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of the Global Fund

OIG REPORT ON ITS INVESTIGATION OF MISCONDUCT AFFECTING A GLOBAL FUND GRANT IN PAKISTAN

On 1 April 2021, the Office of the Inspector General (OIG) published its report on its investigation into three separate events relating to the tuberculosis (TB) grant for Pakistan for which The Indus Hospital (TIH) was the Principal Recipient (PR).

Background

The Global Fund has invested \$697 million in Pakistan since 2003 and is the country's biggest donor for HIV and TB.

TIH operates tertiary care multidisciplinary hospitals and other healthcare providers in Pakistan. It started operations in July 2007. In April 2016, it contracted with Interactive Research and Development (IRD) under a "long-term technical assistance" (LTTA) agreement to support the implementation of the "Global Fund Tuberculosis Project" for an amount of \$1,918,801 for the period May 2016 to December 2017. Under the agreement, IRD would provide technical advice, oversight and personnel. This agreement was later extended to December 2018.

In May 2016, the Global Fund entered into the Grant Agreement PAK-T-TIH with TIH as PR for an amount up to \$39.7 million. Prior to signing, concerned with an underachieving TB program under a previous grant with a different entity, the Secretariat asked an executive manager of IRD, which represented TIH in the grant agreement negotiations, to devise a plan to adapt IRD's "Zero TB" project to the Global Fund grant program.

This IRD executive manager prepared or oversaw the preparation of draft documents supporting the

Global Fund grant agreement, notably the PAK-T-TIH grant budget for the period 2016-2017, which included budget earmarked for the LTTA agreement and for IT support services. In April 2016, a month prior to the grant agreement being signed, TIH submitted this grant budget to the Global Fund. Under the “technical assistance fees – Consultants” cost line, which amounted to \$1,918,801. IRD was already identified as a service provider in this document.

The Secretariat was aware of these facts and endorsed the award of the LTTA agreement to IRD during grant negotiations. On 29 April 2016, prior to the signature of the Grant Agreement and during the grant negotiations referred above, TIH signed the LTTA agreement with IRD. The agreement did not detail individuals’ rates or specific deliverables; rather, it indicated a lump-sum associated with a percentage of time to be allocated to the work by a series of individuals with specific professional designations, and the possibility to have the cost of additional consultants charged to the contract, with no further breakdown of the cost structure. The full budgeted amount under the Grant Agreement budget was used as the contract amount.

In 2016, TIH created the Global Health Directorate (GHD) as an internal structure to manage donor programs. However, this structure was in part staffed with external consultants employed by IRD, and managed by an IRD executive manager, pursuant to the LTTA agreement. According to the IRD executive manager, “GHD is owned, operated completely by myself and a fellow IRD director”. IRD’s website stated, as of the publication date of this OIG report “2016 [...] GHD awarded Principal Recipient status by Global Fund...with a total portfolio of USD 47m”. GHD oversaw the activities of TIH’s Project Management Unit which supported the implementation of the Global Fund grant. It was headed by – and the report wording suggests still is – by a program director with a dual reporting line to TIH’s Chief Executive Officer (CEO) and to the IRD executive manager in charge of the GHD.

In November 2016, TIH contracted with Interactive Health Solutions (IHS) for the provision of IT services and submitted conflicts of interest declarations to the Global Fund. In January 2017, TIH advertised for suppliers to bid on four major projects under the TB grant, and in March 2017 awarded all four contracts to IRD for a total amount of \$1,354,168.

Returning to the LTTA agreement, while it is not unusual or unexpected to have nominal budgetary envelopes at the grant signature stage, it is unexpected that a supplier be identified at that stage when a public tender has yet to be conducted, and also for the actual contract amount following a tender to very closely correspond to the budgeted envelope.

IRD employees performed key grant management tasks as part of GHD, including supervising TIH employees. As such, TIH’s responsibilities as PR were linked to the actions of its supplier, IRD. Similarly, IRD’s actions must be viewed in the context of both its role within GHD and its separate roles and responsibilities as a supplier. Lastly, as the owner of IRD has majority ownership of IHS with his wife, the actions of IRD and IHS must also be analyzed taking this association into account.

In December 2018, OIG received information relating to alleged conflicts of interest, procurement and implementation irregularities involving IRD services to TIH. In assessing this information, the OIG saw that routine Global Fund oversight processes had also flagged related irregularities in the procurement of services from IRD and the other related party supplier, IHS. This OIG investigation sought to verify the allegations received, including reviewing the Secretariat’s role in the initial handling of the reports of irregularities in this grant. The scope of the investigation covered the period 1 January 2016 to 31 December 2018.

The agreements between TIH and the two service providers did not include explicit mention of the Code of Conduct for Suppliers. However, the Grant Agreement requires this Code to be communicated to all suppliers by the PR. The suppliers IRD and IHS were presented with this Code of Conduct by the OIG

twice; first in the initial communication notifying them of the investigation and requesting their collaboration, and again when the detailed findings were shared with them for comments. No objections were made regarding their applicability or to the investigative process. IRD and IHS cooperated with the investigation and notably provided costs and expenditure information in relation to the services provided to TIH.

Investigation Findings

The OIG report describes its three main findings, relating to three separate events, which in summary are:

TIH, the Global Fund grant's PR, engaged in anti-competitive and collusive practices and failed to properly mitigate actual or apparent conflicts of interest in its selection of IRD as a supplier for four projects to be funded as part of the grant. This resulted in a non-compliant amount of \$1,062,076 and a potentially recoverable amount of \$341,791.

Subsequently, following a procurement process compromised by anti-competitive, fraudulent and collusive practices, TIH engaged IHS, an entity majority-owned by an executive manager and owner of IRD and his wife, to provide IT services. This resulted in a non-compliant amount of \$1,070,085 and a potentially recoverable amount of \$519,624.

TIH, with the subsequent agreement of the Secretariat, selected IRD as an LTTA supplier without conducting a competitive tender. The safeguards proposed to mitigate the related conflicts of interest proved to be ineffective. The costs of this contract to the grant were materially higher than the costs of delivery by IRD and those costs did not reflect the true nature of the amounts invoiced. In some instances, costs invoiced could not be supported. This resulted in a non-compliant and potentially recoverable amount of \$310,174: see section 2.3 of the report.

These events involved non-compliance with the Grant Agreement by the PR, including non-compliance by the PR's suppliers with the Code of Conduct for Suppliers. As the costs for managing the grant, as well as the cost of the contracts with the suppliers, were paid with grant funds, this resulted in an ineligible use of grant funds. Because these compliance issues have resulted in losses, the OIG has proposed that these amounts be recovered by the Secretariat.

The investigation found that the malpractices outlined above resulted in an amount of \$2,442,335 of grant funds being spent in a manner not in compliance with the terms of the Grant Agreement and that this amount is therefore ineligible for funding.

In relation to Finding 1, an amount of \$341,791 was linked to payments for milestones showing unsupported and exaggerated programmatic achievements, or where the quality of services was deficient, leading the OIG to conclude a loss to the program.

In relation to Finding 2, analysis of costs and services provided to TIH showed that IHS's proposal reflected a level of service which was not delivered. The difference between costs to the supplier and amounts charged to the grant amounted to \$519,624. This amount is proposed to the Secretariat as a basis for determining recoveries.

In relation to Finding 3, an amount of \$310,174 corresponded to expenditures for which the supporting documents, or their absence, led the OIG to conclude that the activities or expenditures did not take place as represented and constitute a loss to the program.

Therefore, of the overall misspent amount of \$2,442,335 of grant funds, OIG found \$1,171,589 to constitute a financial loss and has recommended it be recovered.

The OIG found that unmitigated, or improperly mitigated conflicts of interest between implementers and suppliers enabled the events outlined above. In particular, neither TIH nor the Secretariat appears to have

taken tangible or effective action to enforce and monitor the terms of the conflict of interest declarations submitted by five individuals associated with IRD in relation to their role in the operations or management of the GHD.

The investigation concluded that there was insufficient or ineffective oversight on the part of the Global Fund Secretariat in reviewing and endorsing TIH's selections of IRD and IHS after its selection of IRD as a long-term technical assistance provider, and in managing the related conflicts of interests.

The investigation findings conclude with the OIG's reminder that, while empowered individuals within the Secretariat have broad discretion in the fiduciary oversight of grant management, they are in particular expected to uphold the Guidelines for Grant Budgeting in making determinations regarding the eligibility of expenditures and issuing related approvals. While exceptions and deviations from these Guidelines are expected in the due course of grant management, minimal controls exist to manage and govern such exceptions. These oversight decisions by the Secretariat do not, however, mitigate the prohibited practices in the management of grant funds by a PR. Stronger management performance and attention to conflict of interest matters on the part of the Secretariat could have prevented or allowed earlier detection of these issues.

The OIG also notes that the report does not aim to present the entirety of the investigative work performed by the OIG. However, it is important to understand how the OIG reached its conclusions and the OIG report therefore provides fairly long explanations of: (i) the collusive and anti-competitive practices that affected the grant program; (ii) the insufficient risk mitigation by the Global Fund Secretariat of declared conflicts of interest by PR's suppliers; (iii) the unsupported and exaggerated programmatic achievements; (iv) the anti-competitive, fraudulent and collusive practices with a third-party supplier that were used to obtain a falsified financial proposal; (v) how, after TIH paid IHS \$1,070,085 to provide IT services, IHS only spent \$550,461 on delivering the work; (vi) how the procurement and award of the contract for IT services was compromised by unmitigated conflicts of interests providing IHS with an undue advantage; (vii) how the Secretariat came to endorse the non-competitive pre-selection of a supplier by a PR; and (viii) the costs charged to the grant that did not reflect the true nature of the amounts invoiced, and in some instances, costs invoiced that could not be supported.

Agreed management actions

In the light of this investigation, four Global Fund management actions have been agreed with the Global Fund Secretariat:

The Secretariat will finalize and pursue, from all entities responsible, an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.

The Secretariat, in consultation with the OIG, will report findings of supplier misconduct for potential referral to the Sanctions Panel.

The Global Fund Secretariat will ensure that the PR takes appropriate action towards the individuals responsible for the prohibited practices described in this report, notably, to ensure they are not involved with the implementation of Global Fund grants to that PR.

To better mitigate prohibited practices and improve the programmatic delivery of TIH, the Secretariat will conduct a baseline fraud risk assessment and agree on a prioritized action plan of the recommendations. This will address the fraud risks identified in this investigation, i.e., non-delivery, unsupported and exaggerated programmatic achievements, and overcharging and unsupported expenses.

Observations

This is a 'bag of hot potatoes'. It took well more than three years from December 2018, when the OIG was

alerted to the malpractices affecting this TB grant, to the issuance of its report on its investigation. As the OIG Annual Report explains, in 2020 the work of the OIG was disrupted by the COVID-19 epidemic. Even so, Annex B, which provides a summary of subject responses, suggests that there has been a series of discussions with the various parties in Pakistan that have led to the redrafting/rephrasing of the report, as is usual with official OIG processes for finalizing and publishing investigations.

To go through some of the details, interesting though they are, would only serve to make for an unnecessarily long article and distract from the fundamental points. The first is that there is no doubt about the malpractices at TIH regarding grant management. The interrelationships between the various parties, depicted in several complicated diagrams in the report and Annex A, clearly indicate a structure designed to maximize gain from the grant. Yet, despite the uncertainty over what amounts are to be recovered by the Global Fund and from whom, it appears that the TB program with TIH as PR continues. In fact, that the Secretariat is transferring the TB program to Mercy Corps, although the closure period of the TB grant with TIH has been extended to ensure the orderly and complete transfer of patient follow-up to the incoming recipient.

Second, the OIG report and the responses in Annex B raise serious questions about the knowledge and involvement of the Global Fund staff working on this grant. The OIG report states early on that “the Secretariat asked an executive manager of IRD, which represented TIH in the grant agreement negotiations, to devise a plan to adapt IRD’s “Zero TB” project to the Global Fund grant program”. To the reader of the OIG report this suggests that the Secretariat was working with IRD before the grant was signed and was, it is reasonable to assume, therefore fully cognizant of that organization’s relationship with TIH and subsequently endorsed IRD’s non-competitive selection and appointment. However, when this author discussed the investigation report with the OIG, the OIG noted that a “consortium” proposal, while unusual, is not inherently prohibited and could potentially have been managed diligently by TIH and the Secretariat. Weaker institutions being supported by embedded technical assistance support is not an extraordinary occurrence – it can be a legitimate tool to enable a national entity to take on the management of a grant.

Third, in view of the foregoing, the amounts proposed to be recovered are less than certain. In fact, in Annex B to the report, there is a notable comment on the conflict of interest: “Moreover, the Indus Hospital pointed out that the Global Fund was fully aware of IRD’s participation in the preparation of GF’s grant proposal and budget, in the LTTA agreement and in implementation and IT services”. Also, in the first ‘comment on the procurement of the four projects’ OIG notes that “the Indus Hospital and IRD maintain that they had proper authorization from the Global Fund to award the four research and implementation contracts to IRD without conducting a standard procurement procedure, yet no documentary evidence of such authorization was provided to the OIG in support of this authorization. IRD claims that the Global Fund was aware that IRD was the author of the four projects, and because of that it was IRD’s understanding that the GF was aware or approved that the projects would also be implemented by IRD.

Nonetheless, the endorsement provided by the Secretariat in relation to using IHS as a supplier acknowledged the procurement process and conflict of interest issues, but that endorsement cannot reasonably be understood as having accepted underlying collusive and fraudulent practices. Also, the amounts linked to the LTTA were not used and overseen by the Secretariat as would normally be expected of Global Fund grant funds. With respect to the PR, the OIG does not consider the entire LTTA contract as ineligible ? only those amounts compromised by compliance issues unrelated to the Secretariat’s endorsement have been considered ineligible and are proposed for recovery. The onus is on grant recipients to demonstrate proper use of funds through the upkeep of books and records. Such statements, in the absence of a record which exists for all other approvals, is unlikely to provide a legal barrier to recoveries, should they be claimed.

Fourth, the Global Fund Secretariat needs to go beyond the fourth agreed management action. From what

OIG reports happened at the beginning and during this TB grant, it appears that the Secretariat needs to review its policies and processes with regard to: (a) PR supplier selection and appointment; (b) managing conflicts of interest; and (c) monitoring program outputs.

With regard to (c), I made the point in my article on the OIG report on the Nigeria Supply Chain (OIG investigation into the Nigeria Supply Chain) that the Global Fund appears not to have a management accounting system in place that might have identified earlier that grant expenditure on this program was not delivering the expected levels of outputs. However, when this was discussed with the OIG, the OIG's response was that, as a financing institution with a deep commitment to country ownership and development of national capacities, the Global Fund does not mandate the use of specific reporting tools and/or ERP systems. Data sit in-country, regularly inspected by assurance providers. Moreover, the OIG audit report which focuses on programmatic delivery in Pakistan references OIG's analysis of costs incurred by the two non-government PRs, implementing similar interventions in the same districts, showing significant variations.

Fifth, and this also relates to the recent OIG report on Grant Closure Processes in this same issue of the GFO (OIG Report on its Audit of Global Fund Grant Closure Processes), Annex B of this report, under 'Comments on conflicts of interest', states that the "CCM commented that joint execution of the grant by the Indus Hospital and IRD was approved by the Global Fund, namely through the Technical Review Panel and the Board's approval of the concept note and funding. The Secretariat, however, confirmed to the OIG that the PAK-T-TIH grant of 2016-2017 did not go through the Grant Approval Committee (GAC) process and the TRP as the funds were reallocated from previous PAK-T-NTP grant activities." So, this raises the issue: why is the use of reallocated funds not subject to the same scrutiny as newly committed funds? Evidently, this too needs review and improvement in how the Global Fund processes reallocated funds. However, the Global Fund says that the TIH grant for the period 2016-2017 was not reviewed by GAC because the Operational Policy Note allows Regional Managers/Heads of Department to approve changes in implementation arrangements if they emanate from one approved funding, as was the case in 2016.

The sad result of what has happened on this TB program grant is that \$2,442,335 has been found by the OIG to have been misspent. Of this amount, OIG found \$1,171,589 to constitute a financial loss which the OIG says the Secretariat should attempt to recover. Were that amount recovered in full, that would reduce the non-compliant expenditure to \$1,270,746, which some may regard as a loss to the program. But that may be hypothetical because the reality is that recovery is by no means certain. IRD is reported to have initiated legal action in Pakistan against the Global Fund because it disagrees with the OIG findings. That will render recovery difficult if not impossible. So, the misspent total is more likely to remain at \$2.4 million, which represents a loss of over 6% of the grant funds. Surely that suggests both poor program management and poor Global Fund Secretariat oversight?

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