

9 December 2009

CODE OF CONDUCT FOR SUPPLIERS

Introduction

1. As a major financing institution in the fight against AIDS, tuberculosis and malaria, the Global Fund recognizes the importance of accountability for suppliers and transparency and predictability in its operations.
2. As stated in its Framework Document, a core principle of the Global Fund is to operate in an open, transparent and accountable manner. Consistent with this core principle, the Global Fund will work to ensure all its financing activities, including its corporate procurement and grant operations, and staff adhere to the highest ethical standards.
3. The goal of this Code of Conduct (“Code”) is to enlist suppliers’ commitment to maintain integrity of the Global Fund-funded grant operations and corporate procurement activities in compliance with this core Global Fund principle.
4. The Global Fund will regularly review and revise this Code, when needed, to reflect changes in best practice, lessons learned and feedback from partners.

Scope of this Code

5. This Code requires all bidders, suppliers, agents, intermediaries, consultants and contractors (“Suppliers”), including all affiliates, officers, employees, subcontractors, agents and intermediaries of Suppliers (each a “Supplier Representative”), to observe the highest standard of ethics in Global Fund-funded activities regarding supply of goods and/or services to the Global Fund or any recipient of Global Fund financing, including principal recipients, sub recipients, other recipients, country coordinating mechanisms, procurement agents and first-line buyers.
6. The principal recipients, sub recipients, other recipients, country coordinating mechanisms, procurement agents and first-line buyers must ensure that this Code is communicated to and complied with by all of their Suppliers. Suppliers will ensure that this Code is communicated to all their Supplier Representatives and will take reasonable steps to ensure compliance by Supplier Representatives, including by taking immediate action in cases of non-compliance. Breaches of this Code may result in a decision by the Global Fund to sanction the Supplier and/or Supplier Representative involved, suspend disbursements to grant recipients or cancel funding.

Fair and Transparent Practice

7. The Global Fund does not tolerate corrupt, fraudulent, collusive, anti-competitive or coercive practices of any kind involving its resources, including grant funds. The Global Fund will take strong, immediate action in all circumstances where it determines that there is substantive and credible evidence of corrupt, fraudulent, collusive, anti-competitive or coercive practices as defined hereunder.

8. Suppliers and Suppliers Representatives are expected to participate in procurement processes in a manner that is transparent, fair, accountable and honest, including by complying with all applicable laws and regulations regarding fair competition as well as recognized standards of good procurement practice.

9. Suppliers and Suppliers Representatives are expected to respond to solicitations in an honest, fair, and comprehensive manner, accurately reflecting their capacity to satisfy the requirements set out in the bid or contract documents. They are expected to follow all of the rules established for each procurement process, and only submit bids and enter into contracts if they can and will fulfill all obligations of the contract.

10. Suppliers and Supplier Representatives will not, directly or indirectly, including through an agent or other intermediary, engage in corrupt, fraudulent, collusive, anti-competitive or coercive practices in bidding for, or performing, a Global Fund-financed contract or activity. For these purposes:

“corrupt practice” means the offering, promising, giving, receiving, or soliciting, directly or indirectly, anything of value or any other advantage to influence improperly the actions of another person or entity;

“fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a person or entity to obtain a financial or other benefit or to avoid an obligation;

“coercive practice” means any act or attempt to influence improperly the decisions or actions of a person or entity by impairing or harming, or threatening to impair or harm, directly or indirectly, such person or entity or their property;

“collusive practice” means an arrangement between two or more persons or entities designed to achieve an improper purpose, including influencing improperly the actions of another person or entity;

“anti-competitive practice” means any agreement, decision or practice which has as its object or effect the restriction or distortion of competition in any market.

11. Suppliers and Supplier Representatives will not solicit, offer, give or receive, or promise or represent to offer, give or receive, fees, gratuities, rebates, gifts, commissions, or other payments, except as disclosed in full to the Global Fund or the grant recipient, in connection with the procurement process or in contract execution.

12. Information, data, know-how and documents obtained from participating in Global Fund or grant recipient procurement processes, or in the course of performing a Global Fund-financed contract, must under no circumstances be made available to any third parties for the purpose of giving existing or potential Suppliers a preferential position or advantage in relation to tenders or any other procurement processes of the Global Fund or the applicable grant recipient, without the prior written consent of the Global Fund.

Compliance with laws

13. Suppliers and Supplier Representatives will comply with all applicable laws and regulations in countries where they do business, as well as the publicized rules, regulations and policies of the Global Fund that apply to their areas of work.

14. Suppliers and Supplier Representatives will ensure that Global Fund resources received by them are not used to support, finance or promote violence, aid terrorists or terrorist-related activity or fund organizations known to support terrorism.

15. Suppliers and Supplier Representatives will not engage in money-laundering activities. This includes any kind of activity which hides or is intended to hide the fact that funds have been obtained illegally or are connected with the proceeds of crime, e.g. through fraud or bribery or other illegal activity.

Access and Cooperation

16. Suppliers and Suppliers Representatives are expected to maintain accurate and complete records in appropriate books of account of all financial and business transactions under Global Fund-financed contracts for a minimum period of five years after the date of last payment made under the Global Fund-financed contract.

17. Suppliers and Suppliers Representatives are expected to cooperate with the Global Fund and comply with any reasonable request, in the opinion of the Global Fund, of its Office of the Inspector General (OIG) and other agents or representatives of the Global Fund to allow access to relevant staff and to inspect any relevant accounts and records and other documents relating to bidding for and performing Global Fund-financed contracts.

18. Suppliers and Suppliers Representatives will provide at all times any assistance requested by the Global Fund to enable the Global Fund to comply with any legal, regulatory or statutory requirement applying to it.

19. The Global Fund expects its grant recipients to take timely and appropriate action in situations where a grant recipient becomes aware that any of its representatives or the beneficiary of a contract financed by the Global Fund grant has engaged or is suspected of engaging in corrupt, fraudulent, collusive, anti-competitive or coercive practices in connection with the procurement or performance of that contract. The Global Fund will impose sanctions that the Global Fund deems necessary if it considers at any time that a grant recipient has not taken timely and appropriate action satisfactory to the Global Fund in such situations.

Publicity and Advertising

20. Suppliers and Supplier Representatives will not, without the Global Fund's prior written consent, (i) use the Global Fund's name or logo in publicity or advertising; (ii) use their direct or indirect business-relationship with the Global Fund to imply an endorsement by the Global Fund of their goods and services, and (iii) make any representation or statement for or on behalf of the Global Fund.

Full and Open Disclosure and Conflicts of Interest

21. Suppliers will disclose to the Global Fund prior to entering into a contract or at any time during the performance of contract whether they, or any Supplier Representatives, are subject to any sanction or temporary suspension imposed by any major international financing institution or organization, such as the UN or World Bank Group.

22. Suppliers will disclose to the Global Fund or the grant-recipient actual, perceived, or potential conflicts of interest involving the Supplier or any Supplier Representative ("Conflict of Interest"). The Global Fund considers a Conflict of Interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, and that such Conflict of Interest may contribute to or constitute a prohibited practice under this Code. To ensure that Suppliers under Global Fund-financed contracts observe high standards of ethics, the Global Fund will take appropriate actions to manage such Conflicts of Interest or may reject a request for funding or disbursement if it determines that a Conflict of Interest has compromised, or risks compromising, the integrity of any procurement process.

23. Suppliers will not apply or seek to apply undue influence on the decision-making processes of the Global Fund and will not engage in any conduct that breaches or

facilitates the breach of the Global Fund's Policy on Ethics and Conflicts of Interest. (See Annex A).

24. Suppliers are expected to notify the Global Fund as soon as they have knowledge of any integrity concern involving or affecting Global Fund resources and grant funding, whether or not it involves the Supplier or a Supplier Representative. For further information, see <http://www.theglobalfund.org/en/oig/>.

The United Nations Global Compact for responsible corporate citizenship

25. The United Nations Global Compact is a voluntary international corporate citizenship network initiated to support the participation of both the private sector and other social actors to advance responsible corporate citizenship and universal social and environmental principles to meet the challenges of globalization (see www.unglobalcompact.org). The Global Fund strongly encourages all Suppliers to actively participate in the Global Compact.

26. In accordance with the ten principles outlined in the UN Global Compact, the participating Suppliers will be expected to:

- a. support and respect the protection of internationally proclaimed human rights;
- b. ensure that they are not complicit in human rights abuses;
- c. uphold the freedom of association and the effective recognition of the right to collective bargaining;
- d. support the elimination of all forms of forced and compulsory labour;
- e. support the effective abolition of child labour;
- f. support the elimination of discrimination in respect of employment and occupation;
- g. support a precautionary approach to environmental challenges;
- h. undertake initiatives to promote greater environmental responsibility;
- i. encourage the development and diffusion of environmentally friendly technologies; and
- j. work against corruption in all its forms, including extortion and bribery.

Policy on Ethics and Conflict of Interest for Global Fund Institutions*

1. General Principles

- 1.1 The Global Fund to Fight AIDS, Tuberculosis and Malaria (the Fund) was created to attract, manage and disburse additional resources through an innovative public-private partnership to make a sustainable and significant contribution to the reduction of infections, illness and death caused by HIV/AIDS, Tuberculosis and Malaria in countries in need. To achieve these goals, the Fund recognizes the need to involve many interested stakeholders, including recipient and donor states, for-profit and not-for-profit enterprises, and the international intergovernmental community.
- 1.2 Because of the diversity of interests and perspectives represented by these stakeholders, it is particularly important that the Fund operate in a balanced, ethical, collaborative, transparent, and open manner. This policy – provided for in Article 7.4 of the Fund Bylaws – provides guidance in identifying and addressing actual or potential conflicts of interest. It is based on clear definitions of potential areas of concern, a duty to disclose, and outlines procedures (including the establishment of an Ethics Committee and the appointment of an Ethics Official) for managing these conflicts as they arise.
- 1.3 The purpose of this policy is to ensure fairness and a high standard of ethical conduct in the Fund's decision-making to protect the reputation and integrity of the Fund and its interests, and to ensure broad public trust and confidence in the Fund's decision-making and grant-making activities. Where provisions of this policy conflict with law or regulation applicable to a Covered Individual such provisions shall not apply. When possible, however, this policy shall be interpreted to be consistent with applicable law or regulation.
- 1.4 The Fund recognizes that the representative nature of its governing Board and its subsidiary units results in inherent conflicts when the Board or its other governing units must consider matters that have a direct result on the interest of governments, corporations, or organizations that hold governance positions in the Fund. The Fund recognizes that these institutional conflicts of interest must be managed with the highest degree of integrity to safeguard against any perception that participation by a government, corporation or organization in any position at the Fund confers an undue advantage for such entities in Fund decisions.

2. Definitions

- (a) *Covered individual* means a member of the Board of the Fund ("Board Member"), an alternate, a member of any committee, task force, the Technical Review Panel, or any other subsidiary body of the Fund, and professional employees of the Secretariat.^[1]

* Approved 10-11 October 2002, as amended at the Eighteenth Board Meeting of the Global Fund to Fight AIDS Tuberculosis and Malaria (GF/B18/8)

- (b) *Associated Person* means a Covered Individual's (i) spouse, minor child, or domestic partner.
- (c) *Associated Institution* means (i) any organization, corporation or government in which a Covered Individual is serving as an officer, director, trustee, partner or employee, that receives or may receive funding from the Fund or with which the Fund has an agreement, contract, grant or relationship; or (ii) any person, organization, corporation, government or similar institution with whom a Covered Individual is negotiating or has an arrangement concerning prospective employment.
- (d) *Personally and substantially*. To participate personally means to participate directly or to attempt to influence the outcome of a decision-making process, including, for example, consideration of a matter at a Board meeting, or direct and active supervision of a subordinate in a matter. To participate substantially means that the Covered Individual's involvement is of significance to the matter.
- (e) *Gift* means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, honorarium, or other item having monetary value. These include services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.
- (f) *Ethics Committee* means the standing Committee, composed of six Board Members, established to assist with the implementation of the Policy on Ethics and Conflict of Interest and to prevent situations that might affect the reputation and integrity of the Fund.
- (g) *Ethics Official* means the Secretariat employee designated by the Executive Director of the Fund Secretariat to assist the Ethics Committee in its work.

3. Conflicts of Interest

3.1 A conflict of interest arises when a Covered Individual participates personally and substantially in any particular Global Fund matter in which, to his or her knowledge, he or she or an Associated Person or Associated Institution has a financial interest, if the particular matter may have a direct and predictable effect on that interest.^[2] In general, and without limitation, conflicts may be deemed to exist in the following situations:

- Where a Covered Individual's financial interests, or the interests of an Associated Person or Institution could affect the conduct of his or her duties and responsibilities with respect to the Fund or result in a reasonable perception that such a conflict exists;
- Where a Covered Individual's actions compromise or undermine the trust that the public places in the Fund; and
- Where the Covered Individual's actions create the perception that the Covered Individual is using his or her position at the Fund for personal benefit or for the direct financial benefit of an Associated Institution.

Specific examples of such conflicts include:

- *Board Members advocating for approval of a particular grant in which his or her government, entity, or organization will serve as principal recipient, implementing agency, local fund agent, or play some other direct project implementation role or realize some other direct financial benefit;*
- *Board Members advocating for approval of a particular policy from which his or her government, entity, or organization will realize some direct financial benefit;*
- *Board Members using their position on the Board to advocate for or otherwise seek approval of any service contract between the Fund and an Associated Institution; or*
- *TRP members who are employees of a government, corporation, or organization participating in the assessment of a funding proposal in which an Associated Institution has any substantial interest.*

Conflicts do not in principle arise when a Covered Individual or Associated Person or Institution stands to receive a diffuse benefit from the action in question. For example, a Board Member does not have a conflict of interest based on his or her consideration of a proposal if his or her country would realize general population health benefits, or in which non-governmental organizations or entities incorporated in his or her country would receive diffuse benefits as a result of the grant, but in which the government or its entities would not directly participate in its implementation.

These lists are only illustrative, and are not intended to set out all instances where an actual or potential conflict of interest exists, but rather to articulate the principles the Fund will follow in addressing such conflicts as they arise. Each situation will be assessed based upon its particular facts and circumstances, but decisions will be governed by the guidelines set out in this policy, which applies to all activities sponsored or supported by the Fund, public and private, for-profit and not-for-profit alike.

4. Transparency and disclosure

- 4.1 All Covered Individuals have a duty to disclose the existence of any actual or potential conflict of interest, including those that derive from Associated Persons or Institutions, and the nature of such conflict, whenever he or she becomes aware that a conflict exists or that a conflict is reasonably likely to occur or that there is the appearance of a conflict.
- 4.2 All Covered Individuals must complete and submit the attached “Declaration of Interest” to the Ethics Official.^[3]
- 4.3 Disclosure statements shall be updated annually and whenever there is a material change in the information they contain, and shall be maintained by the Ethics Official and made available for inspection by the Ethics Committee, and, only as deemed appropriate by the Ethics Committee, by the Board. Except as outlined above, these statements shall be maintained confidential.
- 4.4 An employee shall request authorization of the Executive Director before accepting an office or occupation outside his or her employment duties at the Global Fund or

accepting an honor or decoration provided by an outside party if the proposed action may give rise to an actual or potential conflict of interest or the appearance thereof. Such requests shall be treated in accordance with the procedure set out in Section 5.4 of this Policy.

5. Procedure when a Conflict of Interest Arises

- 5.1 All actual or potential conflicts of interest or the appearance thereof shall be immediately disclosed in writing to the Fund's Ethics Committee through the Ethics Official. Individuals are encouraged to consult with the Ethics Official or members of the Ethics Committee for guidance if questions arise in the application of this policy.
- 5.2 It is the duty of the Ethics Committee, with the assistance of the Ethics Official, to review these disclosures and to decide whether an actual or potential conflict of interest exists and, if so, whether to issue a waiver defining the extent to which such Covered Individual may participate in any discussion of the issue that has given rise to the conflict. The Ethics Committee may also, at its discretion, bring any conflicts issue to the entire Board (excluding the individual or individuals with potential conflicts) for discussion and determination.
- 5.3 When it is determined that an actual or potential conflict of interest exists, the Covered Individual shall not participate in the matter that has given rise to the conflict absent a waiver from the Ethics Committee. With respect to the Board, this means that the Covered Individual shall not vote or speak on the matter, and shall absent himself/herself without comment before any discussion or voting on the matter, unless a waiver has been granted by the Ethics Committee. The waiver may be designed to allow for any level of participation the Ethics Committee deems appropriate. For example, it may permit the Covered Individual to present information of a technical nature, but not recommendations. Or, it may permit the Covered Individual to attend the meeting in order to fulfill his or her administrative responsibilities, but not to participate in any discussion on issues that have given rise to the conflict of interest. The names of Covered Individuals with actual or potential conflicts of interest who participate in a particular meeting, and the issue on which there is a conflict, shall be recorded in the minutes for that meeting.
- 5.4 The Executive Director may, in consultation with the Ethics Committee, authorize a Global Fund employee to accept or hold an office or occupation outside of his or her employment duties at the Global Fund, or to accept an honor or decoration provided by an outside party. When requested, the Ethics Committee shall state whether such authorization would result in an actual or potential conflict of interest.
- 5.5 When the Board considers groups of proposals for approval, a Board Member's participation in the consideration shall generally not be considered to be a conflict of interest even though his or her country or entity that he or she represents may have a direct interest in a proposal in the group. When the Board considers specific proposals, the Covered Individual or any other person shall alert the Board of any actual or potential conflict of interest and follow the procedures outlined in this policy.
- 5.6 Should a Covered Individual be found to have an actual or potential conflict of interest that has not been disclosed as required above, or the Ethics Committee has reasonable cause to believe that a Covered Individual has failed to disclose an actual or potential

conflict of interest, it will inform the Covered Individual of the basis for such belief and provide him or her with the opportunity to explain the alleged failure to disclose. If, after hearing the response and making further investigations as may be warranted, the Ethics Committee determines that the interested person has in fact failed to disclose an actual or potential conflict of interest, it shall notify the Board.

6. Gifts

6.1 All Covered Individuals and Associated Persons are prohibited from accepting Gifts under circumstances where it could reasonably be construed that the Gift is motivated by the position of the Covered Individual and interests that could be substantially affected by the Fund. All Covered Individuals and Associated Persons are prohibited from giving gifts where it could be reasonably construed that the gift is intended to affect the policies or practices of the Fund or any of the programs it funds. The Ethics Committee may waive this provision as appropriate.

6.2 Exceptions.

- (a) A Covered Individual may accept unsolicited gifts on behalf of the Fund when refusal to do so would not be in the interest of the Fund. Gifts accepted on behalf of the Fund will be turned over to the Secretariat and handled under procedures developed by the Secretariat.
- (b) A Covered Individual may accept unsolicited gifts or provide gifts having an aggregate value of \$20 or less, provided that the aggregate value of individual gifts received from or provided to any one person does not exceed \$50 in a calendar year.
- (c) Widely attended gatherings and other events.
 - (i) When a Covered Individual is asked to present information on behalf of the Fund at a conference or other event, an offer of free attendance at the event is not covered under this policy when provided by the sponsor of the event.
 - (ii) Widely attended gatherings. The Secretariat may approve the free attendance of individuals at widely-attended gatherings on a case-by-case basis, and may develop procedures for such attendance in lieu of individual approvals. In determining whether such approval is appropriate, the Secretariat should consider widely-attended gatherings to be those at which it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, such that the actual and apparent degree of influence over the Covered Individual is sufficiently diluted.^[4]

7. Employment by the Global Fund Secretariat

Any individual who has served as a Board member, Alternate, a member of a Board Committee, or as Chair or Vice Chair of the Technical Review Panel shall not be eligible for employment by the Global Fund Secretariat until one year following their last date of service in such a position. The Ethics Committee may waive this provision as appropriate. A request for such a waiver must be submitted by the concerned individual to the Ethics Committee before he

or she applies for employment by the Secretariat. The Secretariat shall not take action on or accept an application for employment from such an individual unless a waiver has been granted by the Ethics Committee.

8. Uncompensated Involvement of an Associated Person

An Associated Person of any employee of the Secretariat shall not be engaged to carry out work without compensation either on or outside the Global Fund premises.

9. Country Coordinating Mechanisms

The transparent operation of Country Coordinating Mechanisms is necessary for the effective implementation of programs financed by the Global Fund, and for the integrity of proposal development and approval. Covered Individuals shall, as appropriate, individually and through Associated Institutions use their best efforts to ensure that Country Coordinating Mechanisms operate in a transparent manner and actively safeguard against conflicts of interest.

10. Dissemination and Review of Policy

10.1 The Fund Secretariat shall distribute a copy of this policy to all Covered Individuals annually, along with a copy of the Declaration of Interest form.

10.2 Copies of this policy and the Declaration of Interest form shall be posted on the Fund website.

^[1] Professional employees are those who have significant decision-making authority, as opposed to support staff positions. The Executive Director will determine whether a particular individual is covered in circumstances where there is uncertainty.

^[2] With respect to those Board Members and other Covered Individuals who serve on the Fund as representatives of national governments or entities, nothing in this document will be construed as to prohibit such person's participation in matters under consideration that will directly or indirectly affect the financial interests of such national government or entity, except that no Board Member or other Covered Individual shall participate in the consideration of a specific funding request that has been submitted by that government or entity, or any decision through which the government or entity may receive a direct financial benefit (e.g., a grant or a contract or policy), unless such participation has been authorized by the Board.

^[3] Covered Individuals who are already subject to a code of ethics or standards of conduct regulation, and who, under such code or regulation, are required to complete and file a disclosure form that includes the information requested in the attached Declaration of Interest, may submit such form in lieu of the attached Declaration of Interest.

^[4] For Covered Individuals who serve on the Fund as representatives of governments, corporations, or organizations, and where such individual is subject to a code of ethics or standards of conduct regulation as a result of such position, such individual may accept complimentary invitations to widely-attended gatherings otherwise prohibited by this policy where attendance is permitted under the code of ethics or standards of conduct to which the individual is subject.