with applicable laws and regulations and that operations are effective and efficient and financial reporting is reliable. Internal controls consist of the following five related components.⁶ These components are the minimum level for internal control and provide the basis on which internal control is to be evaluated.

1. *Control Environment:* Management and employees should establish and maintain a control environment throughout the agency that sets a positive and supportive attitude toward internal control and conscientious management.

⁵ This e-mail included expired contracts with both BearingPoint and a BearingPoint subsidiary, the Barents Group. In addition, OAA’s e-mail included three contracts that staff from USAID/Egypt’s Financial Management and Procurement offices determined were not between USAID/Egypt and BearingPoint and should not have been included.

⁶ *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (11/99).

2. *Risk Assessment:* Internal control should provide for a risk assessment of the risks the agency faces from both external and internal sources.
3. *Control Activities:* Internal control activities should be effective and efficient in accomplishing the agency's control objectives and help ensure that management's directives are carried out.
4. *Information and Communications:* Information should be recorded and communicated to management and others in the agency who need it and in a form and within a timeframe that enables them to carry out their internal control and other responsibilities.
5. *Monitoring:* Internal control monitoring should assess the quality of performance over time and ensure that the findings of audits and other reviews are promptly resolved.

This review focused on the second component—risk assessment. The GAO standards note that the specific risk analysis methodology used can vary because of differences in agencies' missions and the difficulty in qualitatively and quantitatively assigning risk levels. This review assigned a risk exposure of high, moderate, or low for each major function. A higher risk exposure simply indicates that the particular function is more vulnerable to its program objectives not being achieved or to irregularities occurring. Appendix I describes in detail the risk assessment scope and methodology.

Discussion

The Regional Inspector General/Cairo (RIG/Cairo) examined the risk associated with the restructuring and subsequent sale of BearingPoint to USAID/Egypt's programs by office. The audit team assigned exposure risk levels ranging from low to moderate to five USAID/Egypt mission offices. USAID/Egypt's Financial Management, Policy and Private Sector, and Procurement offices were assessed as moderate risk exposure, and the Program and Regional Legal Advisor offices were assessed as low risk exposure.

Mission-wide, several factors mitigated USAID/Egypt's risk exposure related to BearingPoint's restructuring and eventual sale and the settlement for non-novated contracts:

- USAID/Washington's OAA, Office of General Counsel, and the Chief Financial Officer made the significant decisions related to the USAID novation agreement and settlement for non-novated contracts and provided guidance to USAID missions worldwide on required actions during the restructuring and sale period.
- TAPR-II was the only active USAID/Egypt contract with BearingPoint at the time of the restructuring and sale, and, as such, was the only contract affected by the novation agreement.

- Deloitte’s purchase of BearingPoint generally did not change the underlying contract activities or senior contractor staff. Deloitte made no changes to the staff implementing USAID/Egypt’s TAPR-II project and did not make any changes to project processes or activities.

The assessment of the risk exposure for the five USAID/Egypt offices responsible for activities affected by the BearingPoint restructuring and sale or the settlement for non-novated contracts follows.

Office Description	Risk Exposure
Financial Management Office	Moderate
Risk Assessment Factors	
<ul style="list-style-type: none"> • The Financial Management Office is responsible for financial management of mission programs and operations that include reviewing and processing payments and supporting financial activities of USAID/Egypt programs. • Financial Management Office staff currently responsible for TAPR-II financial analysis and accounts payable have varying experience with the project. The staff person providing financial analysis to the TAPR-II project has worked with the project since its implementation and with USAID/Egypt for approximately 19 years, while the accounts payable clerk is new to the project but has been with USAID/Egypt for 10 years. • Both the financial analyst and accounts payable staff reported that their role during the BearingPoint transition was relatively limited. • The financial analyst ensured that the novation was appropriately recorded in USAID’s Phoenix accounting system. The accounts payable staff responsible for the TAPR-II vouchers at the time of the transition and sale observed no problems during that period. While USAID/Egypt’s Policy and Private Sector Office reported that Deloitte experienced some difficulties as the company merged BearingPoint’s voucher system into its own, the Financial Management Office’s level of voucher review was not affected by these issues. • The role of the Financial Management Office is to receive the vouchers from the contractor and provide them to the contracting officer’s technical representative (COTR) for administrative approval. After the administrative approval is given, accounts payable staff members review the vouchers for accuracy and consistency. • Regarding the settlement of non-novated BearingPoint contracts, the Financial Management Office staff worked with the TAPR-II contracting officer to close out the identified contracts. Based on the office’s review of the list of non-novated contracts provided by OAA, the mission identified three contracts on the list that were unrelated to BearingPoint. • To date, USAID/Egypt has not conducted any audits of locally incurred costs for the TAPR-II project, either before, during, or since the transition from BearingPoint to Deloitte. Financial Management Office staff reported 	

that no locally incurred cost audit had been done because no problems had been identified or raised by mission staff. USAID's Automated Directives System (ADS) 591.3.1.2, "U.S. For-Profit Organizations," states that USAID/Washington's OAA is responsible for determining when to audit a U.S. for-profit organization, such as BearingPoint. However, the mission has the right to conduct an incurred-cost audit of its implementing partners, should it feel this is appropriate. Given the increased risk associated with the BearingPoint sale that this assessment brought to mission management's attention, the Financial Management Office plans to conduct an audit of the TAPR-II project's locally incurred costs within the next 5 months.

- Given the significant experience of the office's staff, their review of guidance provided by Washington, and the mission's plan to conduct a locally incurred cost audit of the TAPR-II project, combined with the size of the TAPR-II program and the lack of prior TAPR-II audits, a risk level of moderate is assigned to the Financial Management Office.

Office Description	Risk Exposure
Policy and Private Sector Office	Moderate
Risk Assessment Factors	
<ul style="list-style-type: none"> The Policy and Private Sector (PPS) Office has primary responsibility for operational oversight of the TAPR-II project. A COTR and three activity managers in the office are responsible for managing components of the TAPR-II project. Each of the TAPR-II activity managers has worked with the TAPR-II project since its implementation in 2005. At the time of the BearingPoint restructuring and sale in 2009, two USAID/Egypt staff shared duties as COTR for the TAPR-II project. One of these staff members is a Foreign Service National with 21 years of experience at USAID/Egypt who has worked on the project since implementation. The second COTR, responsible for project activities, is a U.S. direct hire staff member currently serving as the acting office director. The COTRs and activity managers dedicate approximately 90 percent of their time to the TAPR-II project. PPS staff used multiple mechanisms, including annual and semiannual reports, site visits, and project evaluations, to monitor contract performance before, during, and following the BearingPoint restructuring and sale. The staff also has access to a contractor-maintained electronic data system, which collects contractor data, reports, and contract deliverables. In addition to using information maintained in the electronic data system to monitor contractor performance, the staff communicated either weekly or biweekly with BearingPoint officials, including the local TAPR-II staff and senior staff at BearingPoint's Virginia headquarters, during the period of the restructuring and sale. In early February 2009, after BearingPoint officially announced its restructuring, USAID/Egypt and TAPR-II staff met with 	

BearingPoint officials. Moreover, BearingPoint officials continued to provide USAID/Egypt with information on the company's restructuring throughout the process.

- Prior USAID/Egypt reviews of the TAPR-II project, including a midterm evaluation, and PPS staff observations indicated that the TAPR-II project was achieving planned results and had no significant problems.
- At the time of the restructuring and sale, PPS staff did not change the mechanisms used to monitor the program and did not increase the level of monitoring. Although USAID/Egypt's staff had limited familiarity with Deloitte, minimal changes to the TAPR-II staff, program, or activities occurred after the BearingPoint restructuring and sale, limiting the need for increased monitoring.
- Between October and December 2009, Deloitte experienced difficulties in providing appropriate vouchers as it merged BearingPoint's system into its own voucher system. However, PPS staff reported that this issue had been resolved.
- PPS communicated regularly with other USAID/Egypt offices, such as the Procurement and Program Offices, throughout the BearingPoint restructuring and sale. However, PPS staff had relatively little contact with USAID/Washington related to the BearingPoint restructuring, sale, and eventual novation agreement, since the mission's Office of Procurement was its primary contact on novation actions.
- Given the significant experience of the PPS staff, the existing monitoring systems, and limited changes resulting from the BearingPoint restructuring and sale, combined with the size of the TAPR-II program and the level of PSS Office responsibility for the program, a risk level of moderate is assigned to the PPS Office.

Office Description	Risk Exposure
Office of Procurement	Moderate
Risk Assessment Factors	
<ul style="list-style-type: none"> • A contracting officer in USAID/Egypt's Office of Procurement provides contract negotiation and administrative services for the TAPR-II project. The staff person has extensive USAID contracting experience and has been with USAID/Egypt for more than 2 years. The Office of Procurement worked to ensure that USAID/Egypt followed the guidance provided by USAID/Washington's OAA on both the novation agreement and the settlement agreement. • BearingPoint provided the contracting officer with information immediately upon filing for Chapter 11 protection and continued to provide a status update throughout the restructuring and sale. • The contracting officer maintained regular communication with the TAPR-II 	

COTRs in USAID/Egypt's Policy and Private Sector Office throughout the BearingPoint restructuring and sale.

- The contracting officer noted that, in prior monitoring of the program, staff did not identify any significant problems related to the TAPR-II project that could lead to potential problems during the restructuring and sale.
- According to the contracting officer, because there were no changes to the TAPR-II staff or activities and the transition from BearingPoint to Deloitte was "seamless," there was no need for the Office of Procurement to increase the level of project monitoring. However, the contracting officer reported that USAID/Egypt staff continued to monitor the TAPR-II project throughout the restructuring and sale to ensure that project activities were not disrupted.
- USAID/Washington provided the Office of Procurement with guidance on the January 21, 2010, settlement agreement for the non-novated BearingPoint contracts. The settlement agreement states that USAID will not pursue BearingPoint for additional claims related to contracts that were not covered under the novation agreement and, in turn, USAID will not be liable to BearingPoint for any other payments for these contracts.
- Since USAID/Washington was responsible for developing the Agency-wide novation agreement and the settlement related to non-novated contracts, time demands on the contracting officer related to contracts affected by the agreement and settlement were limited. During this period, the contracting officer regularly communicated with staff from other USAID/Egypt offices and with OAA related to the TAPR-II contract and the non-novated contracts.
- After OAA provided the list of non-novated contracts to the mission, the offices of Procurement and Financial Management identified three contracts from this list that were not affected by the BearingPoint settlement.
- Given the significant experience of the contracting officer, guidance provided by Washington, and limited changes resulting from the BearingPoint restructuring and sale, combined with the size of the TAPR-II program and the level of Procurement Office responsibility, a risk level of moderate is assigned to the Procurement Office.

Office Description	Risk Exposure
Program Office	Low
Risk Assessment Factors	
<ul style="list-style-type: none"> • USAID/Egypt's Program Office is responsible for mission-wide activities, including the development of the mission's strategic plans, budgets, performance management plans, and performance evaluations. On the TAPR-II project, the Program Office assisted other mission offices with activities such as portfolio reviews, performance evaluations, and data quality assessments. 	

- According to Program Office staff, USAID/Egypt officials were notified about the BearingPoint restructuring and sale in both mission-wide and office-specific meetings. In addition, Program Office staff members responsible for public relations were notified by senior USAID/Egypt staff by e-mail. Program Office staff reported being given no specific guidance in terms of next steps related to the restructuring and sale, but noted that they would have no role in this area because they are not involved in directly managing contracts.
- The Program Office was not involved in the closeout of the non-novated BearingPoint contracts.
- A Foreign Service National staff member with a little more than 1 year of experience with the TAPR-II project and more than 8 years experience with USAID/Egypt's Program Office acts as the primary Program Office support for TAPR-II. That staff person is supervised by a U.S. direct hire program officer assigned to USAID/Egypt for the past 3 years who previously served as the Program Office's primary support for TAPR-II.
- Through portfolio reviews and data monitoring, the Program Office determined that, during the period in which BearingPoint was going through the restructuring and sale, the TAPR-II project was achieving its planned results.
- The Program Office continued to coordinate portfolio performance and implementation reviews that described TAPR-II performance during the period of the restructuring and sale. The office conducted the last data quality assessment of the TAPR-II project in FY 2007 and found that the quality of data was generally in keeping with USAID's data quality standards.
- Because there was no change in TAPR-II monitoring and evaluation staff or in the systems that the contractor used to collect and monitor data, the Program Office staff did not conduct additional monitoring, such as updating the data quality assessment, during the restructuring and sale. A data quality assessment of all USAID/Egypt economic growth programs will be conducted in FY 2010 and will include data attributable to TAPR-II.
- Given the limited role of the Office related to the BearingPoint restructuring and sale, the limited changes resulting from that sale and restructuring, and the existing monitoring systems, combined with the size of the TAPR-II program and the level of Program Office monitoring responsibility, a risk level of moderate is assigned to the Program Office.

Office Description	Risk Exposure
Office of the Regional Legal Advisor	Low
Risk Assessment Factors	
<ul style="list-style-type: none"> • The Office of the Regional Legal Advisor provides regional support to multiple missions in the region, including USAID/Egypt. The role of this office was limited regarding the BearingPoint restructuring and sale because most legal decisions related to restructuring, novation, and closeout of non-novated contracts were made in consultation with USAID/Washington's Office of General Counsel. • Office of the Regional Legal Advisor staff provided general information to USAID/Egypt staff on Chapter 11 bankruptcy and what it might mean for BearingPoint. • Given the limited role of the mission's Office of Regional Legal Advisor in activities related to the BearingPoint restructuring and sale, the Office is assigned a risk level of low. 	

Conclusion

The table below summarizes the risks associated with the restructuring and subsequent sale of BearingPoint to USAID/Egypt's programs by office.

USAID/Egypt Offices	Risk Exposure		
	High	Moderate	Low
Financial Management Office		✓	
Policy and Private Sector Office		✓	
Office of Procurement		✓	
Program Office			✓
Office of the Regional Legal Advisor			✓

The risks associated with the restructuring and sale of BearingPoint and their impact on USAID/Egypt's programs were mitigated by several factors. First, USAID/Washington made significant decisions related to the novation agreement, which included USAID/Egypt's TAPR-II project. Second, the TAPR-II project experienced no changes in personnel or activities as a result of the restructuring and sale. Finally, based on information provided during this review, USAID/Egypt plans to conduct an audit of the TAPR-II project's locally incurred costs, which will further mitigate potential unidentified risks resulting from BearingPoint's restructuring and sale.

Evaluation of Management Comments

USAID/Egypt mission officials had no comments on this risk assessment. Given the increased risk associated with the BearingPoint sale brought to mission management's attention during the assessment, the Financial Management Office has taken steps to conduct an audit of the TAPR-II project's locally incurred costs prior to, during, and after the BearingPoint sale.

Scope and Methodology**Scope**

The Regional Inspector General/Cairo (RIG/Cairo) conducted this risk assessment of selected offices within USAID/Egypt. This risk assessment was not an audit. The risk assessment covered operations principally for fiscal year (FY) 2009, the fiscal year in which BearingPoint declared bankruptcy and subsequently sold the key divisions to Deloitte Consulting. This risk assessment was conducted at USAID/Egypt in Cairo from March 30 through May 6, 2010.

The risk assessments of the selected USAID/Egypt offices have the following limitations in their application:

- First, we assessed risk at the office level.
- Second, we assessed risk only. Our risk assessments were not sufficient to make definitive determinations of the effectiveness of internal controls for major functions. Consequently, we did not generally (a) assess the adequacy of internal control design, (b) determine whether controls were properly implemented, or (c) determine whether transactions were properly documented.
- Third, higher risk exposure assessments are not definitive indicators that program objectives are not being achieved or that irregularities are occurring. A higher risk exposure simply indicates that the particular function is more vulnerable to undesirable negative events.
- Fourth, risk exposure assessments, in isolation, are not an indicator of management capability because risk assessments consider both internal and external factors, some of which are beyond management's control.
- Fifth, comparison of risk exposure assessments between organizational units is of limited usefulness because risk assessments consider both internal and external factors, some of which may be beyond management's control.

Methodology

To perform this risk assessment, we interviewed USAID/Egypt officials and reviewed documentation on the role of each responsible office related to the BearingPoint restructuring, sale, and contract settlement. Our review of documentation from selected USAID/Egypt offices on their roles related to the BearingPoint restructuring and sale was limited and judgmental in nature and conducted principally to confirm oral attestations of management.

We identified the selected offices with roles related to the BearingPoint restructuring and sale based on recommendations from senior mission staff and based on the functional role of each office. We determined risk exposure for each of these offices regarding the restructuring and sale—for example, failure to achieve program objectives; failure to ensure program continuity or sufficient monitoring of program changes; and the likelihood of significant abuse, illegal acts, or misuse of resources. We assessed overall risk as high, moderate, or

low. A higher risk exposure simply indicates that the particular function is more vulnerable to its program objectives not being achieved or that irregularities were occurring. We considered the following key factors in assessing risk:

- Significance and sensitivity
- Competence and adequacy of number of personnel
- Susceptibility to failure to attain program goals, noncompliance with laws and regulations, inaccurate reporting, or illegal or inappropriate use of assets or resources
- Relevant internal controls, including control activities such as documentation of performance monitoring, communication of information both internally and externally, and management of human resource capacity
- Warning signs such as a history of improper administration or material weaknesses identified in prior audits or internal control assessments, poorly defined and documented internal control procedures, or a high rate of personnel turnover

These risk assessments were not sufficient to make definitive determinations of the effectiveness of internal controls for major functions. As part of the review methodology, we identified, understood, and documented (only as necessary) relevant internal controls and determined what was already known about the effectiveness of internal controls. However, we did not generally assess the adequacy of internal control design, determine whether controls were properly implemented, or determine whether transactions were properly documented. In some cases, we were able to make these assessments and reported on them as part of the risk exposure assessments.

**Management
Comments**



Memorandum

Date: July 6, 2010

To: Jacqueline Bell, Regional Inspector General/Cairo

From: Herminia Pangan, A/Regional Controller, USAID/Egypt //s//

Subject: Risk Assessment of the Impact of BearingPoint's Restructuring on USAID/Egypt Programs (Report No. 6-263-10-XXX-S)

Mission considered the subject report and has no comments to make. Please proceed with issuing the report in final.

As agreed, the Mission has already contacted Grant Thornton/Hilal to assess the internal controls over the locally incurred costs by the contractor before and after the novation to determine the scope of work.

Thank you for your cooperation.

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