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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance

AAPD No. 24-01

BHA Class Deviation for Sanctions-Related ADS 303 Standard Provisions

Issued: October 30, 2023

AAPDs provide information of significance to all Agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. AAPDs may be used to implement new requirements on short notice, pending formal amendment of acquisition or assistance regulations. Each AAPD is effective as of the issuance date on its cover page unless otherwise noted elsewhere in the AAPD guidance; the directives remain in effect until the specified expiration date (if any) or M/OAA/Policy issues a rescission.

This AAPD is: New Replaces: _____

Category: Acquisition Assistance PSCs

This AAPD applies to: Solicitations New awards Existing awards
 Modification required

This AAPD precedes changes to:

FAR _____ AIDAR _____ CFR _____
 ADS 303 Other _____ No change to regulations

Clause/Provision: New Provision/Clause Provided Herein Available in GLAAS

Contains deviation? No Yes: # BHA-DEV-ADS-23-01 (no expiration date)

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I. Purpose

The purpose of this AAPD is to provide instructions and guidance regarding alternate ADS 303 standard provisions for use in International Disaster Assistance (IDA) and emergency Title II Food for Peace humanitarian assistance solicitations and awards issued by the Bureau for Humanitarian Assistance (BHA). Specifically, this AAPD provides an “Alternate I” provision for use in such BHA assistance solicitations and awards instead of the following mandatory standard provisions related to sanctioned individuals and entities for USAID awards to nongovernmental organizations (NGOs): U.S. NGOs (M12 in [ADS 303maa](#)), non-U.S. NGOs (M14 in [ADS 303mab](#)), and fixed amount awards to NGOs (M5 in [ADS 303mat](#)).

This AAPD is effective as of the issuance date on the cover page and continues in effect until rescinded.

II. Required Actions

Agreement Officers (AOs) must include the “Alternate I” standard provision found in **Attachment 1** of this AAPD in lieu of the basic standard provision found in M12 in ADS 303maa, M14 in ADS 303mab, and M5 in ADS 303mat in all new and existing IDA and emergency Title II humanitarian assistance solicitations and awards issued by BHA as follows:

1. New NOFOs and Awards: AOs must ensure that the “Alternate I” standard provision is included in all new solicitations and awards issued on or after **September 23, 2023**, instead of the basic standard provision.
2. Existing NOFOs: For any open or closed solicitation issued with a resulting award to be issued on or after **September 23, 2023**, the AO must amend the solicitation to replace the basic standard provision with the “Alternate I” standard provision.
3. Existing Awards: For any assistance award issued to an NGO that meets both of the following conditions, the AO must issue a bilateral amendment to replace the basic standard provision with the “Alternate I” standard provision:
 - a. The award includes a special provision referencing a specific OFAC license; and
 - b. The award was issued after **December 9, 2022** and has a period of performance end date after **March 31, 2024**.

AOs do not need to add the “Alternate I” standard provision in existing awards where the period of performance will end prior to **March 31, 2024**.

When amending an existing award, the AO must replace the basic standard provision with the “Alternate I” standard provision and include the following language in the amendment, inserting the applicable provision reference number:

“Beginning on the effective date of this amendment, the Recipient must comply with Standard Provision M[X] Alternate I (“Preventing Transactions with, or the Provision of Resources or Support to, Sanctioned Entities and Individuals (AUGUST 2023)”). The reporting requirements of this Alternate I provision do not apply retroactively to any transaction conducted prior to the effective date of this amendment.”

III. Additional Guidance

Applicability: This AAPD only applies to IDA and emergency Title II humanitarian assistance solicitations and awards issued by BHA as described in Section II above. Other types of assistance solicitations and awards issued by BHA – as well as any assistance solicitations and awards issued by other Missions, Bureaus, and Independent Offices – must use the basic standard provision found in the relevant ADS 303 mandatory reference.

Equitable adjustments: Though BHA anticipates that there will be minimal cost impact on awards and that adjustments can be made within existing award funding, if a recipient seeks to negotiate an equitable adjustment due to costs associated with the requirements in the “Alternate I” standard provision, they must submit a request for approval in accordance with [2 CFR 200.308](#) and the award terms for the AO’s consideration.

IV. Background

BHA provides emergency humanitarian assistance in many countries where there is a presence of sanctioned individuals and entities. In December 2022, the United Nations (UN) and the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) released landmark sanctions exemptions and authorizations to limit the impact of sanctions on life-saving assistance. The UN Security Council adopted [UNSCR 2664](#) declaring that humanitarian assistance and support services that meet other basic human needs are not violations of the UN sanctions regime. Following the issuance of

UNSCR 2664, OFAC published corresponding reforms to insert standing general licenses (GLs) in all of its sanctions program regulations for (1) activities funded by the U.S. Government (i.e., “all official business of the U.S.”); (2) activities funded by several specified public international organizations; (3) several types of foreign assistance activities carried out by non-governmental organizations; and (4) the provision of agricultural commodities and medicines. These GLs implement and build upon UNSCR 2664. The GLs replace Specific Licenses (SLs) issued by OFAC at the request of USAID and the State Department, which previously detailed reporting requirements associated with those SLs. The new GLs are subject to OFAC regulations requiring record keeping but do not contain specific reporting requirements. These updates to UN and U.S. sanctions represent the biggest changes to sanctions policy in years and will strengthen the efficacy of U.S. sanctions programs by ensuring they impact the intended targets without impeding the flow of legitimate humanitarian assistance and support for the basic human needs of vulnerable populations.

The UNSCR called for the UN Emergency Relief Coordinator (ERC) to provide an annual report or briefing on the benefits and any other outcomes from the reform, and requested assistance from Member States in providing information to support such a report, including with respect to implementing providers under their jurisdiction. Similarly, the U.S. Government is interested in assessing the impact of the GLs on U.S. funded assistance. USAID is committed to collecting information on any consequences of the GLs.

Information collected from USAID partners will be used to assess the extent to which the GLs are: (1) serving their intended purpose of facilitating the delivery of humanitarian assistance and other activities that support basic human needs, and (2) providing unanticipated and undesirable benefit to designated individuals and entities. This data will allow an assessment of how changes in conditions on the ground in various jurisdictions may have impacted the provision of taxes, tolls, and fees to OFAC-designated Specially Designated Nationals and Blocked Persons. USAID seeks to mirror the UN Office for the Coordination of Humanitarian Affairs (OCHA) information-sharing/collection requirements as much as possible in order to minimize the burden on partners. USAID is specifically looking for information pertaining to the diversion of resources by designated individuals and entities sanctioned by OFAC. Partners may submit the same reports sent to OCHA to USAID highlighting USAID-funded programs or submit separate reports, to the extent they may involve UN and/or OFAC designated individuals and entities.

In order to implement new reporting requirements and collect the necessary data on an expedited basis, BHA consulted with the Office of the General Counsel (GC) and the

Bureau for Management Office of Acquisition and Assistance Policy Division (M/OAA/P) to develop a new alternate standard provision regarding sanctioned individuals and entities to replace M12 in ADS 303maa, M14 in ADS 303mab, and M5 in ADS 303mat. This “Alternate I” standard provision, found in **Attachment 1** of this AAPD, is to be used in place of the existing mandatory provision in all new IDA and emergency Title II NGO humanitarian assistance solicitations and awards issued by BHA and certain existing solicitations and awards as described above. A class deviation (BHA-DEV-ADS-23-01) has been approved by the Director of M/OAA on September 7, 2023 to authorize the use of this “Alternate I” standard provision.

USAID is considering broader updates to sanctions-related provisions and contract clauses for all assistance and acquisition awards, beyond the BHA awards described in this AAPD. Because rulemaking is a multi-year process, this AAPD provides BHA with the flexibility to begin the collection of necessary data. BHA will insert the “Alternate I” standard provision in both new and existing assistance solicitations and awards in order to obtain the necessary data.

V. Point of Contact

AOs may direct questions about this AAPD to the ["Ask M/OAA/Policy"](#) Google Group.

VI. Attachments

Attachment 1: “Alternate I” Standard Provisions for M12 in ADS 303maa, M14 in ADS 303mab, and M5 in ADS 303mat

Attachment 1: “Alternate I” Standard Provisions for M12 in ADS 303maa, M14 in ADS 303mab, and M5 in ADS 303mat

ADS 303maa M12 / ADS 303mab M14 / ADS 303mat M5, Alternate I.

***APPLICABILITY:** This alternate provision is for use in International Disaster Assistance and emergency Title II Food for Peace humanitarian assistance awards issued by the Bureau for Humanitarian Assistance (BHA).*

**PREVENTING TRANSACTIONS WITH, OR THE PROVISION OF RESOURCES OR SUPPORT TO, SANCTIONED ENTITIES AND INDIVIDUALS (AUGUST 2023)
[DEVIATION NO. BHA-DEV-ADS-23-01]**

- a. In carrying out activities under this award, except as exempt or authorized by a specific license or general license issued by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury, the recipient must not engage in transactions with, or provide resources or support to, any individual or entity sanctioned by OFAC or the United Nations (UN), including any individual or entity that is included on the Specially Designated Nationals and Blocked Persons List maintained by OFAC (<https://www.treasury.gov/resource-center/sanctions/SDNList/Pages/default.aspx>) or on the UN Security Council Consolidated List. (<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>).
- b. The recipient must maintain internal controls and exercise reasonable due diligence to comply with the requirements in paragraph (a), including to minimize transactions with, or the provision of resources or support to, any sanctioned individuals or entities where the recipient relies on any OFAC specific license or general license (for general licenses, see subpart E of each sanctions program in [31 CFR Subtitle B, Chapter V](#) or the OFAC website for the relevant program), which may effectively incorporate relevant authorizations and exemptions by the UN Security Council.
- c. If the recipient becomes aware that any activity funded under this award involves a transaction with, or the provision of resources or support to, any sanctioned individual or entity, including for any transaction covered under a specific license or general license, the recipient must submit a semi-annual report to the Agreement Officer’s Representative (AOR) with a copy to the Agreement Officer by March 31 and September 30 of each year, itemizing the following information for each transaction:

1. Payments of funds under this award in the form of taxes, tolls, and fees to, or for the benefit of, sanctioned individuals or entities. For each payment, the recipient will make best efforts to include details about the amount paid, the approximate date and location of the payment, the name of the individual or entity receiving the payment, a description of how such payment facilitated the assistance activities, and remedial steps, if any, taken to address the issue;
 2. Any diversions of funds, supplies, or services, under this award by sanctioned individuals or entities. For each diversion, the recipient will make best efforts to include details about the circumstances of the diversion, the name of the individual or entity causing the diversion, estimated value diverted, the approximate date and location of the diversion, description and intended destination, and remedial steps, if any, taken to address the issue; and
 3. Any relevant additional information the recipient deems appropriate on obstacles to the provision of assistance under this award.
- d. If there were no known payments to, or diversions by, a sanctioned individual or entity during the reporting period, the recipient does not need to submit a report for that period under paragraph (c).
 - e. The recipient must retain records related to any transaction reported under paragraph (c) for at least 5 years after the date of any subject transaction.
 - f. Any violation of the above will be grounds for unilateral termination of the agreement by USAID.
 - g. The recipient must include this provision in all subawards and contracts issued under this award. The recipient is responsible for the submission of any reporting as required under paragraph (c) of this provision.

[END OF PROVISION]