ADS Chapter 302

USAID Direct Contracting

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ADS 302 – USAID Direct Contracting

302.1 OVERVIEW
Effective Date: 11/10/2020

This chapter prescribes the Agency's policy directives, required procedures, and internal guidance for the procurement of goods and services through direct contracts to implement Agency activities and support for Agency logistics.

Throughout this chapter, the terms "acquisition" and "procurement" are used interchangeably.

The policies in this chapter do not apply to personal services contracts.

302.2 PRIMARY RESPONSIBILITIES
Effective Date: 01/31/2024

As described in **ADS 103, Delegations of Authority, Section 103.3.9.5**, the Assistant Administrator, Bureau for Management, has designated the Director, Office of Acquisition and Assistance (M/OAA), as the Senior Procurement Executive and Chief Acquisition Officer, and delegated to the Director the authorities of the Head of the Contracting Agency in accordance with the Federal Acquisition Regulation (FAR), except for those authorities that are not delegable under the FAR.

a. The **Senior Procurement Executive** in M/OAA is responsible for:

(1) The management direction of USAID's Acquisition & Assistance system, as delegated and described in **ADS 103**.

(2) Approval of **Procurement Executive Bulletins (PEBs)**, which issue information on general guidance, best practices, reminders, and Frequently Asked Questions.

b. The **Chief Acquisition Officer (CAO)**, in M/OAA is responsible for:

(1) Exercising, in person or by delegation, authorities stated in the **Federal Acquisition Regulation (FAR) Subparts 1.3 and 1.6** and **USAID Acquisition Regulations (AIDAR)** subparts 701.3 and 701.6, including selecting and appointing Contracting Officers and terminating their appointments.

(2) Approving Acquisition & Assistance Policy Directives (**AAPDs**), which provide interim implementation or advance notification of A&A regulations, and Agency A&A policy, procedures, and other information.

(3) Establishing and updating, as necessary, policies, procedures, and practices that ensure the use of full and open competition and the appropriate use of performance-based contracting.

(4) Approving contractor salaries that exceed the USAID Contractor Salary Threshold (**302.3.8.4**).

c. The **Head of the Contracting Activity (HCA)**, as defined in **AIDAR 702.170-10**, is responsible for:

(1) Procuring supplies and services necessary to carry out the activities for which they are responsible, including executing contracts within the authorities specified in AIDAR subpart 701.601.

(2) Establishing procurement policies, procedures, and standards appropriate for the activities, subject to the policy stated in this chapter.

d. The **Suspending and Debarring Official (SDO)**, (**AIDAR 709.4**), suspends or debars individuals and entities from participating in government-funded contracts in accordance with **FAR Part 9**, when such action is in the public interest.

e. The **Bureau for Management, Office of Acquisition & Assistance (M/OAA)**, is responsible for:

(1) Developing, issuing, and maintaining the Agency's acquisition regulations, procedures, and standards, in accordance with established Agency delegations and requirements.

(2) Evaluating the Agency's procurement system, providing recommendations to the Procurement Executive regarding the certifications specified in 302.2.b(1), and providing technical support to overseas Contracting Officers.

f. The **Contract Review Board** is responsible for reviewing solicitations and award documents exceeding $25 million for acquisitions, consistent with the policy found in **302.3.4.4**.

g. **Contracting Officers (COs) and Negotiators** are responsible for entering into, administering, and terminating USAID-direct contracts in accordance with the limitations of their delegated authority, policy directives, and required procedures.

h. The **Planner** is responsible for drafting a procurement request, including the Statement of Work, Statement of Objectives, or Performance-Based Work Statement, and appropriate evaluation criteria.

i. The **Contracting Officer's Representative (COR)**, generally from the technical office sponsoring the contract activity, is designated by the Contracting Officer and is responsible for the technical oversight and administration of the activity.

j. The **Chief of the Contracting Office (CCO)**, as defined in section **302.6**, performs the functions and responsibilities designated by the FAR.

302.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

302.3.1 Summary of Acquisition Policies, Regulations, and Procedures

302.3.1.1 Applicability of Regulations, Policies and Related Guidance

Effective Date: 05/31/2024

USAID executes all direct procurement in accordance with the **FAR**, and the **AIDAR**. Additionally, Agency policies on specific topics can be found in sections of the Code of Federal Regulations (CFRs) and the 300 Series of the Automated Directives System (ADS). When it is necessary to implement timely changes prior to a formal amendment of Agency procurement regulations and policy, the Director, M/OAA, issues Acquisition & Assistance Policy Directives (**AAPDs**). COs must stay current on all active AAPDs and ensure that all applicable provisions and clauses are incorporated into solicitations and resulting contracts. AAPDs replaced Contract Information Bulletins (CIBs); however, some CIBs are still in effect. Procurement Executive Bulletins (PEBs) provide information on general guidance, best practices, reminders, and frequently asked questions, in addition to Agency policy and regulations.

302.3.1.2 Deviations

Effective Date: 05/31/2024

a. FAR or AIDAR deviations. COs must follow the procedures in **AIDAR 701.4** as specified in **ADS 302mbr, Procedures for Deviations from the FAR or AIDAR**.

b. ADS deviations. COs must follow the procedures in this subsection "b" to request individual or class deviations from the policy directives or required procedures in this ADS chapter or a mandatory reference to this chapter. OU-level operating policies or procedures, such as Mission Orders, that are inconsistent with the mandatory requirements in this chapter cannot be enforced without an approved deviation. "Individual" deviations are those affecting one contract or transaction. "Class" deviations are those affecting more than one contract. COs may not deviate from **302.3.8.4**, Approval of Contractor Salaries Exceeding the USAID Contractor Salary Threshold (USAID CST).

(1) Contents. Deviation requests must contain the information in (i) through (vii) below. The **ADS 302 or 302 Mandatory Reference Deviation Request Template** available only to Agency staff provides a format that complies with the content requirements.

(i) A complete description of the deviation;

(ii) The effective date, and for class deviations affecting more than one contract action, the proposed expiration date (see **b.(4)**);

(iii) The circumstances in which the deviation will be used;

(iv) A specific reference to the ADS 302 or 302 mandatory reference section being deviated from;

(v) An indication as to whether any identical or similar deviations have been approved in the past;

(vi) A complete justification of the deviation including any added or decreased cost to the Government; and

(vii) As applicable, the name(s) of the contractor(s), and the contract or task order number(s).

(2) Consultation requirements. The cognizant CO must route deviations for consultation with the following offices sufficiently in advance of the desired effective date of the deviation to accommodate the timelines described below and to allow for consideration and evaluation by the approval authority designated in section **302.3.1.2.b(3)**:

(i) Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P). The CO must submit the deviation request, including any additional supporting documents that provide relevant background or historical data, to M/OAA/P at **policymailbox@usaid.gov** to request comments. M/OAA/P normally responds to the request to provide comments within 10 working days. If the exigency of the situation requires more immediate action, the requesting office may contact M/OAA/P to arrange a shorter review period. The CO must make M/OAA/P's comments part of the deviation request file and forward them to the head of the contracting activity as part of the deviation request.

(ii) Cognizant RLO or GC/A&A. The CO must submit the deviation request, including any additional supporting documents, to the Cognizant RLO or GC/A&A for written consultation.

(3) Approval authority.

(i) The head of the contracting activity, as defined in **AIDAR 702.170-1**, has authority to approve:

- Individual deviations that affect only one contract or procurement, and

- Class deviations affecting contracts only within the contracting activity under their management.

(ii) Only the M/OAA Director has authority to approve class deviations that affect more than one contracting activity.

(iii) Deviations involving basic ordering agreements or indefinite-delivery contracts, including single award indefinite-delivery contracts, are class deviations as they are considered to involve more than one contract.

(4) Period of validity.

(i) Class deviations expire two years from the date of approval, unless a shorter period is specified in a deviation, or approval is rescinded. Expiration of the deviation ends its availability for use in future awards and modifications. Expiration dates must be shown on all class deviations. Class deviations cannot be extended. The CO must prepare and approve a new deviation to replace an expiring deviation, if a deviation is still needed.

(ii) Once the terms and conditions of an award are approved based on an individual or class deviation, they remain in effect unless such authority is limited by the terms of the contract or removed by a modification.

(5) Documentation and Filing Requirements.

(i) The CO must retain approved individual deviations in the contract file. Approved class deviations must be retained by the issuing office and also in each contract file where the deviation is used.

(ii) The CO must promptly submit a copy of the approved deviation to M/OAA/P at **policymailbox@usaid.gov**.

(iii) Register of deviations. Contracting activities must maintain a register of deviations granted from the ADS and assign a control number as follows: For deviations issued by USAID/Washington affecting more than one Mission, the symbol of the contracting activity (e.g. “M/OAA” or for deviations for awards performed in an overseas Mission - the relevant geographic/country code; the abbreviation “DEV”; the abbreviation “ADS302”; the fiscal year; the serial number [issued in consecutive order during each fiscal year] assigned to the particular

deviation; and the suffix “c” if it is a class deviation [e.g., M/OAA-DEV-ADS302-24-1, M/OAA-DEV-ADS302-24-2c, 123-DEV-ADS302-24-1]). The CO must include the control number in the document authorizing the deviation and the control number must be cited in all references to the deviation.

302.3.2 Reserved

302.3.3 Contracting and Subcontracting with a Foreign Governmental Organization

Effective Date: 07/28/2014

a. This section prescribes the policy directives and required procedures for contracting and subcontracting with foreign governmental organizations and foreign government-owned parastatal organizations. A foreign governmental organization is one that functions as a governing body, such as foreign ministries and local governments. Foreign government-owned parastatal organizations are firms operated as commercial companies or other organizations -- including non-profits-- or enterprises in which foreign governments or the foreign agencies have a controlling interest. Foreign government-controlled universities and other educational government entities are included under this policy (see **ADS 220** for further policy on types of foreign governmental organizations and applicability).

b. USAID direct contracts and/or subcontracts executed by USAID contractors with foreign governmental organizations may be necessary when the purpose of the contract is to acquire goods and/or services for USAID’s or the prime contractor’s own needs or use, and the foreign governmental organization is the only source of supply or service. In such cases, USAID must ensure that the terms of the contract with such organizations and its consent to subcontracts with foreign governmental organizations contain all required terms and conditions such as those regarding liability, audit, monitoring, and oversight as required by the applicable regulations and policies.

c. Subcontracts

The contractor must request approval to subcontract with foreign governmental or parastatal organizations and must demonstrate why use of such an organization is appropriate, and how the contractor will maintain appropriate and adequate funds management and control. Subcontracts to governmental organizations must be Fixed Price. This requirement is not subject to deviation. A Determination and Findings (D&F) as described in paragraph d. below must be approved prior to subcontract consent.

d. Determination and Findings (D&F) Requirement

(1) When contracting or subcontracting with a foreign governmental organization, the OU, in consultation with the CO, the Bureau for Management, Office of the Chief Financial Officer (M/CFO)/Controller, and RLO/GC must process a D&F in writing addressing the elements below. If the award is to be made on a non-competitive basis, the OU in consultation with the CO and RLO/GC must also process the required Justification and Approvals (J&As) or other non-competitive documentation in accordance with **FAR Part 6**, **AIDAR Part 706**, and ADS 302. The OU must provide a copy of the signed D&F to the CO to be included in the contract file.

(2) The OU must address the following elements in the D&F to support award of a contract/subcontract to a foreign governmental organization:

(i) The OU, or the prime contractor in the case of a subcontract, must provide a concise description of the specific need for a procurement from a foreign governmental or parastatal organization.

(ii) The D&F must include an explanation of why the foreign governmental or parastatal organization is the most appropriate source of supply, and what foreign assistance objective will be achieved by contracting or subcontracting with a foreign governmental organization.

(iii) The D&F must include a discussion of any required deviations, waivers, or related approvals such as those for non-competition, and the status of those requests. Note that foreign government-owned parastatal organizations are covered by the nationality restrictions in **ADS 310**. Prior to entering into a contract of approving a subcontract with such a foreign government-owned parastatal organization or a foreign government ministry or agency of the cooperating/recipient country, the OU must comply with the eligibility requirements of **22 CFR 228**.

(iv) The D&F must include a statement describing the audit requirements to be included in the proposed award and the awardee's accounting systems. If the proposed foreign governmental or parastatal organization resists USAID audit requirements under **ADS 591**, the Mission/OU must determine whether the funds at issue are subject to audit pursuant to a Development Objective Agreement (DOAG) (previously known as a Strategic Objective Agreement (SOAG) (see **ADS 350**). In situations where the subject funds were obligated in a DOAG, the Mission or Operating Unit (OU) must arrange for audits in accordance with the DOAG. In situations where the funds are not obligated in a DOAG, the Mission/OU, with clearance from the Mission Controller or M/CFO, must otherwise ensure that USAID

funds are subject to sufficient accountability and controls to fulfill the audit requirements in **ADS 591**.

(v) Determine reasonableness of cost/price. The CO must determine the price/cost to be reasonable in accordance with **FAR 15** cost and price analysis requirements. In accordance with **FAR Part 44**, in the case of subcontracts, the CO must consider whether the contractor performed adequate cost or price analysis or price comparisons. Subcontracts to foreign governmental organizations must not include overhead or indirect costs.

(vi) Taxes. Provide a statement discussing how taxes will be handled if the taxes are required. **FAR 52.229-7** and **52.229-9** address taxes under USAID contracts with foreign governments.

(vii) Termination. Include a statement confirming that applicable contract termination clauses will be included in the award.

(viii) Host country salary supplementation. As a general rule, USAID discourages salary supplements, except in very special circumstances and only with the proper justification (see **ADS 200**, **ADS 302**, and **AIDAR 731.205-71**). Provide a summary of any authorization received for host country salary supplementation.

(ix) Clauses. All mandatory clauses must be included in the award, unless the CO obtains approval of a deviation, and includes it in the D&F package.

(x) Partner government laws. COs, in consultation with the cognizant RLO or GC, must determine the foreign governmental organization's ability to legally receive funds directly from USAID or a prime contractor vs. receiving funds through the partner government's own financial management systems.

(xi) Funds flow. Statement regarding who will receive funds (entity, individual, etc.) and the relationship of the proposed funds flow with the partner government's own financial management systems.

(xii) Disclaimers of liability. The D&F must include a discussion of any disclaimers of liability by the foreign governmental or parastatal organization that will be included in the contract. The discussion must address what measures will be taken to adequately protect the interests of the U.S. Government.

(xiii) The D&F must include a statement addressing how the Mission or the implementing partner will handle or mitigate any issues that

may come up if: a) the foreign governmental entity fails to perform; and/or b) the Mission or implementing partner finds other fraud or funds mismanagement issues.

(xiv) Disputes and applicable law. The D&F must include a statement that the award will contain the applicable FAR disputes clause.

(xv) The D&F must include a statement regarding adequacy of information supporting a responsibility determination. Prior to entering into direct contracts with foreign governmental or parastatal organizations, the CO must determine the foreign governmental or parastatal organization to be responsible in accordance with the requirements at **FAR Part 9**. In accordance with **FAR Part 44** in the case of subcontracts, the CO must consider whether the prime contractor also performed an adequate responsibility determination.

(xvi) Determination. The D&F must include a statement that, based on the above findings, the Mission Director for Mission-executed awards or the cognizant Bureau AA, with clearance from the Pillar or Regional Bureau AA, for USAID/Washington executed awards, has determined that making an award to a foreign governmental organization is in the best interest of the government.

e. The Operating Unit or COR, as appropriate, must obtain prior written approval of the D&F from the Mission Director for overseas Mission executed contracts or subcontracts; and from the cognizant Bureau AA, with clearance from the relevant Pillar or Regional Bureau AA for USAID/Washington executed contracts or subcontracts. The following clearances are required:

- All D&Fs must be cleared by the CO, RLO/GC, and M/CFO Controller.
- D&Fs for contracts and subcontracts at or above $500,000 also require prior written clearance by the Senior Procurement Executive (SPE).

302.3.4 Acquisition Planning

Effective Date: 08/06/2013

This section provides policy and procedures for planning agency acquisitions.

302.3.4.1 Individual Acquisition Plans (IAPs)

Effective Date: 03/08/2022

Acquisition planning is required to promote and provide for acquisition of commercial items or non-developmental items and full and open competition to the maximum extent practicable; and for selection of the appropriate contract type. Acquisition planning and

market research is the joint responsibility of program, technical, and contracting officers, and must be conducted in accordance with **FAR 7**, **ADS 300, Agency Acquisition and Assistance (A&A) Planning**, and **ADS 201, Program Cycle Operational Policy**. The Planner (as defined in ADS 300) must prepare a written acquisition plan for all cost-reimbursement and high-risk procurements following the policies and procedures in **ADS 300**. **ADS 300** contains mandatory templates, policies and procedures on:

- Procurement Action Lead Time (PALT) for Agency awards; and
- Inherently Governmental Functions.

Special Note for Construction: In accordance with the policy in **ADS 221, USAID's Procedures for Implementing International Agreements for Tied and Untied Aid**, USAID direct awards for construction and other procurements may be subject to untying requirements in the Development Assistance Committee (DAC) Recommendation (see **302.3.4.2**).

Special Note for Equipment Purchases: In accordance with **FAR Subpart 7.4**, the CO must complete the required analysis and document the results in the negotiation memorandum.

302.3.4.2 Applicability of the DAC Recommendation for Construction and Other Procurements Subject to Untying Requirements

Effective Date: 08/06/2013

Under the Development Assistance Committee (DAC) Recommendation, USAID is expected to untie (establish source/nationality Code 935 for) specified categories of goods and services with a value of 700,000 Special Drawing Rights (SDRs) or more to the least developed countries (LDCs). Per **ADS 221**, under the current conversion rate between an SDR and a USD, the threshold is about $1,100,000.

As stated in **ADS 221**, the following categories of procurement actions are covered by the DAC Recommendation:

- Capital projects,
- Capital equipment,
- Capital-related supplies and services, and
- Discrete physical commodities.

Planners and COs must work with their cognizant GC/RLO to determine whether their procurement should be "untied" in accordance with **ADS 221**, and if so, whether a waiver to authorize the Geographic Code 935 will be necessary. In accordance with the policy in **ADS 310**, a waiver would be necessary for each untied procurement unless Code 935 is already authorized by virtue of an existing authority as set forth in either **ADS 310**, or an applicable blanket waiver.

302.3.4.3 Source and Nationality for Procurement of Commodities and Services

Effective Date: 08/06/2013

USAID's Source and Nationality Regulation, **22 CFR 228** as supplemented by **ADS 310** and **ADS 312, Eligibility of Commodities**, provides additional policy and required procedures to ensure that the procurements of commodities and services financed by USAID with program funds meet the requirements of the Foreign Assistance Act (FAA).

Procurement of goods and services for the administrative support of USAID offices in the United States and abroad financed with Operating Expense (OE) funds must be in accordance with **FAR Part 25**, **AIDAR Part 725**, and **ADS 330, Source Rules for Administrative Procurement**. Specifically, such procurements are subject to the Buy America Act and/or to trade agreement provisions.

302.3.4.4 Contract Review Board (CRB)

Effective Date: 08/05/2022

The CRB provides technical assistance and mentorship, identifies problems, and recommends corrective actions for all proposed contract awards described in paragraph **a.** below. The CRB does not review actions associated with Task Orders or Broad Agency Announcements (BAAs). CRB comments will be either mandatory or advisory depending on the nature of the problem.

CRB objectives, review policies, procedures, and parameters are contained in the **ADS 302mao, Contract Review Board Guidelines**.

a. CRB Submission Requirements

All COs must submit any action with a total estimated contract award amount of $25 million and above to the CRB. This includes limited competition contracts, but excludes sole source actions which are subject to a separate review and approval requirement (see **302.3.4.5**). COs with warrants that are $10 million or less are encouraged to submit all actions greater than $10 million to the CRB for review, if they will be responsible for signing the award and do not have a Supervisory CO. Any CO may choose to submit a complex acquisition action of any dollar amount to the CRB.

COs must submit actions to the CRB at the following two stages of the procurement process:

- Pre-solicitation; and

- Either at the competitive range determination or pre-award stage – whichever comes first. If the CO establishes a competitive range, a CRB review is held at this stage, and there will be no additional reviews unless special circumstances arise.

The documents the CO must submit at each stage are provided in the **ADS 302mao, Contract Review Board Guidelines**.

b. Waivers

The Agency Senior Procurement Executive (SPE) may waive the submission requirements in this section. The CO must submit a waiver request in writing to the Senior Procurement Executive (SPE), with a copy to the CRB mailbox (**crbmailbox@usaid.gov**). The request must contain a detailed basis for the request. The SPE will make a final determination based on the CO's request and the CRB Chairperson's recommendation. The CO must include the written, signed waiver in the contract file.

302.3.4.5 Limiting Competition

Effective Date: 09/12/2023

a. Competition in Contracting Act (CICA)

New Awards

The Competition in Contracting Act (CICA) requires that executive agencies provide for full and open competition in soliciting offers and awarding Government contracts (**FAR Subpart 6.1**). When properly justified and approved in accordance with **FAR Subpart 6.3**, **AIDAR Part 706**, or other laws or regulations, COs may award contracts without providing for full and open competition. As applicable, COs must ensure that justification and approval documents (J&As) are prepared and approved in accordance with **FAR Part 6**, **AIDAR 706.302**, and the policies and procedures of this chapter.

Modifications

(1) Competition Requirements

CICA also applies to the modification of contracts. Modifications that "materially change" the terms of the contract trigger the CICA competition requirements (*i.e.*, the requirement to issue a new solicitation or execute a J&A). Several factors are used to assess whether a modification materially changes a contract. These include the extent of any changes in the type of work, performance period, and costs

between the modification and the original contract, as well as whether the original solicitation adequately advised offerors of the potential for the change or whether the change was the type that reasonably could have been anticipated, and whether the modification materially changed the field of competition for the requirement.

Consistent with the Agency's goal of flexibly managing contracts within legal boundaries, COs are encouraged to utilize contract terms to achieve the award's objectives during administration. One such contract term is the FAR "Changes" clause (FAR 52.243-1 through FAR 52.243-5), which authorizes modifications within the "general scope" of the contract. An action specifically authorized by a contract term, such as the Changes clause, does not trigger competition and does not require a J&A. Depending on the circumstances, COs may also rely on other contract terms to modify the contract without invoking competition (see **ADS 302sax, Guide on the Use of the Changes Clause**).

There is no standard test for when the requirement for competition is triggered; it depends on the facts and circumstances of each proposed modification.

(2) Documentation and Consultation Requirements

COs must include an explanation in the Negotiation Memo documenting the contractual authority used for all modifications. If the OU and CO rely on the "Changes" clause to modify the contract requirements, the CO must consult with the Agency Competition Advocate (ACA) prior to proceeding with the modification. Construction contract modifications based on the "Changes" clause at FAR 52.243-2-Alt III, 52.243-4 or 52.243-5, do not require ACA consultation. When consulting with the ACA, the CO must explain why the modification falls within the contract scope. This initial ACA consultation is only to confirm that competition is not triggered. If the ACA confirms that competition is triggered, the CO must follow all the requirements for the preparation and approval of a J&A or issuance of a new solicitation.

When submitting a request for ACA consultation for citing the "Changes" clause, the CO may use the Sample Determination Memorandum for Use of the Changes Clause, Excusable Delays, and/or Cost Overruns or the draft Negotiation Memo. COs must send emails requesting ACA consultation for citing the "Changes" clause to **changesclause@usaid.gov**.

All other ACA consultations must be submitted through the M/OAA J&A mailbox at justificationsanda@usaid.gov. Each consultation e-mail must include the words "Consultation with the ACA" in the subject line. Inclusion of these words in the subject line of the email is important in order to quickly flag it and distinguish it from the other items in the mailbox. COs can expect a response within five business days of sending the email to the J&A mailbox.

If the CO is relying on contract terms and conditions other than the "Changes" clause, the CO may consult with the ACA at their discretion.

For modifications that materially change the terms of the contract, the CO must submit a J&A to the ACA for clearance as required in this chapter.

Note: The **justificationsanda@usaid.gov** mailbox is the only authorized means for obtaining ACA, SPE, or Administrator clearance or approval as required in this Chapter.

Gifted, Non-appropriated Funds

In accordance with Government Accountability Office (GAO) opinions, a J&A is required even in instances where gifted, non-appropriated funds are used to fund a non-competitive action, including task orders. (Gifted funds may be accepted as authorized under the Agency's gift authority in Foreign Assistance Act section 635(d) — see **ADS 628, Gifts and Donations and Dollar Trust Fund Management** for more information). Such actions are excepted from the Administrator approval requirement as specified in paragraph e. below.

b. AIDAR Authority to Limit Competition

AIDAR 706.3 provides USAID-specific authority and procedures for awarding contracts using other than full and open competition. Exceptions to full and open competition using this authority, to include Administrator-approved expedited acquisition procedures for specific activities with a class determination and findings (D&Fs), must comply with this ADS section.

When AIDAR 706.302-70 foreign impairment authority is used, the OU must prepare and certify a J&A addressing all 12 elements as required under FAR 6.303-2(a). When the authority in AIDAR 706.302-70(b)(3) is used, the OU must process a Determination & Findings (D&F) as required by the AIDAR. The OU must prepare either the class or individual J&A to support each non-competitive award issued under the authority of the D&F, and attach a copy of the D&F to the J&A; CO certification is not required per AIDAR 706.302-70(c)(1).

Expedited Procedures Packages or EPPs
The Agency may issue Expedited Acquisition and Assistance Procedures Action Memoranda (also referred to as Expedited Procedures Packages or EPPs), which provide a Determination and Findings (D&F) supporting use of other than full and open competitive procedures for specific activities or programs. The authority upon which the D&Fs under EPPs are based is **AIDAR 706.302-70(b)(3) (ii)**, which may only be used when the Administrator makes a formal written D&F that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program. An example of an EPP is the Administrator approved "Expedited Procedures Package for Prevention, Care, and Treatment of HIV/AIDS."

Before using the approved D&F in the EPP to limit competition to award a contract or modification, the CO must first consider the feasibility of using full and open competitive procedures as described in the FAR, the AIDAR, and related federal policies. This includes category management as well as utilization of small business, including Section 8(a) procurement authorities and use of minority serving institutions. The CO is responsible for determining the level of competition (if any) that is appropriate to the particular procurement. When not providing for full and open competition, the CO must solicit offers from as many potential sources as is practicable under the circumstances. Once the CO determines that the AIDAR 706.302-70(b)(3)(ii) authority applies, the CO may rely upon the Administrator approved D&F without determining whether other non-competitive authorities may also be available.

For each non-competitive award relying on a D&F approved as part of an EPP, the OU must prepare and certify a J&A addressing all 12 elements as required under FAR 6.303-2(a). The J&A must cite AIDAR 706.302-70(b)(3)(i) or (ii), and the D&F as the authority for the action and use the J&A Template for D&Fs issued under EPPs. The CO must document in the J&A the specific circumstances under which the D&F is being used and explain the reason for relying on the D&F instead of utilizing full and open competition.

FAR 6.305 requires that the CO make the J&As publicly available on the government-wide Point of Entry (SAM.gov). Accordingly, the CO must post the J&A and attach the D&F for each contract action that uses the authority of the EPP D&F. The CO must not post the EPP Memo in its entirety. The CO must include a copy of the J&A and the D&F in the contract file and submit a copy of each J&A to the **justificationsanda@usaid.gov** mailbox.

Additional policy and procedures for use of EPP authorities are provided in **ADS 302mbo, Guidance for Use of the Authorities under Expedited Procedures Packages (EPPs)**. Also, see **ADS 302say, Guidance for use of the Expedited Procedures Package (EPP) for Responding to Outbreaks of Contagious Infectious Diseases**.

c. Competition Policy Related to the Source/Nationality Rules at 22 CFR 228 for USAID-Direct Program-Funded Awards

22 CFR 228 and **ADS 310** require Agency program-financed procurements to be from Geographic Code 937 (the U.S., cooperating country and developing countries, excluding any country that is a prohibited source), Code 110, or Code 935. (See guidance at **22 CFR 228** and **ADS 310** for identification, applicability, and authority for use of each code).

When competition for a prime contract will be limited to a geographic source or nationality within the otherwise authorized Geographic Code, the Operating Unit must appropriately justify the reason for limiting competition. The limited competition must be

approved in accordance with the policies of this section. Even if a limited Geographic Code is authorized for the prime award, the CO must include the otherwise applicable Geographic Code in the resulting contract for the procurement of commodities and services by the contractor.

For example, when the default authorized geographic code for USAID-direct procurements is Code 937, in order to limit competition to just one source or nationality within Code 937, *e.g.,* just the United States, the CO must ensure that a J&A is prepared and approved prior to such limitation of competition for the award of the prime contract. The CO must insert Geographic Code 937 as the authorized code in the resulting contract.

d. <u>Indefinite Delivery/Indefinite Quantity (IDIQ) Contract Task Orders (TOs)</u>

(1) **Ordering Period and Fair Opportunity Procedures**

As stated in FAR Part 16, COs must follow fair opportunity procedures when issuing task orders during the ordering period of the contract unless a statutory exception applies. Additionally, when issuing task order modifications that increase the total dollar value of a task order (or Total Estimated Cost in the case of a cost-reimbursement type task order) for new or additional work, COs must use an exception to the fair opportunity procedures in FAR Part 16. The fair opportunity exceptions are provided at FAR Part 16.5; AIDAR Part 706 exceptions to competition must not be used.

Excluded from this are modifications authorized under FAR 52.249-14 Excusable Delays or increases to completion type CPFF orders when the Contractor requires additional funding to provide the specified end product (FAR 16.301-3).

(2) FAR Part 6 and AIDAR Part 706

COs must prepare a J&A using either a FAR Part 6 or AIDAR Part 706 exception to full and open competition to issue or modify a task order outside the SOW or material terms and conditions of the IDIQ award. This includes:

- Task orders with a period of performance beyond the IDIQ period of performance, or modifications that extend the period of performance of an existing task order beyond the basic IDIQ contract's stated period of performance.

- Task orders and modifications to task orders in an amount that will exceed the remaining Total Estimated Ceiling (TEC) of the IDIQ.

- Task order modifications issued after the ordering period has expired that will expand the SOW or requirements; or increase the total dollar value of

a task order (or Total Estimated Cost in the case of a cost-reimbursement-type task order).

e. Administrator Clearance Requirement for Specific Non-competitive Actions

The Administrator must clear on all non-competitive extensions and new non-competitive awards as follows:

- Modifications: The action increases the total estimated cost of a current award by $100 million or more for any of the same activities performed by the contractor. This threshold amount is for the modification only. For example, if a $60 million contract is modified to increase the total estimated cost by $50 million to a new TEC of $110 million then Administrator clearance is NOT required, or

- New Awards: The action is a follow-on award of $100 million or more and is for any of the same activities performed by the contractor under a previous award.

Applicability
This clearance requirement is applicable to all awards, including stand-alone contracts, single and multiple award IQCs and Task Orders, and General Services Administration (GSA) Schedule orders.

This requirement does not apply to:

- Transactions awarded under “Notwithstanding authority”

- Humanitarian and Disaster Assistance activities (BHA)

- Transition Initiative Activities (OTI)

- Food Emergency activities (BHA)

- Competitions limited to local entities

- Changes due to budget revisions when competitive procedures are not applicable

- Modifications or follow-on awards at or above $100 million where appropriated funds are less than $100 million and the addition of non-appropriated funds gifted to USAID (see **ADS 628**) cause the amount of the modification or the total estimated cost of the follow-on award to be $100 million or more.

- Awards made based on a D&F citing the foreign impairment authority at **AIDAR 706-302(b)(3)(ii)** for an Administrator-approved class of contracts, for example, as part of the HIV/AIDS Expedited Procedures Package (EPP).

Procedures and Clearances

The cognizant Operating Unit or Planner is responsible for preparing the **Mission or Bureau Action Memorandum for the Administrator** and submitting it with the J&A in final form to the mailbox: **justificationsanda@usaid.gov** at least six months prior to the anticipated award or amendment date. "Final form" means a CO-originated document addressing FAR Subpart 6.303-2(a)(1)-(12) and (b) content requirements which includes certification from the technical office and clearance from the Office of General Counsel (GC/A&A) or RLO. Exceptions to competition must not be justified on the basis of:

- Mobilization costs;
- Demobilization costs;
- A continuing relationship with the implementer;
- Lack of planning; or
- Concerns about the amount of funds available, such as expiring funds.

Before submitting the package to the **justificationsanda@usaid.gov** mailbox, the cognizant Operating Unit or Planner must obtain clearance from the Mission Director, if applicable and the Assistant Administrator of the Bureau having programmatic responsibility. The Mission Director/AA cannot re-delegate this authority.

The ACA, SPE, and Assistant Administrator for the Bureau for Management (AA/M) must clear all Action Memoranda and J&As submitted to the **justificationsanda@usaid.gov** mailbox before the Administrator reviews and clears the J&A.

f. Limiting Competition to Local Entities

(1) Guidance for the pilot authority for limiting competition to local entities (Section 7077) applicable to new contracts not exceeding $5 Million is provided in section f.(2) below.

The Sec. 7077 definition of local entities is provided at **ADS 302mbe, Local Competition Authority Pilot Program**.

For locally limited competitions for awards over $5 million, OUs must consult their RLO/GC before using the foreign impairment authority in the AIDAR (AIDAR 706.302-70). Solicitations and awards for these competitions must also use the full definition of local entities in Sec. 7077.

OUs may limit acquisition competition to local entities as long as market research/required assessment indicate that at least three (3) local entities are capable of performing the work. Prior to limiting competition to local entities using this authority, the OU must document this market research/required assessment in the procurement planning documentation (see **ADS 201mba**).

(2) Pilot Authority for Limiting Competition to Local Entities (Section 7077).

USAID's FY 2012 Appropriations Act provided authority for a pilot program that allows COs to limit competition to local entities if certain conditions are met (see **ADS 302mbe, Local Competition Authority Pilot Program**).

The authority has been extended and applies to new contracts not exceeding $5 million to be awarded using FY23 or prior year funds. The pilot may be extended again by means of a future Appropriations Act; OUs and COs must consult with their GC/RLO before using the authority with funds made available after FY23. As defined in Section 7077 of Public Law 112-74, the Consolidated Appropriations Act, 2012 (P.L. 112-74), as amended by Section 7028 of the Consolidated Appropriations Act, 2014 (P.L. 113-76), and included by reference in subsequent appropriations acts, local entity means an individual, a corporation, a nonprofit organization, or another body of persons that is, among other requirements, both owned and managed by a majority of citizens or lawful permanent residents of the country in which competition is to be limited. Accordingly, COs must use the revised version of the required provision in all solicitations and awards financed fully or in part with FY23 funding.

COs are not required to prepare, approve, or post a J&A when using the "Local Competition" authority; however, COs and OUs must work together to document the contract file. COs and client offices must use this pilot authority in lieu of other authorities to limit competition for contract awards not exceeding $5 million to local entities. Mandatory guidance for use and reporting of this authority is provided at **ADS 302mbe, Local Competition Authority Pilot Program**.

Special Provision: When using the "Local Competition" authority, COs must insert the appropriate special provision "Limitation on Subcontracting to Non-Local Entities," from **ADS 302mas, Special Contract Requirements**, into solicitations and awards in accordance with **302.3.5.17, Awards Limited to Local Competition.**

g. Available Class J&As for Other Than Full and Open Competition

USAID COs overseas must procure certain goods or services on a recurring basis under specific conditions in which full and open competition is impractical. To expedite the procurement process for these recurring cases, the USAID Senior Procurement Executive approved two Class J&As, as described in the following Mandatory References. COs may use them provided they meet the Conditions for Use, including the certification and file documentation requirements specified in Section II of each Class J&A.

(1) **ADS 309mad, AIDAR revisions of Competition and Publicizing of Personal Services Contracts (PSCs); and Class Justification and Approval (J&A) for Limited Competition for Overseas PSCs and Local Purchases**

Vehicles may also be purchased under the above authority on the condition that the purchase is made under a vehicle standardization plan (see **ADS 534**). A source or nationality waiver may also be necessary if a U.S. manufactured vehicle is purchased from a local dealer.

h. J&A Templates and J&A Posting Requirements

(1) J&A Templates

COs may use either template, as applicable:

1) Template for Justification and Approval for Other Than Full and Open Competition (J&A); or **2) Template for J&A using Expedited Procedures Package** when issuing J&As based on the authority of a D&F issued under an Administrator-approved action memoranda for expedited A&A procedures (also referred to as Expedited Procedures Packages) discussed in **302.3.4.5.b**.

See the **Exceptions to Competition Guide** posted on the **M/OAA Evaluation Division's website** for additional guidance in preparing and submitting J&As.

(2) FAR Requirement to Post J&As

FAR 6.305 requires COs to make J&A documents publicly available at the **Government Point of Entry (GPE)** within 14 days after award (30 days for cases based on unusual and compelling urgency), except for information exempt from public disclosure. In accordance with FAR 6.305(d)(2), USAID provides access to the justifications by linking from its Internet Web site directly to the GPE. Therefore, COs do not have to post directly to USAID's Internet Web site.

FAR 6.305 requires posting of J&As awarded using the statutory authorities set forth in FAR 6.302; however, AIDAR 706.302-70 "Impairment of foreign aid programs" provides Agency-specific authority for using other than full and open competitive procedures. As a matter of agency policy, J&As utilizing the authority under **AIDAR 706.302-70(b)(3) and (b)(5)** must also be posted in accordance with the requirement in FAR 6.305. This includes J&As issued under the authority of an EPP Administrator-approved D&F, for example, the "Expedited Acquisition and Assistance Procedures for HIV/AIDS and Infectious Disease."

Per FAR 6.001, the FAR requirement for J&A public posting does not apply to non-competitive awards using "notwithstanding authority."

Clearance Requirement and Other Considerations for J&As Prior to Posting

To ensure quality control of public postings, COs must submit all J&As for clearance to the mailbox: **justificationsanda@usaid.gov** after obtaining all J&A clearances (including General Counsel (GC/A&A) or Resident Legal Officer), but before signature by the J&A approval authority. The CO must send a signed copy of the scanned clearance sheet, showing all clearances, including Legal Counsel, to the J&A mailbox. The ACA will review the J&A and provide written clearance. ACA clearance will not be provided until COs adequately address any ACA comments identified as "mandatory."

Exemptions from the clearance requirement:

1. J&As previously cleared and approved by the ACA are excluded from this clearance requirement.

2. J&As issued under the authority of a D&F as part of an EPP. This exemption allows COs to expedite their associated awards and modifications; however, COs are encouraged to obtain review/input via the J&A mailbox where time and circumstances allow. The CO must provide a copy of all final EPP J&As to the J&A mailbox.

In addition, careful screening of J&As is required to identify information that must be redacted, such as contractor personally identifiable information (PII), proprietary data, and any other sensitive data. The exemptions to disclosure of information contained in the **Freedom of Information Act (FOIA) (5 U.S.C. 552)**, and the prohibitions against disclosure in **FAR 24.202** must be considered during this review. The CO is responsible

for working with GC and USAID's FOIA Team (M/MS/IRD) to prepare the justification for public posting, as appropriate. See **FAR subpart 6.305(e)** for additional information and prohibitions.

302.3.4.6 Indefinite Delivery/Indefinite Quantity IDIQ Contracts (IDIQs) – Planning of Awards

Effective Date: 09/12/2023

As part of the Agency's USAID Forward procurement reform goals, this section sets forth policy and procedures that reflect greater priority on increasing competition and reducing reliance on Task Orders issued under IDIQ contracts (previously referred to as IQCs) to accomplish large scale, long-term projects/activities. In addition to the FAR requirements in Part 16 for selecting contract type, Contracting Officers (COs) and Operating Units (OUs) must comply with the following Agency policy and procedures when contemplating the selection of an IDIQ as the contract type or the issuance of a task order under an IDIQ (see **ADS 300** for general policies and procedures for acquisition planning and see **ADS 302mbi, Acquisition Planning for Indefinite Delivery Indefinite Quantity Contracts and Task Orders** for guidance specific to IDIQs and Task Orders.

a. Single-Award IDIQ Determination

In cases where IDIQs are determined to be in the best interest of the Agency, there are statutory and regulatory preferences for making multiple awards of IDIQs. Single award IDIQs reduce competitive opportunities and may create an over-reliance on one contractor, increasing program vulnerabilities.

The statutory basis for the multiple-award preference for IDIQs is the Federal Acquisition Streamlining Act (FASA) of 1994. Federal Acquisition Regulation (FAR) 16.504 addresses indefinite quantity contracts. It establishes a preference for making multiple awards of indefinite-quantity contracts and includes the factors the Contracting Officer must consider when determining the appropriate number of awards. However, under some circumstances, single-award indefinite-quantity contracts may be appropriate. As required by FAR 16.504(c), the Contracting Officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file.

Per FAR 16.504, no task or delivery order contract in an amount estimated to exceed $100 million (including all options) may be awarded to a single source unless the head of the agency makes a determination in writing. The Administrator has delegated the authority to make this determination to the Director, M/OAA.

b. Reducing Use of High-Risk Contract Types

OMB has requested that all federal agencies reduce the use of High-Risk contract types, to include Time and Materials (T&M) type contracts. In accordance with FAR Part 16.501(d), a time-and-materials contract may be used only if the CO prepares a

Determination and Findings (D&F) that no other contract type is suitable. COs are discouraged from awarding T&M type IDIQ contracts. Instead, COs are encouraged to solicit and award IDIQs that allow task orders to be negotiated either on a cost-reimbursable or fixed price basis.

COs must evaluate proposed IDIQs for potential areas suitable for fixed price methodology. Reduction of risk may also be accomplished by establishing specific line items for fixed priced deliverables within cost reimbursement type orders. COs must negotiate IDIQs that allow for fixed price or fixed price with cost reimbursable line item task orders when agency requirements can be sufficiently defined, especially in cases of small-scale task orders valued less than $1 million where deliverables are clearly defined.

c. Ordering Period and Period of Performance

FAR 16.505(c) limits the ordering period for IDIQs providing advisory and assistance services to five years. COs may issue IDIQs allowing the Period of Performance of Task Orders to continue for no more than two years past the expiration of the ordering period in the IDIQ. COs may issue Task Orders at any time during the ordering period of the IDIQ. However, no Task Order period of performance can exceed five (5) years, including modifications.

The period of performance in the basic IDIQ must include the maximum possible period of performance of all task orders. For example, if the ordering period is five years and the contract allows for a task order period of performance to extend two years beyond the expiration of that ordering period, then the period of performance of the basic IDIQ must be stated as seven years in the contract. This allows for

(1) The terms and conditions of the basic IDIQ to remain in effect for the duration of all Task Orders; and

(2) The CO to issue contract modifications that may become necessary or required during the additional two-year period of performance.

Accordingly, COs must enter the final delivery date of all Task Orders (*i.e.,* the end date of the seven-year period of performance) in the fill-in in paragraph (d) of FAR Clause 52.216-22 Indefinite Quantity (Oct 1995) in the IDIQ award. To award or modify task orders beyond these limitations, COs must follow the policy and procedures in **302.3.4.5, Limiting Competition**.

d. CPARS for IDIQs

The CO awarding the IDIQ must determine and specify in Section G of the IDIQ whether CPARS will be completed:

- On each order meeting the FAR thresholds,

- On individual orders regardless of the dollar value, or

- By combining all orders into one CPAR under the base contract, regardless of the dollar value of each individual order.

Combining orders into one CPAR is not feasible when the requiring activities and/or places of performance differ, or when scopes of work of individual orders are significantly different (see **FAR 42.1502(d)**). For additional considerations on selecting the most appropriate reporting method for Single-Agency Indefinite-Delivery Contracts, including IDIQs, COs should review **Guidance for the Contractor Performance Assessment Reporting System (CPARS)**.

e. IDIQ Small Business Considerations

Contracting Officers have discretion to set-aside IDIQs and Task Orders in accordance with both FAR 19.502, which provides broader authority for multiple-award contracts and small business set-asides; and agency statutory authority.

(1) General Statutory and Regulatory Authority for Small Business Set-Asides in Multiple-Award Contracts

In accordance with section 1331 of the Small Business Jobs Act of 2010 (Jobs Act) (15 U.S.C. 644(r), FAR 19.502-4 gives COs discretion to:

- Reserve one or more IDIQ awards for small businesses;

- Set aside part or parts of IDIQ awards for small businesses; or

- Set aside task orders under IDIQs for small businesses.

FAR 16.505(b)(2)(i)(F), provides that COs may, at their discretion, set aside task orders for small business concerns. Small business set-asides are an exception to fair opportunity ordering requirements. No written justification is needed for this exception. COs must consult the FAR for required clauses.

(2) Agency-Specific Statutory Authority- Exception for Small Businesses

FAR 16.5 requires that the CO provide each awardee a fair opportunity to be considered for each order exceeding $3,000 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in FAR 16.505(b)(2). The exceptions to the fair opportunity process listed in that referenced subparagraph are all directly derived from statute and the Agency

may not deviate from these FAR requirements without statutory authority to do so.

Since 2002, USAID's annual Appropriations Acts have provided statutory authority to award task orders to small and small disadvantaged businesses without providing a fair opportunity to all contractors under a multiple award IDIQ. The initial authority was in Section 534 entitled "Special Authorities" of Public Law 107-115 Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, and contained the following paragraph, which has been repeated each year, although the section number has changed:

> "(f) SMALL BUSINESS – In entering into multiple award indefinite-quantity contracts with funds appropriated by this Act, the United States Agency for International Development may provide an exception to the fair opportunity process for placing task orders under such contracts when the order is placed with any category of small or small disadvantaged business."

Use of Small Business Authorities to create Set-Asides or Reserve Awards

COs must work with program offices and the Office of Small and Disadvantaged Business Utilization (OSDBU) to identify potential set-aside opportunities for qualified small business concerns for one or more of the prime contract awards in new multiple-award IDIQs. If the overall Statement of Work is too broad for small businesses to compete effectively for the entire range of services or goods, then the requesting office may consider separating out segments of the work that may be more suitable for small businesses to perform. Small and small disadvantaged businesses will be more competitive for these smaller awards, and to the extent they receive prime awards, the CO can then use the above authorities to award task orders to small businesses.

(a) **Small Business Set Asides.** If market research and the history for comparable activities show that two or more small business holders have demonstrated strong performance and competitive pricing, then U.S. awards must be set-aside for small business primes only (the "rule of two"). For overseas awards, the Agency also strongly encourages the use of small businesses. If a total small business set-aside is not appropriate, a partial-set aside for segments of work or specific geographic regions must be considered. Only small businesses that are awarded a partial set-aside IDIQ award are eligible to be considered for set-aside task orders. When soliciting task order proposals for set-aside work, COs must reject proposals from concerns that do not qualify as small business as they are considered non-responsive.

(b) **Small Business Reserves.** If a total small business set-aside is not appropriate, the OU must perform market research to identify the total number of awards to be issued and the number of those awards to be reserved for

small businesses. The more the expertise exists in the market place within small business, the greater the number of awards to be reserved for small business. Market research must also be the basis for setting any threshold for small business task orders.

(c) **Small Business Thresholds.** COs may establish small business dollar thresholds for small business task orders under IDIQs. Only small businesses will be considered for task orders below the threshold; however, small businesses must also be considered for task orders above the threshold. Market research must be the basis for setting any threshold for small business task orders. The threshold amount must be identified in the solicitation and resulting contracts.

See section **302.3.5.3** for the mandatory language that must be included in solicitations and resulting multiple-award IDIQs that include a small business concern prime contract award.

f. Award of Task Orders

As noted above, Planners and COs must follow policies and procedures contained in **ADS 300** when planning any requirements to be issued as task orders. When issuing task orders that are predominantly commodity purchases, the CO must document their decision to use any methodology other than fixed price or fixed price with cost reimbursable line items for non-commodity-type elements of the award.

When issuing noncompetitive task orders or modifications to task orders, COs must also follow the policy and procedures in **302.3.4.5**. COs must also follow the policy and procedures at **ADS 302mbm, Organizational and Consultant Conflicts of Interest** when issuing Design and Implementation task orders.

The following Additional Help documents are available to provide further guidance and clarification on the task order award process in general, as well as on field support actions. OUs should follow the current guidance at **Field Support Action Process** when determining the magnitude of any one task order.

- **The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IDIQs (TEXT ONLY VERSION)**

- **The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IDIQs (VERSION WITH GRAPHICS)**

- **Field Support Action Process**. This document addresses task orders that accept Mission funding and outlines the processes that should be completed before Mission-specific work is authorized under such a task order.

- **Contract Types to Address Global Technical Leadership with Field Support and/or Cost-Contributions**. This document helps determine alternative contracting mechanisms available to USAID/W technical officers when accepting field support or cost-contributions from Missions or other operating units to co-fund activities.

302.3.4.7 Unsolicited Proposals
Effective Date: 05/31/2024

a. USAID's Industry Liaison, M/OAA, manages the receipt and evaluation of unsolicited proposals submitted via: **https://www.workwithusaid.gov/unsolicited-submissions**. Detailed guidance on submission requirements and criteria for consideration for these proposals is provided at **Unsolicited Proposals & Grant Applications**, **FAR 15.6**, and **AIDAR 715.6**.

b. Prior to negotiating the award of a contract resulting from an unsolicited proposal, COs must ensure that a Justification and Approval (J&A) has been approved in accordance with the FAR and USAID policy. Unsolicited proposals are non-competitive actions. The Planner, in coordination with the CO, is responsible for preparing the justification for other than full and open competition in accordance with the appropriate provisions of **FAR Subpart 6.3** or **AIDAR Part 706**. In addition, COs must fulfill all other planning requirements for awarding USAID Contracts in accordance with the **FAR**, **AIDAR**, and **ADS 302**.

302.3.4.8 Expediting Awards Made Under Section 8(a) of the Small Business Act
Effective Date: 09/12/2023

USAID and the U.S. Small Business Administration (SBA) have entered into a Partnership Agreement (PA) for expediting prime contract awards and purchase orders that are made under Section 8(a) of the **Small Business Act**. The PA is available at: **https://www.sba.gov/document/support--sba-and-agencies-partnership-agreements**.

[Note that **AAPD 23-02: Verification of Eligibility for the 8(a) Program** supersedes the guidance in this section **302.3.4.8** regarding expediting awards to 8(a) concerns and related procedures in USAID's 8(a) Program PA with SBA.]

302.3.4.9 Branding
Effective Date: 08/01/2019

In accordance with **ADS 320, Branding and Marking**, the Planner must provide the Contracting Officer with a branding strategy.

302.3.4.10 Organizational Conflict of Interest (OCI)
Effective Date: 09/13/2018

FAR Subpart 9.5 prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest.

As stated in the FAR, COs must analyze planned acquisitions in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate significant potential conflicts before, during, and after contract award. Detailed agency guidance is provided in **ADS 302mbm, Organizational and Consultant Conflicts of Interest**.

302.3.4.11 Reserved

302.3.4.12 Logistic Support Overseas to USAID Direct Contractors

Effective Date: 04/20/2006

The policy directives and required procedures in this section supplement other regulations that govern the Agency's financing and provision of in-kind, logistic support overseas to USAID direct contractors. The policies support these Agency objectives:

- Increased use of contractors, in accordance with **section 621 of the Foreign Assistance Act of 1961, as amended (FAA)**;
- Reduced administrative burden on the USAID establishment in cooperating countries; and
- Maximized use of cooperating country funds or U.S. Government-owned local currency for local costs, rather than use of U.S. dollars, in accordance with **FAA section 636(h)**.

Missions must make every effort to foster the development of countrywide standards for the provision of logistic support to comparable classes of contractors. If a Mission provides logistic support, it must be at the minimum level necessary to ensure efficient, economical, and effective contractor performance.

a. Documents requesting logistic support overseas must indicate the following:

(1) Each type of logistic support to be made available, e.g., transportation of personnel, personal goods or commodities; quarters; furnishings; equipment; utilities; supplies for residence and office; maintenance; and, medical facilities.

(2) Whether each type of logistic support must be in cash or in-kind, and whether it will be provided by the cooperating country, the Mission, or the contractor itself.

The contracting office must ensure that the solicitation and contract for the logistic support reflects the information in the requesting document.

b. Financing of logistic support

Missions must use local currencies, in lieu of U.S. dollars, whenever feasible and in accordance with the financial management requirements in **ADS 624, Host Country-Owned Foreign Currency** to defray the costs of contractor logistic support. This requirement applies regardless of whether the contractor, the cooperating country, or USAID arranges the support. Local currencies used to finance logistical support overseas must come from the following sources, listed here in descending order of preference:

(1) The cooperating country's own budgetary or private resources,

(2) Cooperating country-owned local currency that USAID or Pub. L. 480 programs generate, and

(3) U.S. Government-owned country-use local currency that USAID or Pub. L. 480 programs generate.

Missions may use USAID dollars to finance logistic support overseas only when no reasonable alternative exists by which such support can be financed with local currency or provided in-kind.

c. Arrangements for logistic support

When arranging for logistic support overseas, each Mission must assess the local situation and determine which of the following three methods of providing that service, listed in descending order of preference, is best suited for its programs:

(1) Arrangements by the contractor itself, when feasible and reasonably economical. (It is assumed that this method will apply in the case of virtually all construction contracts and most of the larger engineering and technical assistance contracts.)

(2) Arrangements by the cooperating country, when timely, adequate, and feasible in terms of the country's economic and administrative resources.

(3) Arrangements by the Mission alone or jointly with either or both of the other parties, where the Mission Director determines that adequate and timely logistic support at reasonable cost cannot be ensured through other options. In such cases, and when direct-hire resources are inadequate, the Mission is encouraged, if feasible, to contract for assistance in providing logistic support. M/OAA and the General Counsel provide guidance on logistic support contracts as necessary.

d. Exceptions

Only the Mission Director, principal USAID officer at post, or the individual serving in an acting capacity as the senior Mission staff member may approve exceptions to the policies in this section for the Mission. Mission staff must justify exceptions and request approval in writing for them.

302.3.4.13 Grants Under Contracts (GUCs)

Effective Date: 08/05/2022

Grants under Contracts (GUCs) are a USAID-specific mechanism that authorizes contractors to provide assistance to non-governmental organizations (NGOs) on behalf of the Agency. In very exceptional circumstances, a contract may include GUCs to partner government entities, but only if the OU complies with the policies and procedures in section e. below in addition to sections a. – d. (as applicable).

If the principal purpose of the USAID-direct award is for the organization to serve as a pass-through entity as defined in **2 CFR 200.1**, then an assistance award is the appropriate instrument to accomplish that purpose. A contract with GUCs may be used only when it meets the requirements in paragraph b. below. COs, working with the Planner, must consider the policy and required procedures for selecting the appropriate acquisition or assistance instrument in **ADS 304, Selecting Between Acquisition and Assistance (A&A) Implementing Instruments**.

If the contractor is purchasing property or services or intends to have another entity perform any part of the project or program for which the contract was awarded, then the contractor must do so through subcontracts.

However, if the contractor is also required to provide financial support to a number of grantees for capacity building or other support as part of the overall contract activities, or if the grant activities are incidental to the primary contract activities, then the contract may include Grants under Contract.

If the CO agrees that a contract with a GUC component is the appropriate type of instrument, then the OU Planner and CO must comply with the following required procedures.

a. When GUCs are contemplated under the contract, then the Request for Proposal (RFP) statement of work or statement of objectives and the resulting contract's SOW or performance work statement (PWS) must describe the GUC program and how the contractor will provide support to grantees through GUCs, including any technical assistance to build the GUC recipient's organizational capacity, as needed. The CO is responsible for ensuring that the contract terms hold the contractor responsible for awarding grants when they appropriately comply with the GUC program described in the SOW or PWS and documenting its determination that the award to a lower tier entity is appropriately a GUC rather than a subcontract.

If the contract is modified to change the GUC terms in the contract, such modification is subject to CICA requirements that the CO must address in accordance with section **302.3.4.5** prior to executing the modification.

b. Approval for Grants under Contract

(1) In order for the CO to issue a solicitation and enter into a resulting direct contract that allows the USAID contractor to execute grants, the requiring office must first prepare and obtain approval of a written justification that it is not feasible to accomplish USAID objectives through normal USAID direct contract and grant awards because one or both of the following applies:

(a) Executing a number of small grant activities is particularly difficult for the responsible USAID Mission or Office; and/or

(b) The grant program is incidental and relatively small in comparison to the other technical assistance activities of the contractor.

(2) The justification must be:

(a) Cleared by the cognizant General Counsel or Resident Legal Officer and the CO; and

(b) Approved by the Head of the Contracting Activity (HCA) for the specific contract for which it would be allowed.

(3) For IDIQs, approval must be obtained at the IDIQ level and the SOW must include authorization for GUCs to be included in any TOs. Additionally, approval must also be obtained for any TO to include GUCs.

(4) USAID does not require HCA approval when a contractor will only be managing or administering grants already awarded by USAID.

c. The grant program under the GUCs authority must meet the following conditions:

(1) Award Amount Threshold: The total value of an individual grant to a U.S. NGO must not exceed the Simplified Acquisition Threshold (SAT), as defined in **48 CFR Section 2.101**. This limitation to the SAT does not apply to grant awards to non-U.S. NGOs.

(2) USAID must be significantly involved in establishing the selection criteria and provide prior written approval of the recipients. USAID may be less significantly involved when grants are at or below the micro-purchase threshold as defined in **48 CFR Section 2.101**.

(3) USAID must ensure that the requirements that apply to USAID-executed grants in **ADS 303, Grants and Cooperative Agreements to Non-Governmental Organizations** (including the prohibition on construction activities under grants, see **ADS 303maw**), and the applicable standard provisions in ADS 303 are also applied to grants that a USAID contractor executes.

(4) USAID must retain within the contract the ability to terminate the grant activities unilaterally in extraordinary circumstances.

(5) COs must include **FAR clause 52.203-16**, Preventing Personal Conflicts of Interest, and include a statement as part of a Grants Under Contracts provision that the contractor must follow the requirements of the clause in the selection and award of GUCs.

d. GUCs may be provided as cost-reimbursement or fixed amount grants. USAID does not authorize contractors to execute or administer cooperative agreements, whether cost-reimbursement or fixed amount, on its behalf. USAID policy in **ADS 303** limits construction under assistance to cooperative agreements only, therefore GUCs must not include construction.

COs must not award contracts in which the contractor disclaims liability for any GUCs it awards on USAID's behalf.

e. Additional Requirements for GUCs Providing Funds to Partner Government Entities.

(1) In exceptional circumstances, GUCs to partner government entities to provide funds may be authorized if they meet the conditions, requirements, and approvals below. This requirement does not apply to GUCs that are solely in-kind grants, technical assistance, or other activities by the recipient to or for the benefit of a partner government entity. Note that COs do not have the authority to execute grants to a foreign government; ADS 103.3.5.1.c delegates such authority to AAs, and as further delegated.

(2) Prior to obligating funds into a contract for any GUC to a partner government entity that provides funds for activities that the entity will implement (excluding "in-kind" grants, technical assistance, and other activities provided to or on behalf of the partner government entity), the CO must verify that these types of GUCs have been approved in a Determination and Findings, in accordance with paragraph (3) below.

(3) The OU must prepare a D&F that documents:

(a) The results of a pre-financing assessment conducted under ADS 220.3.3.1 and 220.3.4.3 that complies with all statutory assessment requirements; a risk mitigation plan to address any weaknesses identified

in the assessment; and how all identified weakness will be mitigated in the GUC that provides funds to a partner government entity;

(b) How a GUC that provides funds to a partner government entity is consistent with any other decisions and results under the Public Financial Management Risk Assessment Framework (PFMRAF), if any (see ADS 220);

(c) How a GUC that provides funds to a partner government entity will contribute to sustainability other than in cases where immediate development results outweigh sustainability goals.

(d) That there are no alternative means to achieve the foreign assistance purpose other than through GUCs issued by the USAID prime awardee to a partner government entity.

(4) If the cumulative amount of GUCs to partner government entities exceeds $10 million for the duration of a prime contract award, the Operating Unit must complete a Congressional Notice with the pre-financing assessment results (see ADS 220).

(5) All D&Fs must be cleared by the RLO/GC, CO, and M/CFO/Mission Controller. The D&F must be approved by the Mission Director for GUCs under Mission executed contracts, and by the cognizant Pillar Bureau Assistant Administrator, in consultation with the relevant Regional AAs, for GUCs under USAID/Washington executed awards. The OU must provide a copy of the signed D&F to the CO to be included in the contract file.

(6) In addition to the clearances above, all D&Fs must be approved by the Bureau AA and the AA for Management. It is USAID policy to increase its direct assistance to partner governments to achieve sustainable development results. As such, no prime award may contain GUCs that provide funds to partner government entities unless a D&F specified in 302.3.4.13 e (3) above is approved by the cognizant Bureau AA (in consultation with relevant Pillar or Regional AAs, as applicable) and the AA for Management and provided to the CO.

(7) The total value of all GUCs that provide funds (as opposed to in-kind assistance) to a particular partner government entity (for example, ministry, municipality, district, etc.) must not exceed $300,000 for the duration of the prime contract.

(8) For GUCs that provide funds to partner government entities, the contractor must be required to:

(a) Incorporate into the grant all required terms and conditions from the prime contract award specifically relating to GUCs, and those regarding audit, monitoring and oversight by the prime recipient. This is not subject to deviation.

(b) For additional information on applicable standard provisions see ADS 303.3.21. When questions arise concerning the appropriate provisions for GUCs, the CO must consult with the cognizant attorney in GC or the cognizant RLO on the terms and conditions of the GUC before approving a GUC providing funds to a partner government entity.

(9) USAID must retain within the contract the ability to terminate the grant activities unilaterally in extraordinary circumstances.

(10) COs must include FAR clause 52.203-16, Preventing Personal Conflicts of Interest, and include a statement as part of a Grants Under Contracts provision that the contractor must follow the requirements of the clause in the selection and award of GUCs.

302.3.4.14 Government–furnished Property (GFP) - Information Technology (IT)

Effective Date: 06/21/2018

GFP IT may include, but is not limited to, mobile IT equipment such as mobile phones, laptops, tablets, and desktops furnished to contractors. COs must identify GFP in the solicitation and resulting award (as specified by the Acquisition Planner) and ensure that all contracts involving government property include the appropriate clause(s) required by **FAR Part 45** and **AIDAR 745**.

CORs must monitor GFP IT in accordance with section **302.3.8.15**.

302.3.4.15 Acquisition of Custom-Developed Software

Effective Date: 06/21/2018

In accordance with **ADS 300** and **ADS 547maa, Limits on Custom-Developed Software**, all B/IO/Ms must consult with, and receive approval from, M/CIO before procuring any custom-developed software for an USAID IT Investment as defined in ADS 547maa.

The CO must confirm that M/CIO approvals have been obtained by the B/IO/M prior to issuance of an RFP/or award that includes a requirement for custom-developed software for an USAID IT Investment (see **ADS 547maa** for further guidance).

302.3.4.16 Information System Security

Effective Date: 11/15/2017

Information system security (also known as INFOSEC) is the practice of preventing unauthorized access, use, disclosure, disruption, modification, inspection, recording, or destruction of information in order to provide:

a. Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

b. Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

c. Availability, which means ensuring timely and reliable access to and use of information.

These are collectively referred to as the "CIA triad." INFOSEC is a general term that can be used regardless of the form the data may take (*e.g.,* electronic, physical). **ADS 302mah, Information Security Acquisition Requirements for Acquisition of Unclassified Information Technology** provides policy and procedures on including INFOSEC requirements in the acquisition of information systems and services, i.e., the protection of agency information in electronic format.

This policy and procedure applies to all contracts, regardless of the source of funding, when the acquired equipment, system(s), or services (including cloud services), is to be used by the Agency directly or used by a contractor on behalf of the Agency under a contract that requires use of that IT equipment, or system(s), or services. Note: in cases where third parties house or maintain USAID data, Planners and COs must include INFOSEC requirements, as provided in **ADS 302mah**. USAID staff may also apply the policy and procedures whenever a requestor, an acquisition or contracting authority, or the cognizant designated Information System Security Office (ISSO) believes it would be in the best interest of protecting USAID's information systems.

For questions on whether INFOSEC is required under a specific planned award, CORs and COs must coordinate with the Designated Information System Security Officer (ISSO) as discussed in **ADS 302mah**. Additional information on INFOSEC is available in **ADS 545, Information Systems Security**, which details the security policies, consistent with federal regulations, mandates, and directives that serve as the highest-level basis for USAID ISS.

302.3.4.17 Implementation of Section 508 of the Rehabilitation Act of 1973

Effective Date: 05/31/2024

Section 508 of the Rehabilitation Act requires that Federal information and communication technology (ICT) be accessible according to standards developed by the Access Board, an independent Federal agency charged with accessibility for people with disabilities. These standards cover a variety of products, including, but not limited to, computers, telecommunications equipment, multifunction office machines such as

copiers that also operate as printers, software, websites, information kiosks and transaction machines, and electronic documents. **FAR 39.2** implements **Section 508** for direct contracts and provides policy guidance for purchase of ICT through such procurement actions as contracts, task orders, delivery orders, and purchase orders.

For any procurement action that includes ICT, the CO must ensure that the requesting office (i.e., the Planner) provides in the requirement documents: 1) a determination that the requirement is ICT as defined by the Section 508 standards in **Appendix A to Part 1194, Title 36**, and 2) all information identified in FAR 11.002(f), including the applicable ICT accessibility standards. The requesting office must prepare these standards using the Revised Section 508 Standards Applicability Checklist (see https://www.section508.gov/manage/laws-and-policies/quick-reference-guide under Tools & Technical Assistance) and the Accessibility Requirement Tool.

If an exception to the ICT accessibility standards per FAR 39.204 applies to the procurement action, the CO must ensure that the Planner provides a written confirmation in the requirement documents. This confirmation may be included in the IAP, if applicable. The exception in FAR 39.204(a)(2) on incidental contract items can be used when the contractor procures such items and provides them to a host government as part of contract performance.

When an exemption per FAR 39.205 applies to a procurement action, the CO must obtain a written determination from the Planner. Guidance for acquisition considerations of ICT is available at Section508.gov. For technical questions, please contact **Section508@usaid.gov**.

The CO must ensure that the ICT accessibility standards provided in the requisition package are included in the solicitation. The CO must require offerors to complete an Accessibility Conformance Report (ACR) and include it as part of the proposal for any requirements identified as having ICT where Section 508 applies. A template for the ACR is available here: **https://www.itic.org/policy/accessibility/vpat**. The CO must include the completed ACR from the successful offeror in any resulting contract.

The CO must insert **AIDAR clause 752.239-71** in solicitations and contracts when prescribed. The COR must monitor the contractor's compliance with Section 508 requirements during award administration and must notify the CO if additional ICT is identified.

302.3.4.18 Designation of the Contracting Officer's Representative

Effective Date: 09/12/2023

The COR assists in the technical monitoring and administration of a contract. The COR designation is specific to a particular individual for the specified award. This authority is independent of any other roles, responsibilities, and duties the designee may fulfill in their technical capacity.

COs must comply with **FAR Part 1.6** and follow the policy directives and required procedures below when designating a COR. A COR must be designated for all contracts and orders (including for IDIQs and each TO under IDIQs), other than those that are firm-fixed price.

The Operating Unit (OU) must nominate a COR as early in the acquisition planning process as possible. The CO must designate the COR (and alternate, if applicable) and must not finalize a contract (including TOs) until after they have signed the COR designation letter in accordance with **ADS 302mar, Model Letter and Procedures for Designating the Contracting Officer's Representative (COR) for Contracts and Task Orders** and received the signed COR acknowledgement.

At the time of the award, the CO must identify the COR by name in the relevant section of the award and enter the COR's name in the Global Acquisition and Assistance System (GLAAS). When the award is executed, the CO must distribute the designation letter as appropriate, including sharing a copy of the letter with the contractor and maintaining the signed letter in the award file.

In the event the COR changes during the period of the award, the CO must re-issue the designation letter to the new COR, prepare a unilateral modification in GLAAS to update the COR designation, provide a copy of the signed designation letter along with the modification to the contractor, and maintain a signed copy in the award file.

Before the CO designates the COR and alternate COR, the selected individuals must provide:

- Proof of an unlapsed COR certification in the **Federal Acquisition Institute Cornerstone OnDemand (FAI CSOD) system**. FAI CSOD will show the status of an unlapsed COR certification as "certified," based on the individual's progress in completing required continuous learning points (CLPs); and

- Proof of completion of the Agency-specific training.

a. Eligibility

In order to be eligible for designation as a COR or an alternate COR, the appointee must:

- Be authorized to perform inherently governmental functions. They must work for USAID as a(n):

  - Direct-hire employee,

  - Employee of another U.S. Government agency through an interagency agreement or on detail, or

- PSC (U.S. National, Cooperating Country National or Third Country National).

- Have an unlapsed COR certification in the FAI CSOD system and meet the Agency-specific mandatory training requirements.

- Possess knowledge, training, and experience commensurate with the responsibilities to be delegated.

b. Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) Certification Program and Agency-Specific Training Requirements

Federal Acquisition Certification and training requirements for CORs are determined by the USAID Acquisition Career Manager (ACM) in M/OAA's Professional Development and Training Division in conjunction with the Federal Acquisition Institute and the Office of Federal Procurement Policy (OFPP) (see **PDT Division's website** available on the Agency intranet only). In addition to the training required for initial FAC-COR certification or maintenance of an existing certification, individuals must provide proof of having completed the following Agency-specific mandatory training requirements, or predecessor courses, appropriate to the individual's FAC-COR level, to the CO prior to being designated as a COR:

FAC-COR Level I:

- FCL-CM-2500 Category Management 101 or FCL-AID-0007 Category Management & You,

- USAID 103 – PDT ASIST Overview,

- CPARS Overview,

- USAID 101 – USAID Accruals On-Line Training, and

- FAC 889, Section 889: Prohibition on Telecommunication and Video Equipment.

FAC-COR Level II:

- All Agency-specific Level I Requirements listed above,

- FCL-AID-0007 Category Management & You, and

- USAID 102 - PDT E-Learning: The Acquisition Professional in the USAID CONtext.

For FAC-COR Level II only, CORs must also upload the CO/AO Justification & Approval Form available on the **PDT Division's website** (available on the Agency intranet only), along with the CV/Resume to FAI CSOD.

M/OAA's Professional Development and Training Division (M/OAA/PDT) maintains a record of the qualifying predecessor courses. Predecessor courses will only be accepted if certification is completed no later than September 30, 2022. Thereafter, only those courses listed above will be accepted. Due to FAI CSOD limitations, individuals should contact **PDTandMe@USAID.gov** to provide verification of completion of predecessor courses and obtain confirmation of eligibility for COR designation.

Individuals who were current in their FAC-COR Level I Certification prior to July 1, 2021 must complete the following Agency-specific mandatory training requirements if not already completed:

- FAC 889, Section 889: Prohibition on Telecommunication and Video Equipment, and

- FCL-AID-0007 Category Management & You.

In order to maintain the FAC-COR certification, the COR must complete eight CLPs every two years for Level I or 40 CLPs every two years for Level II during the window indicated in FAI CSOD. Specific courses may be assigned to CORs for CLPs. If the COR fails to complete the CLPs, the FAC-COR certification will lapse and the COR will no longer have the authority to perform the functions of a COR.

c. Exceptions to Certification and Agency-Specific Training Requirements

The following individuals may be designated as CORs without having to complete the FAC-COR certification program:

- Individuals holding a Defense Acquisition Workforce Improvement Act (DAWIA), Certified Professional Contract Manager (CPCM) or other accredited certification. These individuals should contact **PDTandME@usaid.gov**,

- Federal Acquisition Certification for Program and Project Managers (FAC-P/PM) Mid-Level, who have met the FAC-COR requirements for Level II , and

- Federal Acquisition Certification in Contracting (FAC-C) certified individuals.

However, the above individuals must still request and be granted FAC-COR certification in FAI CSOD and complete the USAID 101- USAID Accruals On-Line Training before the CO can designate the individual as a COR.

d. Issuing the COR Designation Letter

COs must use the Standardized Designation Letter, essentially as written, to designate a COR. COs may tailor the letter in accordance with guidance provided in **ADS 302mar, Model Letter and Procedures for Designating the Contracting Officer's Representative (COR) for Contracts and Task Orders**.

The CO may also designate an alternate COR to perform COR duties during the absence of the COR. The alternate must meet the COR eligibility requirements and be appointed by designation letter, preferably the same letter as the COR.

e. Limitations on COR Authorities

COR authority does not include directing the contractor, either in writing or verbally, or otherwise committing to changes that affect price, quality, quantity, delivery or other terms and conditions of the contract. Only a CO has the authority to take such actions. The Standardized Designation Letter further states the specific limitations of the COR designation.

CORs may enlist the assistance of others to:

- Conduct fact-finding,
- Provide analyses or interpretations of technical requirements,
- Assist with performance monitoring, and
- Make recommendations, among other assistance that may be sought.

However, the COR remains accountable for the delegated responsibilities and is the only person authorized to provide technical direction to the contractor as described in the COR designation letter.

The COR is not authorized to further delegate this authority. If neither the COR nor the alternate is available to perform their duties, the COR must direct the contractor to the CO for guidance. No other individuals are authorized to provide direction to the contractor, approve contractor payment requests or accept work products.

f. Revocation of a COR Designation

The COR designation is effective for the duration of the contract unless otherwise specified or subsequently revoked by the CO in accordance with **ADS 302mar, Model Letter and Procedures for Designating the Contracting Officer's Representative (COR) for Contracts and Task Orders**.

302.3.4.19 Simplified Acquisition

Effective Date: 11/08/2021

COs must comply with the requirements of the FAR and Agency policies when using simplified acquisition procedures. For equipment purchases, in accordance with **FAR Subpart 7.4**, the CO must complete the required analysis and document the results in the negotiation memorandum. Guidance on simplified acquisition procedures can be found in **ADS 302saw, Simplified Acquisition Guide**.

302.3.5 Solicitation Requirements and Provisions

Effective Date: 07/01/2007

When preparing solicitations, Contracting Officers must adhere to the policies and corresponding solicitation clauses and provisions of this section, when applicable.

302.3.5.1 Uniform Use of Line items

Effective Date: 10/15/2019

FAR Subpart 4.10 requires that all solicitations and contracts (including GWACs, Federal Supply Schedule (FSS), IDIQs and orders) use a uniform line item structure. Guidance and supplemental information on USAID-specific requirements are found in **ADS 302mbn, Uniform Use of Line items**.

302.3.5.2 Exception to Federal Excise Tax on Specific Foreign Contract Payments

Effective Date: 06/02/2020

FAR subpart 29.4 requires agencies to withhold a two percent tax on behalf of the Internal Revenue Service (IRS) on payments made under contracts to certain foreign entities unless an exception applies. The USAID Administrator made a blanket determination that all payments made pursuant to USAID-issued contracts and orders with foreign contracting parties fall under the exception in FAR 29.402-3(a)(5) for contracts providing "foreign humanitarian assistance." As such, contracting officers must not incorporate the provision at FAR 52.229-11 into any solicitations when the resulting contract or order will be issued by USAID.

302.3.5.3 Indefinite Quantity Contracts (IQCs) – Exception for Small Businesses

Effective Date: 08/30/2016

COs must include language substantially as follows in the "Fair Opportunity Process" paragraph of Section F of the solicitation/award:

EXCEPTION: P.L. 107-115, Section 534(f), entitled "Small Business," provides USAID with an additional exception to the fair opportunity process in FAR 16.505. Under this exception USAID may directly place task orders with any category of small or small disadvantaged business that received one of the IQCs awarded from the solicitation from which this contract was awarded.

302.3.5.4 Key Personnel

Effective Date: 07/01/2007

Contracts must designate as key personnel only the following:

- Those personnel directly responsible for management of the contract, or
- Those personnel whose professional and technical skills are certified by the requiring office as being essential for the successful implementation of the contract activity.

a. Number of Key Personnel

The number of key personnel designated for any contract must not be more than five individuals or five percent of the contractor employees working under the contract, whichever is greater.

b. Multiple Candidates

Contracting Officers (COs) must not require that contractors propose more than one individual for each key personnel position, since requiring contractors to do so for USAID's approval is inappropriate. USAID is not entitled to select an employee for the contractor, only to refuse a contractor's selection when the individual is found to be unacceptable for sufficient reasons.

c. Sample Solicitation Provisions

(1) Availability of proposed key personnel

Where the qualifications of key personnel are a significant evaluation factor in the award of a contract, the CO must be reasonably assured that the offeror has submitted the names of the proposed key personnel in good faith. To this end, the solicitation document must include language substantially as follows:

The contract proposed by this solicitation includes a key personnel clause, and the quality of key personnel proposed will be an evaluation factor. The offeror must include as part of its proposal a statement signed by all individuals proposed as key personnel, confirming their present intention to serve in the stated position and their present availability to serve for the term of the proposed contract.

(2) Contracting Officer consent to replace key personnel

The key personnel provision in the contract must require the prior consent of the CO for any changes in key personnel, to ensure that replacements possess at least equal qualifications. Sample language for this provision follows:

"Key Personnel"

A. The key personnel that the Contractor must furnish for the performance of this contract are as follows:

Name/Position Title _____/_____
Name/Position Title _____/_____
Name/Position Title _____/_____
Name/Position Title _____/_____
Name/Position Title _____/_____

B. The personnel specified above are considered to be essential to the work being performed hereunder. Prior to replacing any of the specified individuals, the Contractor must notify both the CO and the COR reasonably in advance and submit written justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the activity. No replacement will be made by the Contractor without the written consent of the CO.

302.3.5.5 Preventing and Addressing Sexual Misconduct

Effective Date: 03/29/2021

ADS Chapter 113, Preventing and Addressing Sexual Misconduct provides policies and procedures to establish a workplace free of sexual misconduct; it applies to individuals working for or on behalf of the Agency, regardless of hiring or contracting mechanism, who have routine physical access to USAID facilities.

COs must insert the special contract requirement "Sexual Misconduct" from **ADS 302mas, Special Contract Requirements** in the solicitation and resulting contract where contractor employees will be required to have access to USAID facilities.

302.3.5.6 Grants Under Contracts (GUCs)
Effective Date: 07/22/2021

a. Prior to the issuance of a solicitation that includes Grants Under Contract providing for a USAID direct contractor to execute grants with non-governmental organizations (nonprofits or for-profits) and partner government entities (also known as partner government implementing entity as defined in **ADS 220**), the CO must ensure that the requiring office has obtained all approvals required in **302.3.4.13**. The CO must then:

   (1) Ensure that the requirements that apply to USAID-executed grants in ADS 303, Grants and Cooperative Agreements to Non-Governmental Organizations (including the prohibition on construction activities under grants) and the applicable standard provisions in ADS 303 are also applied to grants that a USAID contractor executes, and

   (2) Ensure that the contract provides USAID the ability to

      (a) Terminate the grant activities unilaterally in extraordinary circumstances, and

      (b) Require significant USAID involvement in establishing selection criteria and prior written approval of the selection of the grant recipients, as required by **302.3.4.13**.

c. Further information on the requirements for HCA approval is in **302.3.4.13.**

302.3.5.7 The Government Cost Estimate in Negotiated Procurements
Effective Date: 04/20/2006

The Contracting Officer (CO) must not include the Government cost estimate in a competitive solicitation or a Request for Task Order Proposals. However, solicitations for completion form cost-reimbursement contracts may state the magnitude of the requirement in terms of an estimated cost range. COs must not include estimated cost ranges in solicitations for a cost-reimbursement term (LOE) contract.

302.3.5.8 Defense Base Act (DBA) Insurance
Effective Date: 06/30/2016

a. Defense Base Act (DBA) insurance is worker's compensation coverage for employees injured while working on a U.S. Government contract performed outside the United States. **FAR 28.305** requires DBA coverage for employees performing contracts approved or financed under the **Foreign Assistance Act of 1961 (Pub. L. 87-195)**. Contracting Officers (COs) must include both **FAR 52.228-3, Workers' Compensation Insurance (Defense Base Act)** and the supplemental **AIDAR 752.228-3, Worker's Compensation Insurance** (Defense

Base Act) in each contract, unless the Department of Labor (DOL) approves a blanket waiver of coverage.

Foreign national employees covered by such waivers (and/or their employers) are exempt from the requirement to secure Defense Base Act insurance. Foreign national employees and their employers should be aware that, even though they do not have to secure Defense Base Act coverage, foreign national employees must be provided worker's compensation benefits as prescribed in applicable foreign laws. However, the waivers do not apply to any employee who is:

(1) A citizen of the United States,

(2) A resident of the United States, or

(3) Hired in the United States.

b. Waivers

The Secretary of Labor may waive application of the Defense Base Act with respect to any contract, work location (country), or class of employees upon the written request of the head of any department or other agency of the United States. The list of active Defense Base Act insurance waivers is provided on the DOL **Web site**. Missions may submit questions on DBA or submit requests for country-based waivers to the Evaluation Division (M/OAA/E) at **DBAWaiverRequests@usaid.gov**.

c. USAID Contract Rates

USAID awards a contract for DBA coverage for USAID direct and host country contractors. The contract includes a provision for the periodic adjustment of the basic rate. Contractor information and updated rates are announced via **Acquisition and Assistance Policy Directives (AAPDs)**. COs should consult the most recent AAPD for current rates and coverage.

302.3.5.9 Reserved

302.3.5.10 Organizational Conflict of Interest (OCI)

Effective Date: 09/13/2018

This section consists of the information in **ADS 302mbm, Organizational and Consultant Conflicts of Interest**.

302.3.5.11 Reserved

302.3.5.12 Required Approvals for Information Technology (IT) Acquisition

Effective Date: 05/31/2024

a. Agency Chief Information Officer (CIO) Approval of Information Technology

The Federal Information Technology Acquisition Reform Act (FITARA) requires the Agency CIO to review and approve contracts for, or that include a component of, information technology. This requirement applies when such information technology is "used by an agency," including if used by the agency directly or used by a contractor under a contract with the agency (as defined in AIDAR 739.002 and further clarified in **ADS 509**). This definition applies for purposes of the policy and procedures of this section.

b. Planning and Pre-Award Requirements

In addition to acquisition plan requirements in FAR Part 7, Agency policy and procedures for acquiring information technology are found in **ADS 300**. The Operating Unit must obtain M/CIO approval as required in ADS 300. The CO must specify CIO-approved IT in the schedule of the resulting award. No other IT may be included in the schedule.

c. Contract Clause

The requirement for Agency CIO approval of IT during contract performance is implemented through **AIDAR clause 752.239-70**, which is prescribed for all solicitations and contracts. This clause applies to all IT, including hardware (e.g., computers, laptops, desktops, tablets, printers, etc.), infrastructure equipment (e.g, networking equipment, routers, switches, firewalls, etc.), software including software as a service (SaaS), cloud services, artificial intelligence (AI) and emerging information technologies, and other commercial items and commercially available off-the-shelf (COTS) technology.

If the contractor determines that IT not specified in the schedule is necessary to perform the contract, **AIDAR 752.239-70** requires the contractor to request approval to acquire the additional IT. The CO must forward the contractor's request to **ITAuthorization@usaid.gov**, if this mailbox was not copied on the original request. Following approval or disapproval by the CIO, the CO must approve or deny the contractor's request in writing. If approved, the CO must specify in writing the IT approved by the CIO for purchase.

d. COs may submit questions regarding IT approval requirements related to a specific solicitation or award to M/CIO at **ITAuthorization@usaid.gov**.

302.3.5.13 Access to USAID Facilities and USAID's Information Systems

Effective Date: 05/31/2024

In accordance with **Homeland Security Presidential Directive (HSPD) 12**, federal agencies must include implementation of **Federal Information Processing Standards, Publication Number 201 (FIPS PUB 201)**, as amended, and **OMB guidance M-05-24**,

as amended, in solicitations and contracts that require the contractor to have routine physical access to a Federally-controlled facility or access to a Federally-controlled information system. (For more information on the requirements of HSPD-12, see **FAR Case 2005-15**, **FAR 4.1303**, and the **USAID HSPD-12 Program**.) Accordingly, CO must incorporate FAR Clause 52.204-9, Personnel Identity Verification of Contractor Personnel and AIDAR clause 752.204-72, Access to USAID Facilities and USAID's Information Systems, in solicitations and contracts, as applicable.

As specified in the AIDAR clause 752.204-72, the contractor (typically through its Facilities Security Officer) must return any USAID credentials (such as the Personal Identity Verification [PIV] or Facility Access Card [FAC]) and remote authentication tokens issued to contractor employees to the COR prior to departure of the individual or upon completion or termination of the contract, whichever occurs first. The COR, in turn, must return PIV/FAC cards to the Office of Security (SEC) and remote authentication tokens to the B/IO Administrative Management Staff (AMS). The COR must maintain documentation in the COR contract files to verify that the above actions were completed in accordance with **ADS 306mah, Contracting Officer Representative (COR) Checklist: Exit Procedures for Institutional Support Contractors and Federal Employees Under Interagency Agreements**.

302.3.5.14 Supporting USAID's Disability Policy in Contracts

Effective Date: 05/11/2015

USAID's Disability Policy Paper articulates the Agency's commitment to advocate for, outreach to, and include people with physical and mental disabilities, to the maximum extent feasible, in the design and implementation of USAID programming. The Policy Paper also provides guidance for making that commitment operational. COs must insert AIDAR clause 752.222-70, USAID Disability Policy, in all Requests for Proposals (RFPs) and resulting contracts.

The Agency developed a provision setting forth its objectives for accessibility standards in USAID-financed construction. Additionally, COs must insert AIDAR clause 752.236-70, Accessibility Standards for USAID Construction Contracts, in solicitations and contracts that require any new program-funded renovation or construction. Where compliance with accessibility standards is technically infeasible or presents an undue burden, the CO must obtain a waiver (see 302.3.6.11 for details) and document the file accordingly.

302.3.5.15 Incorporating Gender Issues into Solicitations

Effective Date: 11/08/2021

USAID must address gender analyses findings and recommendations in their activity designs (see **ADS 201** and **ADS 205, Integrating Gender Equality and Female Empowerment in USAID's Program Cycle**). For solicitations, such as Requests for Proposals (RFPs) and Requests for Task Order Proposals (RFTOPs), the Planner or COR, as appropriate, must submit the procurement request package to the CO in

accordance with the policy and procedures at **ADS 205** regarding gender integration in solicitations. Specifically, Chapter 205 requires that the requiring office provide a statement indicating either 1) how the results of the gender analysis are incorporated into the request; or 2) the rationale for why gender inequality is not included in the activities under the requested contract action.

If the procurement request package does not comply with the requirement in **ADS 205**, then the CO will notify the requiring office that they are unable to take any further action on the request until the office meets one of the requirements.

Additional guidance on incorporating gender considerations into the technical components and evaluation factors of solicitations is available at ADS 205. For technical assistance, consult the USAID Mission, Office or Bureau gender specialist or the Gender Equality and Women's Empowerment Hub in the Bureau for Development, Democracy, and Innovation (DDI).

302.3.5.16 Incorporating Leadership Act Implementation into Acquisition Solicitations, Awards and Modifications

Effective Date: 11/15/2017

a. The CO must follow the policy and include the following provisions in **AAPD 14-04** in all USAID-funded solicitations and contracts obligating or intending to obligate FY04 or later funds available for HIV/AIDS activities:

(1) "Conscience Clause Implementation – Solicitation Provision" for solicitations;

(2) "Conscience Clause Implementation" for contracts;

(3) "Condoms"; and

(4) "Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking (Acquisition)".

b. When, in accordance with **302.3.5.6**, the contractor will execute grants-under-contract, the solicitation/award must require the contractor to include the applicable standard provisions in **ADS 303** in all grants under the contract financing HIV/AIDS activities.

302.3.5.17 Awards Limited to Local Competition

Effective Date: 07/31/2012

When limiting competition to local entities (see **302.3.4.5f**), Contracting Officers (COs) must insert the provision "Limitation on Subcontracting to Non-Local Entities" from **ADS 302mas, Special Contract Requirements** in the solicitation and resulting contract.

302.3.5.18 Prohibition on USAID-Specific Experience Requirements in Evaluation Criteria

Effective Date: 07/01/2007

Agency policy prohibits the use of "prior USAID experience" of an offeror as a minimum qualification, selective factor, or evaluation criteria when awarding contracts. This prohibition applies both to the evaluation of technical qualifications and experience of the offerors, as well as to key personnel such as program managers, contract managers, and technical experts.

If used, the phrase "relevant work experience" will not be construed as being limited to USAID experience; rather, it will mean significant, related skills or knowledge in the desired sector, type of program, development activity, or specific area of professional expertise, as described in the solicitation.

Examples of appropriate language to include in solicitations to determine relevant work experience include the following:

a. Key personnel

Minimum qualification requirements:

- (insert # of years) relevant work experience
- (insert # of years) experience relevant to the scope of work
- (insert # of years) experience in international economic development (or other specific expertise)

b. Corporate experience

Evaluation criteria/Selective factors:

- Depth and breadth of relevant work experience
- Relevance of prior experience to the Statement of Work

302.3.5.19 Reserved

302.3.5.20 Conference Costs and Required Approvals

Effective Date: 09/12/2023

ADS 580, Conference Planning and Attendance provides the Agency policy directives and required procedures for conferences funded in whole or in part by USAID. When the requirement for a USAID-funded conference, as defined in ADS 580 is included in the Statement of Work, the CO must incorporate into the award the AIDAR clause 752.231-72 "Conference Planning and Required Approval".

USAID's requirements regarding conference approval requirements are in **AIDAR 731.205-43**. These requirements are also applicable to contracts with an educational institution. If all the required data is available at the time of award, the Mission or B/IO requesting office is required to obtain the appropriate Agency approvals and provide such approvals to the CO to be incorporated into the award. If all the required data is not available at the time of award, the AIDAR clause requires that the contractor submit conference requests and receive prior written approval from the CO when certain thresholds for Agency participants or conference expenses are met.

302.3.5.21 Reserved

302.3.5.22 Climate Risk Management

Effective Date: 11/08/2021

Climate risk management (CRM) is the process of assessing, addressing, and adaptively managing climate risks that may impact the ability of USAID to achieve its activity objectives. Climate risks are defined as potential negative consequences due to changing climatic conditions. All USAID Operating Units (OUs) must adhere to CRM requirements in activity design and implementation as required in **ADS 201mal** unless 1) the activity qualifies for one of the limited exceptions described in Section 1 of the reference; or 2) the climate risk assessment conducted at the level of the Regional/Country Development Cooperation Strategy identified low risks for the sector/area.

Accordingly, the OU should incorporate, as appropriate, the results of the climate risk assessment in solicitation Sections C - Statement of Work, Section L - Instructions to Offerors, and Section M - Evaluation Factors, which the CO will then incorporate into the formal solicitation. Additionally, per **ADS 201mal**, the climate risk assessment must be documented in the environmental compliance analysis. The **Climate Risk Management Resource Page** contains sample language that OUs can use in Sections C, L, and M. Additionally, OUs may obtain support from the designated Climate Integration Lead (CIL) in each B/IO and Mission. The full list of CILs and their responsibilities is available on the **Climate Risk Management Resource Page**.

302.3.5.23 Use of Acquisition 360 to Encourage Vendor Feedback

Effective Date: 10/05/2023

In accordance with FAR 1.102-3, as a matter of agency policy, COs are required to insert the provision at **FAR 52.201-1, Acquisition 360: Voluntary Survey**, in all solicitations for awards anticipated to be above the SAT. Personal services contracts with individuals, awarded pursuant to AIDAR Appendices D or J, are excluded from this requirement.

An M/OAA working group has been established to periodically review the information received from the surveys and take any necessary actions, to include responding to recommendations and communicating with OMB as needed.

302.3.5.24 Solicitation Notice Regarding Definitization of Requests for Equitable Adjustment Related to Change Orders Under Construction Contracts

Effective Date: 01/31/2024

COs must include a notice with the information required at FAR 36.211(b) in solicitations for construction contracts expected to be awarded to a small business pursuant to FAR Part 19. Instructions for inclusion of this notice are found in **ADS 302mbq, Instructions for the Solicitation Notice Regarding Definitization of Requests for Equitable Adjustment Related to Change Orders Under Construction Contracts**.

302.3.6 Pre-Award Requirements

Effective Date: 04/20/2006

This section provides policy directives and required procedures governing the acquisition process prior to award.

302.3.6.1 Composition of Technical Evaluation Committees (TECs)

Effective Date: 09/12/2023

The selection of Technical Evaluation Committee (TEC) members must be made in accordance with the following:

a. USAID staff (direct hires, Personal Services Contractors (PSCs), and direct hire employees of another U.S. Government agency providing services through an interagency agreement or on detail must constitute a majority of the membership on all TECs. Evaluators from other Federal agencies and non-governmental evaluators, including fellows, may participate, provided that they comply with any applicable requirements for, or limitations on, their participation as stated in this chapter, **FAR Parts 3 and 15**, and **AIDAR Part 715**. ISC employees must not serve as voting members of TECs.

b. Contracting Officers (COs) must take reasonable precautionary steps to avoid the conflicts of interest arising on the part of technical evaluation team members. One step is to verify with TEC members that they, their spouse, and their dependents do not have connections, such as financial interests, with any of the offerors prior to commencing evaluations. COs must refer any potential problems to their cognizant Resident Legal Officer for any action overseas and to the Assistant General Counsel for Ethics and Administration for any USAID/W action.

c. As required in **AIDAR 715.305(c)**, a Non-Governmental Evaluator or an Evaluation Assistance Contractor participating in a technical evaluation must sign a **Certification and Agreement for the Use and Disclosure of Proposals**

(ADS 302sae), which states that they will safeguard the proposals and information in them and that they perceive no actual or potential conflict of interest.

302.3.6.2 Dissemination of Cost Proposal Information to TECs in Negotiated Procurements

Effective Date: 04/20/2006

a. Contracting Officers (COs) may provide cost information from proposals to members of a TEC during the source selection process, as described in paragraph **b.** of this section. This constitutes the Agency procedures required under **FAR 15.305(a)(4)**.

b. The decision to provide proposal cost information to TEC members rests with the CO, who may request TEC input as part of the cost realism analysis required in **FAR 15.404-1(d)**. While the CO has considerable discretion as to how much, when, to whom, and even if cost information is to be provided, they must consider the following guidelines and document the decision in the negotiation file:

(1) If the cost proposals vary significantly either from the Government estimate or in comparison to each other, then the TEC may assist in analyzing the discrepancies. While there may be circumstances in which the entire cost proposal is provided to the TEC, in many cases, only certain components of the cost proposals need to be provided; for example, in-country housing costs, number of trips and their duration, and the proposed level and distribution of effort under completion-form contracts.

(2) The preferred timing for the CO to share cost information with the TEC is after the initial technical assessment and scoring has taken place, but early enough in the process to ensure adequate attention to discrepancies and questions during negotiations. The CO may also share with the TEC any revisions to cost proposals resulting from negotiations, if, in the CO's judgment, doing so aids the analysis of the revisions.

c. When sharing cost information, the CO does not have to do so with all members of the TEC. After discussion with the TEC Chair, the CO decides who, among the other members, is best able to provide relevant analysis of the cost information.

302.3.6.3 Evaluation and Use of Contractor Past Performance and Integrity Information (CPII)

Effective Date: 11/08/2021

When evaluating contractor performance and integrity information, COs and CORs must follow the guidance and procedures in **ADS 302mbh, Assessment and Use of Contractor Performance and Integrity Information**.

302.3.6.4 Branding

Reserved

302.3.6.5 Pre-award Audits and Surveys of the Accounting System

Effective Date: 11/08/2021

a. Definitions

"Pre-award audit" and "pre-award survey," as used in this section, are defined in **ADS Chapter 591**.

b. CO Role in Obtaining Pre-Award Audits and Surveys

The CO determines whether any pre-award audit or survey of prospective contractors will be necessary, per the thresholds and procedures listed in **ADS 591.3.3.1 "Pre-Award Audits and Surveys."** **FAR Subpart 9.1** prescribes additional policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible.

The CO must request all pre-award audits or surveys using the **Audit Request Memorandum** form and email the completed form to the Contract Audit Management Branch (M/OAA/CAS/CAM) Supervisory Auditor at **CAMConnect@usaid.gov** or **singleaudit@usaid.gov**.

c. Conducting Pre-Award Audits and Surveys

The cognizant Federal audit agency, non-Federal resources, or other Federal auditors conduct pre-award audits and surveys of the accounting system. M/OAA/CAS/CAM Direct-Hire staff may conduct pre-award surveys and other financial reviews, but do not conduct pre-award audits.

For non-U.S. firms and U.S. firms receiving funding from USAID/Washington Bureaus, M/OAA/CAS/CAM is the designated entity to conduct pre-award surveys. Missions may use M/OAA/CAS/CAM's services or may opt to use a contractor (see **ADS 591**). Prior to pre-award surveys, the M/OAA/CAS/CAM survey team will work with the prospective contractor to communicate audit document requirements.

The pre-award survey field work is normally completed within five days. Based on the results of the pre-award survey, M/OAA/CAS/CAM will issue a results/corrective action letter within a week, requiring the prospective contractor to respond with a corrective action plan within 30 days. The pre-award survey report is issued within three weeks of receipt of the corrective action plan. The total time from M/OAA/CAS/CAM's receipt of the CO's request to issuance of the final report is approximately 10 weeks.

After the pre-award audit or survey is completed, M/OAA/CAS/CAM or the Mission must enter it into the Tracking Audit Consolidated System (TRACS) to track action on findings and recommendations and for document storage and retention purposes.

302.3.6.6 Classified Contract and Contractor Security Requirements

Effective Date: 06/21/2018

a. Policy and procedures on Classified Contract and Contractor Security Requirements are provided in ADS Chapters 565, 566, 567 and 568.

b. IDIQs, Classified TOs, and the National Industrial Security Program (NISP)

FAR clause 52.204-2 Security Requirements, binds the contractor to meet the security requirements identified in the National Industrial Security Program Manual (NISPOM). USAID participates in the National Industrial Security Program (NISP) administered by the Defense Security Service (DSS). The requirements for the NISP are covered in **ADS Chapter 567, Classified Contract Security and Contractor Personnel Security Program** and FAR Subpart 4.4 "Safeguarding Classified Information Within Industry".

Although most of the offices sponsoring USAID's IDIQs are not restricted and do not typically require contractors to have access to classified material or restricted space (as more fully described in ADS 567), classified task orders are occasionally issued.

The M/OAA IDIQ template includes language in Section H and a blank DD 254 as a Section J attachment; which puts the contractor on notice that it must have the “Secret” level facility clearance in order to be considered for a classified task order.

COs must ensure that solicitations for basic IDIQ proposal preparation instructions (Section L) require offerors to indicate whether or not they and their listed proposed subcontractors have a “Secret” level facility clearance. If the successful offeror has this level facility clearance, the IDIQ CO must indicate their clearance level in Section H of the resulting award. This statement is included for information purposes for Task Order COs (TOCOs) and Task Order CORs (TOCORs) only, to inform them whether or not they may include the contractor in the Fair Opportunity process for a classified task order. Per ADS 567, the B/IO or Mission Project Officer is responsible for determining if a contract/TO should be classified; and the TOCO is responsible for incorporating the cleared DD 254 for the specific classified task order into the TO award.

A contractor that does not have the required level facility clearance may choose to begin the facility clearance process right after the contract is awarded. However, the CO must not award a classified task order to a contractor without a facility clearance before the DSS grants an interim or final clearance. If time permits, the TOCO may include a contractor that does not have a facility clearance in the Fair Opportunity "competition" on the condition that the contractor recognizes that continued participation is at its own risk and the TOCO will not award the TO to that contractor if DSS does not grant the facility clearance before the TO must be awarded. If time does not permit, the TOCO

does not have to request a contractor without the required facility clearance for the Task Order to submit a proposal for a classified TO.

Under classified TOs, any contractor personnel requiring personnel clearances must also be cleared at the appropriate level before they may perform in the restricted space. TOCOs must not approve such personnel to work under the TO until the personnel clearance is obtained, unless there is unclassified work for the employee to perform until the clearance is granted.

302.3.6.7 Negotiation of Indirect Cost Rates

Effective Date: 06/21/2018

Indirect costs are costs which cannot be directly identified with a single contract. Each organization negotiates its indirect cost rates with one government agency which has been assigned cognizance. Usually the cognizant government agency is that agency which has the largest dollar volume of contracts with the firm or organization. The resulting Negotiated Indirect Cost Rate Agreement (NICRA) is binding on the entire government. The NICRA contains both final rates for past periods and provisional (billing rates) for current and future periods. For more information on indirect cost rates, please see **ADS 302mbl, Best Practices Guide for Indirect Costing**.

302.3.6.8 Determining Profit and Fee Objectives

Effective Date: 04/20/2006

USAID must use a structured approach, like the **FAR** describes and requires, for the determination of pre-negotiation profit or fee objectives. USAID Contracting Officers may use another agency's structured approach as appropriate.

302.3.6.9 USAID Contractor Salary Threshold (USAID CST) and Salary Supplements to Host Government Employees

Effective Date: 09/12/2023

a. USAID Contractor Salary Threshold (USAID CST)

The USAID Contractor Salary Threshold (CST) sets a maximum rate on salaries under contracts where the Agency establishes the price or the fixed labor rate for services after considering what the actual staff salaries would be.

(1) The USAID CST is equivalent to the maximum rate at Federal agencies without a certified Senior Executive Service (SES) performance appraisal system. This rate is available at: **https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/** by clicking the link to "Basic Rates of Pay for Members of the Senior Executive Service." While the amount of the CST is derived from the SES system, there is no other connection between the USAID contractor salary policy and the SES system.

(2) Before the Contracting Officer (CO) may authorize payment for any contractor salary that **exceeds** the USAID CST under a USAID direct contract, they must obtain approval in accordance with the procedures in **302.3.8.4**.

(3) The USAID CST does not normally apply to executive level salaries. While USAID technical assistance services contracts typically furnish senior-level professional services, the services rarely involve executive level direct labor. Therefore, costs associated with executive level salaries are typically allocated to a contract through the indirect cost pool, to which CST does not apply. Salaries for individuals providing personal or non-personal services to USAID contractors instead must be compensated at rates determined by the CO to be fair and reasonable in the competitive market, in accordance with applicable **FAR** and **AIDAR** cost principles. Overall compensation to individuals providing these services are subject to the applicable cost principles in **FAR 31.205-6** and **FAR 31.205-33** as well as **AIDAR subparts 731.2, 731.3, and 731.7**.

(4) Contract rates must be established on an hourly basis. For purposes of estimation, calculate non-personal services contract rates based on 2080 hours/year, the number used by many private sector entities. If a contractor employs methods or calculations using other than 2080 hours/year, the CO must annotate this in the negotiation memorandum and in the contract, particularly if the methodology results in an annualized salary exceeding the USAID CST.

b. Salary Supplements to Host Government (HG) Employees

In accordance with AIDAR 731.205-71, salary supplements are eligible for USAID financing in exceptional circumstances and only when authorized according to USAID policy established in the **State cable 119780 dated April 15, 1988**. When such circumstances exist, the contractor must obtain the CO's written approval as required by AIDAR clause 752.231-71.

Before granting approval, the CO must ensure compliance with USAID policies on payment of salary supplements to HG employees, found in **State cable 119780 dated April 15, 1988**. This cable provides guidance on:

(1) The eligibility criteria for salary supplements;

(2) Required approvals by the appropriate Assistant Administrator;

(3) Documentation of the justification for payment of salary supplements, including the legality of such payments under host country laws and regulations;

(4) Restrictions on such payments to policy-making officials; and

(5) Required approvals for exceptions to the policy and the eligibility criteria.

COs must insert AIDAR clause 752.231-71 in all contracts that may require services of HG employees.

302.3.6.10 Waiver to Standards for Accessibility for the Disabled in USAID Construction Contracts

Effective Date: 07/01/2007

When necessary, in accordance with **302.3.5.14**, Contracting Officers (COs) will follow the policies and procedures below to obtain a waiver of accessibility requirements in construction contracts.

a. New construction. All new construction will comply with the standards for accessibility set forth in the provision "Standards for Accessibility for the Disabled in USAID Construction Contracts" (see **302.3.5.14**).

b. Alterations to existing structures. Before deviating from accessibility standards when altering existing structures, a contractor must obtain the CO's advance affirmation that compliance with the standards is technically infeasible or presents an undue burden. The CO provides this affirmation by obtaining a waiver in accordance with the procedures at **USAID Policy on Standards for Accessibility for the Disabled in USAID-Financed Construction**.

c. A request for a waiver must include the following:

(1) Identification of the specific requirements and procedures of the standards from which a waiver is sought;

(2) A detailed explanation, including appropriate information or documentation, as to why a waiver should be granted; and,

(3) A statement that, where feasible, persons with disabilities will be accommodated, and which describes how these accommodations will allow the disabled access to the programs and services being provided.

302.3.6.11 Contract Reporting and System for Award Management (SAM)

Effective Date: 09/12/2023

The **System for Award Management (SAM)** is an official USG website where any company, organization, or individual can obtain a unique entity identifier (UEI) and register to do business with the USG. It is possible for an entity to obtain a UEI without completing a full registration; SAM only requires basic information to conduct the entity validation process that results in a UEI.

Offerors and contractors are required to have a UEI in accordance with **FAR Subpart 4.6** and register in SAM in accordance with **FAR Subpart 4.11**. COs must require offerors and contractors for contract actions over the micro-purchase threshold to have a UEI even in cases where full registration in SAM is not required, unless the CO

determines that an exception applies in accordance with FAR Subpart 4.6 and following procedures in **ADS 302mbj** (see below).

There is no requirement for subcontractors to complete the full registration in SAM. However, a subcontractor must obtain UEI in order for the contractor to complete any applicable Federal Funding Accountability and Transparency Act (FFATA) reporting in the **FFATA Subaward Reporting System (FSRS)**, after award of the subcontract.

Certain exceptions exist that allow the use of a generic entity identifier instead of a UEI, or that exempt an entity from full SAM registration. For more information on UEI and SAM registration exceptions, see **ADS 302mbj, Exceptions to Contract Reporting in the Federal Acquisition Regulation Part 4.6** and the **M/OAA Vendor Information website** which contains additional resources related to UEIs and SAM registration.

302.3.6.12 Prohibition on Transactions with Designated Entities – Office of Foreign Assets Control (OFAC)

Effective Date: 07/01/2007

Presidential Executive Orders (in particular **E.O. 13224**) and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism**.** In addition, **FAR 25.701** prohibits agencies and their contractors and subcontractors from acquiring any supplies or services from individuals or organizations, if any proclamation, EO, Office of Foreign Assets Control (OFAC) regulation, or statute administered by OFAC prohibits the transaction. Accordingly, Contracting Officers (COs) must check the OFAC List to ensure that a selected contractor and proposed subcontractors (including known individuals from those organizations), are not on the list. COs must include **FAR 52.225-13, Restrictions on Certain Foreign Purchases**, in all awards, and ensure that awardees are aware of the list as part of the compliance with that clause.

The OFAC List (or Specially Designated Nationals (SDN) and Blocked Persons List) is available at the OFAC Web site under "**Specially Designated Nationals (SDN) List**."

302.3.6.13 Incorporating Successful Competitive Proposals into Contracts by Reference

Effective Date: 04/20/2006

Contracting Officers (COs) must not incorporate an entire successful, competitive proposal into the contract by reference. To the extent that a portion of a proposal is of substantial importance to the contract, then the CO must expressly state that portion in the contract or write a specific, clearly delineated citation in the contract that references that portion of the proposal.

302.3.6.14 FAR Part 4.21 Prohibition on Contracting for Certain Covered Telecommunications and Video Surveillance Services or Equipment (Section 889)

Effective Date: 09/12/2023

a. Two statutory prohibitions (**section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232)**) ("Section 889") for covered telecommunications equipment, systems, and services have been implemented separately by the FAR. The statute covers:

- Certain telecommunications equipment and services produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of those entities), and

- Certain video surveillance products or telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of those entities).

b. Section 889 Part A

Effective August 13, 2019, FAR 4.2102(a)(1) implemented the statutory prohibition 889(a)(1)(A) requiring that agencies not "procure or obtain or extend or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system," unless an exception or waiver as described in the FAR applies.

This prohibition applies only to covered equipment, systems, and services USAID acquires for its own direct use.

c. Section 889 Part B

Effective August 13, 2020, FAR 4.2102(a)(2) implemented the statutory prohibition 889(a)(1)(B) requiring that agencies not "enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system," unless an exception or waiver as described in the FAR applies.

USAID cannot contract with an entity that uses covered telecommunications equipment or services as described in FAR 4.2102(a)(2), regardless of whether that usage is in performance of work under a Federal contract. The prohibition applies at the prime contract level because the prime contractor is the only "entity" that the agency "enters into a contract" with; the agency does not directly "enter into a contract" with any subcontractors, at any tier. However, it is the contractor's responsibility to determine whether it uses the supplier's or subcontractor's "covered telecommunications" equipment or services as described in FAR 4.2102(a)(2).

d. Mandatory FAR provisions and clause, and internal Agency-specific solicitation and award language to implement Section 889 Parts A and B

(1) COs must include **FAR provision 52.204-24** (October 2020) and **FAR provision 52.204-26 (October 2020) Covered Telecommunications Equipment or Services—Representation**:

- In all solicitations and obtain the representation from the offeror before awarding a new contract; and

- Obtain the representation from the contractor before modifying a contract to extend the period of performance, including extensions under the authority of an Excusable Delays clause in the contract; or when exercising an option.

For commercial items under the FAR part 12, COs must instead use the FAR 52.212-3 (October 2020), which contains the same annual representation requirements in FAR 52.204-26(c)(2).

If the offeror/contractor has not submitted the representation at FAR 52.204-24, the CO must check the offeror's/contractor's annual representation in SAM, if applicable (see **ADS 302mbj, Exceptions to Contract Reporting in the Federal Acquisition Regulation Part 4.6**),to confirm that it has represented at FAR 52.204-26 (October 2020) that it "does not use covered telecommunications equipment or services". If the offeror/contractor has not completed the updated representation at FAR 52.204-26 after October 26, 2020, or has represented that "it does use covered telecommunications equipment or services," the CO must require the offeror/contractor to submit the representation at FAR 52.204-24 and the applicable disclosure information required in paragraphs (e)(2)(i) or (e)(2)(ii) of the provision. If the offeror/contractor represents that "it does use covered telecommunications equipment or services," the CO must not execute an award or modification without an approved waiver.

(2) COs must include **FAR clause 52.204-25**:

- In all solicitations and contracts;

- In modifications that exercise an option in contracts that do not already contain the clause; at least three (3) months in advance to provide notice for exercising the option and to provide contractors with adequate time to comply with the clause; and

- In modifications that extend the period of performance in contracts that do not already contain the clause, including those issued under the authority of the applicable Excusable Delays clause in the contract.

If a modification does NOT extend the period of performance or exercise an option, the CO must not include the clause in a modification that is executed for any other purpose.

(3) COs must include the internal **Section L provision Waivers under FAR Part 4.21 Prohibition On Covered Telecommunications And Video Surveillance Services** (available on the Agency intranet only):

- In all solicitations; and
- When requesting the representations at FAR 52.204-26 and 52.204-24 before modifying a contract or order to extend the period of performance or exercise an option.

COs must modify the Section L language accordingly for use in Requests for Task Order Proposals (RFTOPs). COs may request additional information from offerors who submit an affirmative representation in 52.204-24(d)(2) (see Section L provision for further details).

(4) For solicitations that have an anticipated award period of performance that extends beyond September 30, 2028, the CO must follow the procedures in the internal **Solicitation Procedures and Language to Implement Section 889** guidance (available on the Agency intranet only), and incorporate the appropriate language in Sections F and H of the solicitation and resulting award.

(5) IDIQs

COs must modify existing IDIQ contracts that do not already contain FAR clause 52.204-25 to add the clause before any new TOs may be issued; and before any existing TO is modified to extend the period of performance or exercise an option. All TOCOs must first verify that the IDIQ has been modified before issuing any new TOs and before modifying any existing TOs to extend the period of performance or exercise an option. COs must include the FAR provision 52.204-24 in all RFTOPs.

(e) CO Action on Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment

If the offeror/contractor submits an affirmative representation, the CO must not award a contract to the offeror or extend or renew a contract with the contractor unless a waiver as described in paragraph (3) below is granted, or a statutory exception as described in FAR 4.2102(b) applies.

In accordance with FAR 4.2103(a)(1)(i) and (a)(2)(i), the CO may rely on the “does not provide”/"does not use" representation(s) in FAR 52.204-26 and/or 52.212-3, and the

“will not provide”/”does not use” representations in FAR 52.204-24, unless the CO has a reason to question the representation.

If the CO has a reason to question a “does not use” representation, the CO must use the following language to require vendor verification:

> *"Thank you for submitting your Representation in response to Solicitation #[insert number]. Based on market research and feedback from Government contractors during the acquisition process, it appears that the telecommunications equipment or service(s) in [enter country name] uses covered technology. We request that you please reconfirm or resubmit your representation by [insert date]. If you determine that covered telecommunications equipment or services are being used, please let us know if there is no other alternate eligible source available. The Agency may be able to utilize a waiver of 889 requirements and your organization will remain eligible for an award."*

The CO may rely on the offeror/contractor's verification unless the CO has reason to question the verification. If the CO has reason to question the verification, the CO must consult with GC/A&A.

(f) Statutory Authority for Waivers and Waiver Procedures

i. Reserved

ii. Director of National Intelligence (DNI) Waivers

FAR 4.2102(b) authorizes the DNI to provide a waiver if the Director determines the waiver is in the national security interests of the United States.

If the Agency has any existing DNI waivers, the Agency will review the offeror’s/contractor’s disclosure information to determine if such waivers apply.

iii. Waiver Procedures

(a) Acquisition of Supplies for Use and Services for Performance Entirely Inside the United States.

COs are not authorized to use any DNI waivers to award contracts (including task orders and purchase orders) for supplies and services for use or performance entirely in the United States where the offeror/contractor provides an affirmative representation. This includes modifications to extend the contract/task order or to exercise an option.

(b) Acquisition of Supplies for Use and Services for Performance Outside the United States.

COs are authorized to use the authority of a DNI waiver in limited circumstances to award or extend a contract, or exercise an option, if the offeror/contractor submits an affirmative representation that meets the conditions of a waiver. The CO must follow the internal waiver procedures for use of a DNI waiver in the **Section 889 DNI Waiver Implementation Guidance** (available on the Agency intranet only). The procedures also address special requirements for ASIST filing and GLAAS reporting. While all waivers available to the Agency are listed in GLAAS, see the Section 889 DNI Waiver Implementation Guidance for information on the primary waiver available for the acquisition of supplies for use and services for performance overseas.

(g) CO Actions on Contractor Reporting Requirement under FAR clause 52.204-25

As required in paragraph (d) of FAR clause **52.204-25**, the contractor is required to report any use of covered equipment or services identified during the period of performance. If a contractor reports such use, the CO must immediately advise the COR and provide the information the contractor provided under the paragraph (d)(2)(i) to M/CIO (by emailing **Section889waiver@usaid.gov**) within one business day of notification. The clause requires that within 10 business days of the original submission, the contractor must provide any further available information about mitigation actions undertaken or recommended. The CO must promptly forward such additional information to M/CIO. On the third business day after the day of submitting such information, the CO may apply an available waiver or statutory exception if required to continue the award unless otherwise instructed by M/CIO.

302.3.7 Award

Effective Date: 04/20/2006

The following sections provide policy directives and required procedures for the award of a contract.

302.3.7.1 Reserved

302.3.7.2 Congressional Award Notice System

Effective Date: 09/12/2023

USAID's Congressional Award Notice System requires Contracting Officers (COs) to provide notice to the Bureau for Legislative and Public Affairs (LPA) after signing certain awards to U.S. organizations.

a. COs must follow the notification procedures in **ADS 302man, Congressional Award Notice**. The sequential steps are:

(1) Sign the award,

(2) Provide notice to LPA,

(3) Allow the 48-hour embargo period to elapse, then

(4) Release (or allow to be released) an announcement of the award. The Agency may not announce the award beforehand. See also Congressional Award Notification, Section II, Other Considerations.

b. Types of awards which require notice include

(1) Contracts of any value to an organization that has not previously received an award from USAID. Contracts with individuals are not included.

(2) Any award with which there was Congressional correspondence during the pre-award stage. LPA will alert the CO that such correspondence has occurred, and the CO will flag the award as falling under these notification criteria and procedures.

(3) Any award for a particular program or geographic region that the operating unit or LPA identifies as being of particular interest to Congress, the Agency, or the general public; for example, earthquake relief in Haiti or the international HIV/AIDS program. LPA will coordinate with its liaison in the operating unit to identify these awards and will alert the operating unit, the CO, or both of them at the earliest opportunity before the award decision.

(4) New contracts and contract modifications with a total estimated cost (TEC) or TEC increase of US $500,000 or more. Modifications providing only incremental funding (and involving no increase to the contract TEC) are not included.

Included in this category are:

(i) Contracts awarded under the U.S. Small Business Administration (SBA)'s 8(a) program. NOTE: Report the award to the subcontractor [the 8(a) firm] rather than the SBA.

(ii) Basic indefinite quantity contracts with maximum ordering limits over the $500,000 threshold.

(iii) Task orders awarded under USAID multiple award indefinite quantity contracts, as well as under GSA Federal Supply Schedule contracts and other government-wide acquisition contracts (GWACs).

302.3.7.3 Processing of Awards in the Global Acquisition & Assistance System (GLAAS)

Effective Date: 08/06/2013

Prior to signing a contract, COs must ensure that the entire award package is processed and generated in GLAAS, available only internally at **https://pages.usaid.gov/GLAAS**. The negotiation memorandum must be documented accordingly. GLAAS contains the most current version of the FAR and AIDAR clauses including those currently found in CIBs/AAPDs. For each acquisition award type in GLAAS, there are corresponding clause templates. The templates help ensure that mandatory clauses and provisions are included in all awards. When the award is signed by all relevant parties, the CO or negotiator must upload a scanned copy of the fully executed award into GLAAS. M/OAA/E has included the use of GLAAS on the Evaluation Scorecard used as part of the Procurement System Review.

302.3.7.4 File Documentation

Effective Date: 11/08/2021

The Agency Secure Image and Storage Tracking (ASIST) System is the Agency's official electronic repository for all Acquisition & Assistance (A&A) award documentation. A&A staff must file all documentation relating to an award, from pre-solicitation through close-out, in ASIST. CORs must also maintain their award administration files in ASIST. To avoid duplicate filing, A&A staff should not manually file documents in ASIST for GLAAS actions if the documents have been automatically exported from GLAAS into ASIST. The requirements and procedures for filing award documents in ASIST, as well as standards for file documentation by contract type are available internally at the **ASIST Homepage**. The ASIST guidelines also contain guidance for maintaining older awards in the paper-based format.

ADS 511, Essential Records Program requires that all essential records also be maintained in hard copy format. Not all contracts will meet the requirements of essential records. If the cognizant B/IO or Mission identifies the award as an essential record, in accordance with the procedures and criteria in ADS 511, COs and CORs must also maintain the award and COR files in hard copy. The Agency's Essential Records Program is managed by the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD).

302.3.8 Post-Award Administration

Effective Date: 04/20/2006

The following sections provide policy directives and required procedures governing the administration of a contract after award through close-out.

302.3.8.1 Reserved

302.3.8.2 Extraordinary contractual actions under AIDAR part 750

Effective Date: 05/31/2024

AIDAR part 750 specifies standards and procedures relating to requests for extraordinary contractual actions under Executive Order 11223 in a manner that is analogous to FAR part 50. As is the case with the similar FAR part 50 authorities, AIDAR 750.7107 - Limitations upon exercise of authority, only allows the use of this authority for issuance of a modification when no other legal authority is available. See **ADS 302mbk, Procedures for Processing Extraordinary Contractual Actions in accordance with AIDAR Part 750** for further policies and procedures.

302.3.8.3 Reserved

302.3.8.4 Approval of Contractor Salaries Exceeding the USAID Contractor Salary Threshold (USAID CST)

Effective Date: 09/12/2023

The following procedures must be followed to obtain approval of contractor salaries exceeding the USAID Contractor Salary Threshold (USAID CST) described in section **302.3.6.9.a**.

a. The Director, M/OAA, must approve any contractor salary that exceeds the USAID CST before the Contracting Officer (CO) may authorize the payment of the salary under a USAID direct contract.

b. The CO must determine if the proposed salary exceeding the USAID CST is fair and reasonable in accordance with applicable **FAR** and **AIDAR** guidance. If the CO determines that the proposed rate is fair and reasonable, the following procedures must be followed to obtain the approval of the Director, M/OAA, for the salary:

(1) The CO must prepare a memorandum in which the proposed salary is evaluated as fair and reasonable in accordance with the applicable FAR guidance. The memorandum must include discussion of the following items:

- Comparison of the proposed salary with the pre-solicitation independent government cost estimate (IGCE), and
- The specific basis upon which the proposed rate is considered fair and reasonable in accordance with the applicable **FAR** cost principles.

(2) The CO must forward the memorandum to the Contracting Officer's Representative (COR) for their concurrence. The COR must prepare a supplemental memorandum indicating concurrence or non-concurrence, discussing relevant technical issues, such as

- Technical competence of the individual compared to that required for the work,
- Scope of responsibility, and
- Any inconsistencies with independent government cost estimates.

(3) The COR must forward both the CO's and the COR's memoranda to the cognizant Assistant Administrator or Mission Director for concurrence.

(4) If concurrence is granted, the COR returns the memoranda to the CO who will then forward it to the Director, M/OAA, for a decision.

(5) After the Director, M/OAA, renders a decision, the CO must convey that decision in writing to the contractor to facilitate the contractor's compliance with the relevant cost principle in **AIDAR 731**.

(6) The CO must document the actions required in this section in the contract file (see **AIDAR 731.205-6, 731.371(b), and 731.772**). The approval document must be placed in the contract file.

c. An increase in the maximum annual rate for the USAID CST cannot, by itself, be the basis for salary increases for contractor employees. Revisions to salaries should only be considered along with changes to the scope of work or in accordance with other contract terms. Salary increases should not be granted without corresponding increases in the quality or quantity of services rendered.

302.3.8.5 Post Award Requirements Concerning Prohibition on Transactions with Designated Entities – Office of Foreign Assets Control (OFAC)

Effective Date: 07/01/2007

a. COs must check the **Office of Foreign Assets Control (OFAC) List** to ensure that the names of the contractor, subcontractors, and individuals from those organizations who are known to the CO are not on the list **before:**

- **Awarding** an option or a modification to increase the scope of a contract,
- **Issuing** modifications for incremental funding, and
- **Consenting** to subcontracts (see **FAR Subpart 44.2)**.

b. COs must ensure that contractors **are aware** that the requirements of **FAR**

52.225-13, Restrictions on Certain Foreign Purchases, apply in all USAID-funded awards; contractors must include the clause in all subcontracts.

302.3.8.6 The Role of the Contracting Officer in the Debt Collection Process

Effective Date: 08/06/2013

The **Federal Claims Collection Act of 1966** and the **Debt Collection Improvement Act of 1996 (DCIA)** mandate that agencies comply with standard, Governmentwide debt collection procedures.

The CO is responsible for determining the principal amount of most debts owed by contractors. For the process for recovering debt, see **ADS 625, Accounts Receivable and Debt Collection**. Additional guidance can be found in **ADS 302sav, Contracting Officer's Role in Debt Collection**.

302.3.8.7 Performance Monitoring and Contractor Performance Assessment Reporting (CPAR)

Effective Date: 11/08/2021

1. Site Visits. Site visits are an important part of effective contract performance monitoring; joint visits by the CO and the COR are encouraged. Each time the COR or a designated representative makes a site visit, the COR must ensure that a brief report highlighting the findings is placed in the official award file in ASIST.

2. When evaluating contractor performance and integrity information, COs and CORs must follow the guidance and procedures in **ADS 302mbh, Assessment and Use of Contractor Performance and Integrity Information**.

302.3.8.8 Reporting of Foreign Taxes

Effective Date: 09/12/2023

AIDAR clause 752.229-71 requires contractors to annually report by April 16 on whether foreign taxes, including value-added taxes and custom duties, have been imposed on U.S. foreign assistance and, if so, whether the foreign government reimbursed the taxes.

COs must tailor AIDAR clause 752.229-71 to include the appropriate point of contact and address for the report submission. For USAID Missions this should be a point of contact at the Embassy or Mission country, in which the contract will be performed. For USAID/Washington-issued contracts this will be a point of contact in M/CFO's Cash Management and Payments division (M/CFO/CMP).

The clause requires contractors to provide CORs with a copy of the report. CORs must monitor contractor compliance with the requirements of this clause and verify that the reports are submitted according to the terms of the award.

302.3.8.9 Processing of Award Modifications in GLAAS
Effective Date: 08/06/2013

Prior to signing a contract modification, COs must ensure that: the entire modification package is processed and generated in GLAAS; and the negotiation memorandum is documented accordingly. When the modification is signed by all relevant parties, COs or negotiators must upload a scanned copy of the fully executed award into GLAAS.

302.3.8.10 USAID Implementing Partner Notices (IPN) Portal for Acquisition
Effective Date: 08/30/2016

a. The USAID Implementing Partner Notices Portal for Acquisition (referred to as "IPN Portal") streamlines USAID's process of providing universal bilateral modifications for awards to Partners/Contractors for their signature. The IPN Portal is also available to provide notices to USAID contractors who register with the IPN Portal. The IPN Portal posts proposed universal bilateral modifications for awards, which can be accessed electronically by registered contractors and A&A specialists. The IPN Portal for Acquisition is located at **https://sites.google.com/site/usaidipnforacquisitions/**.

This policy applies to all awards except:

- Individual task orders under IDIQs,
- Acquisitions below the micro-purchase threshold,
- Purchase card transactions,
- Purchase orders, and
- Orders and Blanket Purchase Agreements (BPAs) issued under GSA Multiple Award Schedules.

b. When necessary, the IPN Portal Administrator, as designated by the Director, M/OAA, will generate bilateral award modifications and notices and post the modifications/notices to the IPN Portal. Examples of such modifications include required FAR or USAID clause updates affecting all awards (or classes of awards to be specified in the modification). The IPN Portal Administrator will provide advance notice to COs that a policy clause update is being prepared for posting on the IPN Portal. COs are responsible for modifying awards in accordance with FAR or USAID clause changes unless the IPN Portal Administrator provides advance notice to COs that a policy clause update is being prepared for posting on the IPN Portal.

IPN Portal modifications must not change the:

- Amount of obligated funds,
- Total estimated cost,
- Statement of Work, or
- Period of performance.

c. Proposed bilateral modifications provided through the IPN Portal are not effective until the Contractor and the CO sign the modification. Additional policy guidance and specific instructions for subscribing to the IPN Portal can be found in **ADS 303max, USAID Implementing Partner Notices (IPN) Portal**. COs and contract specialists must register for access to the IPN Portal in order to finalize the processing of the IPN Portal modifications under their respective awards, and complete GLAAS requirements in accordance with this policy.

d. COs must insert the AIDAR clause 752.7036 entitled "**USAID Implementing Partner Notices (IPN) Portal for Acquisition (July 2014)**" in all solicitations and resulting contracts, except for: orders under indefinite delivery contracts issued pursuant to (48 CFR) FAR subpart 16.5; orders under Federal Supply (GSA) Schedules issued pursuant to (48 CFR) FAR subpart 8.4; and contracts and purchase orders awarded under the simplified acquisitions procedures of (48 CFR) FAR part 13.

302.3.8.11 Reporting of Terminations for Default/Cause

Effective Date: 03/08/2022

COs must keep the Suspending and Debarring Official (SDO) and M/MPBP/COMP informed of any planned termination for default (**FAR Subpart 49.4**) or termination for cause (**FAR Subpart 12.403**) action. At least five (5) business days prior to proceeding with a termination, COs must provide the following information by e-mail to **compliance@usaid.gov**:

- Contractor's name,
- Unique entity identifier,
- Address,
- Contract and/or task order number,
- CO and COR names,
- Award Period of Performance,
- Award value (TEC), and
- Reasons for termination.

302.3.8.12 Contractor Code of Business Ethics and Conduct - Contractor Disclosures

Effective Date: 09/12/2023

COs must insert the FAR clause FAR 52.203-13, Contractor Code of Business Ethics and Conduct, in solicitations and contracts when the estimated value of the contract is over $6,000,000 and the period of performance is 120 days or more. Pursuant to this clause, contactors that have credible evidence of violations of Federal criminal law, (including fraud, conflict of interest, bribery, or gratuity violations found in **Title 18 U.S.C.**) or violations under the Civil False Claims Act (31 U.S.C. 3729-3733), must make timely written disclosure of the violation(s) to the Office of the Inspector General (OIG), and provide a copy to the CO.

Within three (3) business days of receipt of such a contractor disclosure, the CO must forward a copy of the contractor's disclosure documents directly to M/MPBP/COMP at **compliance@usaid.gov**. M/MPBP/COMP in coordination with the Office of the General Counsel, Litigation and Enforcement Division (GC/LE) and the agency's OIG will take appropriate action.

At the post-award orientation meeting with the contractor, the CO must discuss the importance of the ethics clause, and when and to whom to disclose the relevant information.

302.3.8.13 Debarment and Suspension

Effective Date: 09/12/2023

a. M/MPBP/COMP provides direct support and recommendations to the SDO on all matters related to suspension and/or debarment. GC/LE serves as the primary attorney for the Agency's Suspension and Debarment Official. In that role GC/LE provides advice on a full range of enforcement matters as well as issues regarding contractor and grantee responsibility and issues of corporate compliance and internal controls.

b. COs must notify M/MPBP/COMP in writing at **compliance@usaid.gov** when they become aware of any of the causes of suspension or debarment, with regard to contractors and subcontractors, as specified in **FAR 9.4**.

c. Upon receiving notification from the CO that a contractor may have engaged in actions that could lead to suspension or debarment, M/MPBP/COMP will:

- Consult with GC/LE, as necessary;
- Consult with other offices within USAID, as required, to prepare a recommendation for the SDO; and

- Coordinate suspension or debarment actions with the Interagency Suspension and Debarment Committee (ISDC), and/or the Office of Inspector General.

d. When, in accordance with **FAR Part 9**, the SDO decides to initiate a suspension and /or debarment action, M/MPBP/COMP will:

- Issue a written notice of suspension or proposed debarment action to the contractor and any affiliates involved upon review of the action by GC/LE; and

- Enter the contractor's exclusion information into the System for Award Management (SAM).

302.3.8.14 Civilian Board of Contract Appeals Procedures

Effective Date: 07/21/2014

a. In accordance with AIDAR 733.270, the Civilian Board of Contract Appeals (CBCA) resolves all contractor appeals of final decisions issued by USAID COs.

b. In accordance with **FAR Subpart 33.2**, the CO must attempt to resolve all controversial contractual issues by mutual agreement with the contractor. When this is not possible, the CO must consult with the Assistant General Counsel for Litigation and Enforcement (GC/LE) prior to issuing a CO final decision. The contractor may appeal a CO's final decision and failure by a CO to issue a timely final decision.

c. When a contractor files an appeal with CBCA, GC/LE, working with the CO, will compile and submit to the Board and the contractor, all documentation relevant to the appeal. To comply with CBCA requirements, the CO must follow the procedures and timeframe specified below:

Within 15 calendar days of receipt of an appeal or advice that an appeal has been filed, the CO must assemble, scan and transmit via electronic mail to GC/LE all documents relevant to the claim and to the CO's decision that has been appealed, including:

- The CO's decision, if any, from which the appeal is taken;

- The contract, including modifications, specifications, plans and drawings, if any;

- All correspondence between the parties relevant to the appeal, including the written claim or claims that are the subject of the appeal, and evidence of their certification, if any;

- Affidavits or statements of any witnesses on the matter in dispute and transcripts of any testimony taken before the filing of the notice of appeal;

- All documents and other tangible things on which the CO relied in making the decision, and any related correspondence;

- The abstract of bids, if relevant; and

- Any additional evidence or information deemed necessary to determine the merits of the appeal.

302.3.8.15 Reporting and Disposition of Government Property

Effective Date: 06/21/2018

a. In accordance with AIDAR 752.245-70 Government Property-USAID Reporting Requirements, the contractor is required to provide an annual report of all Government-furnished property (GFP).

b. The COR, as the designated Property Manager (see FAR Part 45 and ADS 302 (COR Designation Letter), must ensure receipt of the "Annual Report of Government Property in Contractor's Custody" required under AIDAR clauses 752.245-70 and 752.245-71.

All mobile Information Technology (IT) equipment, including but not limited to, mobile phones (*e.g.,* smartphones), laptops, tablets, and encrypted devices provided as government furnished property, title to which vests in the U.S. Government, are considered accountable personal property and must be reported by the contractor on an annual basis. M/CIO encourages CORs to request copies of M/CIO inventory records from the M/CIO Service Desk to verify against the contractor annual property reports. The AIDAR requires the contractor to also include in the annual report, all contractor acquired mobile IT equipment.

c. Disposition

The COR is responsible for verifying the return or disposition of Government-furnished Property (GFP). In the case of GFP mobile IT equipment, the COR is responsible for coordinating the return of the equipment to the Agency B/IO AMS Officer in accordance with the policy and procedures in **ADS 547**. CORs must use the **COR Checklist for Management of Government-furnished IT assets and USAID Access**.

302.3.8.16 Close-out Procedures
Effective Date: 09/17/2010

All USAID direct contracts must be closed in accordance with **FAR 4.804** closeout of contract files. For guidance on specific procedures for contract closeout see **ADS 302sat, Guidance on Closeout Procedures for A&A Awards**.

302.4 MANDATORY REFERENCES

302.4.1 External Mandatory References
Effective Date: 06/21/2018

a. **Executive Order 11223, Relating to the Performance of Functions Authorized by the Foreign Assistance Act of 1961, as amended**

b. **Executive Order 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism**

c. **Federal Acquisition Regulation (FAR)**

d. **Federal Acquisition Regulation (FAR) Case 2005-15**

e. **Federal Information Processing Standards, Publication Number 201 (FIPS PUB 201)**

f. **Foreign Assistance Act of 1961, as amended**

g. **The National Defense Authorization Act for FY 1997 (Public Law No. 104-201), Section 821(b)**

h. **The Office of Federal Procurement Policy (OFPP) Act of 1974 (Pub. L. 93-400), as amended by Pub. L. 96-83**

i. **OMB Guidance M-05-24, dated August 5, 2005**

j. **State cable 119780 dated April 15, 1988 "Policy Guidance on Criteria for Payment of Salary Supplements for Host Government Employees"**

302.4.2 Internal Mandatory References
Effective Date: 05/31/2024

a. **Acquisition and Assistance Policy Directives (AAPDs)/Contract Information Bulletins (CIBs)**

b. **ADS 103, Delegations of Authority**

c. **ADS 201, Program Cycle Operational Policy**

d. ADS 205, Integrating Gender Equality and Female Empowerment in USAID's Program Cycle

e. ADS 221, USAID's Procedures for Implementing International Agreements or Tied and Untied Aid

f. ADS 300, Agency Acquisition and Assistance (A&A) Planning

g. ADS 300mat, Guidance for Broad Agency Announcements

h. ADS 302mah, Information Security Acquisition Requirements for Acquisition of Unclassified Information Technology

i. ADS 302mam, Class Justification for Other Than Full and Open Competition for Procurements by Missions for U.S. Manufactured Vehicles

j. ADS 302man, Congressional Award Notice Procedures

k. ADS 302mao, Contract Review Board Guidelines

l. ADS 302mar, Model Letter and Procedures for Designating the Contracting Officer's Representative (COR) for Contracts and Task Orders

m. ADS 302mas, Special Contract Requirements

n. ADS 302mbe, Local Competition Authority Pilot Program

o. ADS 302mbh, Assessment and Use of Contractor Performance and Integrity Information

p. ADS 302mbi, Acquisition Planning for Indefinite Delivery Indefinite Quantity Contracts and Task Orders

q. ADS 302mbj, Exceptions to Contract Reporting in the Federal Acquisition Regulation Part 4.6

r. ADS 302mbk, Procedures for Processing Extraordinary Contractual Actions in accordance with AIDAR Part 750

s. ADS 302mbl, Best Practices Guide for Indirect Costing

t. ADS 302mbm, Organizational and Consultant Conflicts of Interest

u. ADS 302mbn, Uniform Use of Line items

v. ADS 302mbo, Guidance for Use of the Authorities under Expedited Procedures Packages (EPPs)

w. ADS 302mbq, Instructions for the Solicitation Notice Regarding Definitization of Requests for Equitable Adjustment Related to Change Orders Under Construction Contracts

x. ADS 302mbr, Procedures for Deviations from the FAR or AIDAR

y. ADS 303max, USAID Implementing Partner Notice (IPN) Portal

z. ADS 304, Selecting Between Acquisition and Assistance (A&A) Implementing Instruments

aa. ADS 306mah, Contracting Officer Representative (COR) Checklist: Exit Procedures for Institutional Support Contractors and Federal Employees Under Interagency Agreements

ab. ADS 309mad, Competition and Publicizing, and Class Justification and Approval (J&A) for Limited Competition for PSCs

ac. ADS 310, Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID

ad. ADS 320, Branding and Marking

ae. ADS 330, Source and Nationality Rules for Administrative Procurement

af. ADS 350maa, Guidance on Funding Foreign Government Delegations to International Conferences

ag. ADS 458, Training and Career/Professional Development

ah. ADS 509, Management and Oversight of Agency Information Technology Resources

ai. ADS 511, Essential Records Program

aj. ADS 545, Information Systems Security

ak. ADS 547, Property Management of Information Technology (IT)

al. ADS 547maa, Limits on Custom-Developed Software

am. ADS 557, Website Management and Public Information

an. **ADS 580, Conference Planning and Attendance**

ao. **ADS 624, Host Country-Owned Foreign Currency**

ap. **ADS 625, Accounts Receivable and Debt Collection**

aq. **ADS 628, Gifts and Donations and Dollar Trust Fund Management**

ar. **Agency for International Development Acquisition Regulation (AIDAR)**

302.5 ADDITIONAL HELP

Effective Date: 09/12/2023

a. **ADS 302sad, Contract Types to Address Global Technical Leadership with Field Support and/or Cost-Contributions**

b. **ADS 302sae, Certification and Agreement for the Use and Disclosure of Proposals**

c. **ADS 302sal, Field Support Action Process**

d. **ADS 302sam, The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs_(TEXT ONLY VERSION)**

e. **ADS 302sam1, The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs_(VERSION WITH GRAPHICS)**

f. **ADS 302sat, Guidance on Closeout Procedures for A&A Awards**

g. **ADS 302sav, Contracting Officer's Role in Debt Collection**

h. **ADS 302saw, Simplified Acquisition Guide**

i. **ADS 302sax, Guide on the Use of the Changes Clause: What Modifications Trigger Competition?**

j. **ADS 302say, Guidance for use of the Expedited Procedures Package (EPP) for Responding to Outbreaks of Contagious Infectious Diseases**

k. **ADS 303sae, Operational Security – General Information**

l. **ADS 579sab, Protecting Sensitive Information Prior to Publication of USAID Foreign Assistance Data**

m. **Procurement Executive Bulletins (PEBs)**

302.6 DEFINITIONS

Effective Date: 01/31/2024

Acquisition & Assistance Policy Directives (AAPDs)
Issued by the Director, Office of Acquisition & Assistance (M/OAA), to provide information of interest to contracting personnel, such as advance notification or interim implementation of changes in acquisition or assistance regulations, reminders, procedures, and general information. (**Chapter 302**)

Chief of the Contracting Office (CCO)
For USAID Missions, the CCO is the Supervisory Contracting Officer at the Mission, or in the case of a regional Mission, the Regional Supervisory Contracting Officer. If the CCO is also the Contracting Officer (CO) for an action requiring approval of the CCO, then approval will be at a level above the CCO. For USAID/Washington, the CCO is the M/OAA Deputy Director of Washington Operations. (**Chapter 302**)

Competition Advocate
An individual charged by FAR 6.5 and AIDAR 706.5 with promoting full and open competition. For the designation of competition advocates, see AIDAR 706.501. (**Chapters 302** and **305**)

Contract Review Board (CRB)
A board comprised of Contracting Officers and a General Counsel (GC) representative responsible for reviewing documentation for acquisition actions exceeding $10 million in order to minimize vulnerabilities that could lead to protests, disputes, claims, and litigation against the Agency; providing senior level advice on contracting actions to the Contracting Officer; and, ensuring the consistency of procurement documentation. (**Chapter 302**)

Contracting Officer (CO)
A person representing the U.S. Government through the exercise of their delegated authority to enter into, administer, and terminate contracts and make related determinations and findings. This authority is delegated by one of two methods: to the individual by means of a "Certificate of Appointment", SF 1402, as prescribed in FAR 1.603-3, including any limitations on the scope of authority to be exercised, or to the head of each contracting activity (as defined in AIDAR 702.170), as specified in AIDAR 701.601. (**Chapters 302** and **331**)

Direct Acquisition
When USAID is a direct party, a signatory, in a mutually binding legal relationship obligating the seller ("contractor") to furnish supplies or services and the buyer ("USAID") to pay for them. (**Chapters 301** and **302**)

Federal Acquisition Regulation (FAR)

The primary document containing the uniform policies and procedures for all executive agencies for the acquisition of supplies and services with Congressional appropriations. It is Chapter 1 of Title 48, Code of Federal Regulations (CFR). (**Chapters 302** and **330**)

Head of the Contracting Activity (HCA)
The official who has overall responsibility for managing a contracting activity. AIDAR 702.170 lists each HCA for USAID and the limits on the contracting authority for each are in AIDAR 701.601. Also, see contracting activity. (**Chapters 302**, **330**, **331**)

Planner
The designated person responsible for developing and maintaining a written Individual Acquisition Plan (IAP), or for the planning function in those acquisitions (FAR 7.101) or assistance actions not requiring a written plan. The Planner may be the Project Manager, where a project approach is used (**ADS 201**), or the intended Contracting Officer/Agreement Officer Representative (COR/AOR), among other examples. The Planner works with the CO/AO to carry out the planning function. Operating Units (OUs) must ensure that a Planner is identified for a particular procurement. Though OUs have the discretion to determine the appropriate individual based on the organizational structure and functions of the unit, the Planner must be an individual with sufficient authority in the OU to ensure that planning complies with this chapter, FAR acquisition planning requirements, and OMB/OFPP Policy Letter 11-01 Performance of Inherently Governmental and Critical Functions. (**Chapters 201, 300**, **302**, **303**, **304**)

Procurement Executive Bulletin (PEB)
An information document issued by the Director, Office of Acquisition & Assistance, to provide information of interest to contracting personnel, such as policy reminders, information regarding general guidance, best practices, reminders, and frequently asked questions. (**Chapter 302**)

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