

SUBJECT: Use of GovWorks and Other Franchise Funds

NEW MATERIAL: This Notice and attachment serve to explain Franchise Funds—including GovWorks. It also establishes the policy and procedures for USAID's "pilot program" with GovWorks (and any other Franchise Fund or Cooperative Administrative Support Units (CASU) through which USAID staff obtain procurement services).

EFFECTIVE DATE: 01/24/2002

POLICY

**USAID/General Notice
M/OP
01/24/2002**

SUBJECT: Use of GovWorks and Other Franchise Funds

There has been a recent surge of interest in the use of GovWorks for handling USAID procurements. GovWorks is a self-sustaining Franchise Fund entity of the Department of Interior's (DOI) Minerals Management Service (MMS) that is authorized to perform contracting functions for other Government agencies.

This Notice and attachment serve to explain Franchise Funds – including GovWorks. It also establishes the policy and procedures for USAID's "pilot program" with GovWorks (and any other Franchise Fund or Cooperative Administrative Support Units (CASU) through which USAID staff obtain procurement services). This policy provides guidance on when and how USAID staff may use the procurement services of Franchise Funds like GovWorks during the pilot phase of one year established in this Notice.

We will be arranging meetings in the next few weeks for GovWorks to brief USAID staff on using their services.

The policy and procedures contained in this Notice will be appropriately incorporated into ADS Chapter 306.

Point of Contact: Questions regarding this Notice should be directed to Diane Howard, M/OP/POL at 202-712-0206.

Notice 0144

Use of GovWorks and Other Franchise Funds

I. WHAT ARE FRANCHISE FUNDS AND CASUs?

Franchise Funds: Section 403 of the Government Management Reform Act (GMRA) of 1994, Pub. L. 103-356, authorized six executive agencies, designated by the Director of the Office of Management and Budget, to establish Franchise Funds on a pilot basis. Franchise Funds operate at the Departments of Commerce, Health and Human Services, Interior, Treasury, and Veterans Affairs, and the Environmental Protection Agency. They operate under the Government-wide pilot program, which has been extended until September 30, 2002. During this time, the Franchise Funds are authorized, consistent with Office of Management and Budget (OMB) guidelines, to provide common administrative support services to their parent agencies and to other Federal agencies when such services can be provided more efficiently through the franchise funds than by other means.

The Franchise Fund agencies establish fees to cover their total estimated costs for providing the services. Fees are generally assessed as a percentage of the overall cost of activity/services you are accessing through the Franchise Fund agency. Using agencies must make a determination that use of a Franchise Fund provider is the most expeditious and cost-effective route for obtaining these services. USAID presently creates more contracting actions than we have contracting officers to handle them. Recruitment for additional qualified contracting officers has been slow and retention remains an issue. USAID has determined that use of GovWorks is an efficient means to obtain the services of additional procurement professionals. This determination is a blanket determination covering all actions processed by GovWorks during the pilot phase. Therefore, there is no need to make a separate determination for each action.

Franchise Funds operate under the authority of the Government Management Reform Act (GMRA) of 1994 and this authority is the appropriate one to cite when entering a Franchise Fund agreement. This authority is distinct from the USAID-specific authorities under the Foreign Assistance Act (FAA) of 1961 (e.g., 632(a), 632(b)) as well as the government-wide Economy Act authority. Therefore, Franchise Fund agreements have a distinct format and content as prescribed in Attachment 1 and as more fully described in Section III.(B) below. Moreover, the analyses and justifications normally required under OMB Circular A-76 and FAA section 621(a) do not apply because they are superseded by GMRA's explicit authorization for the Franchise Funds to provide common administrative support services to other agencies (including USAID).

CASUs: Cooperative Administrative Support Units (CASUs) are a broader category that includes the GMRA Franchise Funds. CASUs are more fully explained in the October 19, 2001, USAID General Notice entitled "Alternative Means for Obtaining Support Services" (<http://iapp1.usaid.gov/notices/notDetail.cfm?msgID=4863> – link available to USAID Intranet users only). A unique aspect of the Franchise Funds is that – unlike other CASU arrangements – the funds provided in an interagency agreement to a Franchise Fund are considered obligated when the agreement is signed. For more information on CASUs, visit the CASU website at: www.casu.gov.

II. WHAT IS GOVWORKS?

Based in Herndon, Virginia and part of the Department of Interior (DOI), GovWorks is a Franchise Fund offering procurement services for a fee, normally three- percent of the contract value. GovWorks handles acquisitions from start to finish--- that is, it conducts the competition, makes the award, administers the award, including payment of vouchers and close out. GovWorks also provides legal advice and is responsible for claims, protests, disputes, and appeals related to the USAID action assigned to them. For full information on its basic services, please refer to the GovWorks web site: www.Govworks.gov.

In order to meet the needs of requesting agencies, GovWorks frequently enters into task orders off GSA schedule contracts, such as FEDSIM and MOBIS, but also conducts other competitive procurements when necessary to meet client needs. Like all U.S. Federal agencies, GovWorks employees are trained and warranted, direct-hire Contracting Officers of the Federal Government. As standard practice, it follows the Federal Acquisition Regulation (FAR) and its own DOI supplement to FAR in awarding contracts.

III. USAID’S “PILOT” PROGRAM FOR USE OF GOVWORKS

In issuing this Notice, USAID establishes a one-year pilot program¹ for working with GovWorks. This program may be extended to procurement services obtained from other Franchise Funds or other CASU arrangements provided the requiring office coordinates in advance with the Office of Procurement, Policy Division (OP/Policy) and the Office of General Counsel, Contract and Commodity Management Division (GC/CCM). The one-year time limitation refers to the period during which interagency agreements may be issued to GovWorks and is not intended as a restriction on the period of performance for the contracts awarded by GovWorks during this pilot phase.

To facilitate their ability to meet USAID’s often unique requirements, USAID has met with GovWorks with the following results:

A. USAID Parameters for Use of GovWorks

GovWorks is able to accept a broad array of procurement actions from requesting agencies. In addition to contracts, it also is willing to process grants and cooperative agreements. Initially however, USAID will use GovWorks services incrementally, as described below. We are conducting the pilot program in stages so that we have an opportunity to gain experience on a controlled subset of actions before expanding the use of GovWorks to other actions. We may restrict future use of GovWorks if lessons learned support such a restriction.

During this “pilot phase,” the following parameters apply:

- 1) USAID staff may only use GovWorks for acquisition (that is, contract) actions – not assistance (that is, grants and cooperative agreements).

¹ The government wide Franchise Fund pilot currently expires 30 Sep 02. It is anticipated that the government wide pilot program will be extended again. In the event that it is not extended, USAID’s pilot program expires commensurate with the government wide program.

- 2) USAID staff may use GovWorks for all simplified acquisition actions (that is, those actions under \$100,000).
- 3) USAID staff may use GovWorks for acquisition actions exceeding the simplified acquisition threshold under the following conditions:
 - a) The action must be agreed upon by the requesting office and the USAID Contracting Officer. During procurement planning discussions, the offices should consider which, if any, planned actions might be appropriate for GovWorks. If unplanned requirements arise later, agreement can be reached outside the normal planning process. The Agency is optimistic that GovWorks will be able to help reduce the workload on M/OP, but we should be mindful that GovWorks also has limits. Last year GovWorks did only two contracts for the Agency. M/OP will monitor GovWork's performance and capacity during the pilot year, but Bureaus are discouraged from proposing too many contracts for GovWorks.
 - b) You must consult with cognizant legal counsel for any proposed actions that will result in a contract involving long-term overseas assignment of contractor employees or shipment of goods overseas. This consultation is to ensure that issues under the applicable framework bilateral agreement, if any, are identified and appropriately addressed, where possible.
 - c) Actions proposed to be sent to GovWorks cannot be for the award of
 - A Task Order under a USAID-issued Indefinite Quantity Contract (IQC).
 - An IQC unless the requiring office agrees that GovWorks will issue all the Task Orders thereunder. (This rule is from GovWorks.)
 - A Personal Services Contract (PSC).
 - A contract with a "grants under contract" component (see ADS 302, USAID Direct Contracting).
 - A contract involving population activities or social marketing activities. For the purposes of this Notice, "population activities" refers to those contracts that would require the "Population Planning" provision ("Mexico City" language) and "social marketing activities" refers to contracts under which the contractor or any lower-tier subcontractor may generate income in the performance of the contract.
 - A contract that is anticipated to be politically sensitive or that uses any USAID-specific authorities (for example, impairment of foreign assistance objectives, notwithstanding, etc.).
- 4) The only approved means for accessing GovWorks is through a GovWorks Agreement under the authority of GMRA (see Attachment 1). GovWorks agreements may include tasking for multiple contract actions but may only be signed by warranted Contracting Officers within the Office of Procurement or overseas Contracting Officers (that is, BS93s and BS94s). Limiting the sources of signatory authority is part of the pilot program.
- 5) USAID staff must follow the forward funding guidelines applicable to interagency agreements (see ADS 602 and 603).

- 6) GovWorks agreements may provide for funding to be provided on an incremental basis (both for the GovWorks Agreement and the contract issued by GovWorks) subject to coordination with GovWorks by the requesting technical office.

When you identify an action on the procurement plan as a potential action for processing by GovWorks, your OP or Mission contracting officer will review the action for compliance with the above parameters. If the action complies with the parameters above, the USAID Contracting Officer (CO) will execute an interagency agreement with GovWorks, using the form in Attachment 1. Please note that during the process of issuing the GovWorks Agreement, the USAID CO will not review the action request for any “contractual” issues. GovWorks is responsible for handling that type of qualitative review.

B. Considerations

Use of GovWorks for some Agency contracting actions should serve as a much-needed supplement to our in-house contracting workforce. When considering which actions to send to GovWorks, you should be aware of certain facts. Of paramount importance is the fact that if your action is processed by GovWorks, it will result in a DOI contract. This means that:

- 1) The Contracting Officer for that contract resides at GovWorks. The GovWorks Contracting Officer handles all administrative actions. No USAID Contracting Officer has authority to intervene in the contract.
- 2) The payment function resides at GovWorks. GovWorks will handle all payment, audit, and voucher related activities. No USAID Controller has authority to intervene in the contract.
- 3) Cognizant Technical Officers (CTOs) will play the key-coordinating role in the administrative effort since GovWorks personnel do not have access to other USAID personnel except through the CTO. (This will be especially true initially.) For example, if there is a question about restricted commodities, the CTO will have to direct GovWorks personnel to the correct source for answers. Likewise, if there is a contract implementation problem at an overseas mission, the CTO is the contact for GovWorks in resolving such problems. GovWorks COs will not know – at least in the beginning – how to contact the appropriate parties in a given country. The CO in that country is not a “backstop” to the GovWorks CO since the contract is a DOI contract and the Mission CO does not have access to the contract nor authority or responsibility for it. Further, only GovWorks can issue binding contract interpretations, approvals, changes, etc.
- 4) DOI lawyers will handle protests. DOI lawyers may or may not be sensitive to the political situation of a given country or activity. USAID is liable for the costs of the protest if DOI determines that USAID documents or actions of USAID personnel are the cause of the protest.
- 5) GovWorks Contracting Officers review your procurement request and Statement of Work (SOW) from the perspective of broad contractability. However, it gives the benefit of the doubt to the requesting agency. This means, that GovWorks will assume that procurement requests that we send them have been appropriately vetted within the Agency and that the SOW reflects a standard that is acceptable to the Agency. Likewise, GovWorks assumes that the requesting office has or will comply with all pre-obligation requirements necessary for that action. GovWorks is not responsible for prompting a requesting agency to fulfill its

own internal requirements. Cognizant Assistant Administrators (AAs) and Mission Directors are responsible for ensuring that adequate procedures exist or are established within their Bureau or Mission to ensure that all the USAID pre-obligation requirements are met. The ADS 200 Reference entitled “Form to Use Before Obligating Funds” may be considered for these purposes.

- 6) Statistics about GovWorks contracts comes from GovWorks. This means that if you are responding, for example, to a request to provide data on your entire Bureau or Mission “contract” portfolio, you will need to “merge” data from USAID systems with data from GovWorks reports if you want to identify the GovWorks activities as contracts. USAID systems will report such actions as “interagency agreements” issued to GovWorks. However, our systems will not have any information about the resulting contracts issued by GovWorks.

C. Understanding between GovWorks and USAID

USAID and GovWorks are in the process of negotiating a Memorandum of Understanding (MOU) to govern all actions USAID may assign to GovWorks.

The draft MOU encapsulates the verbal agreements between GovWorks and USAID and also addresses issues of reporting and audit responsibilities. As part of the MOU, GovWorks agrees to:

- 1) Charge USAID only two percent of the obligated amount instead of the normal three-percent charge.
- 2) Use the USAID supplement to the FAR – the AIDAR- in processing and creating contract documents for USAID. Using the AIDAR ensures that applicable USAID provisions for those contracts that require overseas assignment of personnel will be included in the resulting contract. Please note that the GovWorks Contracting Officers (COs) will decide which provisions are applicable to a given procurement based upon the prescriptions for their use contained in the AIDAR.
- 3) Follow USAID Automated Directive Systems (ADS) and USAID Contract Information Bulletins (CIBs) so contracts that GovWorks awards will also comply with the multi-faceted lower level acquisition policies and procedures of USAID. GovWorks will be added to the ADS distribution list so it will have current copies of ADS CDs. Likewise, it will be added to the CIB distribution list. Please note again, that GovWorks COs will be responsible for determining which policies and procedures are applicable for a given contract.
- 4) Work with the requiring office to determine the appropriate frequency of reporting on the activity. (GovWorks provides monthly standard financial reports but will work with the CTO to determine how frequently s/he needs these reports. GovWorks also initiates required Contractor Performance Reports (CPRs) that will require CTO input. As always, the Contractor will be responsible for progress and performance reports of the activity as required by the terms included in the contract.)
- 5) Obtain CTO technical approval for payment of invoices following DOI procedures and provisions of the contract. This request will often be done via e-mail or facsimile.

SUMMARY

The use of GovWorks could potentially result in great benefit to USAID. Ultimately, the measure of the benefit will be the extent to which GovWorks can appropriately implement and manage USAID activities. Your input and feedback will be needed to help USAID in its evaluation of the GovWorks pilot program.

**Attachment 1: Franchise Fund Agreement Between USAID and the
[Dept. of _____]**

FRANCHISE FUND AGREEMENT
BETWEEN THE
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT
AND THE
[DEPARTMENT OF _____]

I. AUTHORITY AND PURPOSE

A. Under section 403 of the Government Management Reform Act (GMRA) of 1994, P.L. 103-356, the Director of the Office of Management and Budget, has [designated/authorized] _____ (“Servicing Agency”) to provide _____ goods and services to other federal agencies on a cost reimbursable basis. The Servicing Agency is responsible for assuring that they perform only those procurement actions within their statutory and regulatory authority.

B. The United States Agency for International Development (“USAID”) has need of such goods and services, as further described in section II of this Agreement (the “Requested Goods and Services”).

C. Accordingly, USAID will reimburse the Servicing Agency \$_____ (“Reimbursement Amount”) during fiscal year 20__ for supplying the Requested Goods and Services. The Servicing Agency will supply the Requested Goods and Services in accordance with the Government Management Reform Act and other authority governing the activities of the Servicing Agency.

II. REQUESTED GOODS AND SERVICES

A. Background

B. Scope of Work

The Servicing Agency will

C. Budget (or reference attachment)

D. Reports

III. FUNDING TERMS AND CONDITIONS

A. Signature of this Agreement by USAID and the Servicing Agency constitutes an obligation of the Reimbursement Amount or an agreed upon increment thereof. USAID funding for this Agreement is limited to the Reimbursement Amount. Unless USAID agrees otherwise in writing, funds obligated under this Agreement are available for expenditures under this Agreement until the Completion Date as defined in Article VII of this Agreement. Funds not expended by the Servicing Agency by the Completion Date and funds expended for purposes or activities not authorized by this Agreement shall be promptly refunded to USAID.

B. Except as USAID may otherwise agree in writing, the Servicing Agency shall submit to USAID a final request for reimbursement under this Agreement within nine months after completion of all activities under the Agreement. This includes activities associated with closeout and settlement of indirect rates with the Contractor. Funds which have not been disbursed and for which reimbursement requests have not been received by USAID as of nine months following the completion of all activities may be unilaterally deobligated by USAID.

C. The Servicing Agency shall ensure that all statutory or other restrictions on expenditures of the funds transferred hereby are fully complied with.

D. The Servicing Agency will bill USAID through the Online Payment and Collection (OPAC) System, using accounting classification information specified at the end of this Agreement. Upon request by the Servicing Agency, USAID will provide funds to the Servicing Agency in advance of receiving the Requested Goods and Services.

E. The Servicing Agency will administer the funds it receives under the Agreement in accordance with all applicable law.

F. The Servicing Agency will ensure that all applicable AIDAR provisions are included in solicitation and award documents and that appropriate sections of the USAID Automated Directive Systems (ADS) are followed in making and administering the award.

G. The Servicing Agency is responsible for the resolution of any claims, protests, disputes, or appeals arising from the contract(s) issued hereunder.

IV. RESPONSIBILITIES

A. USAID

USAID will:

1. Ensure that funds are available up to the Reimbursement Amount to cover the cost of the Requested Goods and Services.
2. Reimburse the Servicing Agency up to the Reimbursement Amount for the Requested Goods and Services.
3. [Provide the Servicing Agency with a designated [program/technical] officer to consult with the Servicing Agency [Contracting] officer and the Servicing Agency [technical] officer (COTR) concerning the Requested Goods and Services. The USAID

[program/technical] officer will not be in direct contact with the Servicing Agency [contractor/grantee] unless the Servicing Agency specifically approves the terms and conditions of such contacts in writing.]

B. The Servicing Agency

The Servicing Agency:

1. Will receive reimbursement from USAID to cover the cost of the Requested Goods and Services.
2. Will ensure that all funds received are properly committed and obligated for the purposes specified herein and that expenditures conform to applicable guidelines.
3. Confirms that it has sufficient staffing equipment and logistical resources to provide the all of the Requested Goods and Services.

V. RECORDS

The Servicing Agency will maintain contract file records in accordance with the Federal Acquisition Regulation (FAR) and Department of Interior (DOI) regulation and policy.

VI. POINTS OF CONTACT

A. Financial Officers

For USAID

[Name]
____/____/____ [Office symbol, title]
United States Agency for International Development
1300 Pennsylvania Avenue, N.W.
Room ____
Washington, DC 20523-____]

For the Servicing Agency

B. Technical Officers

For USAID

____/____/____ [Office symbol, title]
United States Agency for International
Development
1300 Pennsylvania Avenue, N.W.
Room ____
Washington, DC 20523-____

For the Servicing Agency

VII. COMPLETION DATE

The planned completion date of this Agreement is _____, or such other date as the parties may agree to in writing.

VIII. DURATION OF AGREEMENT

This Agreement shall remain in effect until the Requested Goods and Services have been supplied. Any provision that requires performance after expiration or termination will remain in force notwithstanding the termination of this agreement.

IX. TERMINATION

Unless applicable laws or regulations dictate otherwise, either party may terminate this Agreement upon 90 days advance written notice to the other party.

X. DISPUTES

Disputes arising hereunder shall be decided by the USAID Agreement Officer (except for those disputes brought under the contract that is issued by GovWorks). The USAID Agreement Officer shall furnish the Servicing Agency a written copy of the decision. Decisions of the USAID Agreement Officer shall be final unless, within 30 days of receipt of the decision, the Servicing Agency appeals the decision to USAID's Deputy Assistant Administrator for Management, USAID, Washington, DC 20523. Appeals must be in writing with a copy concurrently furnished to the Agreement Officer. In order to facilitate review on the record by the Deputy Assistant Administrator for Management, the Servicing Agency shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

XI. PUBLIC INFORMATION

It is USAID's policy to inform the public as fully as possible of its programs and activities. The Servicing Agency agrees to follow federal and USAID-specific public notice requirements for contracts awarded hereunder. Aside from mandatory public notice requirements, the Servicing Agency is encouraged to give public notice activities under this award and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include the following statement (or a substantive alternative) as follows:

"Funding for this activity comes from the U.S. Agency for International Development (USAID). USAID administers the U.S. foreign assistance program providing economic and humanitarian assistance in more than 80 countries worldwide."

The Servicing Agency may call on USAID's Bureau for Legislative and Public Affairs (LPA) for advice regarding public notices. The Servicing Agency is requested to provide copies of notices or announcements to the cognizant technical officer and to USAID/LPA.

XI. AMENDMENTS AND MODIFICATIONS

This agreement may be amended by formal modifications to the basic award document or by means of an exchange of letters between the cognizant Agreement Officer for USAID and an appropriate official of the Servicing Agency.

SERVICING AGENCY

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

 [Name]

 [Title]

 Date

 [Name]

 [Deputy] Assistant Administrator [Title]

 Bureau for [] [Office]

 Date

ACCOUNT NUMBERS:

USAID:

[THE SERVICING AGENCY]:

File name	Notice Date	Effective Date	Editorial Revision Date	ADS CD No.	Remarks
iu3_0201_012802_cd26	01/24/2002	01/24/2002	N/A	ADS CD 26	New
iu3_0201_050702_cd28	N/A	01/24/2002	05/07/2002	ADS CD 28	Changed POC