ADS Chapter 303

Grants and Cooperative Agreements to Non-Governmental Organizations

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ADS 303 – Grants and Cooperative Agreements to Non-Governmental Organizations

303.1 OVERVIEW

Effective Date: 06/01/2006

This chapter describes the Agency's internal guidance, policy directives, required procedures, and standards for the award and administration of USAID grants and cooperative agreements to:

- Institutions of higher education,
- Hospitals,
- Nonprofit non-governmental organizations, and
- Commercial organizations.

USAID provides assistance to U.S. or non-U.S organizations, individuals, nonprofits, and for-profit entities. Authorizing legislation (including the **Foreign Assistance Act of 1961, as amended**), other statutes, Government-wide directives and regulations, and Agency policies specify the eligibility requirements for individual assistance programs.

303.2 PRIMARY RESPONSIBILITIES

Effective Date: 07/22/2015

a. The Bureau for Management, Office of Acquisition and Assistance (M/OAA) develops and interprets policy on behalf of USAID for the award and administration of grants and cooperative agreements. M/OAA carries out this responsibility in accordance with the requirements of **2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards** and USAID's implementing regulation **2 CFR 700 USAID Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**, and this ADS chapter.

b. The **M/OAA Director** is also the Assistance Executive and coordinates all matters that OMB or USAID regulations govern or which may require OMB approval. The M/OAA Director:

- Authorizes restricted eligibility, in accordance with **303.3.6.5**;
- Makes the final decision on the choice of implementing instrument in the event of a dispute between the requesting official and the Agreement Officer, in accordance with **ADS 304**; and

c. The **Agency Liaison**

- Reviews information for the Catalog of Federal Domestic Assistance (CFDA) for completeness and accuracy and forwards the information to the Office of Management and Budget (OMB) for entry into the CFDA by the General Services Administration (GSA);

- Updates CFDA entries annually;

- Submits an annual crosswalk that references program transactions occurring during the year, such as additions, deletions, consolidations of programs, and changes to program titles;

- Assigns CFDA numbers; and

- Prepares the CFDA entry describing the Agency's general program description.

NOTE: The Chief of the Strategic Planning and Performance Division of the Bureau for Policy and Program Coordination (PPC/SPP/SPA) was serving as the Agency Liaison to the CFDA (see **303.3.5.1**). However, this office has been superseded by the establishment of the Office of the Director of Foreign Assistance. Details of the liaison function will be revised. For further information, contact PPC and M/OAA.

d. The **Agreement Officer** (AO) has legal responsibility for the award. Therefore, only the AO can take action on behalf of USAID to enter into, amend, or terminate an award. The AO is authorized this responsibility either by a warrant issued by the Director, M/OAA, or through a delegation by virtue of his or her position provided by:

- The Mission Director or other principal officer of a USAID overseas mission (see **ADS 103**),

- The Assistant Administrator for the Bureau for Democracy, Conflict, and Humanitarian Assistance (AA/DCHA), or

- The directors of DCHA offices, as re-delegated by the AA/DCHA (see **ADS 103.3.15**).

e. Prior to award, **the Activity Manager** ensures that an anticipated award reflects the project design and planning documentation prepared in accordance with **ADS 201** and **ADS 300** and supports the assistance objectives. The Activity Manager:

- Ensures adequate notice and time is provided to the AO to compete and award an assistance instrument by using an annual A&A plan or by obtaining the AO's consent;

- Justifies an exception to eligibility, in accordance with this chapter and as directed by the AO, if eligibility is to be restricted;

- Provides the Agency Liaison with an annual update on the information in Catalog of Federal Domestic Assistance (CFDA) entries for which the Activity Manager is responsible (see **303.3.5.1**);

- Complies with **22 CFR 216, Environmental Procedures,** requirements during the design process;

- Manages the merit review of applications on behalf of the AO;

- Carries out elements of the pre-award survey and provides a technical analysis of specific costs when asked by the AO;

- Advises the AO whether an application is responsive to the published announcement and otherwise complies with established USAID Development Objectives;

- Determines the expected level of cost sharing, in accordance with specific program requirements and **303.3.10**;

- Processes all necessary request documentation for the AO to consider in awarding a grant or cooperative agreement to a selected applicant. This documentation includes advice on the programmatic aspects of the application, including the applicant's program description with clearly established goals that are realistic, measurable, and represent the highest objective that the recipient can be expected to achieve and for which the recipient will be held accountable;

- Helps the AO determine the potential recipient's level of technical and managerial competence; and

- Performs other duties, as requested by the AO, to ensure prudent management of assistance funds.

f. After award, the **Agreement Officer's Representative (AOR)**, as designated in writing by the AO, provides programmatic and administrative oversight of the assistance instrument. This authority is not re-delegable other than as specified in the AO's designation letter. The AOR ensures that USAID exercises prudent management over the award and monitors the recipient's progress in achieving the objectives of the program description. The AOR:

- Maintains contact, including through site visits and liaison, with the recipient;

- Reviews and analyzes reports and monitors reporting requirements (see **ADS 540**);
- Verifies timely performance;
- Ensures compliance with the terms and conditions of the award;
- Carries out all responsibilities in the schedule of the award as delegated by the AO and as noted under the "Substantial Involvement" section of Cooperative Agreements;
- Monitors the recipient's financial reports to ensure that the recipient makes progress toward meeting the required cost sharing, when applicable;
- Notifies the AO promptly of any developments that could have a significant impact on the recipient's performance;
- Prepares internal documents to support amendments to the award;
- Assists the AO in the review of proposed Branding Strategies and Marking Plans and monitors the execution of approved Marking Plans;
- Ensures all mitigative environmental measures and conditions in the award are implemented throughout the life of the award and that timely amendments are undertaken as needed with the relevant Bureau environmental officer approval in writing (see **ADS 204, Environmental Procedures**);
- Monitors classified recipients' compliance with the security specifications included in their grants and cooperative agreements, and notifies the AO and the Office of Security of any problems or suspected noncompliance with those requirements (see **ADS 545, Information Systems Security**, **ADS 565, Physical Security Programs (Domestic)**, and **ADS 567, Classified Contracts and Awards Under USAID's National Industrial Security Program**);
- Evaluates the recipient's program effectiveness at the end of the program, and produces a final report on the award for the AO and the Activity Manager; and
- Performs other duties, as requested or delegated by the AO, to ensure prudent management of assistance funds.

g. The **Office of the General Counsel (GC)** or the cognizant Resident Legal Officer (RLO) makes the final legal determinations on behalf of the Agency.

USAID staff must refer all contacts from an applicant's or a recipient's lawyer to GC or the RLO. Staff must also consult GC or the RLO on significant policy matters.

h. **Assistant Administrators** approve termination of awards based on the decision that continued assistance would not be in the national interest of the United States.

i. The **Assistant Administrator, Bureau for Management**, or designee, makes the final decision on any appeals brought under **2 CFR 700.15**, or the Mandatory Standard Provision entitled "Disputes and Appeals" when it involves non-U.S. organizations.

303.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

303.3.1 Policy Directives

Effective Date: 12/26/2014

2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, establishes the requirements that the federal government agencies must follow when administering grants and cooperative agreements to U.S. non-governmental organizations. **2 CFR 700** is the Agency's regulatory implementation and supplement to **2 CFR 200**. **2 CFR 200** and **2 CFR 700** do not directly apply to foreign organizations (non-U.S. non-governmental organizations). However, USAID applies some of these regulations to non-U.S. non-governmental organizations through this ADS chapter and **ADS 303mab, Standard Provisions for Non-U.S. Non-governmental Organizations**.

303.3.2 Required Procedures

Effective Date: 12/26/2014

USAID executes all assistance awards in accordance with **2 CFR 200** and **2 CFR 700**. Additionally, Agency policies on specific topics can be found in other sections of the Code of Federal Regulations (CFRs) and the ADS 300 Series. When it is necessary to implement timely changes prior to a formal revision of Agency assistance regulations and policy, the Director, M/OAA will issue **Acquisition and Assistance Policy Documents (AAPDs)**. M/OAA uses **Procurement Executive Bulletins (PEBs)** to issue guidance, best practices, reminders, and answers to frequently asked questions.

303.3.3 Type of Assistance Instrument

Effective Date: 12/26/2014

Assistance (grants or cooperative agreements) is used when the principal purpose of the relationship between USAID and the recipient is to transfer anything of value to the recipient to carry out a public purpose of support or stimulation, as authorized by the **Foreign Assistance Act of 1961, as amended (FAA)**. The AO makes the final

decision regarding whether an award will be an acquisition or assistance instrument. For further guidance on the differences between assistance and acquisition (contracts), see **ADS 304, Selecting Between Acquisition and Assistance Implementing Instruments**.

During the Planning Phase, the Development Objective Team (DO Team) and the Agreement Officer make a determination on the duration and type of assistance instrument (see **ADS 201, Program Cycle Operational Policy**).

303.3.4 Deviations

Effective Date: 12/26/2014

When it is necessary to achieve program objectives under an award or when special circumstances make it in the best interests of the U.S. Government, USAID may grant a deviation from:

- **2 CFR 200**;
- **2 CFR 700**;
- The policy directives and required procedures of this chapter;
- **ADS 303maa, Standard Provisions for U.S. Non-governmental Organizations**;
- **ADS 303mab, Standard Provisions for Non-U.S. Non-governmental Organizations**; or
- **ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations**.

NOTE: This section does not apply to the requirements of **22 CFR 216, Environmental Procedures**.

a. Approving Officials

(1) U.S. organizations. For grants and cooperative agreements to U.S. organizations, only the Director, M/OAA, may approve individual deviations from both **2 CFR 200** and **2 CFR 700**. Additionally, the Office of Management and Budget (OMB) must also approve any class deviations from **2 CFR 200** and **2 CFR 700**.

(2) Non-U.S. organizations. For grants and cooperative agreements to non-U.S. organizations, the Director, M/OAA or the Mission Director with program responsibility may approve deviations.

b. Procedure

(1) The AO or the Activity Manager may initiate a deviation request through an action memorandum to the appropriate approving official noted in **303.3.4(a)**.

(2) The AO must clear the deviation request before it is submitted to the approving authority.

(3) The AO or Activity Manager must consult with the Office of the General Counsel (GC) or the Resident Legal Officer (RLO) on all deviations. GC/A&A must clear the action memorandum before the AO or Activity Manager submits it to the approving authority.

(4) Before submitting the action memorandum, the requestor also must obtain written comments from M/OAA's Policy Division regarding the information provided to meet the requirements of **paragraph c.** of this section. M/OAA/P will respond within 10 working days. If more time is needed, M/OAA/P must alert the requestor and provide an estimate of when comments will be provided. The AO must maintain a copy of the comments submitted by M/OAA/P as part of the deviation request file.

(5) If the deviation request involves the cost principles or the applicant's Negotiated Indirect Cost Rate Agreement, the AO must also obtain written comments from M/OAA's Contract Audit and Support Division (M/OAA/CAS), Overhead/Special Costs and Closeout Branch, before submitting the request to the approving official. M/OAA/CAS has 10 working days in which to respond. If more time is needed, M/OAA/CAS must alert the requestor and provide an estimate of when it will provide comments. If M/OAA/CAS does not provide comments within 10 working days or within the requested extension period, the requestor may treat the non-response as concurrence.

(6) If the approving official does not approve the deviation request, the approving official should provide a written explanation to the requestor regarding why the request was not approved. If the requestor can revise the request to address the approving official's objections, the requestor may do so and resubmit the request. The approving official's denial of a deviation request may not be appealed.

(7) The requestor must provide a copy of each approved deviation request to M/OAA/P, and the AO must retain the approved deviation in the award file.

c. Content of a Deviation Request

Each deviation request must

(1) List the name of the recipient and identify the grants or cooperative agreements affected. Include the dollar value of each award;

(2) Identify the provision, policy, or procedure from which a deviation is necessary;

(3) Provide a full description of the deviation and the circumstances in which it will be used;

(4) Detail the reasons supporting the request, including any background information that contributes to a fuller understanding of the sought deviation;

(5) Describe the intended effect of the deviation; and

(6) State whether a previous deviation from the same requirement had been requested and, if so, the circumstances of the request and whether the approving official approved or disapproved the request.

(For an example, see **ADS 303sac, Sample Action Memorandum for Deviation**.)

303.3.5 Public Notice and Advertising

Effective Date: 12/26/2014

a. USAID has a responsibility to notify the public of its funding priorities in assistance programs (**2 CFR 200.202-203**). The Agency generally fulfills this responsibility by announcing assistance programs in the **Catalog of Federal Domestic Assistance** (CFDA) and at **Grants.Gov**.

b. As Office of Management and Budget policy requires (see **Office of Federal Financial Management Policy Directive on Use of Grants.Gov)**, USAID must synopsize and post all funding opportunities and application packages to the **Grants.Gov** site except:

(1) Assistance programs that are only published through an Development Objective CFDA entry;

NOTE: USAID, at present, does not publish assistance programs solely through CFDA entries;

(2) Awards that USAID limits to non-U.S. organizations, and which will be for less than $25,000; and

(3) Awards for which eligibility is restricted to a single source in accordance with procedures in **303.3.6.5**.

ADS 303mae, USAID Policy Guidance on Posting Grant Opportunities and Application Packages on Grants.Gov, provides specific instructions for posting synopses and application packages to the **Grants.Gov** Web site.

303.3.5.1 Catalog of Federal Domestic Assistance

Effective Date: 06/01/2006

Pub. L. 95-220, **31 U.S.C. 6104** established the **Catalog of Federal Domestic Assistance (CFDA)** as the database for all Federal programs available to U.S. non-governmental organizations, individuals, educational institutions, and state and local governments. An individual or organization can search this database, find assistance programs, determine if an assistance program matches the individual or organization's requirements, and determine if the individual or organization is eligible for the assistance program. The individual or organization may then contact the office that administers the program and find out how to apply.

Use of the CFDA allows an individual or organization to find information in one location, instead of having to search through many different Federal Agency Web sites. All agencies of the U.S. Government, including USAID, must collect, coordinate, and submit information on all current Federal domestic assistance programs.

A Federal domestic assistance program is any program that provides assistance to a domestic profit or nonprofit corporation; institution or individual; a State or Territory; or, any county, city, or other local government subdivision. This includes programs that finance grants or cooperative agreements to U.S. recipients for activities abroad. It does not include programs that finance grants or cooperative agreements to non-U.S. recipients for activities abroad or for the acquisition or recruitment of personnel.

USAID satisfies the requirements of the Federal Program Information Act (Pub. L. 95-220) by publishing a general entry about its programs in the CFDA. This information must also be published in **Grants.Gov** and issued as Requests for Applications or Annual Program Statements.

If the Development Objective Team wishes to submit an entry into the CFDA, it should send the information through the cognizant Bureau program office to the Agency Liaison.

303.3.5.2 Notice of Funding Opportunity

Effective Date: 07/22/2015

USAID primarily uses two types of Notices of Funding Opportunity (NOFO), a Request for Applications (RFA) and an Annual Program Statement (APS).

a. An RFA is used when the intent is to provide assistance for an activity or methodology that supports or is in keeping with USAID's program objectives.

2 CFR 200.203(b) recommends that AOs make all RFAs available for receipt of applications for at least 60 calendar days. AOs should provide longer response periods for sizeable activities or more detailed applications used to ensure high quality applications. An AO should not make an RFA available for less than 30 days unless there are exigent circumstances supported by a written determination by the AO (see **2 CFR 200.203(b)**).

b. An APS is used when USAID intends to support a variety of creative approaches towards developing methodologies to assess and implement development objective activities.

When used, USAID will publish an APS at least once a year, either with an open-ended response time or a closing date of at least six months after issuance.

303.3.5.3 Solicitation Format

Effective Date: 07/22/2015

When issuing a NOFO, either an RFA or an APS, the AO must follow the established format in **Appendix I to Part 200 – Full Text of Notice of Funding Opportunity**. A summary of the format is as follows:

a. Section I, Program Description, contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. Specifically, the Program Description:

(1) Must describe the operating unit's funding priorities or the programmatic or focus areas in which the operating unit intends to provide assistance.

(2) Must include a statement identifying the authorizing legislation (generally the **Foreign Affairs Act**) and whether the award is subject to **2 CFR 700** and **2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**.

(3) May include any program history.

(4) May include indicators of successful projects (e.g., if the program encourages collaborative efforts) and examples of projects previously funded by the Agency.

b. Section II, Federal Award Information, provides sufficient information for a potential applicant to decide whether to submit an application. This section must include:

(1) The estimated total amount of the program, the expected number of awards, and the financial range of the individual awards;

(2) The anticipated start dates and performance periods for new awards; and

(3) Whether the award will be a grant or a cooperative agreement. If USAID expects to award a cooperative agreement, describe the intended substantial involvement by the Agency (see **303.3.11**).

c. Section III, Eligibility Information, addresses the considerations and factors that determine applicant or application eligibility for award. This section must:

(1) Identify the types of entities that are eligible to apply. Include a statement to the effect that USAID encourages applications from potential new partners. If there are no restrictions on eligibility, this section must indicate that all potential applicants are eligible (see section **303.3.6** on Eligibility).

(2) Describe the cost sharing element. State explicitly whether cost sharing is required for the applicant to be eligible (see **303.3.10**), cost sharing is suggested (that is, voluntary) but not required, or cost sharing is not required.

When cost sharing is suggested and will be a factor in determining who will receive an award, the announcement must explicitly describe how cost sharing will be considered as part of the review process. Do not use vague statements such as “cost sharing is encouraged.” If applicable, the announcement must clearly state any restrictions or special conditions regarding the types of costs that are acceptable for cost sharing (consistent with **2 CFR 200.306**), the NOFO must explicitly state it. This section must refer to Section IV, which states any pre-award requirements for submission of documentation to verify commitments to meet cost-sharing requirements. **Note that a fixed amount award cannot be used in a program that requires mandatory cost sharing** (see **2 CFR 200.201(b)(2)**).

(3) State any limit on the number of applications an applicant may submit under the NOFO and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both.

(4) If applicable, include any other eligibility criteria, i.e., criteria that will make an application or project ineligible for a Federal award. These criteria must be clearly stated and must include a reference to the regulation or policy that describes the restriction, as applicable (see **303.3.6.1(d) Multi-tiered Review**).

d. Section IV, Application and Submission Information, must include:

(1) Point of Contact Information, including the name, title, street address, e-mail, and phone number, so that an applicant may obtain from the POC any materials needed for the application or otherwise communicate with the POC regarding the application requirements.

(2) Content and Format of Application Submission, must identify the required content of the application and forms or formats that an applicant must use. In accordance with **5 CFR 1320**, which implements the **Paperwork Reduction Act**, USAID may require no more than the original and two copies of any application. This section must include a statement directing the applicant to submit the SF-424 series, which includes the:

- **SF-424, Application for Federal Assistance**;
- **SF-424A, Budget Information – Non-construction Programs**; and
- **SF-424B, Assurances – Non-construction Programs**.

This section must also address information that successful applicants must submit after notification of intent to make a Federal award but prior to actual award.

(3) Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM). This section must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to:

(i) Be registered in SAM before submitting its application;

(ii) Provide a valid DUNS number in its application; and

(iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may

determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

(4) Submission Dates and Times for application submission must be identified. This section must also detail how USAID makes the determination that an application has been received in time, and consequences of late submission (see **303.3.6.6**).

(5) Funding Restrictions. Notices must include information on funding restrictions to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity (see **303.3.30**), if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs). This section must include a statement regarding whether the award will or will not allow the reimbursement of pre-award costs.

(6) The required certifications, assurances, and solicitation provisions found in **303.3.8**.

(7) Other submission requirements. This might include the format of submission (paper or electronic) and where the applicant must submit the application. If USAID authorizes electronic submission, advise what the applicant should do in the event of technical difficulties and provide a point of contact.

e. Section V, Application Review Information, must include:

(1) The selection criteria and any sub-criteria that USAID will use when reviewing applications, including an indication of their relative importance (see **303.3.6.3**). The selection criteria are distinct from eligibility criteria that are addressed prior to acceptance of an application. If the selection criteria vary in importance, the NOFO must specify the relative percentages, weights, or other means used to distinguish among them.

(2) If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section III.2 (see **303.3.5.2.c(2)**)), a clear statement of how USAID evaluates cost sharing as part of the review process (see **303.3.10**) must be included in the NOFO.

(3) Review and Selection Process. The NOFO may indicate who reviews the applications (e.g., USAID personnel, representatives from the local American embassy, host governments, or private sector individuals) and note that the AO makes the final selection.

(4) Anticipated Announcement and Federal Award Dates. This section is optional and intended to provide applicants information for planning purposes.

f. Section VI, Federal Award and Administration Information, must include:

(1) Federal Award Notices. This section must address what a successful applicant can expect to receive following selection. State that a notice of award signed by the AO is the authorizing document, whether USAID will provide it electronically, and to whom USAID will provide it. USAID may include a description of the form, the content of notifications to unsuccessful applicants, and whether requests for additional information will be considered from unsuccessful applicants.

(2) A statement identifying how the award will be administered, including the applicable standard provision and any approved deviations from the **Standard Provisions**. For U.S. organizations, the solicitation must state that **2 CFR 700**, **2 CFR 200**, and **ADS 303maa, Standard Provisions for U.S. Non-governmental Organizations** are applicable. For non-U.S. organizations, the solicitation must state that **ADS 303mab, Standard Provisions for Non-U.S. Non-governmental Organizations** will apply. USAID prefers that, instead of attaching complete copies of **2 CFR 200** and **2 CFR 700** to the NOFO, the NOFO direct applicants to the source (see **303.4** and **303.5**).

(3) Reporting. This section must include general information about the type (e.g., financial or performance), frequency, and means of submission of award reporting requirements. The types and frequency of financial and programmatic reports must be strictly limited to those detailed in 2 CFR 200 (For output or unit cost data the AO must refer to 2 CFR 200.328). Imposing the same reporting requirement on ten or more recipients has Paperwork Reduction Act, (5 CFR 1320), implications. When necessary, the AO must contact General Counsel or the cognizant Resident Legal Officer for guidance. Guidance on specific financial and programmatic reporting requirements that have met the requirements of the Paperwork Reduction Act and received OMB approval are found in Procurement Executive Bulletins.

Additionally, the AO must advise the DO Team to use **ADS 540** for detailed guidance on the submission of copies of reports and other information to USAID's Development Experience Clearinghouse (DEC), when drafting the reporting requirements.

(4) If program income is anticipated to be generated under the award, the AO must consider how that income will be treated under the award (see **2**

CFR 200.307 or, for non-U.S. organizations, see the provision "Program Income").

(5) If the Administrator has provided a written determination for use of an additional or substitute logo or seal and tagline representing a presidential initiative or other high level interagency federal initiative, identify the alternate branding and marking standards to be used in the award (see **2 CFR 700.16** or, for non-U.S. organizations, see the provision entitled "Marking and Public Communications Under USAID-Funded Assistance").

(6) A statement detailing how the Agency will ensure environmental soundness and compliance in design and implementation when required by the **22 CFR 216** determination.

g. Section VII, Federal Awarding Agency Contacts, must include points of contact (POC) for questions while the funding opportunity is open. In addition to the name and address of the POC, USAID may establish a generic e-mail address for inquiries.

h. Section VIII, Other Information, must include:

(1) A statement that USAID reserves the right to fund any or none of the applications submitted, and

(2) Any other relevant information such as related programs or other upcoming or ongoing funding opportunities.

303.3.5.4 Cancellation of Notice of Funding Opportunity

Effective Date: 07/22/2015

The cancellation of a Notice of Funding Opportunity (NOFO) costs the U.S. Government and applicants' time, effort, and money. USAID should cancel NOFOs only when cancellation is in the public interest. For example:

(1) When the specific programmatic or focus areas are no longer within the Agency's mission or objectives.

(2) When amendments to the NOFO would be of such magnitude that a new NOFO is desirable.

If USAID cancels a NOFO, USAID will return any applications it has received unopened and will issue a notice of cancellation, either posted electronically as a general notice or sent to all prospective applicants, or both. USAID staff must purge any electronic applications for a cancelled NOFO from primary and backup data storage systems.

The notice of cancellation must:

(1) Identify the solicitation number and provide the title or the subject matter,

(2) Briefly explain the reason why USAID cancelled the NOFO, and

(3) Assure prospective applicants that they will be given an opportunity to apply for any subsequent or future NOFOs for the program, if appropriate.

The AO must document the:

(1) Circumstances and rationale for the cancellation;

(2) Applications received, returned, and purged; and

(3) Cancellation notice and NOFO issuance dates.

303.3.5.5 Unsolicited Concept Papers and Applications
Effective Date: 06/01/2006

The **Guide to USAID's Assistance Application Process and to Submitting Unsolicited Assistance Applications** provides guidance for submitting unsolicited concept papers and applications. USAID should encourage the general public to review it.

303.3.6 Eligibility
Effective Date: 12/26/2014

In accordance with the Federal Grant and Cooperative Agreement Act, USAID encourages competition in the award of grants and cooperative agreements to identify and fund the programs that best achieve Agency objectives.

The Agreement Officer (AO) guarantees the integrity of the competitive process by ensuring overall fairness and consideration of all eligible applications. The AO also has the ultimate authority to make award decisions for grants and cooperative agreements on behalf of USAID.

The AO must not limit eligibility when awarding grants and cooperative agreements, unless USAID authorizes a restriction on eligibility in accordance with **303.3.6.4**. 2 CFR 200 requires that the Agency publish an announcement seeking applications from all eligible and qualified entities (see **303.3.5**).

303.3.6.1 Eligibility Requirements
Effective Date: 12/26/2014

The AO verifies that a Request for Application (RFA) or Annual Program Statement (APS) correctly identifies applicant eligibility requirements and essential program qualifications in accordance with the following standards:

a. Authorizing legislation and governing program requirements specify eligibility requirements for individual grant programs. Generally, and in compliance with the **Foreign Assistance Act of 1961, as amended**, USAID may provide assistance to any U.S. or non-U.S. organization, individual, non-profit, or for-profit entity. When specific program requirements restrict eligibility (for example, Title XII Collaborative Research Support Programs), USAID must identify the restriction in the Catalog of Federal Domestic Assistance, RFA, APS, or other appropriate notice.

b. To be eligible for assistance under the private voluntary organization (PVO) grant program, both U.S. and international PVOs must be registered with USAID as required by **22 CFR 203**. The registration requirement does not apply to local PVOs.

c. **Merit Review Criteria.** The DO Team must propose the merit review criteria for selecting an applicant. However, if the AO determines that the criteria is so restrictive that it severely limits the pool of potential applicants, the AO may request that the Activity Manager change the criteria to broaden the pool of applicants.

d. **Multi-tiered Review.** The DO Team, with the approval of the AO, may establish a two or more tiered solicitation and review system. The DO Team may request potential applicants to submit an executive summary or concept paper. The DO Team may also request corresponding budget information at their discretion. After reviewing these submissions, the DO Team selects the best submissions and conducts a second level solicitation and review with the selected applicants and uses more specific merit review criteria. The DO Team may conduct additional levels of solicitation and review only if the second level does not adequately identify applicants for the activities to be funded. Section III or Section V of the NOFO must explain the intended multi-tiered review/eligibility process so that potential applicants know what to expect at each phase of the review process.

303.3.6.2 Merit Review Criteria

Effective Date: 12/26/2014

a. The DO Team must develop the merit review criteria. The criteria must include the programmatic factors or priorities that affect eligibility for selection. The number of criteria should be limited to three or four factors. The review criteria in an announcement must provide as much information as practical to allow potential applicants to judge whether it is in their best interest to incur costs to apply for the award. The criteria must address the importance of the

programmatic and administrative elements, but must not be unduly restrictive. It is not necessary to quantify the relative weight of the criteria, but the announcement must identify the relative importance of the criteria. The Activity Manager must obtain the AO's approval of the criteria before the AO publishes the Request for Applications (RFA) or Annual Program Statement (APS).

b. No Requirement for Prior USAID Experience. RFA and APS documents for the award of USAID assistance instruments must not require prior USAID experience.

c. Gender issues. USAID must address gender issues in all USAID-funded activities (see **ADS 205**). In RFAs (including those for Leader with Associate Awards) and APSs, the Agreement Officer must ensure that the RFA or APS:

- Integrates gender issues into the solicitation (unless a rationale was provided by the Activity Manager for not addressing gender in the project or activity) in accordance with **ADS 205**. When USAID directs applicants to incorporate gender issues into their applications, the RFA or APS must state the requirements in the different performance components, e.g., Program Description, key personnel qualifications, if applicable, and monitoring and evaluation requirements.

- Integrates gender issues into the programmatic selection criteria (e.g., technical understanding and approach, monitoring and evaluation, personnel, etc.) that correspond to the performance requirements stated above, unless an approved rationale for not incorporating gender issues has been included in the RFA or APS.

If the program/project office provides the Agreement Officer with a procurement request for a program that does not include the requirements in **ADS 205** for either integrating gender issues in the Program Description or the rationale for why gender is not an issue for the particular assistance program it intends to fund, then the Agreement Officer must notify the program/project office that no further action will be taken on the request until it meets one of these requirements.

For technical assistance and additional guidance, consult the USAID Mission/Office or Bureau gender specialist or the Office of Gender Equality and Women's Empowerment (GENDEV) in the Bureau for Economic Growth, Education, and Environment (E3).

d. Volunteers for Prosperity. **Executive Order 13317** requires that an applicant's use of highly-skilled U.S. volunteers be a review factor in the selection of applications for assistance activities to be implemented abroad under the following initiatives:

- Emergency Plan for AIDS Relief,
- Digital Freedom Initiative,
- Water for the Poor Initiative,
- Trade for African Development and Enterprise Initiative,
- Middle East Partnership Initiative, and
- Other Presidential initiatives as identified in the future.

e. **Environmental Concerns**. The Activity Manager must ensure that the requirements in **22 CFR 216** for an environmental impact assessment have been met, approved in writing by the relevant Bureau environmental officer, and are incorporated into the RFA, APS and award as necessary. When USAID directs applicants to address environmental concerns in an activity, the RFA or APS must state the requirement. **ADS 204** provides detailed guidance on environmental concerns, and **ADS 201** provides guidance on incorporating **ADS 204** into the planning, achieving, and learning processes.

f. **Branding and Marking**. It is a Federal statutory and regulatory requirement (see **Section 641, Foreign Assistance Act of 1961, as amended**, and **2 CFR 700.16**) that all overseas programs, projects, activities, public communications, and commodities that USAID partially or fully funds under an assistance award or sub-award must be appropriately marked with the USAID identity. Under **2 CFR 700.16**, USAID requires the submission of a Branding Strategy and a Marking Plan by the "apparently successful applicant." The apparently successful applicant's proposed Marking Plan may include a request for approval of one or more exceptions to the marking requirements in **2 CFR 700.16**. The AO reviews and approves the apparently successful applicant's Branding Strategy and Marking Plan (including any requests for exceptions), consistent with the provisions "Branding Strategy," "Marking Plan," contained in the Certifications, Assurances, Other Statement of the Recipient and Solicitation Standard Provisions, and "Marking and Public Communications Under USAID-funded Assistance" contained in **ADS 303maa, Standard Provisions for U.S. Nongovernmental Recipients** and **ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations**, **2 CFR 700.16**, and **ADS 320, Branding and Marking**.

Note that in contrast to "exceptions" to marking requirements, waivers to these requirements based on circumstances in the host country must be approved by the cognizant Mission Director or other USAID principal officer [see **2 CFR 700.16(5)**]. Any questions about the applicability of either the Standard Provisions or **2 CFR 700.16** may be directed to General Counsel/Acquisition & Assistance (GC/A&A), or USAID's Senior Advisor on Brand Management.

303.3.6.3 Reviewing Applications

Effective Date: 12/26/2014

a. At least two individuals (three or more is preferable) must be appointed to serve on each Selection Committee (SC) to review applications. The SC must review the applications using the review criteria stated in the Notice of Funding Opportunity (NOFO). The SC must keep selection information and applicant proprietary data confidential.

b. Committee members must possess the requisite technical knowledge or expertise to review the programmatic merits of the applications. The Agency may make exceptions with the approval of the AO.

c. When necessary, other Federal agencies and non-governmental reviewers may participate on the SC. USAID staff (direct-hire and Personal Services Contract (PSC) employees) must comprise a majority of the members on the SC.

d. The AO must take steps to ensure that members of the SC, both USAID staff and outside reviewers, do not have conflicts of interest with the organizations whose applications are being reviewed. A conflict of interest includes situations when:

- The member of the SC works for or has any other financial interest (including being an unpaid member of a Board of Directors) in the organization that submits an application for the committee's review,

- The member's spouse/partner or minor child works for or has any other financial interest (including being an unpaid member of a Board of Directors) in the organization that submits an application for the committee's review, and

- An organization or entity in which an SC member serves as an officer, director, trustee, general partner, or employee, has a financial interest in an application under the committee's review. This includes situations where the SC member is negotiating for one of the positions listed here and is serving as an unpaid member of the organization or entity's Board of Directors.

- An employee of an external organization (e.g., technical advisors in AIDS, child survival, infectious diseases, population, basic education) participates in the review of a potential competitor's application, which allows the SC access to financial or other data that may be competitively useful to the reviewer's organization.

The DO Team must make all efforts to identify potential conflicts early in the review and selection process. Because resolution of conflicts of interest is fact-driven and case-specific, the DO Team must coordinate with the AO and the cognizant General Counsel or Resident Legal Officer on the issues.

e. When periodic reviews are specified, the Activity Manager must collect the applications as they are received until the Agency can review a reasonable number in accordance with the provisions of the announcement. If the DO Team established a specific timeframe for the review of applications in the NOFO, for example, quarterly reviews, and only a small number of applications are received during that time, the DO Team may consider the applications received to be a reasonable number. The SC may also include applications it received in response to earlier notices in a periodic review.

f. For the Office of U.S. Foreign Disaster Assistance (OFDA) programs, the OFDA director may authorize selection of a sole application received, if the director determines that it is not advisable to wait for more applications. The Activity Manager must provide a copy of such an authorization to the AO.

g. When reviewing applications against a criterion related to gender issues, the Activity Manager must coordinate with the Bureau for Economic Growth, Education, and Environment, Office of Gender Equality and Women's Empowerment (E3/GENDEV).

h. If an unsolicited application reasonably fits an existing program, the DO Team may include the application in a relevant review and selection under an RFA or APS. If it does not, a justification to restrict eligibility under **303.3.6.5** must be approved before the AO can issue an award to the applicant.

i. The same SC members should review all applications for each specific award. If this is not possible or if there are established procedures for review by separate SCs, the Activity Manager must document the reason and the procedure and submit it to the AO for the agreement files.

j. The AO must provide the SC with a written review plan that specifies the criteria and methodology for reviewing the applications consistent with the information published in the RFA or APS.

k. The SC must prepare a written selection memorandum of each application as compared to the established review criteria.

l. Both the AO and the SC must use the applicable mandatory templates discussed in **ADS 300, Agency Acquisition and Assistance Planning** when preparing for reviewing applications and documenting the findings. These templates can be found internally at: **https://pages.usaid.gov/M/OAA/assistance-resources**.

m. The SC's narrative in the selection memorandum must detail each application's strengths and weaknesses relative to the review criteria. If the RFA or APS does not indicate the relative importance of the review criteria, then all criteria are equally weighted. If the RFA or APS assigned numerical values to the criteria,

then the report must include a discussion of the numerical scoring, in addition to the narrative identifying strengths and weaknesses.

n. The SC must also include a discussion of its review procedure in their review documentation.

o. Upon completion of the SC's review, the Activity Manager then must forward the selection memo to the AO, who must place a copy in the award file.

p. AOs must ensure that the solicitation, selection, award, and administration of USAID grants and cooperative agreements follow all the requirements and guidance of **22 CFR 205, Participation By Religious Organizations In USAID Programs** (see **303.3.28**).

303.3.6.4 When Eligibility Can Be Restricted

Effective Date: 12/26/2014

In the context of this chapter, unrestricted eligibility refers to instances in which USAID posts an assistance solicitation, typically via a Request for Applications (RFA) or an Annual Program Statement (APS), with no limitations on the eligibility for applicants. Restricted eligibility, as described in this chapter, refers to any assistance actions that are restricted to a particular type of organization or other limitation, most typically for sole source awards (including follow-on awards), extensions, limited to local entities or limited for efficiency.

Under certain circumstances, eligibility may be restricted as indicated below in a., b., and c. of this paragraph. These situations are different from those in which restricted eligibility is permitted, as discussed in **303.3.6.5** below. The required documentation for an assistance action varies depending on whether unrestricted eligibility is required and whether there is an applicable exception that permits restricted eligibility.

Eligibility requirements do not apply and, therefore, no exception to restrict eligibility or Justification for Restricting Eligibility (JRE) under **303.3.6.5** is needed for an assistance action otherwise covered by this chapter for:

a. The issuance of associate awards, or amendments to associate awards made within the terms and conditions of a previously solicited Leader with Associate Award.

b. Awards, extensions, or amendments using non-appropriated funds (including, but not limited to, monies or in-kind contributions from bilateral and multilateral development partners, host country governments, foundations and other private sector entities), and

c. Extensions to existing agreements under 2 CFR 200.308(d)(2).

To determine whether eligibility may be restricted for a particular action, Operating Units and AOs are encouraged to consult with the Deputy Director (DD), for M/OAA's Accounting, Compliance, Transparency and Systems Support Division (M/OAA/ACTS).

303.3.6.5 Restrictions to Eligibility

Effective Date: 07/22/2015

Eligibility may be restricted by an AO only when an exception to restrict eligibility applies and is documented in accordance with this section.

a. Justifications to Restrict Eligibility (JRE)

The Activity Manager must prepare a justification for use of an exception to restrict eligibility under this section **303.3.6.5** using the **Justification to Restrict Eligibility (JRE) Template** and submit it for approval to the AO, unless otherwise specified below.

When an official other than the AO is required to approve a justification as set forth below, the Activity Manager must add the AO as a clearing official. Prior to submitting a justification to the **JRE@usaid.gov** mailbox, the Activity Manager must obtain all required clearances as specified below for each type of JRE. To obtain DD M/OAA/ACTS AE, Assistant Administrator of the Bureau for Management (AA/M), or Administrator clearance or approval, the Activity Manager must submit the justification to the **JRE@usaid.gov** mailbox.

Each justification must contain sufficient facts and rationale to justify the use of the specific exception cited. Requirements for the content of justifications and applicable clearances and approval authorities are determined by a combination of the following:

- The dollar threshold of the new award or amount of increase to an existing award (see paragraph **303.3.6.5a(1)** below),
- The type of exception used (see paragraph **303.3.6.5a(2)** below), and
- Whether the action is a follow on or extension (see paragraph **303.3.6.5a(3)** below).

Exceptions to restrict eligibility must not be justified on the basis of:

- Mobilization costs,
- Demobilization costs,
- Continuing relationship (except when sections **303.3.6.5a.(2)(a) or (h)** apply),
- Lack of planning, or

- Concerns about amount of funds available, such as expiring funds.

(1) **Dollar thresholds.** Based on the dollar thresholds below, the following clearances and approvals are required for JREs. Additional clearances or alternate approvals may be required based on the requirements in **paragraphs a(2) and a(3)** of this section **303.3.6.5**.

(a) **Restricted eligibility actions valued under $5 million.** Unless otherwise provided in paragraphs a.(2)(a)-(i), the Activity Manager must submit a justification to the AO for all exceptions to restrict eligibility for which a JRE is required under this section **303.3.6.5** for new awards or extensions under $5 million.

(b) **Restricted eligibility actions valued at $5 million or more but less than $10 million.** For all exceptions for which a JRE is required under **303.3.6.5** for new awards at $5 million or more but less than $10 million, the cognizant Resident Legal Officer (RLO) or General Counsel (GC) Section for Acquisition and Assistance (GC/A&A) attorney must clear the JRE before the Activity Manager submits it to the AO, or other clearing or approving official as required in **paragraphs a(2)(a)-(i)**. In the case of follow-ons or **extensions for $5 million or more ($20 million for Critical Priority Countries (CPCs))**, in addition to the requirements of this paragraph, the requirements at **a(3)** below also apply.

(c) **Restricted eligibility actions valued at $10 million and above.** For all exceptions to restrict eligibility for which a JRE is required under this section **303.3.6.5** for new awards valued at $10 million and above, the following individuals must clear the justification before the approving official may approve it:

- Cognizant RLO or GC/A&A attorney,
- Cognizant Mission Director (MD) or Assistant Administrator (AA), and
- Deputy Director M/OAA/ACTS.

These individuals may not delegate this clearance authority; however, individuals serving in those positions in an "acting" capacity also have the authority to clear the justification. **For extensions**, in addition to the requirements in this paragraph, the requirements of **a.(3)** below also apply.

(2) Exceptions to restrict eligibility and requirements for authorizing their use

USAID permits restricted eligibility under the following exceptions when a JRE is prepared in accordance with the requirements specified for the applicable exception and those in **paragraphs a.(1) and, if applicable, a.(3).** If the action is an extension or follow-on award of $5 million or more ($20 million for CPCs) the JRE must be approved by the Administrator under **303.3.6.5a.3**.

(a) Exclusive or predominant capability

USAID may restrict eligibility, including sole-source, awards when it considers a recipient to have exclusive or predominant capability based on one of the following criteria:

- Proprietary resources,
- Specialized facilities or programmatic expertise,
- An existing and unique relationship with the cooperating country or beneficiaries, or
- Participation in a Global Development Alliance, USAID‘s business model promoting public-private alliances as a central element of the Agency‘s strategic assessment, planning, and programming efforts.

This exception may not be used to continue an on-going relationship when the applicant developed the exclusive or predominant capability during performance of any USAID award.

When this exception is used, the Activity Manager must describe in detail the uniqueness of the proposed recipient and how it applies to the activity to be supported. The JRE must also describe what other options USAID explored.

(b) Small grants

USAID may restrict eligibility, including sole-source, when the awards are at or below the simplified acquisition threshold and have a term of no more than one year.

(c) Restricted eligibility for efficiency

USAID may restrict eligibility to a selected group of applicants when it is necessary for sake of efficiency.

The DD M/OAA/ACTS must clear and the AE must approve JREs citing this exception. The Activity Manager must describe in detail what other options USAID explored, including other exceptions and the periodic review alternative discussed at section **303.3.6.3e**, and why these alternatives were determined to be unacceptable.

(d) New entrants

For grants or cooperative agreements valued at less than $5 million, USAID may restrict eligibility to organizations that have received USAID direct assistance as a primary recipient of less than $1,500,000 during the past three years in order to expand the number and sustainability of development partners.

(e) Congressionally mandated programs

USAID may restrict eligibility to a single source when legislation includes a congressional earmark specifying that USAID make an award to a particular organization.

In the absence of legislation that specifies a particular awardee, USAID may use this exception only when Congressional intent for USAID to make an award to a particular recipient is demonstrated by specific language in either:

- Both House and Senate Committee Reports, or
- A Congressional Conference Report.

In these cases, both the cognizant attorney (either the Resident Legal Officer (RLO) or the appropriate GC/W backstop attorney) and the Assistant Administrator (AA) for the Bureau for Legislative and Public Affairs (LPA) must confirm their agreement that Congress intended for USAID to make an award to a particular recipient before the Activity Manager submits the justification for approval.

The Activity Manager must attach to the JRE a copy of the statute specifying the awardee, as well as any information supporting the planned activity as requested by the AO. In the absence of legislation specifying the awardee, the Activity Manager must provide cognizant GC/RLO and AA/LPA confirmation of Congressional intent with the justification.

(f) Critical objectives of the foreign assistance program

USAID may restrict eligibility when it is critical to the objectives of the foreign assistance program. USAID may use this exception only when no other exception applies.

This exception is typically used for specific blanket justifications for a class of awards and for a particular purpose or period of time, for example, the Administrator-approved Expedited Procedures Package (EPP) for HIV/AIDS (see section **303.5**).

- **Individual justifications for a single restricted eligibility action**. The cognizant Assistant Administrator, or Office Director who reports directly to the Administrator, approves JREs citing this exception. The cognizant RLO or GC/A&A as well as the DD M/OAA/ACTS must clear the justification, regardless of dollar value. The Activity Manager must explain the circumstances that require using the exception, discuss what other options USAID explored, and may not rely on any of the other exceptions.

- **Blanket justifications for a class of awards and for a particular purpose or period of time**. The cognizant Assistant Administrator, or Office Director who reports directly to the Administrator, may approve blanket JREs citing this exception. The cognizant RLO or GC/A&A attorney and the DD M/OAA/ACTS must clear the justification.

  Blanket JREs approved at levels below the Administrator are subject to the requirements in **paragraph a(3)** of **303.3.6.5**; blanket JREs approved by the Administrator (under EPPs) are not subject to the requirements of **paragraph a(3)** of this section **303.3.6.5**.

- **Transactions using the authority of blanket justifications**. In order to use the authority of a blanket JRE, the Activity Manager must prepare written documentation supporting use of the blanket JRE in accordance with any applicable policy and procedures specific to that blanket JRE (generally, such policy and procedures are issued in an AAPD or PEB). In the absence of such guidance, the Activity Manager must provide the memorandum to the AO for incorporation into the award file. Transactions using the authority of blanket JREs that were approved at levels below the Administrator are subject to the requirements in **paragraph a(3)** of this section **303.3.6.5.**

(g) Unsolicited applications

Unsolicited applications are those submitted to USAID for an award by an applicant solely on their initiative, without prior formal or informal solicitation by USAID.

USAID may make an award based on an unsolicited application when the application:

- Clearly demonstrates a unique, innovative, or proprietary program;
- Represents an appropriate use of USAID funds to support or stimulate a public purpose; and
- Fits within an existing Development Objective.

When the terms of an unsolicited application fit within the scope of a published and open Annual Program Statement (APS), the application may be considered under the APS. The unsolicited application is then considered to have been solicited under the APS and no justification to restrict eligibility is required. If there is no open APS, then the Activity Manager must prepare a justification to restrict eligibility.

To use this exception to restrict eligibility, the Activity Manager must first certify that USAID did not solicit the application and that it was submitted by the applicant solely on the applicant's own initiative.

This exception may not be used for non-competitive extensions to existing awards. A recipient's request to extend an ongoing relationship is not an unsolicited application. One of the other exceptions in this section **303.3.6.5** must apply for the recipient's request to be granted.

The JRE must address how the following additional issues warrant acceptance of the application:

- In what way the application is unique, innovative, or proprietary;
- How funding the application is an appropriate use of USAID funds to support or stimulate a public purpose; and

- Describe how it fits within a Development Objective (DO).

See **Guide to USAID's Assistance Application Process and to Submitting Unsolicited Assistance Applications** for further information.

(h) Follow-on awards and extensions

A follow-on award is a new award to an entity to perform activities that are the same as or substantially similar to those included in a recently expired previous agreement with the same entity. An extension is an amendment to increase the total estimated amount of an existing award, usually to provide additional activities within the program description, to extend the period of the award, or both. Also included in the definition of "follow-on" as used in this Chapter are awards or extensions that include new activities that are clearly logical expansions of or derived from activities previously performed by the same recipient.

USAID may restrict eligibility for follow-on grants or cooperative agreements or extensions to the existing awardee. When the follow-on awards or extensions are limited to no more than an increase in value of the amount of the **original award** of less than $5 million (an increase of less than $20 million for Critical Priority Countries (CPCs)), the requirements of **303.3.6.5a(3)** do not apply. Proposed follow-on awards and extensions that increase the total estimated amount of the original award by $5 million or more (an increase of or $20 million or more for CPCs) must be approved by the Administrator following the requirements in **303.3.6.5a(3)**. For extensions or follow-ons less than $5 million ($20 million for CPCs), this authority must not be used to extend an award beyond 10 years of its original award date unless the JRE is approved by the cognizant Assistant Administrator, for U.S. organizations, or the Mission Director for non-U.S. organizations. For follow-on awards or extensions of $5 million or more of the original award amount, this authority must not be used to extend an award beyond 10 years of its original award date unless the JRE is approved by the Administrator. The follow-on exception must not be used to continue a relationship with a recipient that received an award based on the small grant award exception.

When this exception is used, the Activity Manager must justify with specificity why the benefits of continuing the assistance activity with the same recipient exceeds the benefits of a competitive process encouraged by law and required by Agency policy. For extensions or awards of $5 million or more using this authority, the DD

M/OAA/ACTS must clear the JRE. For extensions or awards of less than $5 million, an informational copy of the JRE must be furnished to the DD M/OAA/ACTS for reporting purposes only by sending it to the **JRE@usaid.gov** mailbox.

A JRE is not required if the amendment is strictly for administrative purposes, including:

i. Incremental funding actions;

ii. Changes which do not require:

- An increase to the total estimated amount of the award, or
- A substantive change to the program description;

iii. A no-cost time extension; or

iv. An extension authorized under 2 CFR 200.308(d)(2).

(i) Science and technology and innovation

USAID may restrict eligibility for new or follow-on awards, or amend existing awards in instances which the Agency determines that a promising science and technology concept or innovative solution exists to tackle a pressing development challenge.

For purposes of this exception, innovation means significant, not incremental, improvements in development impact and the process that translates knowledge into economic growth and social well-being. For purposes of this exception, science means the process of generating knowledge based on evidence, including the systematic study of the nature and behavior of the material and physical universe, based on observation, experiment, and measurement, and the formulation of laws to describe these facts in general terms. For purposes of this exception, technology means the application of scientific knowledge to practical problems, including the tools, processes, and techniques, created by such application of knowledge.

To use this exception to restrict eligibility, the Activity Manager must document with specificity that the proposed award or extension is for science and technology or innovation activities, and that the benefits to the Agency of restricting eligibility exceed the benefits to the Agency of unrestricted eligibility PPL/ST, or its successor organization, must clear all science and technology JREs using this

exception and IDEA, or its successor organization, must clear all innovation JREs using this exception. RLO or GC clearance by the backstop attorney for the requiring office is only required when the follow-on or extension is for $5 million or more. When used for extensions or follow-on awards for $5 million or more ($20 million for CPCs), the requirements of **303.3.6.5a(3)** also apply.

(3) Follow-on awards and extensions for $5 million or more

The Administrator must approve the JRE when the action is:

a. **A follow-on award** of $5 million or more ($20 million or more for CPC countries) using any of the authorities in **303.3.6.5a(2)**;

b. **An extension** that increases the total estimated amount of the **original award** by $5 million or more ($20 million or more for CPC countries) and uses any of the authorities in **303.3.6.5a(2)**.

The Activity Manager must obtain the clearances below before the Administrator approves the justification. Additional clearances may be required based on **paragraphs a. (1) and a.(2)** above.

The Activity Manager must obtain clearances from the following individuals, in the order below, before the Administrator will approve a JRE under any exception in this section **303.3.6.5**:

- Agreement Officer
- Cognizant RLO or GC/A&A, and
- Cognizant MD or AA of the Bureau having programmatic responsibility (the AA may not re-delegate this authority).

The Activity Manager must then submit the JRE to the **JRE@usaid.gov** mailbox, where M/OAA/Evaluations will assist in obtaining the remaining clearances from the following individuals:

- Deputy Director M/OAA/ACTS,
- AE, and
- AA/M.

The Activity Manager must submit the JRE to the **JRE@usaid.gov** mailbox for the Administrator's approval at least six months before the anticipated award or amendment date in order to allow sufficient time to issue the solicitation with unrestricted eligibility in the event the JRE is not cleared.

The requirements of this paragraph **303.3.6.5a(3)** do not apply to:

- New restricted eligibility awards using any of the authorities in **303.3.6.5a(2)**, other than **303.3.6.5a(2)(h)**, that do not include any of the same or substantially similar activities as those funded under an existing or preceding USAID award;
- Awards made to public international organizations (PIOs) or bilateral development partners;
- Awards relying upon statutory notwithstanding authority;
- Humanitarian and disaster assistance activities (OFDA);
- Transition Initiative activities (OTI);
- Food emergency activities (Food for Peace);
- Awards limited to local entities;
- Changes due to budget revisions when eligibility procedures are not applicable;
- Awards made under Administrator-approved blanket justifications to restrict eligibility for an approved class of awards, for example, EPP for HIV/AIDS Expedited Procedures Package; or
- Non-appropriated funding (e.g., gifts received by USAID from bilateral and multilateral donors, host governments, or the private sector).

b. Other Exceptions to Restrict Eligibility

The following exceptions to restrict eligibility do not require the preparation of a JRE when the specific requirements of the exception, provided below, are met.

(1) Emergency and Disaster Assistance

USAID may restrict eligibility and award new or follow-on awards, or amend existing awards, for disaster relief, rehabilitation or reconstruction assistance provided under section 491 of the Foreign Assistance Act and for emergency food aid under Title II of the Food for Peace Act. Such restricted eligibility may be made following the written determination by the Director of the Office of U.S.

Foreign Disaster Assistance or the Director of the Office of Food for Peace, both residing within the Bureau for Democracy, Conflict and Humanitarian Assistance (DCHA), that unrestricted eligibility is impracticable for awards within their respective areas of responsibility on an award-by-award or disaster-by-disaster basis. Following such a determination, no other requirements of this section **303.3.6.5** apply.

(2) Restricted Eligibility to Local or Regional Entities

USAID may restrict eligibility to local or regional (indigenous) entities. For purposes of consistency and reporting, the definition of "local entity" means an individual, a corporation, a nonprofit organization, or another body of persons that:

(1) Is legally organized under the laws of;

(2) Has as its principal place of business or operations in;

(3) Is majority owned by individuals who are citizens or lawful permanent residents of; and

(4) Is managed by a governing body the majority of who are citizens or lawful permanent residents of the country receiving assistance.

For purposes of this section, 'majority owned' and 'managed by' include, without limitation, beneficiary interests and the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the organization's managers or a majority of the organization's governing body by any means.

If eligibility for award is restricted to local or regional entities, U.S. organizations may not submit an application for the award unless the program is re-advertised to provide unrestricted eligibility, allowing all U.S. organizations an opportunity to submit an application.

USAID does not require a JRE where restriction of eligibility to local entities is described in the Project Appraisal Document (PAD) in **ADS 201**. PADs may be amended to authorize restrict eligibility to local entities using this exception.

(3) Transition Awards

USAID may restrict eligibility when awarding to a local entity that has been a sub-recipient under a USAID prime award (the "initial award") and all of the following conditions have been met:

- The direct award does not exceed 5 years in duration and the total estimated amount is less than $5 million ($20 million for CPCs);

- The sub-recipient is a local organization;

- USAID's intent that the initial award recipient would develop the capacity of the sub-recipients so that the sub-recipients would be eligible to receive a direct award from USAID or other donors in the future is clearly stated in the acquisition or assistance solicitation for the initial award; and

- The initial award contains:

  - Criteria for the prime recipient to identify and qualify a sub-recipient for a direct award,

  - Procedures for making the direct award, and

  - A timeframe for when the direct award will be considered, including the limits of USAID funding of the initial award for activities of the sub-recipient.

Awards under this exception are at the discretion of the Agreement Officer.

Awards under this exception must not be extended unless the Mission justifies the extension using the exception in **303.3.6.5a(2)(f)** ("Critical objectives of the foreign assistance program") and, if applicable, **303.3.6.5a(3)**.

For existing awards, amendment of the initial award may be necessary to conform with the above before direct awards to sub-recipients may be made. Such amendments must comply with all other legal and policy requirements and may only be made after an individual authorized to approve the activity under **ADS 201** approves a memorandum confirming that the program description of the initial award intended that the initial award recipient would develop the capacity of the sub-recipients so that they would be eligible to receive a direct award from USAID or other donors in the future.

303.3.6.6 Late or Incomplete Submissions

Effective Date: 12/26/2014

USAID may review and consider late or incomplete Request For Applications (RFA) or Annual Program Statement (APS) award applications if:

- USAID's treatment of the material is consistent with the terms of the RFA or APS,
- All late applications are treated the same, and

- They are reviewed before any agreements are awarded under the RFA or APS.

The AO must consent in writing to the review of late or incomplete applications.

303.3.7 The Award Decision
Effective Date: 06/01/2006

The AO's decision to fund or not to fund an award is final and not subject to review. Any information that may impact the AO's decision must be directed to the AO.

303.3.7.1 Notification
Effective Date: 06/01/2006

a. Only the AO may notify the apparently successful awardee that they are being further considered for an award. It is essential that no one on the SC make any commitment, expressed or implied, to the selected applicant. Only the AO is authorized to make a commitment on behalf of USAID.

b. USAID must individually notify each applicant in writing on the success of its application. Once USAID decides which applicant the Agency will consider for award, the AO or the Activity Manager (if authority is delegated by the AO) must notify all unsuccessful applicants that they will not be considered further and briefly explain why USAID did not select their application. The letters must be approved by the AO before the Activity Manager may send them.

303.3.7.2 Request for Additional Information
Effective Date: 12/26/2014

Within 10 working days after an applicant receives notice that USAID will not fund its application, the unsuccessful applicant may send a written request for additional information to the AO.

Additional information may be provided at the discretion of the AO. USAID may respond orally or in writing. The cognizant B/IO should respond to the request within 30 days after consultation with the AO or inform the applicant that more time is necessary. If responding orally, the AO or the technical representative from the B/IO must make a written summary of the response for the agreement file. The AO must be present at and lead any meeting. If responding in writing, the AO must approve any written communication before it is sent to the unsuccessful applicant.

USAID's responses must be limited to the Agency's interest in supporting the applicant's program as described in the application. Comparing one application to another is neither advisable nor helpful to the applicant. The Selection Committee (SC) chair and the AO should only give additional information that would be useful to the applicant in preparing future applications.

If the applicant has questions about the program or about the programmatic review, the SC chair will provide constructive feedback that may assist the applicant when developing applications in the future. The SC chair may explain the basis for the decision and the strengths and weaknesses of the application in terms of the published review criteria. When the applicant has questions about process, accountability, and business considerations, the AO will respond. The SC chair and the AO will jointly respond when the applicant raises both types of questions.

303.3.8 Pre-Award Certifications, Assurances, and Other Statements of the Recipient and Solicitation Standard Provisions

Effective Date: 04/08/2016

In addition to the certifications included in the **Standard Form 424**, the AO must obtain the following certifications, assurances, and other statements from both U.S. and non-U.S. organizations (except as specified below) before making an award and as otherwise required by the regulations listed in this section. The AO must also incorporate the solicitation standard provisions and provide links to the applicable award standard provisions in all solicitations.

The AO may choose to request the applicant to submit the certifications either as part of the application or during negotiations. The AO should consider the administrative burden of requiring certifications as part of the application in light of potential delays in making the award while waiting for the certifications. The required certifications, assurances, and other statements are:

a. A signed copy of **ADS 303mav, Certifications, Assurances, and Other Statements of the Recipient and Solicitation Standard Provisions**, which includes:

1. **Assurance of Compliance with Laws and Regulations Governing Nondiscrimination in Federally Assisted Programs** (This assurance applies to Non-U.S. organizations, if any part of the program will be undertaken in the U.S.);
2. **Certification Regarding Lobbying** (**22 CFR 227**);
3. **Prohibition on Assistance to Drug Traffickers for Covered Countries and Individuals** (**ADS 206, Prohibition of Assistance to Drug Traffickers**);
4. **Certification Regarding Terrorist Financing**;
5. **Certification Regarding Trafficking in Persons;** and
6. **Certification of Recipient**

b. Other certifications and statements found in **ADS 303mav, Certifications, Assurances, and Other Statements of the Recipient and Solicitation Standard Provisions**:

1. A signed copy of **Key Individual Certification Narcotics Offenses and Drug Trafficking,** (**ADS 206.3.10**) when applicable;
2. A signed copy of **Participant Certification Narcotics Offenses and Drug Trafficking** (**ADS 206.3.10**) when applicable;
3. A completed copy of **Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction**;
4. **Other Statements of Recipients**.

c. The standard provisions that must be incorporated into the solicitations are:

1. Branding Strategy – Assistance
2. Marking Plan – Assistance
3. Conscience Clause Implementation (Assistance)
4. Prohibition on Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements – Representation

303.3.9 Pre-Award Risk Assessment

Effective Date: 07/22/2015

The recommendation or selection of an application for award by an Activity Manager or a Selection Committee does not in any way guarantee the award. The AO must evaluate the risks posed by applicants before making the award. The AO must evaluate risk in accordance with the principles established by USAID and the Office of Management and Budget (OMB) (see **2 CFR 200.205**). Depending on the result of this pre-award risk assessment, the AO may either:

- Make the award,
- Deny the recommendation of the Activity Manager and not execute the award, or
- Award with "specific conditions" (**2 CFR 200.207** and **303.3.9.2**).

A positive risk assessment means that the applicant possesses or has the ability to obtain the necessary management competence to plan and carry out the assistance program to be funded, and that the applicant will practice mutually agreed upon methods of accountability for funds and other assets provided by USAID.

History of Performance. Note that while an organization's history of performance on USAID awards should be a factor in determining the level of risk, a history of receiving grants from USAID does not guarantee that there is no risk in providing funds to an organization. Changes in personnel, accounting practices, or financial status may affect an organization's performance on a new award.

An applicant's history of performance can serve as an indicator of the quality of its future performance. An applicant must provide a list of all its cost-reimbursement contracts, grants, or cooperative agreements involving similar or related programs during the past three years. The reference information for these awards must include the performance location, award number (if available), a brief description of the work performed, and a point of contact list with current telephone numbers. The Activity Manager determines whether to require this information as part of the initial application or later from the apparently successful applicant(s). Requiring the information at a later date may be appropriate when USAID is conducting a multi-tiered review (see **303.3.6.1.d**) (see **Best Practices for Collecting and Using Current and Past Performance Information**).

The Selection Committee chair must validate the applicant's past performance reference information based on existing evaluations to the maximum extent possible, and make a reasonable, good faith effort to contact all references to verify or corroborate the following:

- How well an applicant performed,
- The relevancy of the work performed under the program,
- Instances of good performance,
- Instances of poor performance,
- Significant achievements,
- Significant problems, and
- Any indications of excellent or exceptional performance in the most critical areas.

The Selection Committee chair and the AO may use the Contractor Performance Assessment Reporting System (CPARS) and the Past Performance Information Retrieval System (PPIRS) if there is information available on the recipient in these systems, taking into account the differences between performance under acquisition and performance under assistance.

The Activity Manager and the Selection Committee chair may contact references other than those provided in the application, if the RFA or APS state that it is allowed.

Additionally, before making an award or amending an award to add incremental funding, increase the total program amount, or extend the period of performance with additional cost, the AO must verify that neither the successful applicant, nor its proposed subawardees:

- Have active exclusions in the System for Award Management (SAM) (**www.sam.gov**);

- Appear on the Specially Designated Nationals (SDN) and Blocked Persons List maintained by the U.S. Treasury for the Office of Foreign Assets Control, sometimes referred to as the "OFAC List" (online at: **http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx**); and

- Are listed in the United Nations Security designation list (online at: **http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml**).

Pursuant to **2 CFR 780** and **2 CFR 180**, the Assistant Administrator of the Bureau for Management, or designee, has the authority to grant an exception permitting an organization with active exclusions to receive federal assistance. However, such an exception can only be made in writing and must include a description of the unique circumstances that warrant deviation from the government-wide policy.

The AO must address the risk assessment of the prospective recipient and document all findings in the Negotiation Memorandum. The AO must also certify in the Global Acquisition and Assistance System (GLAAS) that the applicant is not listed as actively excluded in SAM.gov as suspended, debarred, or proposed for debarment.

When awarding a Fixed Amount Award, the following are to be used instead of those specified in this section:

- The procedures in **303.3.25**;
- **ADS 303saj, Fixed Amount Award to Non-Governmental Organizations**; and
- **ADS 303mak, Fixed Amount Award Entity Eligibility Checklist.**

For all other assistance awards, the following is specific guidance by category for assessing risk:

CATEGORY A: U.S. ORGANIZATIONS THAT HAVE BEEN RECIPIENTS OR CONTRACTORS UNDER USAID OR OTHER U.S. GOVERNMENT (USG) ACQUISITION OR ASSISTANCE INSTRUMENTS

When a U.S. organization has previously received a positive risk assessment by USAID or another USG Agency, the AO may rely on:

- A **Single Audit** or similar audit maintained by M/OAA/Contract Audit and Support Division, Contract Audit Management;

- A signed copy of the applicable statutory and regulatory certifications required in **303.3.8**;

- The quality of the applicant's history of performance on similar USAID projects, including compliance with the terms and conditions of the funding agreement, as evaluated by the DO Team in accordance with **303.3.6.3**; or

- Other information as necessary, including formal pre-award surveys (see **303.3.8**, **303.3.5.2**, **303.3.9.1** and **303.3.25**).

CATEGORY B: NON-U.S. ORGANIZATIONS THAT HAVE BEEN RECIPIENTS OR CONTRACTORS UNDER USAID OR OTHER U.S. GOVERNMENT (USG) ACQUISITION OR ASSISTANCE INSTRUMENTS

To make a risk assessment for a non-U.S. organization that has previously received a positive risk assessment by USAID or another USG Agency, the AO may rely on:

- Audits performed in accordance with **ADS 591, Financial Audits of USAID Contractors, Grantees, and Host Government Entities 591.3.4.2**;

- A signed copy of the applicable statutory and regulatory certifications required in **303.3.8**;

- The quality of the applicant's history of performance on similar USAID projects, including compliance with the terms and conditions of the funding agreement, as evaluated by the DO Team in accordance with **303.3.6.3**; or

- Other information as necessary and appropriate, including pre-award surveys, (see **303.3.8, 303.3.5.2**, **303.3.9.1** and **303.3.25**).

CATEGORY C: ORGANIZATIONS NEW TO USAID OR ORGANIZATIONS WITH OUTSTANDING AUDIT FINDINGS

If a criteria found in **303.3.9.1**, applies to the selected or recommended applicant, the AO must perform a survey in conformance with that provision before making a risk assessment decision. The survey must be considered when making the decision. At a minimum, the risk assessment for such an applicant will be based on the same considerations as in categories **a** or **b** of this section, depending on whether it is a U.S. or non-U.S. organization. Additionally, the AO must obtain the following information from these applicants, when appropriate:

- Copies of audited financial statements for the last three years, which a Certified Public Accountant or other auditor satisfactory to USAID has performed;

- Projected budget, cash flow, and organization charts; and
- Copies of applicable policies and procedures (e.g., accounting, purchasing, property management, personnel).

303.3.9.1 Pre-Award Surveys

Effective Date: 12/26/2014

a. Pre-Award Survey Requirements. For all assistance awards, if any of the following criteria apply, the AO must establish and convene a formal survey team to conduct an examination that will help inform the risk assessment (see **303.3.9**):

(1) The AO or Activity Manager is uncertain about the prospective recipient's capacity to perform financially or programmatically.

(2) The prospective recipient has never had a USAID grant, cooperative agreement, or contract. This requirement does not apply to Fixed Amount Awards.

(3) The prospective recipient has not received an award from any Federal agency within the last five years. This requirement does not apply to Fixed Amount Awards.

(4) The AO has knowledge of deficiencies in the applicant's annual audit (**Single Audit** or equivalent).

(5) The AO determines it to be in the best interest of the U.S. Government.

b. Contents of the Pre-Award Survey. The survey team examines the applicant's systems to determine whether the prospective recipient has the necessary organization, experience, accounting and operational controls, and technical skills in order to achieve the objectives of the program, or whether specific conditions will be needed.

(1) For a U.S. organization, the AO must ensure that the applicant can meet the requirements of the award, including **2 CFR 200** and the applicable cost principles. The AO or the AO's representative must conduct a detailed analysis that addresses whether:

i. The applicant's accounting, recordkeeping, and overall financial management systems meet the standards in **2 CFR 200.300-309 and 2 CFR 200.333-337**.

ii. The applicant's system of internal controls is reasonable in accordance with applicable cost principles. This includes the

segregation of duties, handling of cash, contracting procedures, and personnel and travel policies.

iii. The applicant's property management system, if applicable, meets the property standards in **2 CFR 200.310-316**.

iv. The applicant meets the requirements in **2 CFR 200.330-332** for the administration and monitoring of sub-awards.

v. The applicant's procurement system, if procurement is significant to the award, meets the standards set forth in **2 CFR 200.317-326**.

(2) For a non-U.S. organization, the AO must ensure that the applicant can meet the requirements of **ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations** as part of the risk assessment. For local non-U.S. organizations, the pre-award survey team must either use **ADS 303sam, Non-U.S. Organization Pre-Award Survey Guidelines and Support** or conduct a detailed analysis in accordance with locally-established or award-specific criteria that achieve the same objectives as the **NUPAS**. For additional guidance regarding local non-U.S. organizations pre-award surveys, risk assessments, and specific conditions (see **ADS 303sam, NUPAS Guidelines and Support**).

(3) For Fixed Amount Awards, the AO must use the **ADS 303mak, Fixed Amount Award Entity Eligibility Checklist** to ensure the intended recipient will be able to comply with **ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations**.

c. Composition of the Pre-Award Survey Team. When assembling a formal survey team, the AO must ensure appropriate expertise.

(1) A typical team consists of:

i. A Development Objective Team member,
ii. The AO, or the AO's representative,
iii. A financial officer from the Bureau for Management, Office of the Chief Financial Officer, or the Mission or regional controller's office, and
iv. A representative from M/OAA/Contract Audit and Support Division, Contract Audit Management Branch (for Washington-based awards), if possible.

(2) Depending on the capacity of the Operating Unit to assemble the above team, the survey may be conducted in whole or in part by a local accounting firm approved by the cognizant Regional Inspector General as long as the Scope of Work for such work includes conflict of interest

restrictions prohibiting the firm from providing capacity development to entities it surveys.

(3) The survey team reviews the applicant's systems against the standards discussed in paragraph b of this section and submits its findings to the AO for review, consideration, and informing the risk assessment.

d. Risk Assessment Decision. Before the award of any grant or cooperative agreement, the AO must:

(1) Review the proposed project description and budget to ensure that they adequately describe the objectives of the project, the activities funded by USAID that will achieve the objectives, and a monitoring system to measure the project's progress. The Activity Manager advises the AO on the professional and technical experience and competence of the applicant and the conformity of the application to USAID criteria.

(2) Make a written final determination of the applicant's risk in the Memorandum of Negotiation. If the determination is positive, the AO must state in the memorandum that the applicant:

i. Has adequate financial resources or the ability to obtain such resources, as required during the performance of the award.

ii. Has the ability to meet the award terms and conditions, considering all existing prospective recipient commitments, both non-governmental and governmental.

iii. Has a satisfactory record of performance. Generally, relevant unsatisfactory performance in the past is enough to justify a finding of non-responsibility, unless there is clear evidence of subsequent satisfactory performance or the applicant has taken adequate corrective measures to assure that it will be able to perform its functions satisfactorily.

iv. Has a satisfactory record of business integrity.

v. Is otherwise qualified to receive an award under applicable laws and regulations.

303.3.9.2 Specific Conditions

Effective Date: 12/26/2014

It is the AO's responsibility to minimize the risk to USAID posed by high risk organizations. If, after conducting a comprehensive risk assessment of a potential recipient, the AO is unable to make a positive risk determination, the AO may either deny the Activity Manager's recommendation and not make the award or award with "specific conditions" (high risk) (see **2 CFR 200.207**). The AO, however, may consider

this choice only if it appears likely that the potential recipient can correct its deficiencies within a reasonable period of time. Because regulation authorizes "specific conditions," a deviation is not needed.

a. Means to Minimize Risk. When the AO makes an award, the AO may consider requiring any of the following specific conditions:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(3) Requiring additional, more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Establishing additional prior approvals; or

(6) Requiring the recipient to obtain technical or management assistance.

When the AO determines that more Federal oversight is necessary, the AO may:

- Issue a contract to a third party to provide technical assistance to the recipient,
- Require the recipient to contract for technical assistance, or
- Have USAID staff provide technical assistance directly to the recipient.

b. The AO must notify the successful applicant of:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the action needed to remove the additional requirement, if applicable;

(4) The time allowed for completing the actions if applicable; and

(5) The method for requesting reconsideration of the additional requirements imposed.

Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

c. Non-US NGO Recipients

Because **2 CFR 200** is not legally applicable to awards to non-U.S. organizations, as a matter of USAID policy, the standards in this ADS section **303.3.9.2d** must be used for making awards to non-U.S. recipients with specific conditions. Where deficiencies or weaknesses are identified by the pre-award survey under **303.3.9.1b(2)** and cannot be corrected prior to award, the AO may make an award upon an affirmative risk assessment determination that is contingent upon one or more specific conditions in the award. Such specific conditions must mitigate the risks posed by the deficiencies or weaknesses identified by the NUPAS and require the recipient to correct the reported deficiencies. Specific conditions for non-US recipients may be of limited duration or may cover the entire period of the award. For additional guidance on specific conditions for non-US recipients, see the NUPAS Guidelines and Support. Additionally, when specific conditions are used with non-US recipients, the following requirements apply:

(1) The specific conditions must contain language subjecting the recipient to a follow-up review/survey within a reasonable time after award to verify compliance with the conditions;

(2) The continuation of award performance must be predicated on the recipient correcting the reported inadequacies within the timeframe identified in the award;

(3) The Negotiation Memorandum must document in the risk determination section the rationale for including each specific condition;

(4) The specific condition(s) must specify in the award document:

i. The nature of the additional requirements,
ii. The nature of the corrective action needed,
iii. The time allowed for completing the corrective actions; and

(5) The cognizant Operating Unit must develop and carry out a plan for monitoring and supporting the recipient in satisfying any specific conditions.

Whenever possible, specific conditions must be for as limited a time period as necessary to mitigate the identified risks and not for the life of the award.

For specific conditions that do not cover the entire award period, once the specific condition has been satisfied and its conditions have been fully met, the Agreement Officer must remove the specific condition by formal amendment to the award. For specific conditions that cover the entire period of the award, the

specific condition must clearly state that it covers the entire period of the award or must identify clearly the timeframe(s) or milestones at which the inclusion of the specific may be reconsidered, amended or removed.

303.3.10 Cost Share

Effective Date: 06/18/2012

Cost share refers to the resources a recipient contributes to the total cost of an agreement. Cost share becomes a condition of an award when it is part of the approved award budget. The cost share must be verifiable from the recipient's records; for U.S. organizations it is subject to the requirements of **2 CFR 200.306**, and for non-U.S. organizations it is subject to the Standard Provision, "Cost Share"; and can be audited. If a recipient does not meet its cost share requirement, the AO may apply the difference in actual cost share amount from the agreed upon amount to reduce the amount of USAID funding for the following funding period, require the recipient to refund the difference to USAID when this award expires or is terminated, or reduce the amount of cost share required under the award.

303.3.10.1 Cost Share Determination

Effective Date: 12/26/2014

Although there is no general legislative requirement that recipients of grants or cooperative agreements must cost share, cost sharing is an important element of the USAID-recipient relationship. When used, its application should be flexible, case-specific, and used to support or contribute to the achievement of results. USAID should use cost sharing after considering whether it is appropriate for the recipient organization in the particular circumstances, in particular, the programmatic and technical context. There is no set formula for cost sharing. There is not a suggested numeric reference point. Cost sharing should be based on the needs or purpose of the activity. Examples of when cost-sharing may be appropriate include:

- When there is a programmatic rationale for cost sharing, such as helping to ensure that the recipient will build its organizational capacity for mobilizing resource. For example, when building fundraising capability is an objective of an activity, it would be appropriate to require the recipient to meet specific private financing targets as a condition of USAID funding.
- When it is critical that the activity continues after USAID assistance ends, cost sharing requirements can ensure that the recipient establishes adequate alternate sources of funding.
- When an award supports an activity initiated by the recipient or an unsolicited application. Because most USAID funding is reserved for development priorities the Agency has already established, only limited funding may be available for even the best of other programs. USAID may only be able to partially fund these other activities.

- To otherwise give the recipient a financial stake in the success of a program.

In all of these cases, the DO Team should discuss the amount and terms of cost sharing with potential recipients prior to award (see **ADS 200saf, Guidance on Consultation and Avoidance of Unfair Competitive Advantage**).

The Activity Manager must determine the appropriate cost share for individual grants and cooperative agreements. The Activity Manager must include this determination in the financial analysis of the program prior to issuance of a Request for Applications (RFA) or an Annual Program Statement (APS). In the case of awards solicited with unrestricted eligibility, the Activity Manager is encouraged to communicate with a broad range of potential applicants regarding appropriate cost sharing prior to issuance of the RFA or APS. Even after USAID issues an RFA or APS, it may be appropriate to consider special circumstances and change the cost share requirement. In the case of restricted eligibility awards, the Activity Manager may wish to discuss or negotiate the cost share with the applicant, especially those who submit unsolicited applications.

USAID may not use a set formula in determining the level of cost share. The Activity Manager should take several considerations into account when making cost share decisions. For example, it might be difficult for a recipient to meet a cost share requirement during an activity with a short timeframe. A specific program may be risky and discourages potential recipients from providing meaningful contributions. Eligibility may be limited to indigenous organizations with limited resources.

The Activity Manager must write a memorandum to the AO documenting the factors that were considered when determining the amount of cost share.

USAID may require cost sharing regardless of the type of organization, whether non-profit (U.S. and international private voluntary organizations, local nongovernmental organizations, universities, foundations, and others) or commercial organizations, including for-profit businesses. In the case of a non-U.S. recipient, it is important to be flexible when establishing cost sharing requirements.

If an activity generates a profit, the AO must consider the best uses of program income and document this in the award. In accordance with **2 CFR 200.307** and the prior written approval of the AO, USAID may use program income to finance the non-Federal cost share of an award. The AO may also make the program income additive to USAID's contribution without a cost sharing requirement when this would help achieve program objectives, such as sustainability.

303.3.10.2 Cost Sharing in RFAs and APS

Effective Date: 07/22/2015

If USAID makes a determination to require cost sharing in an award, it must state the requirements in the announcement. If USAID issues an announcement [Request for

Applications (RFA) or Annual Program Statement (APS)] and then the Activity Manager decides that the amount of cost share required should be changed, the Activity Manager must provide an adequate justification and request the AO to amend the RFA or APS document, as applicable. Applications that do not meet the minimum cost share requirement, when applicable, are not eligible for award consideration. See **303.3.5.2c** and **303.3.5.2e**.

In accordance with **2 CFR 200.306**, cost sharing cannot be used as a separate factor during the merit review of applications. However, cost sharing may be considered in the merit review only if the funding announcement specifically addresses how it will be considered, e.g., assigning a certain number of additional points to applicants who offer cost sharing, or using cost sharing to break ties among applications with equivalent scores after evaluation against all other factors. Note that excessive reliance on cost sharing during the merit review may unfairly favor larger, better-funded organizations.

303.3.10.3 Meeting Cost Sharing Requirements

Effective Date: 12/26/2014

As part of the analysis of the applicant's proposed budget, the AO must review the applicant's proposed cost share contributions for cost realism. The AO must verify that the proposed contributions meet the standards set in **2 CFR 200.306** for U.S. organizations or the Standard Provision “Cost Share” for non-U.S. organizations. USAID does not apply its source and nationality requirements or the restricted goods provision established in the Standard Provision "USAID Eligibility Rules for Commodities and Services" to cost share contributions.

In the award budget, cost share must be expressed as a dollar figure rather than a percentage to assist in monitoring the amount. Cost sharing applies throughout the life of an agreement, and the AOR must monitor the recipient's financial reports to ensure that the recipient is making progress toward meeting the required cost share. If it appears that the recipient is not making adequate progress, the AOR must bring this to the attention of the AO. The AO then must initiate discussions with the recipient to resolve the issue. The AO has the authority to reduce the amount of USAID incremental funding in the following funding period or to reduce the amount of the agreement by the difference between the expended amount and what the recipient agreed to provide. If the award has expired or been terminated, the AO may request the recipient to refund the difference to USAID.

In-kind contributions are allowable as cost share in accordance with **2 CFR 200.306** for U.S. organizations and in accordance with the Standard Provision, “Cost Share” for non-U.S. organizations. This includes things such as volunteer time; valuation of donated supplies, equipment, and other property; and use of unrecovered indirect costs.

303.3.11 Substantial Involvement and Cooperative Agreements

Effective Date: 12/26/2014

USAID substantial involvement in awards is limited to cooperative agreements. USAID cannot be substantially involved in grants. When making an award, the AO must select, in accordance with **ADS 304**, either a grant or a cooperative agreement as the appropriate implementing instrument.

In determining whether an award will need substantial USAID involvement, the AO must not consider a single factor or proposed involvement. The AO must instead evaluate the type of overall relationship expected between USAID and the recipient.

Office of Management and Budget policy on substantial involvement proscribes that agencies "should limit their involvement in assisted activities to the minimum consistent with program requirements." Therefore, the AO must be satisfied that USAID's proposed involvement in an assistance activity is reasonable and necessary. Anticipated substantial USAID involvement is a relative, rather than an absolute concept. USAID must always have some involvement in assistance awards, e.g., monitoring performance, reviewing reports, or providing approvals required by **2 CFR 200.308** and **2 CFR 700.16**. But these are not instances of substantial involvement.

Substantial involvement is defined by the following elements at **303.3.11a – d**, unless USAID authorizes a deviation in accordance with **303.3.4**. The DO Team must describe this substantial involvement in the cooperative agreement if the DO Team anticipates such Agency involvement during the performance of an award. The DO Team must consult with the AO and describe USAID's interests so that the award adequately reflects the level of USAID's necessary planned involvement. Furthermore, USAID must directly and specifically tie each area of substantial involvement to an activity in the program description to the AO's satisfaction.

On behalf of the Agency, an AOR will substantially be involved in the administration of a cooperative agreement to help the recipient achieve the agreement objectives. The AO may delegate the approvals listed in items **a - d** below to the AOR, except for authority to change the program description and the approved budget. Only the AO may approve such changes after review by the AOR.

ELEMENTS OF SUBSTANTIAL INVOLVEMENT

a. Approval of the Recipient's Implementation Plans

If at the time of award, the program description does not establish a timeline in sufficient detail for the planned achievement of milestones or outputs, USAID may delay approval of the recipient's implementation plan for a later date. USAID must not require approval of implementation plans more often than annually. If the AO has delegated authority to the AOR to approve implementation plans, the AOR must review the agreement's terms and conditions to ensure that changes to the terms and conditions are not inadvertently approved by the AOR.

b. Approval of Specified Key Personnel

USAID may designate as key personnel only those positions that are essential to the successful implementation of the recipient's program. USAID's policy limits this to a reasonable number of positions, generally no more than five positions or five percent of recipient employees working under the award, whichever is greater.

c. Agency and Recipient Collaboration or Joint Participation

When the recipient's successful accomplishment of program objectives would benefit from USAID's technical knowledge, the AO may authorize the collaboration or joint participation of USAID and the recipient on the program. There should be sufficient reason for Agency involvement and the involvement should be specifically tailored to support identified elements in the program description. When these conditions are met, the AO may include appropriate levels of substantial involvement such as the following:

(1) Collaborative involvement in selection of advisory committee members, if the program will establish an advisory committee that provides advice to the recipient. USAID may participate as a member of this committee as well. Advisory committees must only deal with programmatic or technical issues and not routine administrative matters.

(2) Concurrence on the substantive provisions of sub-awards. **2 CFR 200.308** already requires the recipient to obtain the AO's prior approval for the sub-award, transfer, or contracting out of any work under an award. This is generally limited to approving work by a third party under the agreement. If USAID wishes to reserve any further approval rights for sub-awards or contracts, it must clearly spell out such Agency involvement in the substantial involvement provision of the agreement.

(3) Approval of the recipient's monitoring and evaluation plans.

(4) Monitor to authorize specified kinds of direction or redirection because of interrelationships with other projects. All such activities must be included in the program description, negotiated in the budget, and made part of the award.

d. Agency Authority to Immediately Halt a Construction Activity

USAID may include the statement "The AO may immediately halt a construction activity if identified specifications are not met." In such cases, the AO must also attach the identified specifications to the award when it is being executed. Any material changes to the specifications must be treated as an amendment to the award.

303.3.12 Negotiation of the Award

Effective Date: 12/26/2014

a. **Review of Proposed Award Budget.** The AO must review the apparently successful applicant's budget to ensure that costs, including cost sharing, are in compliance with OMB's and USAID's policies. The recipient must justify in advance the proposed costs for each element of the program. If the recipient expects to earn program income during the award period, the schedule of the award must specifically state how the income will be applied. (The definition of program income is located in **2 CFR 200.80** and income application suggestions can be found in **2 CFR 200.307.**)

When reviewing costs, the AO must review the cost breakdown; and evaluate and analyze specific elements of costs for reasonableness and allocability of costs in the budget, and the allowability of the costs under the applicable cost principles. The review of the proposed budget helps the AO determine:

(1) The extent of the prospective recipient's understanding of the financial aspects of the program and the recipient's ability to perform the grant activities within the amount requested;
(2) Whether the applicant's plans will achieve the program objectives with reasonable economy and efficiency; and
(3) Any special conditions relating to costs that are in the award.

The AO must determine the level of the cost review based on the nature of the program, the amount and type of costs involved, and past experience with the applicant. For example, if an assistance award contains construction, then the AO must complete a detailed cost-analysis for the construction component. AOs must use the mandatory templates found internally at **https://pages.usaid.gov/M/OAA/assistance-resources** to document cost review findings.

The AO may request M/OAA/Contract Audit and Support Division (CAS) assistance when reviewing the proposed budget. M/OAA/CAS could address whether the apparently successful applicant's budget is fair and reasonable for the proposed program, and whether the application is consistent with the Agency's cost accounting policies, procedures, and practices. This includes ensuring that the apparently successful applicant's indirect cost rates are consistent with any Negotiated Indirect Cost Rate Agreements (NICRA).

If the apparently successful applicant has never received a negotiated indirect cost rate, the recipient may choose to charge a de minimis rate of 10% of modified total direct costs (see 2 CFR 200.414(f)). If the prospective applicant chooses the de minimis rate, the AO must incorporate the 10% indirect cost rate

in the award budget and the recipient must follow the requirements in 2 CFR 200.414(f).

The AO must negotiate with the applicant to resolve any issues related to proposed costs that do not comply with USAID policies before executing the award.

b. **File documentation.** 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. The requirements and procedures for filing award documents in ASIST, as well as standards for file documentation by award type are available internally at **https://pages.usaid.gov/M/OAA/assistance-resources**. The ASIST guidelines also contain guidance for maintaining older awards in the paper-based format. The AO must document the negotiation process for a new assistance award or an amendment of an existing award, along with other pre-award determinations in a Memorandum of Negotiation using the applicable templates found internally at **https://pages.usaid.gov/M/OAA/assistance-resources**. The Memorandum of Negotiations must be included in the award file together with all applicable supporting documentation.

303.3.13 The Award Process and Elements of an Award

Effective Date: 12/26/2014

Before making an award, the AO must ensure that:

- The program description clearly identifies the purpose of the program, contains an implementation plan that specifically identifies each element of the program, and specifies the duration of the assistance instrument.

- All elements of the award – including items in the schedule such as period of performance, award amount, place of performance, and program description – clearly and coherently express the specific understandings of both parties.

- The Branding Strategy and Marking Plan meet regulatory and USAID policy requirements. If the Administrator has provided a written determination for use of an additional or substitute logo or seal and tagline representing a presidential initiative or other high level interagency federal initiative, the AO must identify the alternate branding to be used in the award (see **2 CFR 700.16** or, for non-U.S. organizations, see the provision entitled “Marking and Public Communications Under USAID-Funded Assistance”).

- All representations and certifications are completed and current.

- All “specific conditions” are identified (see **303.3.9.2**).

- The award complies with all CFRs and Executive Orders in the mandatory references (**303.4**), the Standard Provisions, other ADS chapters, and other USAID guidance, as appropriate.

To avoid ambiguities and ensure the recipient's agreement , the AO must include in the award document all mandatory standard provisions and only those "Required as Applicable" standard provisions that are intended to be a term and condition of the award. The AO must determine which "Required as Applicable" standard provisions to include in the award using the guidance found in Applicability Statements of each "Required as Applicable" standard provision and the applicable mandatory references and additional help documents included with this chapter.

Before the award is signed, the AO must ensure that all of the elements of a legally binding agreement are present. These are:

- Competent parties,
- Proper subject matter,
- Sufficient consideration,
- Mutual understanding, and
- Agreement on the terms of the assistance instrument.

The AO's signature serves to obligate funds under a grant or cooperative agreement (see **ADS 621, Obligations**), as long as the AO accepts the recipient's application without substantial modification or negotiates any changes with the applicant. The AO will provide a copy of the grant or cooperative agreement to the recipient to ensure it agrees with the terms and conditions of the award. If the AO makes any substantive change to the program description or the budget or adds terms to the agreement that were not addressed during negotiations, such as a Substantial Involvement Understanding or "specific conditions" (see **2 CFR 200.207** and **303.3.9.2** and **303.3.11**), the AO must obtain the applicant's agreement to the changes or additional terms before obligating funds.

Prior to signing a grant or cooperative agreement, the AO must ensure that the entire award or amendment package is processed and generated in GLAAS, available only internally at **https://pages.usaid.gov/M/OAA/assistance-resources**. The negotiation memorandum must be documented accordingly. When the award is signed by all relevant parties, the AO or negotiator must upload a scanned copy of the fully executed award into GLAAS.

303.3.14 Duration of Assistance Awards

Effective Date: 06/18/2012

Section 635(h) of the Foreign Assistance Act states that a grant or cooperative agreement may not run at any time for more than five years. This means that any current period of performance may not be for more than five years. As long as this is the case, USAID may extend the agreement. For example, after the completion of the first year, subject to eligibility requirements, USAID may extend the award for one more year. Alternatively, prior to the end date of the award, it may be extended for up to five years, subject to the eligibility requirements in **303.3.6.5**.

303.3.15 Designation of the Agreement Officer's Representative (AOR)

Effective Date: 08/08/2014

An Agreement Officer's Representative (AOR) assists in the programmatic monitoring or administration of an award. The AOR 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 his or her technical capacity.

The AO must designate an AOR (and alternate, if applicable) for each grant or cooperative agreement as early in the award process as practical. The AO may not finalize an award until after they have signed the AOR designation letter in accordance with **ADS 303mai, Model Letters and Procedures for Designating the Agreement Officer's Representative (AOR) for Cooperative Agreements and Grants** and received the signed AOR acknowledgement.

The Operating Unit (OU) must nominate an AOR as early in the planning process as possible. At the time of the award, the AO must identify the AOR by name in the Schedule of the award and enter the AOR's name in the Global Acquisition and Assistance System (GLAAS). When the award is executed, the AO must distribute the signed designation letter to the recipient, the paying office, the AOR and alternate, and other relevant parties. The signed designation letter must also be maintained in the award file.

In the event the AOR changes during the period of the award, the AO must re-issue the designation letter to the new AOR and receive the new AOR's acknowledgement. The AO must prepare a unilateral amendment in GLAAS to update the AOR designation, provide a copy of the signed designation letter along with the amendment to the recipient, the paying office and other relevant parties, and maintain a signed copy in the award file.

Before the AO designates the AOR and alternate AOR, the selected individuals must provide:

- Proof of a current certification in the **Federal Acquisition Institute Training Application System (FAITAS)**;
- Proof of completion of the Agency specific training; and, if applicable

- Proof of completion of the required 40 hours of continuous learning.

a. Eligibility and Appointment

(1) In order to be eligible for designation as an AOR or an alternate AOR, the appointee must:

- Have a direct employee – employer relationship with the U.S. Government that allows him or her to perform inherently governmental functions. AOR eligibility is not based on the program which brought the individual into the Agency, (e.g. Fellows or Participating Agency Service Agreements (PASA), but on the individual's employment status). 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. citizen or national, Foreign Service National or Third Country National).

- Be AOR certified through the Agency's mandatory training and certification program specified in paragraph b of this section.

- Possess experience commensurate with the responsibilities to be delegated.

(2) Approvals for Designating an Uncertified AOR

An uncertified AOR is an individual who has never been certified or an AOR whose certification has expired as a result of not having completed the mandatory continuous learning requirements discussed in **303.3.15.b**. In exceptional circumstances, the AO may designate an uncertified AOR with a written recommendation from the Mission Director (MD) for Mission executed awards, or the Bureau Deputy Assistant Administrator (DAA) for USAID/W executed awards. The MD or DAA may recommend the designation of an uncertified individual as an AOR for a period of up to six months. The recommendation must be in writing and in accordance with the **USAID Federal Acquisition Professional Accreditation & Re-Certification Program Standard Operating Procedure (SOP)**.

The request must include:

- A description of the compelling circumstances requiring the exception,

- Affirmation that the individual has completed the Phoenix Accruals online course, and

- Confirmation from the individual and the individual's supervisor that the individual will complete the AOR certification and Agency training requirements within six months.

Recommendations for extensions of the designation of an uncertified AOR beyond six months can only be approved by the Director of M/OAA. This extension may be for an additional six months not to exceed a cumulative period of one year. The AO may designate an uncertified AOR only upon receipt of the appropriate written approvals.

b. Certification and Training Requirements

The Office of Human Capital and Talent Management, Center for Professional Development (HCTM/CPD), in coordination with M/OAA, established a Contracting Officer's Representative (COR)/ Agreement Officer's Representative (AOR) certification program. Specific certification requirements are outlined in **ADS 458, Training and Career/Professional Development, Section 458.3.4.2(c)** and include successful completion of:

- Acquisition and Assistance (A&A) Management for COR/AORs course (A&A 104) or its predecessor course,

- Programming Foreign Assistance,

- Web-based Phoenix Accruals on-line course,

- Web-based COR/AOR on-line course, and

- 40 hours of continuous learning points for every two years from the initial certification.

Failure to complete the 40 hours of continuous learning points will result in an expiry of the AOR's certification and the AOR will no longer be eligible to perform the functions of an AOR.

(1) Exceptions:

The following individuals may be designated as AORs without completion of the COR/AOR certification program:

- Warranted Contracting/Agreement Officers,

- Procurement Management Certification Program (PMCP) certified individuals, and

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

However, the individuals must still complete the Web-based Phoenix Accruals online course, and be certified in FAITAS, before the AO can designate the individuals as AORs.

c. Issuing the AOR Designation Letter

AOs must use the Standardized Designation Letter, essentially as written, to appoint an AOR. AOs may tailor the letter in accordance with guidance provided in **ADS 303mai, Model Letters and Procedures for Designating the Agreement Officer's Representative (AOR) for Cooperative Agreements and Grants**.

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

d. Limitations on AOR Authorities

AOR authority does not include communicating with the recipient, either in writing or verbally, or otherwise committing to changes that affect the program, cost, period of performance, or other terms and conditions of the award. Only an AO has the authority to take such actions. The Standardized Designation Letter further states the specific limitations of the AOR designation.

AORs may enlist the assistance of others to:

- Conduct fact-finding,

- Provide analyses or interpretations of programmatic requirements, and

- Make recommendations, among other assistance that may be sought.

However, the AOR remains accountable for the delegated responsibilities and is the only person authorized to carry out the functions described in the AOR designation letter.

The AOR is not authorized to further delegate this authority. If neither the AOR nor the alternate is available to perform their duties, the AOR must direct the recipient to the AO for guidance. No other individuals are authorized to approve recipient payment requests or perform other AOR functions.

e. Revocation of an AOR Designation

The AOR designation is effective for the duration of the award unless otherwise specified; is subsequently revoked by the AO; or the AOR's certification expires for failure to complete the required continuous learning points. AOs have the authority to revoke a designation letter in writing at any time if an individual's performance as an AOR is unsatisfactory. AOs must revoke a designation letter and appoint a new AOR if the AOR:

- Is assigned to a new post or position unrelated to the award,
- Fails to maintain the AOR certification by completing the required continuous learning points every two years after the initial AOR certification, or
- Has not completed the certification program within the time specified for AORs who are designated under the exceptional circumstances listed in **303.3.15.a.(2)**.

In the event that the AOR's certification expires the AOR must inform the AO of the expiration. The AOR must not continue to perform AOR duties, even if the AO has not formally revoked the AOR's designation, as it may result in unauthorized commitments as the AOR will be acting without authority. The AOR will be held accountable and must accept responsibility for any unauthorized action and must assist the AO in processing all documentation required to formalize the commitment.

303.3.16 Congressional Award Notification System

Effective Date: 02/20/2009

The Congressional Award Notification System requires the AO to notify the Bureau for Legislative and Public Affairs (LPA) when they make certain awards to U.S. organizations.

a. AOs must follow the notification procedures in **ADS 302man, Congressional Award Notification**. This requires the AO to notify LPA AFTER signing but BEFORE releasing, or allowing to be released, an announcement of the awards listed below. This restriction on announcing the award applies to notifying the awardee that the award has been signed. For further details, see Section II, Other Considerations of that same document.

b. Types of awards that require notification include the following:

(1) Awards of any value to an organization that has not previously received an award from USAID.

(2) Any award with which there was Congressional correspondence during the pre-award stage. LPA will alert the AO that such correspondence has

occurred, and the AO 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 AO, or both of them at the earliest opportunity before the award decision.

(4) Grants, cooperative agreements, and any amendment to them with a total estimated amount or increase in the total estimated amount of US $500,000 or more, respectively. Amendments providing only incremental funding (and involving no increase to the award amount) are not included.

303.3.17 Distribution of Awards

Effective Date: 06/01/2006

Generally, distribution of awards is at the discretion of the AO. At the minimum, a copy of the agreement document and all amendments to the award must be part of the official award file and provided to the:

- Recipient,
- AOR,
- Office responsible for payment under the agreement, and
- Accounting station, if it is different from the office responsible for payment.

If payment is by letter of credit, the AO must immediately send a scanned copy of the award and any amendment by email to the Bureau for Management, Office of the Chief Financial Officer, Cash Management and Payment Division (M/CFO/CMP) at the Letter of Credit Activity mailbox: **loc@usaid.gov**. Because the funds are obligated when the AO signs the award, the AO should not obtain the recipient's signature before sending the award to M/CFO/CMP. The AO must provide M/CFO/CMP with the signed award letter or amendment cover page, accounting and appropriation data, and the schedule. The AO must send the award or amendment to M/CFO/CMP within 10 business days after signing it.

303.3.18 Award Administration

Effective Date: 12/26/2014

Award administration includes all interactions concerning the award between USAID officials and the recipient from the time the award is made until the end of USAID support. The specific nature and extent of award administration varies from award to

award in the normal exercise of Federal responsibilities. It ranges from reviewing and analyzing performance reports and performing site visits to specific elements of substantial involvement by USAID under a cooperative agreement.

The Agency's role in administration is limited to measuring and evaluating the recipient's progress and any appropriate involvement. The Agency and its representatives must not control or try to control the recipient's or any sub-recipient's day-to-day management of the program.

a. Administrative Duties. The AOR and the AO share in the oversight of an assistance award. It is essential that they work as a team in order to administer the grant or cooperative agreement effectively. While there is a clear division of responsibility between the functions, AO and AOR functions are closely related and cannot be performed in isolation from each other. Both the AO and AOR's actions must be limited to monitoring the recipient's progress in achieving the objectives of the program description and verifying that the activities being funded by USAID conform to the terms and conditions of the award.

The AO provides oversight of the financial management aspects of the award through reviews of reports, correspondence, site visits, or other appropriate means. When necessary, the AO will request or arrange for special audits. The AO is responsible for all award suspensions and terminations, except for terminations based on national interest, which the Assistant Administrator has authority over.

If program income is anticipated to be earned under the award, it should be addressed in Section IV of the RFA or APS and documented in the award. As part of an AOR's financial management responsibilities, the AOR is responsible for monitoring program income throughout the life of the award. (See **2 CFR 200.307** or, for non-U.S. organizations, see the provision "Program Income.")

The AO should give a post-award orientation to the recipient and AOR to clarify the roles and responsibilities of the USAID officials who will administer the award. If the AO delegates specific authority to the AOR, the AO must notify the recipient in writing of the delegation, either in the schedule of the award or a letter. The AO must ensure that the award does not include administrative approvals that are in conflict with the regulations and policies of **2 CFR 200** and **2 CFR 700**, **ADS 303maa, Standard Provisions for U.S. Nongovernmental Organizations,** and **ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations**. If the AOR becomes aware of any other administrative requirements imposed on the recipient, the AOR must immediately notify the AO.

The AO is the records custodian for all official communication that constitutes an amendment of the award. The AOR keeps the AO informed of the recipient's performance. The AOR must ensure that the AO receives copies of all

performance and financial status reports, as appropriate. The AOR reviews all performance and financial reports for adequacy and responsiveness. When reports are not on time, inadequate, or some other problem becomes apparent, the AOR advises the AO to take the necessary action.

The AOR must ensure that the recipient submits reports or deliverables under the award to the DEC. The types of documentation the recipient must submit are found in **ADS 540.3.2.5, Documentation Grantees Submit to the Development Experience Clearinghouse (DEC)**. Documentation that is not considered development experience material is described in **ADS 540.3.2.6, Documentation Agency Contractors Must Not Submit**. **ADS 540.3.2.11**, Where to Submit Development Experience Documentation, provides the Web site and mailing address for submitting material. Additionally, the AOR must ensure that recipients submit data to the Development Data Library in accordance with **ADS 579**.

When an amendment to the award is necessary, the AOR must prepare the necessary internal documentation to support the amendment and meet the satisfaction of the AO.

b. **Site Visits.** Site visits are an important part of effective award administration because they usually allow a more effective review of the project. Site visits occur as needed and do not take place on a set schedule. Joint visits by the AO and the AOR are encouraged. When the AO or AOR makes a site visit, the AO or AOR must write a brief report highlighting the findings and file the report in the official award file.

c. **Terminations.** AOs must notify the Suspending and Debarring Official (SDO) and the Bureau for Management, Office of Acquisition and Assistance, Compliance Division (M/OAA/C) in writing at least five (5) days prior to proceeding with a termination based on failure to comply with the terms and conditions of an award. The AO must provide the following information to the SDO at **compliance@usaid.gov**:

- Recipient's name,
- DUNS No.,
- Address,
- Award number,
- Period of Performance
- AO and AOR names,
- Period of Performance,
- Award value, and
- Reasons for termination.

303.3.19 Unauthorized Commitments and Expenditures Requiring Prior Approvals

Effective Date: 06/01/2006

a. Unauthorized Commitments. When a USAID official, who does not have the authority to do so, acts in a way that leads a recipient or potential recipient acting in good faith to believe that USAID has committed to make a specific award; change the amount of an existing award; or, revise an existing award budget, program description, or any of the terms and conditions of the award, the official has made an unauthorized commitment. It is against U.S. Government and USAID policy to enter into unauthorized commitments.

When the AO believes that an unauthorized commitment should be ratified and recommends payment, and the cognizant General Counsel or Resident Legal Officer concurs with the recommendation, the AO submits an action memorandum through the M/OAA/Evaluation Division to the Director, M/OAA, for ratification. The memorandum must show:

- Evidence that the grant would otherwise have been proper, if made by an appropriate AO;
- The AO reviewing the unauthorized commitment must determine the cost to be reasonable;
- The provided program has furthered USAID's objectives;
- The findings of facts essential to the situation, arranged chronologically with cross-references to supporting enclosures;
- The nature of the unauthorized commitment and funds citation;
- Funds are available and was available at the time the unauthorized commitment was made;
- The recommended disposition; and
- A written statement from the person who made the unauthorized commitment. This statement must detail how the mistake occurred, what training the individual has received from the AO on proper procedures since the incident, and what steps will be taken to prevent future unauthorized commitments.

Only the Director, M/OAA, has the authority to ratify unauthorized commitments.

b. Expenditures Requiring Prior Approval. Recipients must comply with prior approval requirements that are established in the agreement. Failure to comply with prior approval requirements generally causes USAID to deem the costs unallowable.

When it is in the best interest of the Federal Government and funds are available, the AO may review the facts and circumstances of the expenditure made without prior approval and approve the expense if the:

- Expenditures must be otherwise allocable, allowable, and reasonable.
- AO could have approved the expenditures at the time that they were made.
- AO has the authority to approve the same type of expenditure at the time of the request for approval.
- Approval promotes efficient implementation of USAID's program, or
- Facts and circumstances of the expenditure show that the recipient was not grossly negligent and did not intend to circumvent USAID requirements.

The recipient must submit a written request to the AO addressing the criteria set out above and the AO must make a written determination.

303.3.20 Controlling Language

Effective Date: 06/01/2006

It is USAID policy that English is the official language of all award documents because a translation may not convey the full meaning of the original. If an award or any supporting documents are provided in both English and a foreign language, each document must state that the English language version is the controlling version.

Source and Nationality Rules

(1) **22 CFR 228** "Procurement of Commodities and Services Financed by USAID Federal Program Funds" is the regulation that governs the source and nationality of goods and services procured with USAID funds. This regulation applies to USAID-financed goods and services procured by a recipient and sub-recipients (see the provision entitled "USAID Eligibility Rules for Goods and Services" in the Standard Provision for U.S. Nongovernmental Organizations and Standard Provisions for Non-U.S. Nongovernmental Organizations). **22 CFR 228** provides those circumstances to which Source and Nationality rules do not apply.

(2) **22 CFR 228** does not apply to the selection and award of subawards as defined at **2 CFR 200.92**.

303.3.21 Subawards

Effective Date: 12/26/2014

a. Subawards to PIOs and Partner Government Entities

If appropriate, a recipient may enter into a subaward with a Public International Organization (PIO), and in exceptional circumstances with a partner government entity (also known as a partner government implementing entity as defined in **ADS 220**).

Subawards that provide funds (excluding ”in-kind” grants, technical assistance or other activities provided to or on behalf of the partner government entities) to partner government entities for activities to be implemented by the entity must meet the conditions, requirements, and approvals outlined in this section. The requirements in this section do not apply to subawards to a partner government entity solely for “in-kind” contributions, technical assistance, or other activities provided by the recipient to or on behalf of the partner government entity.

Prior to an AO approving a subaward that provides funds (excluding “in-kind” grants, technical assistance and other activities provided to or on behalf of the partner government entity) to a partner government entity for activities to be implemented by that entity, the AO must verify that these types of subawards have been approved either in:

(1) The Project Appraisal Document (PAD) (or PAD amendment) (**ADS 201**); or

(2) A Determination and Finding (D&F), as outlined below.

(a) If the Operating Unit (OU) has not addressed subawards to partner government entities in the PAD (or PAD Amendment), the OU must prepare a D&F that documents:

(i) How a subaward to a partner government entity is consistent with the decisions and results under the Public Financial Management Risk Assessment Framework (PFMRAF), if any (see **ADS 220**);

(ii) How the subaward will contribute to sustainability other than in cases where immediate development results outweigh sustainability goals;

(iii) That there are no alternative means to achieve the foreign assistance purpose other than through subawards to partner government entities; and

(iv) That any partner government subawardee financial risks identified by the recipient will be mitigated or addressed in the subaward.

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

(c) The subaward must include language that captures the audit, monitoring, reporting, and oversight requirements in the recipient's award. This is not subject to deviation. The subaward must also include the appropriate flow-down requirements from the prime award.

(d) After 07/28/2019 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. No prime award may contain subawards that provide funds to partner government entities unless a D&F as specified paragraph b.(2) above is approved by the cognizant Bureau AA (in consultation with relevant Pillar or Regional AAs, as applicable) and the AA for Management, prior to subaward approval by the AO. Before any subsequent subawards to partner government entities are made, the D&F must include a statement of the actions the OU will take to increase direct assistance to partner governments.

b. Applicable Standard Provisions

A U.S. recipient providing a sub-award to a non-U.S. organization must use the Standard Provisions for a Non-U.S. Non-Governmental Organization. A non-U.S. recipient providing an award to a U.S. organization must use the Standard Provisions for U.S. Non-Governmental Organizations. For subawards to PIOs, the recipient must use the Standard Provisions for Cost-Type Awards to PIOs in **ADS 308, Awards to Public International Organizations**.

For sub-awards to partner government entities, in addition to the requirements in Section 303.3.21.a.(2)(c) above, the prime awardee must flow down the appropriate terms and conditions to meet the requirements of the prime award.

For additional information on standard terms and conditions relating to Government-to-Government agreements, see the Additional Help Documents found in ADS Chapters 220. When questions arise concerning the appropriate provisions for subawards, the AO must consult with the cognizant attorney in GC or the cognizant RLO. An approved deviation (**303.3.3**) is required before the recipient may deviate from the terms and conditions of its award from USAID; however no deviation will be authorized from the audit, monitoring, reporting, and oversight mandatory and applicable standard provisions and requirements in **303.3.21a(2)(c).**

c. Defense Base Act Insurance

The Defense Base Act does not apply to grants and cooperative agreements nor to subawards under these instruments. Although the Defense Base Act rate does not apply to grants and cooperative agreements, recipients who desire to purchase DBA coverage may negotiate rates at the discretion of the insurance carrier (see **ADS 302sap, Guidelines for DBA Coverage for Direct and Host Country Contracts**).

Recipients must require contractors who are awarded procurement contracts under the assistance instruments to obtain Defense Base Act coverage for their employees performing services overseas.

303.3.22 The Role of the Agreement Officer in the Debt Collection Process

Effective Date: 08/22/2013

The Federal Claims Collection Act of 1966 and the Debt Collection Improvement Act of 1996 (DCIA) mandates that agencies comply with standard, Government-wide debt collection procedures and centralize the Government-wide collection of delinquent debt. USAID's policy on debt collection can be found in **22 CFR 213**, Claims Collection; **2 CFR 200.345**, Collection of Amounts Due; and **ADS 625, Accounts Receivable and Debt Collection** (see **ADS 303san, Agreement Officer's Role in Debt Collection** for additional guidance.

The AO is responsible for determining if a debt is owed by the recipient and the amount of the debt owed. Preferably, the amount of the debt will be determined by a negotiated settlement between the AO and the recipient. However, if the parties do not agree on the amount, the AO must unilaterally determine the amount of the debt (see **625.3.4.1 Claims Originating Under Acquisition and Assistance Instruments and 625.3.4.2 Claims Originating Under Financial Audit**.) If the recipient disagrees with the AO's determination, see **303.3.23** below.

The AO must promptly issue a demand letter for payment of such debt. A proper written notice ensures the Agency has a legally enforceable debt. The initial demand letter must include the appropriate information and due process procedures contained in **22 CFR 213.9 – Written Notice**. Even if the debt is or will be the subject of a bilateral

amendment or the recipient has agreed to repay the debt, the AO must issue a demand letter as soon as the AO has determined that an actual debt is due. The AO must send a copy of each demand letter to the cognizant billing office immediately upon issuance, and request acknowledgement of receipt. Collection of the debt is the responsibility of the billing office (Mission Controller or M/CFO/WFS).

If the recipient requests approval of installment payments, see **22 CFR 213.19 Installment Payments** for relevant regulations and procedures.

303.3.23 Disputes and Appeals

Effective Date: 06/18/2012

2 CFR 700.15 and the **ADS 303mab, Standard Provision for Non-U.S. Nongovernmental Organizations** "Disputes and Appeals" establishes that the AO decides any dispute between the recipient as defined in 2 CFR 200.86, and USAID arising under the assistance award. The AO's decision is final unless the recipient appeals the decision as outlined below.

303.3.23.1 Disputes

Effective Date: 06/01/2006

The AO must give the recipient a written final decision within sixty (60) calendar days of receiving notice from the recipient of a dispute. If the AO is not able to reach a final decision within that time, the AO must notify the recipient that he or she requires more time to consider the dispute. The AO must place a copy of the final decision in the award files.

303.3.23.2 Appeals

Effective Date: 07/22/2015

If the recipient disagrees with the AO's final decision, the recipient may appeal the AO's decision to the Assistant Administrator, Bureau for Management, or designee. The appeal must be in writing and must be postmarked within thirty (30) calendar days of receipt of the AO's final decision. The recipient must include all relevant and material evidence to support its position and must provide a copy of the appeal to the AO. If USAID has issued a Bill of Collection, the Bill of Collection may be suspended in accordance with **ADS 625** pending resolution of the appeal.

Immediately upon receiving an appeal, the Assistant Administrator, Bureau for Management, or designee, and the AO must forward the appeal to the Bureau for Management, Office of Acquisition and Assistance, Compliance Division (M/OAA/C) at **compliance@usaid.gov**. M/OAA/C will:

- Consult with other divisions within M/OAA as needed before preparing a recommendation for the deciding official; and
- Coordinate a review by GC/A&A and/or GC/LE.

Within sixty (60) calendar days of receiving the appeal, M/OAA/C must notify the recipient of the status (i.e., denied, approved, or more time is needed).

303.3.24 Simplified Grants

Effective Date: 12/26/2014

A deviation is not required from the requirements of **2 CFR 200** or the policies of this chapter in order to use a Simplified Grant for small awards on a cost reimbursement basis as described below. For Fixed Amount Awards, see **303.3.25**. Except as discussed in paragraphs **a** through **h** below, a grant using the Simplified Grant Format generally does not include any of the Standard Provisions used for USAID grants.

USAID may authorize advance payments if the conditions for advance payments in **ADS 636, Program Funded Advances** and **2 CFR 200** Subpart D apply.

The AO may award a Simplified Grant, if the grant meets all of the following conditions:

a. The assistance instrument is a grant, not a cooperative agreement.

b. The total grant amount does not exceed the simplified acquisition threshold.

c. The recipient will not purchase any goods or services, except as authorized pursuant to **22 CFR 228** or **ADS 310, Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID** or any applicable waivers, and the recipient will not purchase any single item that has a useful life over one year and a cost of $5,000 or more.

d. The recipient has signed pre-award certifications as required in **303.3.8**.

e. The grant requires the recipient to allow USAID access to its records for up to three years after the end date of the grant, and the recipient will refund USAID for any funds it receives for any costs that did not meet the terms and conditions of the grant.

f. **The Simplified Grant Format is only authorized when all costs under the award are direct costs. This format is not authorized for awards that include indirect costs.**

g. The AO may modify the Simplified Grant Format as long as the agreement includes the applicable Standard Provision for related costs in the small grant award, and if the support of international travel or the purchase of equipment is necessary for performance of the grant.

h. The grant must be included in any audit required by **2 CFR 200** or **ADS 591.3.2**.

303.3.25 Fixed Amount Awards to Non-Governmental Organizations

Effective Date: 12/26/2014

A fixed amount award is a type of assistance award where USAID provides a specific level of support and where payment is not based upon the actual costs incurred by the recipient. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and USAID. Accountability is based primarily on performance and results.

A Fixed Amount Award is appropriate for supporting projects with very specific and defined elements, when the AO is confident that a reasonable estimate of the actual cost of the overall effort can be established, and USAID can define accomplishment of the purpose of the grant through defined milestones.

It is essential that 1) the program scope is specific and 2) adequate cost, historical, or pricing data is available to establish a fixed amount award with assurance that the recipient will realize no increment above the actual cost.

Because payments under Fixed Amount Awards are based on the achievement of milestones, the structure of the payments is very important. USAID pays the recipient a set amount when it accomplishes a milestone. The AO may follow the guidance in **ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations** for structuring the grant milestones to provide the recipient with the necessary financial liquidity for the performance of the activity.

USAID may also authorize advance payments when recipients meet the conditions for advance payments in **ADS 636, 2 CFR 200 Subpart D**, and if providing liquidity through an initial financing milestone is not sufficient to meet implementation requirements.

The procedures in this ADS section, **ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations**, and **ADS 303mak, Fixed Amount Award Entity Eligibility Checklist** must be used in lieu of those specified in **303.3.9**. The criteria in the section of the Checklist for pre-award financial review for advances, adequately address the conditions for advances in **ADS 636** and **2 CFR 200 Subpart D**.

Grant closeout is accomplished by the AOR's acceptance of the final milestone and approval of payment.

a. Factors for Determining the Use of a Fixed Amount Award

In order for an AO to use a Fixed Amount Award, the following conditions apply:

(1) The award complies with the conditions for fixed amounts awards found at 2 CFR Part 200.201.

(2) The assistance instrument is a grant, not a cooperative agreement.

(3) The AO, technical office, and M/CFO (Washington) or Controller (overseas) have complied with the requirements of **ADS 303mak, Fixed Amount Award Entity Eligibility Checklist,** including ensuring that the recipient has signed pre-award certifications, as specified in **ADS 303.3.8**.

(4) The prospective recipient, technical office, and AO must be able to identify and quantify programmatic accomplishments or results in establishing grant milestones. For further guidance, see **ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations**.

(5) The AO, with the advice of the technical office and M/CFO (Washington) or the Controller (overseas) , must assess the risk factors that could prevent the proposed recipient from completing the activity or require a substantial change in the milestones. The operating unit must not use the Fixed Amount Award mechanism if there is an unacceptably high risk of failure or substantial changes in the milestones are expected as the recipient implements its program. The AO and technical office must document the risk assessment and may use the guidance in **ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations.**

(6) Adequate cost information must be available to allow the AO to determine and negotiate the fixed amount of the grant and payment structure. The fixed amount should include all reasonable costs, as determined by the AO. For further guidance concerning the cost information required and payment structuring, see **ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations** and **ADS 303mak, Fixed Amount Award Entity Eligibility Checklist**.

(7) The AO must document the rationale for selecting the Fixed Amount Award mechanism.

(8) The duration of the Fixed Amount Award must not exceed three years.

(9) The Fixed Amount Award must not include the purchase of any real property.

b. Required Provisions for a Fixed Amount Awards

(1) The AO must ensure that the Fixed Amount Award includes all of the Mandatory Provisions from **ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations**. In addition, the AO must ensure the Fixed Amount Award includes ONLY the applicable "Required, As Applicable" provisions from **ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations**.

(2) The AO must use the **ADS 303sal, Sample Fixed Amount Award** as a template.

c. Amending Milestones

The AO may amend milestones during the period of the grant, if the original milestones are no longer feasible or appropriate due to circumstances beyond the control of the recipient, and if the amended milestones are compatible with and satisfy the original purpose of the grant. The AO may terminate the grant if the AO concludes that multiple or substantial amendments indicate that continuing the grant is no longer in the best interests of the Agency. For additional guidance, see **ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations**.

d. Disposition of Equipment or Property

Recipients must not procure real property under a Fixed Amount Award. Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment. Personal property is any tangible or intangible property other than real property.

Depending on the activities funded and milestones established by the Fixed Amount Award, a recipient may procure equipment or personal property in order to accomplish a milestone. The distinction between whether purchase of the equipment or personal property is a milestone or is one possible means by which the recipient may accomplish a milestone is important for certain aspects of the award. Unless a milestone is itself the purchase of the equipment or personal property, milestones must not list equipment or personal property a recipient may potentially purchase to accomplish the milestone, but the costs of such equipment or personal property may be included in the budget from which milestone payment amounts are estimated and negotiated. Regardless of whether the equipment or personal property is listed in or as a milestone, the Fixed Amount Award must state that title to the equipment or personal property vests in the recipient upon acquisition with the condition that the recipient must use the equipment or personal property for the grant as long as it is needed for such.

If a milestone under a Fixed Amount Award requires the recipient to procure equipment or personal property, and such requirement is specifically provided in the milestone, then:

(1) The grant must require that the purchase be in accordance with **22 CFR 228**, **ADS 310**, **ADS 312, Eligibility of Commodities** and any applicable waivers,

(2) The “Required, As Applicable” provisions from the **ADS 303mat, Mandatory Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations** applicable to the purchase of the

equipment or personal property must be included in the Fixed Amount Award, and

(3) The grant must include disposition instructions for the equipment or property. For additional guidance, see **ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations**.

303.3.26 Leader with Associate Awards

Effective Date: 12/26/2014

A Leader with Associate (LWA) Award involves the issuance of a Leader Award that covers a specified worldwide activity. The Leader Award includes language that allows a Mission or other office to make one or more separate awards, called Associate Awards, to the Leader Award recipient without using restricted eligibility. The Associate Award must be within the terms and scope of the program description of the Leader Award and support a distinct local or regional activity.

Leader with Associate Awards must not be confused with Indefinite Delivery Indefinite Quantity (IDIQ) Contracts that are used in acquisition or any of the procedures used under an IDIQ. As examples, a Leader Award cannot be made without a program description and a budget with sufficient funds to carry out the program description in the Leader Award, and Associate Awards are not made using fair opportunity procedures.

a. Justification for Use of a Leader with Associate Instrument

(1) The Choice of Instrument Memo provided by the OU in accordance with **ADS 304** must describe in detail why the proposed LWA is necessary and why a non-LWA grant or cooperative agreement will not achieve the program objectives. The justification in the memo must include one or more of the following:

- The specific, quantifiable, and demonstrable economies of scale or responsive timing to be achieved through use of the LWA,
- Whether any specific, identified needs in non-presence countries can best be addressed through an LWA, and
- How the LWA will achieve the Agency goal of centralizing knowledge or expertise or demonstrating global technical leadership in a specific technical area.

(2) If the LWA has a combined ceiling (Leader and all Associate Awards) of $75 million or more, the Choice of Instrument Memo's justification must also:

- Specify what specialized technical skills are required to plan and manage the activities that are not available in the field, or

- Demonstrate that an anticipated and frequent need to respond to compelling urgent programmatic requirements cannot be foreseen in terms of location, timing, or magnitude and can best be met through the use of a LWA.

(3) If "buy-ins" (i.e. mission funding into the Leader or centrally managed Associate Awards) will be permitted under the LWA, the Choice of Instrument Memo must propose a ceiling on the size of individual "buy-ins." This ceiling must also be included in the RFA and the award. The memo must also include an analysis of why buy-ins are more advantageous to the Agency than individual Associate Awards. "Buy-ins" may be justified by a discussion of one or more of the following conditions:

- The highly technical or specialized nature of the program and the lack of field staff with the required expertise to plan or manage such activities, or

- An anticipated frequent need to respond to truly urgent programmatic requirements that cannot be foreseen in terms of location, timing, or magnitude, or

- Needs in non-presence countries

For any proposed individual buy-in ceiling in excess of $1 million, the Activity Manager must provide compelling justification in the Choice of Instrument Memo documenting why an individual associate award is not appropriate.

b. Competition of Leader Award

The AO must issue a Request for Applications (RFA) for every Leader with Associate Award following the procedures in **303.3.5.2**. AOs must not award LWAs based on Annual Program Statements, unsolicited applications or with restricted eligibility, unless a deviation is authorized in accordance with the requirements of **303.3.4**. The RFA must state that the competition covers both the initial Leader Award and all subsequent Associate Awards, and specify a ceiling on the total amount of funding for all Associate Awards.

c. Total Amount and Funding

The AO must specify the Total Estimated Amount of the Leader Award and the ceiling on the cumulative total amount of funding for Associate Awards in the

RFA and the Leader Award. These amounts must not be exceeded without a justification to restrict eligibility, in accordance with **303.3.6.5a**. Each Associate Award must specify the total award amount for that instrument. Likewise, the RFA must state that there is no guarantee regarding the number or amount of Associate Awards.

The RFA and resulting Leader Award must state whether missions will be permitted to provide funding through "buy-ins" to the Leader Award or centrally-managed Associate Awards. If "buy-ins" will be permitted, a ceiling on individual "buy-ins" under the Leader or Associate Awards must be established within the terms of the Leader Award.

Leader and Associate Awards are separately obligated instruments. An obligation under the Leader Award is not transferable to Associate Awards (nor transferable from the Associate Awards to the Leader Award or other Associate Awards) without a deobligation and reobligation of funds in accordance with **ADS 621**.

d. Pre-Award Requirements for Associate Awards

Once an AO selects a recipient pursuant to an RFA for a Leader with Associate Award, the eligibility for any Associate Award issued within the terms and conditions of the Leader Award will be limited to the recipient of the Leader Award. The AO's risk determination of the recipient for the Leader Award applies to Associate Awards. However, before awarding an Associate Award, the AO must verify that the applicant does not:

- Have active exclusions in SAM (**www.sam.gov**);
- Appear on the Specially Designated Nationals (SDN) and Blocked Persons List maintained by the U.S. Treasury for the Office of Foreign Assets Control, sometimes referred to as the "OFAC List" (online at: **http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx**); and
- Appear on the United Nations Security designation list (online at: **http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml**).

The AO for the Associate Award must not require additional documentation concerning the recipient's financial or other management systems, unless there is reason to believe that the recipient does not meet the criteria in **303.3.9**.

The AO must obtain the required certifications (see **303.3.8**) prior to the execution of the Leader Award. Before the AO may award an Associate Award, the recipient must affirm that those certifications remain valid or provide new certifications (see **ADS 303mad, Affirmation of Certifications**).

USAID may issue more than one Leader Award for a program under the RFA if the Bureau determines that it is appropriate. However, USAID must not compete Associate Awards among the different recipients of the Leader Awards.

The AO has the discretion to issue one or more Associate Awards to a Leader Award recipient or to issue more than one Associate Award under different Leader Awards for a program. When a Leader Award recipient works with a consortium or subrecipients, any Associate Awards under the Leader Award must be issued to the Leader Award recipient, not to any of the consortium or subrecipient members. The recipient of the Leader Award may make subawards to the consortium members as necessary for the program. The Leader Award must include a requirement for the recipient to provide a programmatic report, either semi-annually or annually, to the AOR that summarizes activities undertaken, progress made/results achieved, trends, or problems under both the Leader Award and all Associate Awards.

e. Length of Award

The period of performance for a Leader Award must not exceed five years. AOs may extend a Leader Award for up to a cumulative period of ten years for purposes of the Leader Award activities using a justification to restrict eligibility based on **303.3.6.5a**. AOs may issue Associate Awards at any time during the period of performance of the Leader Award. The period of performance for an Associate Award must not exceed five years. AOs may extend individual Associate Awards for a cumulative period of up to ten years using a justification to restrict eligibility based on **303.3.6.5a**, but not more than five years beyond the expiration of the Leader Award. AOs must not extend a Leader or Associate Award more than five years into the future at any given time.

USAID does not fund activities under the Leader Award after its expiration date. After completion of the activities under the Leader Award, if funds are available, the AOR may request that the recipient provides a report on lessons learned.

f. Procedures for Issuing an Associate Award

After the AO awards the Leader Award, the AO sends a copy of the award to all Missions, along with any necessary guidance or instructions regarding issuance of Associate Awards. AOs may issue Associate Awards for activities within the programmatic scope of the Leader Award. Leader Awards are also posted on the USAID Business and Acquisition and Assistance Intranet site (**https://pages.usaid.gov/M/OAA/assistance-resources**).

Before requesting the AO to issue an Associate Award, the Activity Manager must consult with the AOR of the Leader Award. The AOR of the Leader Award must concur that the program description for an Associate Award is within the

program description and does not extend beyond the scope of the program area, project goal, project purpose, sub-purposes, outputs and overall results framework of the Leader Award. After receiving the AOR's concurrence, either the AO, or the Activity Manager with the AO's consent, may request the Leader Award recipient to provide an application. The request includes a background statement; a brief program description outlining the area of activity; host country involvement; funding; any period limitation; and, description of why the activity falls under the Leader Award. The RFA for an Associate Award must request a response to the program description and an associated budget.

An SF-424 is not required. The Activity Manager must review the application and provide comments to the AO responsible for the Associate Award. The AO issuing the Associate Award must ensure that the Associate Award is within the scope of the Leader Award when reviewing the recipient's proposed costs and negotiating the final award. The AO has the decision authority whether or not to award the Associate Award.

The AO may execute an Associate Award as a grant or a cooperative agreement, independent of whether the Leader Award is a grant or cooperative agreement. If an Associate cooperative agreement is selected, the AO must specify the terms of any substantial involvement in the award. Such substantial involvement must be consistent with the requirements of **303.3.11** and the program description for the particular Associate Award. The AO must use the standard grant or cooperative agreement award format for the Associate Award.

The AO must include appropriate language in the schedule of the Associate Award, requiring the recipient to provide copies of all program and financial reports to the AOR of the Associate Award with copies of all programmatic reports to the AOR of the Leader Award. The schedule of the Associate Award must also specify:

- The Authorized Geographic Code for procurement, if it is different from the Leader Award;
- Any cost sharing requirements; and
- Any additional standard provisions, such as Title to and Care of Property (Cooperating Country),that may not be included in the Leader Award, but are necessary to the Associate Award.

g. Amendments to Associate Awards

Amendments to associate awards may be restricted to the recipient of the Associate Award, only if the amendment does not extend beyond the scope of the program area, project goal, project purpose, sub-purposes, outputs and overall results framework, period of performance, total amount and other terms

and conditions of the Leader Award. If the amendment to the associate award extends beyond the areas listed in the preceding sentence then the amendment must comply with the requirements found in ADS 303.3.6.5.

Any proposed buy-in under a Leader or centrally-managed Associate Award must have a detailed description of the work to be done, its timing, and estimated cost/budget. All documentation must be submitted to the AO and the relevant Bureau by July 1 for the buy-in obligation to be completed by the end of the fiscal year.

h. File Documentation

The AO's file documentation for Associate Awards must include

- A copy of the Activity Manager's consultation with the AOR for the Leader Award;
- The request for the recipient's application;
- The recipient's application with affirmation of certifications found in **303.3.8**;
- A memorandum of negotiation, including a cost review; and
- A copy of the final Associate Award (a copy must be sent to the AOR for the Leader Award) and a copy of the Leader Award.

303.3.27 Public-Private Partnerships

Effective Date: 07/22/2015

Public-Private Partnership awards including Global Development Alliance (GDA) awards, private sector engagements and other Global Development Lab awards provide resource leverage (see below) from sources outside USAID. The Activity Manager should consult closely with the Office of Innovation and Development Alliances, Global Partnerships Division (IDEA/PS), the Assistance Executive, the Office of the General Counsel or RLO when developing the program description for these types of awards. Additional guidance may be found at the **GDA Web site** (available on the USAID internal website only) and in **AAPD 04-16, Public-Private Alliance Guidelines and Collaboration Agreement**.

Leveraging represents all of the non-USAID resources (excluding cost sharing) that are expected to be applied to a program. Leveraging is limited to Public-Private Partnership awards. Leveraging includes resources that third-parties bring to the program without necessarily providing them to the recipient of the USAID assistance award. These parties may include the host government, private foundations, businesses, or individuals. The recipient is not responsible for meeting the leveraging amounts/resources and leveraging is not subject to audit.

Public-Private Partnerships awards may include cost sharing. If the award includes cost sharing, the recipient must meet the cost-sharing amount and requirements, and the cost-sharing is subject to audit.

For more information regarding leveraging, please refer to the **GDA home page** and **USAID Global Partnerships** (available on the USAID internal website only).

303.3.28 Participation of Faith-Based and Community Organizations

Effective Date: 06/30/2016

a. In accordance with **Executive Order 13279, Equal Protection for the Laws for Faith-Based and Community Organizations**, **Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations**, and **22 CFR 205, Participation by Religious Organizations in USAID Programs**, the following principles guide USAID on the participation of faith-based and community organizations in USAID-funded programs:

(1) The Federal Government must distribute Federal financial assistance for social service programs in the most effective and efficient manner possible (see **Executive Order 13559**).

(2) All eligible organizations, including faith-based and other community organizations, must be able to apply on an equal footing for Federal financial assistance used to support social service programs and participate in any program for which they are eligible.

(a) USAID, recipients, and subawardees who administer USAID funded programs, must not discriminate for or against an organization on the basis of the organization's religious character or affiliation [see **22 CFR 205.1(a)**]. USAID must not disqualify religious organizations from participating in USAID's programs because such organizations are motivated or influenced by religious faith to provide social services (see **22 CFR 205.1(f)**). Decisions about awards of USAID financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization, or lack thereof (see **22 CFR 205.1(j)**). Additionally, when limiting eligibility using the local eligibility exception (**303.3.6.5**), USAID must not limit eligibility solely to either faith-based or secular organizations.

(b) All organizations, whether religious or secular, that participate in USAID programs, including through an award or subaward, must carry out eligible activities in accordance with all program

requirements and other applicable requirements governing the conduct of USAID-funded activities, including those prohibiting the use of direct financial assistance from USAID to engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, prayer, or proselytization (see **22 CFR 205.1(f)**).

(c) Faith-based organizations must not be required, as a condition of Federal assistance, to sacrifice their independence, autonomy, expression, or religious character. A faith-based organization that applies for or participates in USAID-funded programs or services, including through an award or subaward, may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support or engage in any explicitly religious activities. Among other things, faith-based organizations may use their facilities to provide social services supported by USAID, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization may retain authority over its internal governance and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its mission statements and other chartering or governing documents (see **22 CFR 205.1(c)**).

(d) Organizations that receive direct financial assistance under any USAID program, including through an award or subaward, may not engage in explicitly religious activities as part of the programs or services funded by USAID. Explicitly religious activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance [see **22 CFR 205.1(b)**].

(e) USAID funds may not be used for activities that are not permitted by Establishment Clause jurisprudence or otherwise by law [see **22 CFR 205.1(d)**].

(f) An organization that participates in programs funded by financial assistance from USAID, including through an award or subaward, must not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief, refusal to hold a religious belief, or a refusal to attend or participate in a religious practice [see **22 CFR 205.1(e)**].

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the organization receives financial assistance from USAID [see **22 CFR 205.1(g)**].

(h) Solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation [see **22 CFR 205.1(h)**]. In USAID programs in which an applicant must show that it is a nonprofit organization, other than programs which are limited to registered Private and Voluntary Organizations, the applicant may do so using any of the following:

- Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;
- A statement from a state taxing body or the state secretary of state certifying that the organization is a nonprofit organization operating within the state; and no part of its net earnings lawfully benefit any private shareholder or individual;
- A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or
- Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the state or parent organization that the applicant is a local nonprofit affiliate.

b. The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States [see **22 CFR 205.1(i)**].

c. Clarification Regarding Proper Implementation and Use of Data

Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations and **22 CFR 205, Participation by Religious Organizations in USAID Programs**, call for equal opportunity for faith-based organizations. They do not provide for set-asides or evaluation preferences for faith-based organizations, and data collected is not to be used for purposes of funding decisions. The AO must not:

- Provide for set-asides, reservations, or evaluation preferences for faith based organizations in NOFOs.

- Include participation of faith-based organizations as a specific evaluation factor or requirement for award. It may, however, be referred to as an example of one of the many types of organizations whose participation could potentially enhance the quality and impact of development assistance programs.

d. AOs must ensure that the Mandatory Standard Provision, "Equal Participation by Faith-Based Organizations (June 2016)," is included in all solicitations and awards (see **303.4.2**).

303.3.29 Suspension and Debarment

Effective Date: 08/22/2013

In accordance with **2 CFR 780** and **2 CFR 180**, the Suspending and Debarring Official (SDO) may suspend or debar individuals and entities from participating in government-funded grants, cooperative agreements and other assistance programs when such action is in the public interest.

a. M/OAA/C, in consultation with GC/LE provides direct support and recommendations to the SDO in all matters relating to recipient disclosures, suspension, and debarment.

b. AOs must notify M/OAA/C in writing at **compliance@usaid.gov** when they become aware of any of the causes of suspension or debarment, with regard to recipients and subawardees, as specified in **2 CFR 780** and **2 CFR 180.**

c. Upon receiving notification from the AO that a recipient may have engaged in actions that could lead to suspension or debarment, M/OAA/C, in consultation with GC/LE will:

- 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 **2 CFR 780** and **2 CFR 180**, the SDO decides to initiate a suspension and /or debarment action, M/OAA/C, in consultation with GC/LE, will:

- Issue a written notice of suspension or proposed debarment action to the recipient and any affiliates involved; and
- Enter the recipient's exclusion information into the System for Award Management (SAM) at **www.sam.gov**.

303.3.30 Limitation on Construction under Assistance

Effective Date: 08/16/2013

The Agency's infrastructure projects are increasingly a critical component of development programs. However, the limited management oversight the Agency can legally assert over recipients under assistance awards minimizes the Agency's ability to ensure that the design and construction activities are carried out properly. As such, Operating Units and AOs must adhere to the Administrator-approved policy and procedures that limit the use of assistance awards to accomplish construction activities (**ADS 303maw, USAID Implementation of Construction Activities**).

Provision Limiting Construction Activities in Awards

AOs must include the Mandatory Standard Provision, "Limiting Construction Activities (August 2013)" in all solicitations and awards. If the assistance award permits construction activities based on the policy above (or as authorized by waiver), the AO must insert the description and location(s) of the specific construction activities under section **(d)** of the provision. If the award does not include construction activities, the AO must insert "Construction is not eligible for reimbursement under this award" in section **(d)** of the provision.

303.3.31 USAID Implementing Partner Notices (IPN) Portal for Assistance

Effective Date: 07/21/2014

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

b. When necessary, the IPN Portal Administrator, as designated by the Director, M/OAA, will generate bilateral award amendments and notices, and post the amendments/notices to the IPN Portal. Examples of such amendments include required ADS 303 provision updates affecting all awards (or classes of awards to be specified in the amendment). The Portal Administrator will provide advance notice to AOs that an update is being prepared for posting in the IPN Portal.

This policy applies to all awards except:

- Associate Awards under LWAs,
- Awards to PIOs and bilateral development partners, and
- Interagency agreements.

IPN Portal amendments must not change the:

- Amount of obligated funds,
- Total estimated award amount,
- Program Description, or
- Period of performance.

c. Proposed bilateral amendments provided through the IPN Portal are not effective until the Recipient and the AO sign the amendment. Additional policy guidance and specific instructions for registering with the IPN Portal can be found in **ADS 303max, USAID Implementing Partner Notices (IPN) Portal**. AOs and A&A specialists are responsible for registering with the IPN Portal, processing the IPN Portal amendments under their respective awards, and completing GLAAS requirements in accordance with this policy.

d. AOs must insert the applicable provision "**USAID Implementing Partner Notices (IPN) Portal for Assistance (July 2014)**" from **ADS 303maa, Standard Provisions for U.S. Nongovernmental Recipients** or **ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations,** and **ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations** in all solicitations and resulting awards.

303.3.32 Trafficking in Persons (TIP)

Effective Date: 04/08/2016

a. Requirements

The mandatory standard provision on trafficking in persons is included in **ADS 303maa, Standard Provisions for U.S. Nongovernmental Organizations**, **ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations**, and **ADS 303mat, Standard Provisions for Fixed Amount Awards to NGOs**. The provision ensures USAID compliance with various legislative requirements intended to ensure that U.S. Government acquisition and assistance actions are not tainted by trafficking in persons, such as the Trafficking Victims Protection Act of 2000 and Section 1704(a) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013). The provision reflects the U.S. Government's policy against

human trafficking and lists specific trafficking in persons-related prohibitions and requirements that are mandatory for both U.S. and non-U.S. recipients.

b. Certification Requirement and Compliance Plan

If the estimated value of services required to be performed under the award outside of the United States exceeds $500,000, additional trafficking-related requirements apply to the solicitation and award. Specifically, the Agreement Officer (AO) must require the applicant/recipient to certify that it has implemented a compliance plan to prevent trafficking.

1. The AO must require the apparently successful applicant to submit the certification "Certification Regarding to the Trafficking in Persons" before the award is made. The certification is included in **ADS 303mav, Certifications, Assurances, Other Statements of the Recipient and Solicitation Standard Provisions**.

2. The mandatory standard provision on trafficking in persons further requires the recipient to submit the certification annually during the award's period of performance.

3. Unless specifically requested by the AO, the recipient is not required to submit to the AO, the trafficking compliance plan required in the TIP standard provision.

c. Violations and Remedies

If an AO receives credible information from any source that the recipient, subawardee, contractor; or any agent of the recipient, subawardee, or contractor, is engaged in prohibited activities related to trafficking in persons (as defined by the mandatory standard provision on trafficking in persons), the AO must immediately notify both the Office of the Inspector General (OIG) and the Suspending and Debarring Official (SDO). The AO must also consult with the Labor Compliance Advisor at **lca@usaid.gov**. The AO may also direct the recipient to take specific steps to abate an alleged violation or enforce the requirements of the recipient's compliance plan. If necessary, the OIG will conduct an investigation of the alleged offense.

Upon receipt of an IG report that provides support for the allegations, M/OAA will identify an agency official who will be responsible for expeditiously conducting an administrative proceeding, allowing the recipient an opportunity to respond to the report. After the proceeding, the authorized agency official will make a final determination as to whether the allegations are substantiated and will notify the AO and the Director, M/OAA. The AO, in consultation with the Director, M/OAA, will consider taking one or more of the following remedial actions:

1. Requiring the recipient to remove an employee from the performance of work under the award;

2. Requiring the recipient to terminate a contract or a subaward;

3. Suspending payments under the award until such a time as the recipient of the award has taken appropriate remedial action;

4. Terminating the award, in accordance with 2 CFR 200 and 2 CFR 700 for U.S. Organizations, or the Award Termination and Suspension Standard Provision for Non-U.S. Organizations; and/or

5. Referring the matter to the SDO.

The AO and the Director, M/OAA may consider whether the recipient had a compliance plan in place, and whether the recipient was in compliance with that plan at the time of the violation, as a mitigating factor in determining which remedies, if any, should apply. The AO and Director, M/OAA may consider the failure of the recipient to stop an alleged violation or enforce the requirements of the compliance plan when directed by the AO as an aggravating factor in determining which remedies, if any, should apply.

Whether or not the official authorized to conduct the administrative proceeding is the Suspending and Debarring Official, the Suspending and Debarring Official has the authority, at any time before or after the final determination as to whether the allegations are substantiated, to use the suspension and debarment procedures to suspend, propose for debarment, or debar the recipient, if appropriate, considering the factors above.

AOs must enter all substantiated allegations of trafficking in persons-related violations into the Federal Awardee Performance and Integrity Information System (FAPIIS). Immediately upon entering the information into FAPIIS, the AO must also transmit copies of all relevant documents to the Office of Acquisition and Assistance, Compliance Division at **compliance@usaid.gov**, including a brief explanation of the actions taken and the date the information was posted in FAPIIS.

303.4 MANDATORY REFERENCES

303.4.1 External Mandatory References

Effective Date: 12/26/2014

a. **2 CFR 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)**

b. **2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards**

c. **2 CFR 700, USAID Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**

d. **2 CFR 780, Non Procurement Debarment and Suspension**

e. **5 CFR 1320, Controlling Paperwork Burdens on the Public**

f. **22 CFR 203, Registration of Private Voluntary Organizations (PVOs)**

g. **22 CFR 205, Participation by Religious Organizations in USAID Programs**

h. **22 CFR 216, Environmental Procedures**

i. **22 CFR 227, New Restrictions on Lobbying**

j. **22 CFR 228, Procurement of Commodities and Services Financed by USAID Federal Program Funds**

k. **31 USC 6301- 6308, Federal Grant and Cooperative Agreement Act**

l. **System for Award Management**

m. **Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations**

n. **Executive Order 13280, Responsibilities of the Department of Agriculture and the Agency for International Development With Respect to Faith-Based and Community Initiatives**.

o. **Executive Order 13317, Volunteers for Prosperity**

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

q. **Paperwork Reduction Act**

r. **Specially Designated Nationals (SDN) and Blocked Persons List**

303.4.2 Internal Mandatory References

Effective Date: 07/22/2015

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

b. ADS 103, Delegations of Authority

c. ADS 201, Program Cycle Operational Policy

d. ADS 204, Environmental Procedures

e. ADS 206, Prohibition of Assistance to Drug Traffickers

f. ADS 260, Geographic Codes

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

h. ADS 302man, USAID Guidance on Congressional Award Notification System

i. ADS 302mba, Mission or Bureau Action Memorandum for the Administrator

j. ADS 303maa, Standard Provisions for U.S. Nongovernmental Organizations

k. ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations

l. ADS 303mad, Affirmation of Certifications

m. ADS 303mae, USAID Policy Guidance on Posting Grant Opportunities and Application Packages on Grants.Gov

n. ADS 303mai, Model Letters and Procedures for Designating the Agreement Officer's Representative (AOR) for Cooperative Agreements and Grants

o. ADS 303mak, Fixed Amount Award Entity Eligibility Checklist

p. ADS 303mal, Justification to Restrict Eligibility (JRE) Template

q. ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations

r. ADS 303mav, Certifications, Assurances, Other Statements of the Recipient and Solicitation Standard Provisions

s. ADS 303maw, USAID Implementation of Construction Activities

t. ADS 303max, USAID Implementing Partner Notices (IPN) Portal

u. ADS 304, Choice of Implementation Instrument

v. **ADS 312, Eligibility of Commodities**

w. **ADS 318, Intellectual Property Rights**

x. **ADS 320, Branding and Marking**

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

z. **ADS 458, Training and Career/Professional Development**

aa. **ADS 540, USAID Development Experience Information and Reference Services**

ab. **ADS 545mah, Contract Clause Guide for Unclassified Information System Security Systems and Services**

ac. **ADS 591, Financial Audits of USAID Contractors, Grantees, and Host Government Entities**

ad. **ADS 625, Administrative Accounts Receivable**

ae. **A.I.D. Partnership in International Development with Private and Voluntary Organizations (Policy Paper)**

af. **Guide to USAID's Assistance Application Process and to Submitting Unsolicited Assistance Applications**

ag. **Procurement and Assistance Procedures for the HIV/AIDS and Infectious Disease Initiatives (available on the USAID internal website only)**

ah. **Simplified Grant Format**

303.4.3 Mandatory Forms

Effective Date: 02/15/2012

a. **SF-270, Request for Advance or Reimbursement**

b. **SF-271, Outlay Report and Request for Reimbursement for Construction Programs**

c. **SF-424, Application for Federal Assistance**

d. **SF-424a, Budget Information, Non-Construction Programs**

e. **SF-424b, Assurances, Non-Construction Programs**

f. **SF-425, Federal Financial Report**

g. **SF-425a, Federal Financial Report Attachment**

303.5 ADDITIONAL HELP

Effective Date: 07/22/2015

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

b. **ADS 303sac, Sample Action Memorandum for Deviation**

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

d. **ADS 303sai, Profit Under USAID Assistance Instruments**

e. **ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations**

f. **ADS 303sal, Fixed Amount Award Template**

g. **ADS 303sam, Non-U.S. Organization Pre-Award Survey Guidelines and Support**

h. **ADS 303san, Agreement Officer's Role in Debt Collection**

i. **Cross Reference Index**

j. **Policy Paper, Women in Development**

k. **Procurement Executive Bulletins (PEBs)** ***(Only available to USAID employees.)***

l. **Procurement Reform Documentation Requirements for Non-Profit Recipients (self-certification)**

303.6 DEFINITIONS

Effective Date: 12/26/2014

Agreement Officer (see also Contracting Officer)
A person with the authority to (1) enter into, administer, terminate, and close out assistance agreements, and (2) make related determinations and findings on behalf of USAID. An Agreement Officer may only act within the scope of a duly authorized warrant or other valid delegation of authority. The term "Agreement Officer" includes persons warranted as "Grant Officers." It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer. (**Chapter 303** and **304**)

assistance
Financial support to accomplish a public purpose, including grants, cooperative agreements and other agreements in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include technical assistance, the provision of services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; or, contracts which are required to be entered into and administered under procurement laws and regulations. (**Chapter 303** and **304**)

Assistance Executive
The Director, Office of Acquisition and Assistance (M/OAA/OD), or designee in USAID/W who

- Acts as the Agency's coordinator for all assistance matters (that is, financial assistance that provides support to a non-governmental entity to accomplish a public purpose), which may require OMB approval (such as deviations to OMB regulations);
- Makes the final determination of the choice of implementation instrument when there is disagreement between the contracting activity and the Development Objective team. (**Chapter 303** and **304**)

award
Financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and cooperative agreements. (**Chapter 303**)

Non-U.S. Organization
A foreign organization as defined in **2 CFR 200.47**. **(Chapter 303)**

recipient
An organization that receives direct financial assistance (a grant or cooperative agreement) to carry out an assistance program on behalf of USAID, in accordance with the terms and conditions of the award and all applicable laws and regulations. (**Chapters 303**, **304**, **305**, **591**)

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