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The Food Aid Organization of the United Nations

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Mr Jeff Borns
Director
Office of Food for Peace
USAID/DCHA

Dear Mr Borns: *Dear Jeff,*

I would like to thank you for our productive meeting of October 1st regarding the provision of United States humanitarian aid to Somalia. I was grateful for the opportunity to discuss USAID's proposed new requirements (the "USG Conditions") with you.

Let me open by saying that the World Food Programme deeply appreciates the unwavering commitment of the United States to alleviating the humanitarian plight of the Somali people. American food aid has made it possible to reach many of Somalia's most vulnerable women and children, providing vital food and nutrition that has helped stabilize communities and prevent an even more catastrophic and destabilizing flow of refugees into neighboring countries. I know we share the goal of ensuring the continued flow of life-saving humanitarian aid to communities rocked by the multiple shocks of conflict, drought, food and financial crises, and abject poverty.

Our meeting allowed us to make progress toward a contractual framework that could adequately address the requirements of each of our authorizing environments and, in particular, new USG requirements.

We agreed that, to facilitate consideration of potential adjustments, WFP would convey its concerns and propose solutions to USAID in writing.

I note that WFP has discussed the USG Conditions with the several other UN entities¹ that are affected by them. These UN entities share in general terms the concerns that are expressed in this letter – although their individual operational and regulatory circumstances may require separate consideration of some points (for example reporting).

From the outset, I wish to state that WFP already prohibits assistance to armed combatants, and is guided by the core humanitarian principles of impartiality and neutrality. In the case of Somalia, this means that WFP makes all reasonable efforts to avoid transactions with armed groups there, including al-Shabaab.

¹ The United Nations Children's Fund, the Office of the United Nations High Commissioner for Refugees, the World Health Organisation, the Food and Agriculture Organisation, and the International Labour Organization.

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The challenge in Somalia is, of course, that the country is in a deteriorating state of conflict, trapping the most vulnerable people in regions that are subject to shifting control by different armed groups. In particular, at this time up to 70 per cent of the people requiring urgent assistance in Somalia reside in the country's southern and central regions, which are not currently under the control of the Transitional Federal Government.

This makes movements of humanitarian assistance through the country extremely dangerous, requiring passage through roads and villages that are far from secure. Indeed the entire population, including the political, security and business communities, is currently caught in a battle for control by different groups, making it often impossible to know where allegiances and connections lie.

Nevertheless WFP considers that, even in this highly challenging environment, it would be possible to put in place a strengthened framework of measures to prevent assistance from reaching armed groups (including al-Shabaab) in Somalia while preserving its ability to deliver humanitarian assistance to the most vulnerable throughout the country.

Proposed Framework and Standard of Diligence

First, it is proposed that the new framework refer generally to restrictions on transactions with "armed groups", with the understanding that this term would cover all militias and armed groups in Somalia – including al-Shabaab. We consider that this more general reference would achieve USAID's objective with respect to al-Shabaab without potentially placing in doubt WFP's commitment to the humanitarian principle of neutrality (thereby avoiding an increase in the already acute risk of attacks on WFP staff and implementing partners and an impairment of our ability to achieve and maintain access to the needy).

In addition, WFP wishes to propose modifications to the standard of diligence that is set forth in the USG Conditions that would, in our opinion, make it better suited to the exceptionally challenging and dangerous Somali context.

In the case of the standard of diligence, WFP would be grateful for your consideration of the following language:

WFP will take all robust measures possible, in the context of operations in Somalia, to ensure that funds or food contributed by the United States are not used to enter into transactions with armed groups, without unreasonably compromising the safety of humanitarian providers or the ability of WFP to reach persons in need in all regions of the country.

WFP considers that this more context-specific standard of diligence would allow it to adopt robust measures to minimise the probability of transactions with armed groups – including al-Shabaab – without substantially affecting its risk exposure and the positive impact of its operations on vulnerable populations in Somalia.

Thus WFP could stipulate that its transporters and implementing partners make every effort not to pay facilitation fees to armed groups at roadblocks or other transit points, and require that they employ routes that are less likely to involve coerced payments – with the context-specific understanding that this not unduly endanger the provider or block the urgent delivery of humanitarian supplies to intended beneficiaries.



To increase the impact of this measure, WFP would consider it essential to invest in logistical arrangements that would allow avoidance of transit points controlled by al-Shabaab. For example, humanitarian aid, including food aid delivered through WFP, could reach regions not controlled by al-Shabaab – such as northern Hiran, Galagud, and Mudug – through the port of Bossaso instead of through Mogadishu, thereby avoiding transit points controlled by al-Shabaab along the way. This would require dredging the port of Bossaso, and additional investment to improve the road between that town and Beletweyne. We estimate that these improvements would take at least one year to complete at a cost of US\$ 2 to US\$ 3 million, and would involve a 20 per cent increase in transport rates.

In relation to purchases or procurement of goods and services, WFP would robustly ensure that persons or entities that it knows to be affiliated with armed groups are excluded from its procurement activities, and that the values of potential contractors and implementing partners are not inconsistent with its own.

Overseeing purchases by country-level implementing partners would be more challenging. However, WFP considers that it could, under its proposed standard, establish a *de minimis* monetary threshold above which purchases by partners would need to be pre-approved by WFP's Somalia Country Office. This framework would afford WFP the opportunity to recognize and block significant potential transactions with armed groups.

Payments to armed groups as the *de facto* municipal authorities are already not acceptable under WFP policies and practices, and indeed the organization has already closed offices in Somalia to avoid paying them. This approach would continue. In addition, and in line with its approach to purchases of goods and services, WFP could require that any payments by implementing partners to an armed group claiming to be a *de facto* municipal authority be subject to WFP approval – and grant approval exclusively where indispensable in light of security or humanitarian access considerations.

Reporting

In distributing humanitarian aid contributed by the United States, and consistent with the proposed approach described above, WFP would report to USAID all cases in which, despite its efforts, a transaction with an “armed group” could not be avoided and describe the circumstances of the transaction. This would cover all groups, including al-Shabaab.

WFP would make every effort to report promptly. This could include, in cases where additional investigation is required, providing details of incidents as they become available, over a period of time. However, given the difficulty of collecting information in Somalia, we view the proposed short time limit for reporting as unrealistic and not enforceable. I note also that any such reporting would be provided based on the understanding that it would be employed solely for the purpose of tracking the use of humanitarian assistance and not for any non-humanitarian purpose.



Contractual framework

As discussed at our October 1 meeting, some of the UN entities referenced above would wish to bring into operation any conditions that may be agreed to with USAID by inserting the following language in future USAID contribution agreements for Somalia:

The Grantee confirms that in keeping with its standard operating practice and procedures it will use all reasonable measures, as determined by the Grantee in the circumstances in which the Programme is implemented, to ensure that no part of the Grant is used to enter into transactions with, on behalf of, or for the benefit of, (a) any individual or entity included on the list maintained by the committee established by the United Nations Security Council pursuant to United Nations Security Council resolution 1267 or (b) any individual or entity that does not share its values, principles, and humanitarian or development mandate or which, in the judgment of the Grantee, would otherwise not be an appropriate beneficiary, partner or contractor of the Grantee. The Parties acknowledge the need for due diligence in this regard, appropriate to the circumstances in which the Programme is implemented.

To further clarify clause (b) of this provision, WFP is willing to issue a separate document confirming its commitment to avoidance of transactions with armed groups in Somalia – and laying out the standard of diligence and reporting framework that are described above.

I note that this approach does not derogate from the established principle that the United Nations shall screen individuals or entities solely against the list maintained by the UN Security Council pursuant to United Nations Security Council resolution 1267, and that it shall not screen against any national anti-terrorism list.

I wish to express WFP's appreciation of our positive dialogue – and remain, with my colleagues, at your disposal for discussion of any concerns or questions you may have. WFP is committed to working with you to identify a solution that will achieve USAID's objectives.

~~Very truly yours~~

WITH MY warmest personal regards

Ramiro Lopes da Silva