



May 6, 2020

MEMORANDUM FOR USAID CONTRACTING OFFICERS

FROM: Mark Walther, Director, M/OAA **MARK ANTHONY WALTHER** (affiliate) Digitally signed by MARK ANTHONY WALTHER (affiliate)
Date: 2020.05.06 16:38:26 -04'00'

SUBJECT: Encouraging Flexibility in USAID Contracts Impacted by the COVID-19 Crisis

The ongoing outbreak of COVID-19 continues to have a significant impact in countries around the world and has resulted in limited movement and restrictions. The U.S. Agency for International Development (USAID) is strongly committed to providing support to our contractors as implementation continues during these uncertain times. In order to continue our operations and achieve programmatic results, we need to adjust contract performance and administration accordingly in response to the COVID-19 crisis and so I request that all Contracting Officers (COs) respond swiftly and work in partnership with our contractors.

During these unprecedented times, we must continue our work to meet USAID's Mission and allow flexibility that addresses the operating constraints caused by COVID-19. I am providing this guidance to assist COs in their response to potential contractor requests. I encourage COs to utilize maximum flexibility to achieve our programmatic goals while working within USAID's rules and regulations. COs have the authority to make final decisions; all changes as a result of this crisis must be well documented and made part of the official contract files. In circumstances where immediate approval to contractor requests is warranted, COs may use their discretion to issue approval by letter prior to finalizing via modification or other action. In addition to addressing regulatory and policy requirements, you may also cite this memo to supplement your written documentation.

I appreciate your continued support and efforts as we work to achieve our Mission around the world. As the COVID-19 situation evolves, we will continue to communicate and share information as it becomes available. All COs should review and stay up to date with information posted to the [COVID-19 Guidance for Implementing Partners](#) website, which is updated frequently with the most recent guidance, including relief for [USAID Assistance recipients](#). In

addition, COs should familiarize themselves with OMB guidance issued in [OMB M-20-22 Preserving the Resilience of the Federal Contracting Base in the Fight Against the Coronavirus Disease 2019 \(COVID-19\)](#) and [OMB M-20-18 Managing Federal Contract Performance Issues Associated with the Novel Coronavirus \(COVID-19\)](#).

CO Guidance on Potential Contractor Requests

- 1. Revisions to Budget Line Items and Approval of Costs for Preparedness/Readiness:** As contract implementation continues, it is important that contractor preparedness and readiness are maintained. Changes in contractor operations may require budgetary shifts among line items as a result of the COVID-19 crisis. Therefore, I encourage that COs utilize maximum flexibility in approving all reasonable budget revisions that are within the scope and ceiling of the contract that continue to achieve contract results. In addition, contractors may request approval for specific costs associated with continuity and responsiveness to the COVID-19 crisis. I request that COs review these requests expeditiously and approve all allowable, reasonable, and allocable costs to the maximum extent possible. However, there may be instances where modifications to budgets and approval of costs for preparedness and readiness may not be prudent. Examples could be a project that is nearing completion or a newly awarded contract. COs should use their best judgment when making these decisions.
- 2. Revisions to Work Plans:** Due to restrictions in place, contractors may need to shift their implementation plans in response. I encourage all COs to conduct outreach and work with their designated CORs to encourage flexibility in work plans. I recommend all reasonable changes be approved to work plans that are within the scope of the contract, while still working to achieve contract deliverables and results.
- 3. Approval of Travel, Per Diem & Lodging:** In response to the COVID-19 crisis, contractors may have or need to evacuate long-term staff and eligible family members. AIDAR 752.7002 Travel and Transportation for use in cost reimbursement contracts performed in whole or in part overseas allows for reimbursement of emergency and irregular travel at amounts authorized by the Foreign Service Travel Regulations for USAID-direct hire employees in like circumstances when approved by the Mission Director. Further, AIDAR 752.7028 Differential and Allowances allows for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees, their dependents, or both, when authorized by the Mission Director. Within these limits, COs may approve travel and allowances for emergency evacuation due to the COVID-19 crisis. In addition, AIDAR 752.7032 International travel approval and notification, requires approval by CO and/or COR for all international travel directly and identifiably funded by USAID, as far in advance of the proposed travel as possible, but in no event less than three weeks before

travel is planned to commence. COs should recognize that these timeframes may be unable to be met during this crisis and should approach travel approvals with the greatest flexibility. COs are reminded that the requirement for eCountry Clearance remains.

4. **Extension to Acquisition Awards:** Due to conditions beyond contractor's control, extensions to contract period of performance may be necessary to respond to the COVID-19 crisis. Contract clauses provide remedies for emergency situations in the excusable delay clause or other appropriate clause contained in contracts. While each contract's terms and conditions are unique, I highlight the following authorities contained within FAR clauses that may be applicable to your contract:

- Cost Reimbursable Type Contracts - 52.249-14 Excusable Delays.
- Fixed Price Supply and Service Contracts - 52.249-8 Default (Fixed-Price Supply and Service).
- Fixed Price Contracts for Research & Development - 52.249-9 Default (Fixed-Price Research and Development).
- Fixed Price Contracts for Construction - 52.249-10 Default (Fixed-Price Construction).
- GSA Schedule Contracts & Contracts Awarded Using FAR 12 Procedures- 52.212-4 Contract Terms and Conditions-Commercial Items

As applicable, the above clauses state that contractors shall not be held in default because of any failure to perform as a result of causes beyond their control. COs may approve extensions to period of performance and/or revisions to delivery schedules citing the excusable delay authority. I encourage COs to use the flexibilities contained within these authorities to approve reasonable in scope extensions to the maximum extent possible. When exercising flexibility, COs should be mindful of contracts that are critical to maintaining USAID's operations and response to the COVID-19 crisis and should not unduly delay performance of critical requirements. Additionally, COs should be cognizant that any extension or change to delivery schedule does not sacrifice the results and outcomes of the contract. In-scope changes as described in this section do not require a J&A or other approval beyond the CO. Out of scope contract changes may require a J&A and COs may utilize the [Expedited Procedures Package \(EPP\) for Responding to Outbreaks of Contagious Infectious Diseases](#), if applicable to their circumstance.

5. **Maximizing Contractor Telework:** With restrictions in place, contractors may require long term telework and/or flexible work arrangements for their staff. I encourage all COs to approve and allow contractor telework to the extent that the duties performed under the contract allow for telework. Approval of contractor staff telework and/or flexible work arrangements must also be in accordance with the contractor's written policies. While maximum flexibility should be allowed, please be sure that contracts critical to the Agency's

operation and response to the COVID-19 crisis have adequate coverage to maintain operations. While teleworking, contractors must ensure proper security and safeguards are maintained.

6. **Indirect Cost Rate Ceilings:** FAR 42.707(b) allows for establishment of indirect cost rate ceilings and some contracts may contain indirect cost rate ceilings as a contract term. Contractors have informed us that due to the COVID-19 crisis, spikes to provisional indirect cost rates may occur that are beyond their control and in some instances could exceed the negotiated indirect cost rate ceiling contained in some awards. USAID has established a covid-19_indirectCosts@usaid.gov email box where partners can send NICRA-related questions and requests for adjustments to provisional rates within ceilings. M/OAA/CAS is responsible for reviewing and negotiating any adjustments to provisional (billing) rates as well as the establishment of final rates. Contractors have stated concerns over ceilings on their indirect rates and these contract specific issues need to be addressed by the individual CO, in consultation with M/OAA/CAS/OCC. In appropriate circumstances, the CO may consider changes to indirect cost rate ceilings if the provisional or final rates, as approved by USAID or the cognizant Agency, have increased due to an unforeseen financial impact caused as a direct result of the COVID-19 crisis. If increases to ceiling rates are approved, these increases may have a budget impact and could result in a cost overrun to the contract. COs must be mindful that before giving something of value, such as modification to indirect cost rate ceilings, the CO is required to obtain appropriate consideration in return from the contractor. If the CO, in consultation with M/OAA/CAS/OCC, determines that an indirect cost rate ceiling increase is appropriate to provide the contractor relief without obtaining consideration, the CO must obtain the approval of the M/OAA Director in accordance with AIDAR 750.7106-2 Amendments without consideration.