



WHITE PAPER

Independent Evaluation: An Endangered Species in U.S. Development Assistance?

Prepared by
Social Impact, Inc.
September 8, 2016

Independent Evaluation: An Endangered Species in U.S. Development Assistance?

SUMMARY

Increasing demand for accountability, transparency and results in U.S. development assistance has led to a steep rise in large evaluation contracts for international programs with roughly \$1 billion in commitments during the past several years. Recent mergers and acquisitions of specialized international development evaluation firms by large, diversified implementers of development assistance pose real and perceived organizational conflict of interest (OCI) concerns in carrying out independent evaluations. OCI issues threaten to undermine the integrity of the evaluation profession and recent reforms initiated by USG agencies including USAID, DOS, MCC and USDA, designed to improve evaluation accuracy and independence. When evaluation credibility is diminished, the ultimate utility of evaluations for accountability, learning, program improvement and resource allocation purposes is diminished or lost. OCI in evaluation also raises concerns related to procurement integrity with implementer-evaluator organizations gaining access to highly competitive and sensitive information about their competitors through the evaluation process. Stronger OCI policies and guidelines are needed to prevent program implementers from being awarded large evaluation contracts that run at cross purposes with organizational incentives to win large implementation contracts. Such policies and guidelines will help to protect USG and taxpayer investments and interests in independent evaluation of USG development assistance and to preserve the integrity of USAID procurements.

STRONG TRADITION OF INDEPENDENT EVALUATION IN DEVELOPMENT ASSISTANCE

The evaluation practice has become professionalized over the past 40 years as it has increasingly relied on standards and principles to promote the utility, feasibility, ethical practice and accuracy of program evaluations (see American Evaluation Association standards and standards of other national evaluation associations). From the 1990s onwards, multilateral development agencies such as The World Bank, regional development banks, UN agencies and bilateral donors have developed evaluation policies and guidelines to promote similar standards and principles with clear operational guidelines to promote



Box 1: OCI Risks in Independent Evaluation

When OCI concerns are real or perceived in evaluations many different kinds of risks or threats are posed. These include:

- Threats to procurement integrity and increasing bid protests as implementer-evaluator groups have access to or are perceived to have access to competitors' sensitive and proprietary information gained through evaluations.
- Costly delays in evaluations as implementing partners (IPs) seek to postpone or "game" evaluations to prevent disclosure of proprietary information or vulnerabilities to competitors.
- High transaction costs as USG officials need to referee real and perceived OCI concerns.
- Failure of IPs to disclose project performance data for fear of negative consequences.
- Extended rebuttals of negative evaluation findings and determined efforts by IPs to attack the credibility of evaluation findings.
- Appeals and protests to the OIG when evaluations are pushed forward despite IP concerns over objectivity, bias and OCI.
- Evaluations are not used by key user groups because they are perceived as being biased.
- Lost opportunities for evaluations to improve USG learning, accountability and development effectiveness.

evaluation excellence and independence. The multilateral donors have particularly strong policies and guidelines to protect against OCI and more recently with the advent of USAID's Evaluation Policy in 2011, other USG agencies providing development assistance have followed. For example, both USAID and DOS Evaluation Policies and guidelines require the avoidance of "real or perceived" conflict of interest; however, they construe OCI very narrowly and they do not provide concrete measures or tests for preventing far reaching real and perceived OCI. FAR provisions for avoiding OCI (FAR 9.505-3) are quite narrow. Determination of OCI is largely left to contracting officers involved in procuring evaluations who often have little understanding or appreciation of evaluation standards for independence and lack of bias and the importance of these standards in achieving accurate, credible and useful evaluations.

TWO MAIN CAUSES OF OCI IN EVALUATION

There are two main underlying causes of OCI in evaluations that lead to many different kinds of OCI risks or threats (Box 1). First, in conducting evaluations implementer-evaluators have a corporate incentive to amplify the weaknesses and deficiencies of their competitors through evaluations to better place themselves for winning future procurements. This impaired objectivity causes real or perceived OCI in conducting evaluations and causes evaluations to lose credibility—especially in the view of competitors whose projects

are being evaluated—in contradiction with recent USG evaluation policies that seek to increase evaluation credibility, accuracy and use. Thus, evaluation integrity is threatened by the implementer-evaluator model thereby undermining the intended uses of evaluation and the value of USG investments in evaluation. In sum, OCI threatens the government's business interest in independent evaluation.

Second, implementers who conduct evaluations of their competitors have a corporate interest in capturing information that will help them win new projects and disadvantage their competitors. This problem is not a major concern for evaluation firms who are not involved—or only marginally involved—in implementation work. For implementer-evaluator firms, evaluations enable capture of their competitor's proprietary intellectual property, including tools, methodologies and approaches; pricing and budgets; staffing plans; and detailed inside knowledge about the strengths, weaknesses and vulnerabilities of project performance and the performance of key personnel and subcontractors. This non-public competitively useful information comprises the winning ingredients (or the core intellectual capital) that are required to win high value implementation projects around the globe. All of this information can be used by the implementer-evaluator to unfairly win new business through privileged information they capture about their competitors. In sum, procurement integrity is threatened by the implementer-evaluator model.



EXPANDING VOLUME AND VALUE OF M&E SUPPORT CONTRACTS

Increasing demand for accountability, transparency and results in development assistance has led to a steep rise in the volume and value of large evaluation contracts for international programs. USAID, MCC, DOS, USDA, and DOL all procure bundled international M&E support contracts in the form of Indefinite Quantity Contracts (IQCs) and sole source awards to provide M&E services. These contracts reduce the transaction costs related to procuring individual evaluations for the USG while creating substantial business opportunities for firms that specialize in evaluation. For example, in 2014-15 USAID procured roughly twenty (20) mission-wide M&E support projects in countries/regions including Afghanistan (x 5), Bosnia, Ghana (x 2), Egypt, Ethiopia, East Timor, East Africa, El Salvador, Indonesia, Kenya, Lebanon, Liberia, Senegal, Tanzania, Mali, Nepal, the entire Asia Region, Pakistan and Vietnam. Most of these contracts are valued between \$20-80 million. In 2014 USAID also procured a global \$300 million M&E Services IQC implemented by 20 small business prime contractors, many of which have teamed up with large business partners involved in implementation work. MCC, DOS, USDA and DOL have also procured bundled M&E support contracts though at lower levels of value compared to USAID. During the past several years alone the USG has made commitments of roughly \$1 billion in international development evaluation. The high value of evaluation support contracts, combined with decreasing value of USAID contracting dollars (the total value of USAID contracting dollars in FY 2014 declined by 23% compared to FY 2013) has attracted additional large firms to the international evaluation arena, including several firms who are primarily implementers of USG international development programs.

CHANGING LANDSCAPE FOR EVALUATION

In the past, most of USAID's mission-wide M&E support contracts have been implemented by specialized M&E firms that have limited involvement in project implementation. These large projects usually combine M&E services, assessments and project design activities. The independence of the M&E firms has been important to protect against OCI concerns and to protect the independence of USAID evaluations. USAID's Evaluation Policy of 2011 clearly states that USAID evaluations will be "undertaken so that they are not subject to the perception

or reality of biased measurement or reporting due to conflict of interest or other factors." Until recently large implementers have avoided performing large evaluation contracts as prime contractors due to concerns about being "conflicted out" of implementation activities. However, due to the sharp increase in the volume and value of USAID M&E contracts over the past several years, larger implementation firms have sought to expand their work in this area. With recent mergers and acquisitions (M&As) of firms in development assistance, several leading independent evaluation firms have been acquired by much larger firms that implement development programs. The heavy overlaps between the implementation and evaluation work of these firms cause pervasive real and perceived OCI in conducting evaluations and in subsequent USAID procurements.

Examples of recently acquired evaluation firms include Management Systems International/Coffey by TetraTech; Development and Training Services by Palladium; and Weidemann & Associates by Crown Agents. MSI has been one of USAID's primary evaluation contractors and the new parent company, TetraTech, has \$2.3 billion in annual revenue (FY 2015) with international development services and large implementation projects around the world in agriculture and economic growth; democracy and governance; energy; environment and natural resources; land tenure and property rights; water supply and sanitation; architecture, engineering and construction services; and global security.



CURRENT OCI SAFEGUARDS ARE INADEQUATE IN THE NEW M&A LANDSCAPE

In the Federal Acquisition Regulation (FAR) subparts 9.505.1-4 prescribe limitations on contracting as means for avoiding, neutralizing or mitigating OCI. Subpart 9.505-2 relates to preparing specifications or work statements. Subpart 9.505-3 relates to providing evaluation services and subpart 9.505-4 relates to obtaining access to proprietary information. The two underlying principles of the FAR clauses are:

1. Preventing the existence of conflicting roles that might bias a contractor's judgement; and
2. Preventing unfair competitive advantage.

Although the FAR provides a baseline for addressing OCI, the provisions are inadequate for USAID's M&E support contracts. Large implementation firms that seek to win large M&E support contracts often present OCI issues cross cutting several of these FAR clauses. Firms may propose OCI "firewall" solutions that attempt to mitigate OCI. However, these mitigation plans are often inadequate. The proposed mitigation measures generally consist of three types of solutions.

First, and following FAR 9.505-2, if a contractor prepares a scope of work for a new project design as part of its M&E support contract, it is normally precluded from bidding on the procurement for the new project for certain period. This is a clear and easy to enforce OCI avoidance measure.

Second, and following FAR 9.505-3, a firm should not evaluate its own projects or the projects of its competitors without proper safeguards to protect the

Government's interests. The typical remedy for avoiding OCI in evaluating one's own projects is to seek recusal from the evaluation. For example, if a firm is implementing a food security project in Uganda and it has an M&E support project in Uganda, it will recuse itself from evaluating that same project. In this case the contractor may: 1) request a subcontractor to evaluate the project; or 2) USAID may decide to hire an independent firm to evaluate the project.

The subcontracting solution is not defensible because the prime contractor ultimately needs to ensure the integrity of the evaluation and its overall quality to protect itself from the reputational risks of delivering a poor quality evaluation for which it is ultimately responsible. This necessitates that the prime contractor work closely with the subcontractor on all phases of the evaluation including data quality assurance, and the presentation of findings, conclusions and recommendations. Each of these transactions—even if small and limited—breaks down the firewall that is proffered to protect the integrity of the evaluation. Even in the unlikely situation that the prime contractor would have absolutely no visibility into the evaluation data, the subcontractor still has a financial relationship with the prime and a motivation to produce evaluation findings and conclusions that may be tempered to support its business interests in downplaying the positive performance or playing up the poor performance of one of its primary competitors.

The drawback of the second option is that the transactions costs for USAID to select an independent evaluator are high and may take several months to

Box 2: Case Example of Pervasive OCI for a Recently Acquired Evaluation Firm in Tanzania

An evaluation firm recently acquired by a large implementation firm presents pervasive OCI concerns for large evaluation contracts around the world, including Tanzania. In Tanzania USAID channels nearly \$600 million in development assistance each year. The USG is Tanzania's largest bilateral donor, and Tanzania participates in most of the Presidential Initiatives implemented in Sub-Saharan Africa, including Power Africa, Trade Africa, Global Climate Change Initiative, Feed the Future and Partnership for Growth—all of which overlap heavily with contract activities of the implementation firm in sub-Saharan Africa. The acquired M&E firm applied for the five-year \$50 million M&E support contract for Tanzania that would include some 50 evaluations. Because the acquiring firm implements projects in power, trade, climate change, food security and democracy and governance, water and sanitation in adjacent countries and throughout Africa, it would be de facto evaluating competitor projects in Tanzania and capturing competitive and sensitive information on its competitors that could be used to bid against them on scores of high value implementation contracts throughout the region. The real or perceived OCI for the acquiring firm would fly against USAID's Evaluation Policy requiring independent evaluation, undermine evaluation integrity and credibility in Tanzania, and cause procurement integrity concerns (including costly protests) throughout the region. After a protest and agency-initiated corrective action, USAID decided to cancel the M&E Support project in Tanzania.

contract, thus making the timeliness of the evaluation unworkable in meeting USAID's information needs within the program cycle. This solution also defeats the primary intended benefits of the M&E support projects which depend on rapid, responsive and cost-effective evaluation services to USAID and building strong and trusting relationships with IPs on the ground to support a wide range of evaluation and performance management activities.¹ With the expansive scope of the large M&E support contracts and the large implementation footprints of the implementer-evaluator firms there are *many* real or perceived OCI overlaps over the life of the contract that are difficult to remedy on a wide-scale basis. Where the recusal remedy may work for one or two evaluations, the evaluation costs and transaction costs become much higher to establish "work arounds" for many projects.

Third, and following FAR 9.505-3 and -4, a contractor must protect against obtaining access to proprietary information about competitors that it may use for competitive advantage. The typical OCI avoidance measure in this situation is to require a Nondisclosure Agreement (NDA) for the contractor's staff and consultants. In a typical NDA, the evaluation consultant agrees not to disclose proprietary information from the conduct of an evaluation for any purpose other than the evaluation. In more robust NDAs, contractor staff or consultants agree that they have no real or perceived conflict of interest in conducting the evaluation, or if they do, they will not disclose proprietary information. For example, with the State Department NDA evaluators are required to disclose whether they have "current or previous work experience with an organization that may be seen as an industry competitor with implementing organization(s) whose project(s) are being evaluated."² If the consultant acknowledges that he *does* have this conflict of interest all he has to do is certify that if he gains access to proprietary information of other companies, then he will agree to "protect their information from unauthorized use for as long as it remains proprietary and refrain from using the information from any purpose other than it was furnished."³ The problem with NDAs,



however, is that they are very difficult to monitor and enforce. Competitively useful information may still be inadvertently, intentionally or unintentionally utilized and the evaluated competitor firm would have no knowledge that its competitive information had been disclosed. In the M&E support projects this is highly problematic because of multiple evaluation team members, working across multiple evaluations and projects with multiple paths for intentional or unintentional sharing of information with the parent company that has very strong incentives to use the information for competitive advantage. Even if the NDA succeeds in preventing *real* OCI (which cannot be determined) it cannot prevent *perceived* OCI in direct contravention of the USAID and DOS evaluation policies.

In sum, on a small scale, typical OCI avoidance and mitigation remedies may be plausible. However, in cases where M&E support projects are large and bundled, and where the contractor has a large implementation footprint across sectors and multiple geographies, OCI is real and pervasive and current OCI, avoidance and mitigation guidelines and measures are inadequate. In these cases, both evaluation *and* procurement integrity are threatened at high cost to government and tax payers.

¹ In the M&E support projects the contractor is also required to work closely with IPs to develop their activity-level M&E plans. For implementer-evaluator firms the level of inside knowledge about competitors gained through these activities also presents real and perceived OCI concerns.

² Disclosure of Real or Perceived Conflict of Interest for DoS Evaluations. State Department, pg. 1, item 5

³ Op cit, pg. 2.



POLICY RECOMMENDATIONS

1. As a strong and preferred solution, USAID should revise its Operational Policy in the Automated Directives System (ADS) and clarify the guidance on independent evaluation. The new guidance should wholesale preclude implementer-evaluators from bidding on large, multi-sector evaluation projects (but not individual evaluations), where the potential for real and perceived OCI is pervasive and not defensible through traditional mitigation measures and firewalls such as NDAs and outsourcing of work to subcontractors.
2. As a second best and temporary solution, USG central procurement offices for agencies including USAID, DOS and MCC, should develop and distribute a circular for their contracting officers to alert them to the heightened concern about OCI in evaluation given recent mergers and acquisitions in the international development contracting market place. The circular should advise on the inadequacy of current OCI avoidance and mitigation measures in large M&E support contracts and include strong sample language for avoiding OCI in government Requests for Proposals (RFPs). The language should disallow NDAs and subcontracting options for mitigating OCIs due to their inherent weaknesses when applied to M&E support projects.
3. Current M&E Support contracts that were held by evaluation firms that have been recently acquired by large implementation contractors should be reviewed for OCI risk. Where OCI is pervasive, the contracts should be suspended, substantially restructured or re-competed to mitigate real and perceived OCI in conducting independent evaluations.

CONTACT:

Rolf Sartorius, President, Social Impact Inc.
rsartorius@socialimpact.com

