



*Office of Inspector General
for the Millennium Challenge Corporation*

January 12, 2011

Mr. Daniel W. Yohannes
Chief Executive Officer
Millennium Challenge Corporation
875 Fifteenth Street, N.W.
Washington, DC 20005

Dear Mr. Yohannes:

This letter transmits the Office of Inspector General's Audit Report No. M-000-11-001-S on the Review of the Millennium Challenge Corporation's Approach to Addressing and Deterring Trafficking in Persons. In finalizing the report, we considered your written comments to our draft report and included those comments in their entirety in appendix II of this report.

The report contains one recommendation for corrective action. We consider that a management decision has been reached on the recommendation. Final action will not be reached until MCC provides additional documentation.

I appreciate the cooperation and courtesy extended to my staff during this review.

Sincerely,

/s/

Alvin A. Brown
Assistant Inspector General
Millennium Challenge Corporation

SUMMARY

Section 232, "Investigation by the Inspectors General," of the William Wilberforce Trafficking Victims Protections Reauthorization Act of 2008 (Public Law 110-457), dated January 3, 2008, requires that the Inspectors General of the U.S. Department of Defense, U.S. Department of State, and U.S. Agency for International Development (USAID) investigate a sample of contracts under which there is a heightened risk that a contractor may knowingly or unknowingly engage in acts related to trafficking in persons (TIP). The statute requires a report summarizing the findings from the previous year, and directs those Inspectors General to submit a report on the findings to Congress by January 15, 2011. The Millennium Challenge Corporation (MCC), Office of Inspector General (OIG), conducted this review to provide information for the USAID/Inspector General's report to Congress.

The U.S. Department of State defines TIP as "when one person obtains or holds another person in compelled service." Compelled service includes such terms as involuntary servitude, slavery, debt bondage, and forced labor. The majority of human trafficking takes the form of forced labor, which includes forced child labor. Sex trafficking comprises a smaller but still significant portion of overall human trafficking. The U.S. Department of State issues its TIP Report annually and ranks countries according to four tiers: Tier 1, Tier 2, Tier 2 Watch List, and Tier 3. The best ranking is Tier 1 and the worst is Tier 3, which means the country is not fully complying with the minimum standards of the Trafficking Victims Protection Act of 2000 and is not making significant efforts to do so.

The objective of this review was to determine whether MCC included provisions in selected infrastructure contracts that address TIP.

MCC included TIP provisions in selected large works infrastructure contracts reviewed by the OIG. However, one of two small works contracts reviewed included only language prohibiting child labor, and did not address other forms of TIP. MCC included TIP provisions in its guidance for the procurement of large works contracts¹ (page 3), but did not include specific TIP provisions in its guidance for the procurement of small works contracts² (page 4).

¹ MCC's guidance on standard bidding documents defines large works as construction contracts having a value of \$10 million or greater.

² MCC's guidance on standard bidding documents defines small works as construction contracts having a value of \$1 million to \$10 million.

The OIG reviewed seven contracts and one cooperative agreement, as shown below.

Contractor	Date Signed	Amount Rounded (\$ Million)
Burkina Faso		
Plan International USA, Incorporated	September 2009	22.5
Lesotho		
Sanyati Civil Engineering and Construction Proprietary Limited	August 2010	9.0
Lesotho Steel Products Proprietary Limited	August 2010	13.1
Lesotho Steel Products Proprietary Limited	February 2010	1.4
EDRO Construction	October 2010	0.9
Tanzania		
Sinohydro Corporation Limited	December 2009	53.7
AARSLEFF-BAM International Joint Venture	April 2010	97.1
Vanuatu		
Downer EDI Works Limited	May 2008	54.0
Total		251.7

The OIG did not observe any indications of TIP during site visits of selected MCC-funded infrastructure projects in Burkina Faso, Lesotho, Tanzania, and Vanuatu in fiscal year (FY) 2010. The Investigations Office of the USAID Inspector General and the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (G/TIP) did not receive allegations of TIP in any of MCC's compact countries.

Detailed results of this review appear in the following section. The scope and methodology are included in appendix I. Appendix II presents MCC's comments.

As a result of our review, we recommended that MCC revise its guidance on *Standard Bidding Documents: Procurement of Small Works* to include specific TIP provisions. MCC agreed with the OIG's recommendation, and a management decision has been reached.

REVIEW RESULTS

MCC infrastructure contracts contained TIP provisions – MCC included TIP provisions in selected contracts and bidding documents reviewed for three countries: Lesotho, Tanzania, and Vanuatu. The cooperative agreement between USAID and Plan International USA, Incorporated, for schools constructed for MCC's compact in Burkina Faso also contained TIP provisions.³

- For the Lesotho compact, OIG reviewed two large works contracts, one small works contract, and three bidding documents that supported the compact. These documents contained TIP provisions. However, a second small works contract

³ A cooperative agreement is an agreement in which the Federal Government provides funding or a thing of value authorized by public statute, and the Government plays a substantial role. MCC used USAID to implement its program in Burkina Faso.

did not contain similar provisions as identified in the aforementioned contracts and bidding documents. The TIP provisions required that the contractor develop a TIP risk management plan. The TIP provisions also described MCC's steps to minimize the risks of TIP in MCC-funded activities. (Additional information is provided in the following section.)

- For the Tanzania and Vanuatu compacts, the OIG reviewed three large works contracts that supported the compacts. These contracts contained clauses that prohibited child labor, sex trafficking, and prostitution.
- For the Burkina Faso compact, OIG reviewed a cooperative agreement between USAID and a non-governmental organization that supported the compact. The agreement contained a clause stating that the U.S. Government is opposed to prostitution and related activities that contribute to TIP.

MCC guidance on small works procurements did not contain TIP provisions –

MCC did not contain TIP provisions in a small works contract signed in February 2010 for the Lesotho compact. This February 2010 small works contract included only a subclause that prohibited the use of child labor but did not address other forms of TIP.

However, another small works contract signed in October 2010 for the Lesotho compact contained specific TIP provisions.

An MCC procurement official stated that while MCC was working on the bidding documents for the October contract, MCC's Environmental and Social Assessment specialists recommended that the TIP provisions be strengthened. MCC's country team for Lesotho decided to include more specific TIP provisions in the bidding documents used to procure contracts.

Lesotho's bidding documents provide a section on TIP stating that the contractor will be responsible for contributing to the management of the risks related to TIP as part of its works, including the preparation and implementation of a TIP risk management plan. According to an MCC procurement official, MCC then took action to incorporate the TIP provisions into Lesotho's bidding documents beginning in April 2010. However, these specific TIP provisions are not included in MCC's guidance on *Standard Bidding Documents: Procurement of Small Works*. The guidance only states that contractors should comply with "all applicable U.S. laws, regulations, executive orders or policies." If MCC does not emphasize TIP in its guidance on small works contracts, there is a risk that the contractor will not comply with TIP provisions.

Recommendation 1. *We recommend that the Millennium Challenge Corporation's Vice President of Compact Operations revise the guidance on Standard Bidding Documents: Procurement of Small Works to include specific trafficking in persons provisions.*

Findings from the previous OIG report – The OIG's previous survey of MCC's *Policies and Procedures to Address U.S. Government Anti-Trafficking Policy* (Audit Report M-000-10-001-S, March 17, 2010) found that MCC had instituted processes to identify, address, and guard against forced labor, child labor, and other forms of TIP. The report also noted that MCC contracts included clauses that would allow the contracts to be terminated if trafficking in persons occurred. According to MCC officials, its funds are

not subject to the Trafficking Victims Protection Act of 2000, as amended, but MCC is complying with the spirit of the legislation. The OIG recommended that MCC establish written policies and procedures to improve its practices in addressing TIP and countries on the Tier 2 Watch List for 2 consecutive years. MCC issued internal policy in February 2010 and posted external policy on its Web site in March 2010 that addressed its efforts to combat TIP.

Actions MCC has taken since the previous OIG report – MCC has taken additional actions on addressing TIP since the survey report was issued in March 2010. On August 24, 2010, the OIG sent a letter to MCC's Chief Executive Officer requesting a written response describing what actions MCC planned to take on seven countries—Guyana, Lesotho, Mali, Moldova, Nicaragua, the Philippines, and Senegal—that received a compact or threshold agreement and were on the Tier 2 Watch List for the second consecutive year in the U.S. Department of State's June 2010 TIP Report. MCC's Chief Executive Officer responded on September 29, 2010 (see appendix III). He stated that Nicaragua's compact and Guyana's threshold program will end before the 2011 TIP report, and therefore no action is necessary. He also stated that MCC had sent letters to the Prime Minister of Moldova and to the Finance Minister of Senegal emphasizing the importance of policy performance and addressing TIP issues, as well as to remind partner countries of the risk of automatic downgrade to Tier 3 in 2011. As of November 30, 2010, MCC had not sent letters to Lesotho, Mali, and the Philippines. However, according to an MCC official, MCC plans to issue the letters in January 2011.

According to MCC officials, MCC has taken or plans to take the following actions:

- According to an MCC procurement official, in early January 2011, MCC plans to conduct major revisions to its guidance on *Standard Bidding Documents: Procurement of Large Works*, as well as to small works, design/build, and consulting services bidding documents. These revisions will strengthen the TIP requirement for all contracts awarded by any Millennium Challenge Account entity in the future. MCC anticipates the release of the revised standard bidding documents in early March 2011.
- In response to the U.S. Department of State downgrading the tier rankings of Tanzania and Mozambique in June 2010 from Tier 2 to Tier 2 Watch List, MCC verbally communicated with the countries via the U.S. Embassies in country and included input from MCC's resident country missions.
- As part of its oversight of compact projects in Mozambique, MCC performed a special assessment of trafficking risks (completed in October 2010). MCC found that due diligence was undertaken during compact development and that increased trafficking was a potential impact associated with three road projects. MCC was able to direct efforts to address those findings, including providing funding to mitigate trafficking.
- MCC is currently developing operating procedures for its Social and Gender Assessment and other staff that will provide guidance on how to assess the TIP risks of specific projects proposed to MCC by the country during compact development. MCC expects these procedures to be issued by June 2011.

According to a U.S. Department of State G/TIP official, MCC's relationship with G/TIP has improved since last year. The official also stated that MCC regularly contacts G/TIP regarding the tier rankings of countries that MCC finds eligible for funding.

EVALUATION OF MANAGEMENT COMMENTS

Millennium Change Corporation (MCC) provided written comments to our draft review report in a letter dated January 5, 2011, which is presented in appendix II. In its response, MCC agreed with the recommendation in the draft report.

In response to Recommendation 1, MCC stated that in early January 2011, it revised its guidance on *Standard Bidding Documents: Procurement of Small Works* to strengthen trafficking in persons requirements. MCC also revised its guidance on bidding documents for large works, design/build, goods, and consulting services. MCC anticipates the release of the revised standard bidding documents in early March 2011. The Office of Inspector General considers that a management decision has been reached, but final action will not be taken until MCC provides documentation on the revised standard bidding documents.

SCOPE AND METHODOLOGY

Scope

The Office of Inspector General (OIG) conducted this review of the Millennium Challenge Corporation's (MCC) approach to address and deter trafficking in persons (TIP). We planned and performed this nonaudit review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our review objective. We also conducted this review in accordance with Government Auditing Standards, specifically Chapter 3 and Chapter 7, Sections 7.55 and 7.72 to 7.79. Our objective was to determine whether MCC included provisions in selected infrastructure contracts that address TIP. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions. The scope of this review included analyzing infrastructure contracts from May 2008 through October 2010 for judgmentally selected contracts.

As part of the OIG's efforts to address TIP, audit teams conducting performance audits in fiscal year (FY) 2010 carried out tests to determine whether TIP was occurring in MCC compact countries. Four compact countries—Burkina Faso, Lesotho, Tanzania, and Vanuatu—were selected for review because they have infrastructure projects, which have the highest risk of TIP. The total value of the compacts for these four countries was about \$1.6 billion. We analyzed OIG audit teams' working papers regarding TIP audit tests during FY 2010. We reviewed seven infrastructure contracts and one cooperative agreement in those compact countries, valued at about \$251.7 million, and reviewed three bidding documents for the Lesotho compact. We also reported on the status of MCC countries that have received Tier 2 Watch List⁴ rankings for 2 consecutive years. We conducted this review at MCC headquarters in Washington, DC, from November 10 to December 8, 2010.

Methodology

We interviewed MCC officials in the Department of Policy and International Relations and the Department of Compact Operations. Specifically, we interviewed MCC staff in Social and Gender Assessment, Program Procurement Policy, and Environmental and Social Assessment. We also interviewed staff from the Department of State's Office to Monitor and Combat Trafficking in Persons and contacted the Investigations Office of the U.S. Agency for International Development's Inspector General. We reviewed the Department of State's TIP Report for 2010.

To answer the review objective, review steps were established to determine the following:

- Whether MCC had included TIP provisions in its infrastructure contracts.
- Whether TIP occurred on selected MCC-funded infrastructure projects.
- Whether MCC was taking action against countries that did not make significant efforts to fully comply with minimum standards of TIP policy.
- Whether MCC was taking additional actions to address and deter TIP.

⁴ A Tier 2 Watch List ranking means that the government does not fully comply with the minimum standards but is making significant efforts to do so. Public Law 110-457 states that a country that remains on the Watch List for 2 consecutive years shall be designated as a Tier 3 country and may be subject to sanctions.

MANAGEMENT COMMENTS



DATE: January 5, 2011

TO: Mr. Alvin Brown, Assistant Inspector General
Millennium Challenge Corporation

FROM: Mr. Patrick Fine, Vice President /s/
Department of Compact Operations
Millennium Challenge Corporation

The Millennium Challenge Corporation (MCC) appreciates the opportunity to respond to the Office of Inspector General's (OIG) draft report entitled "Audit of the Millennium Challenge Corporation's Approach to Addressing and Deterring Trafficking in Persons."

MCC's response to the single recommendation in the draft report is detailed below.

Recommendation No. 1: Recommendation: We recommend that the Millennium Challenge Corporation's Vice President of Compact Operations revise the guidance on "Standard Bidding Documents: Procurement of Small Works" to include specific trafficking in persons provisions.

MCC Response: In early January 2011, MCC revised its guidance on Standard Bidding Documents: Procurement of Small Works, as well as to the large works, design/build, goods, and consulting services bidding documents. These revisions will strengthen the TIP requirement for all contracts awarded by any Millennium Challenge Account entity in the future. MCC anticipates the release of the revised Standard Bidding Documents in early March 2011.

Thank you for the opportunity to provide our comments on the draft report.



MILLENNIUM
CHALLENGE CORPORATION
UNITED STATES OF AMERICA

Daniel W. Yohannes
Chief Executive Officer

September 29, 2010

Mr. Alvin Brown
Assistant Inspector General
Office of Inspector General
U.S. Agency for International Development
1401 H Street NW, Suite 770
Washington DC 20005

Dear Mr. Brown:

Thank you for your August 24th letter regarding the Millennium Challenge Corporation's (MCC) approach to trafficking in persons (TIP). MCC takes the issue of human trafficking very seriously and has developed an approach that considers TIP issues as part of partner country selection, as well as during program design and implementation. I share your concern regarding MCC partner countries ranked Tier 2 Watch for the second consecutive year in 2010, and the risk of automatic downgrade to Tier 3 in 2011. MCC has addressed this critical issue in a number of ways, including coordinating closely with the Department of State, by communicating clearly with our partner countries, and by noting how TIP issues relate to MCC's Policy on Suspension and Termination.

The Department of State leads the U.S. government's efforts against TIP. MCC has a strong working relationship with the Department of State's Office to Monitor and Combat Trafficking in Persons (G/TIP). Given that 2011 will be the first year that the automatic downgrades take effect, MCC will work closely with G/TIP as it prepares the 2011 TIP report. In all MCC partner countries ranked Tier 2 Watch in 2010, either for the first or second year, MCC resident country directors have coordinated closely with U.S. embassy staff, and U.S. ambassadors have engaged with country counterparts about the 2010 TIP rankings. For both Moldova and the Philippines, MCC senior managers have raised TIP concerns with high-level counterparts during country visits in recent months.

In 2010, of the seven countries noted in your letter, five are compact partners and ranked Tier 2 Watch for the second consecutive year—Lesotho, Mali, Moldova, Philippines, and Senegal—for these five countries, compact implementation will be ongoing when the 2011 TIP report is released. Nicaragua's compact will end prior to the release of the 2011 TIP report and Guyana's threshold program concluded in February 2010. If these five countries make no improvements to warrant upgrade to Tier 2, they face automatic downgrade to Tier 3 in 2011. MCC has already sent letters to the Prime Minister of Moldova and to the Finance Minister of Senegal, and will send letters to Lesotho, Mali, and the Philippines emphasizing the importance of policy

Mr. Alvin Brown
September 29, 2010
Page 2

performance and addressing TIP issues, as well as to remind partner countries of the risk of automatic downgrade to Tier 3 in 2011.

A TIP ranking of Tier 3 does not trigger automatic suspension or termination of MCC assistance. MCC's eligibility criteria, as well as the authority to suspend and terminate, are derived from parameters established in the agency's authorizing statute. Based on these authorities, MCC's system is considerably different from that used to assign TIP rankings. If a partner country's TIP ranking declines, MCC follows procedures set forth in its Policy on Suspension and Termination to analyze what triggered the change and to determine whether the change reflects a significant policy reversal or a pattern of actions inconsistent with MCC's eligibility criteria. Under this policy, if a country demonstrates a pattern of actions inconsistent with MCC's eligibility criteria, MCC may issue a private or public warning, or may move to partially or fully suspend or terminate that country's eligibility for compact or threshold program development and implementation.

Thank you for the opportunity to comment on your letter. Please contact Pat McDonald, MCC's Compliance Officer at 202-521-7260, if you have further questions or concerns.

Sincerely,

/s/

Daniel W. Yohannes
Chief Executive Officer
Millennium Challenge Corporation