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# ADS Chapter 302

## USAID Direct Contracting

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**Functional Series 300 – Acquisition and Assistance**  
**ADS 302 – USAID Direct Contracting**  
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## Table of Contents

<b>302.1</b>	<b>OVERVIEW .....</b>	<b>5</b>
<b>302.2</b>	<b>PRIMARY RESPONSIBILITIES .....</b>	<b>5</b>
<b>302.3</b>	<b>POLICY DIRECTIVES AND REQUIRED PROCEDURES .....</b>	<b>7</b>
<b>302.3.1</b>	<b>Summary of Acquisition Policies, Regulations, and Procedures.....</b>	<b>7</b>
302.3.1.1	Applicability of Regulations, Policies and Related Guidance .....	7
302.3.1.2	Deviations .....	7
<b>302.3.2</b>	<b>Reserved.....</b>	<b>7</b>
<b>302.3.3</b>	<b>Contracting and Subcontracting with a Foreign Governmental Organization.....</b>	<b>7</b>
<b>302.3.4</b>	<b>Acquisition Planning .....</b>	<b>11</b>
302.3.4.1	Individual Acquisition Plans .....	11
302.3.4.2	Applicability of the DAC Recommendation for Construction and Other Procurements Subject to Untying Requirements .....	12
302.3.4.3	Source and Nationality for Procurement of Commodities and Services...	12
302.3.4.4	Contract Review Board (CRB) .....	12
<b>302.3.4.5</b>	<b>Limiting Competition .....</b>	<b>14</b>
302.3.4.6	Indefinite Delivery/Indefinite Quantity IDIQ Contracts (IDIQs) – .....	23
	Planning of Awards .....	23
302.3.4.7	Unsolicited Proposals .....	28
302.3.4.8	Expediting Awards Made Under Section 8(a) of the Small Business Act.	28
302.3.4.9	Branding .....	29
302.3.4.10	Organizational Conflict of Interest (OCI) .....	29
302.3.4.11	Reserved .....	29
302.3.4.12	Logistic Support Overseas to USAID Direct Contractors .....	29
302.3.4.13	Grants Under Contracts (GUCs) .....	31
302.3.4.14	Government–furnished Property (GFP) - Information Technology (IT) ....	34
302.3.4.15	Acquisition of Custom-Developed Software.....	34
302.3.4.16	Information System Security .....	35
302.3.4.17	Implementation of Section 508 of the Rehabilitation Act of 1973.....	36
302.3.4.18	Designation of the Contracting Officer’s Representative (COR) .....	36
302.3.4.19	Simplified Acquisition .....	41
<b>302.3.5</b>	<b>Solicitation Requirements and Provisions .....</b>	<b>41</b>

302.3.5.1	Uniform Use of Line items.....	41
302.3.5.2	Exception to Federal Excise Tax on Specific Foreign Contract Payments... .....	41
302.3.5.3	Indefinite Quantity Contracts (IQCs) – Exception for Small Businesses ..	42
302.3.5.4	Key Personnel .....	42
<b>302.3.5.5</b>	<b>Preventing and Addressing Sexual Misconduct</b> .....	<b>43</b>
302.3.5.6	Grants Under Contracts (GUCs).....	44
302.3.5.7	The Government Cost Estimate in Negotiated Procurements .....	44
302.3.5.8	Defense Base Act (DBA) Insurance.....	44
302.3.5.9	Reserved .....	45
302.3.5.10	Organizational Conflict of Interest (OCI) .....	46
302.3.5.11	Implementation of Section 508 of the Rehabilitation Act of 1973.....	46
302.3.5.12	Required Approvals for Information Technology (IT) Acquisition .....	46
302.3.5.13	Access to USAID Facilities and USAID’s Information Systems .....	47
302.3.5.14	Supporting USAID’s Disability Policy in Contracts .....	48
302.3.5.15	Incorporating Gender Issues into Solicitations.....	48
302.3.5.16	Incorporating Leadership Act Implementation into Acquisition Solicitations, Awards and Modifications.....	49
302.3.5.17	Awards Limited to Local Competition.....	49
302.3.5.18	Prohibition on USAID-Specific Experience Requirements in Evaluation Criteria .....	49
302.3.5.19	USAID-Financed Third Party Web Sites .....	50
302.3.5.20	Conference Costs and Required Approvals.....	51
302.3.5.21	Submission of Datasets to the Development Data Library (DDL) .....	51
302.3.5.22	Climate Risk Management.....	51
<b>302.3.6</b>	<b>Pre-Award Requirements</b> .....	<b>52</b>
302.3.6.1	Composition of Technical Evaluation Committees (TECs).....	52
302.3.6.2	Dissemination of Cost Proposal Information to TECs in Negotiated Procurements .....	53
302.3.6.3	Evaluation and Use of Contractor Past Performance and Integrity Information (CPII).....	54
302.3.6.4	Branding .....	54
302.3.6.5	Pre-award Audits and Surveys .....	54
302.3.6.6	Classified Contract and Contractor Security Requirements .....	55
302.3.6.7	Negotiation of Indirect Cost Rates .....	56
302.3.6.8	Determining Profit and Fee Objectives .....	56
302.3.6.9	USAID Contractor Salary Threshold (USAID CST) and Salary Supplements to Host Government Employees .....	56
302.3.6.10	Waiver to Standards for Accessibility for the Disabled in USAID Construction Contracts .....	58
302.3.6.11	Contract Reporting and System for Award Management (SAM).....	58
302.3.6.12	Prohibition on Transactions with Designated Entities – Office of Foreign Assets Control (OFAC) .....	59

302.3.6.13	Incorporating Successful Competitive Proposals into Contracts by Reference .....	59
302.3.6.14	FAR Part 4.21 Prohibition On Contracting for Certain Covered Telecommunications And Video Surveillance Services or Equipment (Section 889) .....	59
<b>302.3.7</b>	<b>Award</b> .....	<b>64</b>
302.3.7.1	Reserved .....	65
302.3.7.2	Congressional Award Notice System.....	65
302.3.7.3	Processing of Awards in the Global Acquisition & Assistance System (GLAAS) .....	66
302.3.7.4	File Documentation.....	66
<b>302.3.8</b>	<b>Post-Award Administration</b> .....	<b>67</b>
302.3.8.1	Reserved .....	67
302.3.8.2	Extraordinary contractual actions under AIDAR part 750.....	67
302.3.8.3	Reserved .....	67
302.3.8.4	Approval of Contractor Salaries Exceeding the USAID Contractor Salary Threshold (USAID CST) .....	67
302.3.8.5	Post Award Requirements Concerning Prohibition on Transactions with Designated Entities – Office of Foreign Assets Control (OFAC) .....	69
302.3.8.6	The Role of the Contracting Officer in the Debt Collection Process.....	69
302.3.8.7	Performance Monitoring and Evaluation of Contractor Performance .....	69
302.3.8.8	Reporting of Foreign Taxes .....	72
302.3.8.9	Processing of Award Modifications in GLAAS .....	73
302.3.8.10	USAID Implementing Partner Notices (IPN) Portal for Acquisition.....	73
302.3.8.11	Reporting of Terminations for Default/Cause.....	74
302.3.8.12	Contractor Code of Business Ethics and Conduct - Contractor Disclosures .....	75
302.3.8.13	Debarment and Suspension .....	75
302.3.8.14	Civilian Board of Contract Appeals Procedures .....	76
302.3.8.15	Reporting and Disposition of Government Property.....	77
302.3.8.16	Close-out Procedures .....	77
<b>302.4</b>	<b>MANDATORY REFERENCES</b> .....	<b>77</b>
<b>302.4.1</b>	<b>External Mandatory References</b> .....	<b>78</b>
<b>302.4.2</b>	<b>Internal Mandatory References</b> .....	<b>78</b>
<b>302.5</b>	<b>ADDITIONAL HELP</b> .....	<b>81</b>
<b>302.6</b>	<b>DEFINITIONS</b> .....	<b>82</b>

## ADS 302 – USAID Direct Contracting

### 302.1 OVERVIEW

Effective Date: 11/10/2020

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

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

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

### 302.2 PRIMARY RESPONSIBILITIES

Effective Date: 08/01/2019

As described in [ADS 103, Delegations of Authority, Section 103.3.10.7](#), the Assistant Administrator, Bureau for Management, has designated to the Director, Office of Acquisition and Assistance (M/OAA), the responsibilities of the Senior Procurement Executive, the Chief Acquisition Officer, and the Head of the Contracting Agency.

- a. The **Senior Procurement Executive** in M/OAA is responsible for:
  - (1) The management direction of USAID’s Acquisition & Assistance system, as delegated and described in [ADS 103](#).
  - (2) Approval of [Procurement Executive Bulletins \(PEBs\)](#), which issue information on general guidance, best practices, reminders, and Frequently Asked Questions.
  
- b. The **Chief Acquisition Officer (CAO)**, in M/OAA is responsible for:
  - (1) Exercising, in person or by delegation, authorities stated in the [Federal Acquisition Regulation \(FAR\) Subparts 1.3 and 1.6](#) and [USAID Acquisition Regulations \(AIDAR\)](#) subparts 701.3 and 701.6, including selecting and appointing Contracting Officers and terminating their appointments.
  - (2) Approving Acquisition & Assistance Policy Directives ([AAPDs](#)), which provide interim implementation or advance notification of A&A regulations, and Agency A&A policy, procedures, and other information.

- (3) Establishing and updating, as necessary, policies, procedures, and practices that ensure the use of full and open competition and the appropriate use of performance-based contracting.
  - (4) Approving contractor salaries that exceed the USAID Contractor Salary Threshold (**302.3.8.4**).
- c. The **Head of the Contracting Activity (HCA)**, as defined in [AIDAR 702.170-10](#), is responsible for:
- (1) Procuring supplies and services necessary to carry out the activities for which he or she is responsible, including executing contracts within the authorities specified in AIDAR subpart 701.601.
  - (2) Establishing procurement policies, procedures, and standards appropriate for the activities, subject to the policy stated in this chapter.
- d. The **Suspending and Debarring Official (SDO)**, ([AIDAR 709.4](#)), suspends or debars individuals and entities from participating in government-funded contracts in accordance with [FAR Part 9](#), when such action is in the public interest.
- e. The **Bureau for Management, Office of Acquisition & Assistance (M/OAA)**, is responsible for:
- (1) Developing, issuing, and maintaining the Agency's acquisition regulations, procedures, and standards, in accordance with established Agency delegations and requirements.
  - (2) Evaluating the Agency's procurement system, providing recommendations to the Procurement Executive regarding the certifications specified in 302.2.b(1), and providing technical support to overseas Contracting Officers.
- f. The **Contract Review Board** is responsible for reviewing solicitations and award documents exceeding \$25 million for acquisitions, consistent with the policy found in **302.3.4.4**.
- g. **Contracting Officers (COs) and Negotiators** are responsible for entering into, administering, and terminating USAID-direct contracts in accordance with the limitations of their delegated authority, policy directives, and required procedures.
- h. The **Planner** is responsible for drafting a procurement request, including the Statement of Work and an appropriate evaluation plan.

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

### **302.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES**

#### **302.3.1 Summary of Acquisition Policies, Regulations, and Procedures**

##### **302.3.1.1 Applicability of Regulations, Policies and Related Guidance**

Effective Date: 08/06/2013

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

##### **302.3.1.2 Deviations**

Effective Date: 07/01/2007

Contracting Officers (COs) must follow the procedures in [AIDAR 701.4](#) when deviating from the policy directives or required procedures in this ADS chapter. However, COs may not deviate from **302.3.6.10**, Approval of Contractor Salaries Exceeding the USAID Contractor Salary Threshold (USAID CST).

#### **302.3.2 Reserved**

#### **302.3.3 Contracting and Subcontracting with a Foreign Governmental Organization**

Effective Date: 07/28/2014

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

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

**c.** Subcontracts

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

**d.** Determination and Findings (D&F) Requirement

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

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

- (i)** The OU, or the prime contractor in the case of a subcontract, must provide a concise description of the specific need for a procurement from a foreign governmental or parastatal organization.
- (ii)** The D&F must include an explanation of why the foreign governmental or parastatal organization is the most appropriate source of supply, and what foreign assistance objective will be achieved by contracting or subcontracting with a foreign governmental organization.

- (iii) The D&F must include a discussion of any required deviations, waivers, or related approvals such as those for non-competition, and the status of those requests. Note that foreign government-owned parastatal organizations are covered by the nationality restrictions in [ADS 310](#). Prior to entering into a contract of approving a subcontract with such a foreign government-owned parastatal organization or a foreign government ministry or agency of the cooperating/recipient country, the OU must comply with the eligibility requirements of [22 CFR 228](#).
- (iv) The D&F must include a statement describing the audit requirements to be included in the proposed award and the awardee's accounting systems. If the proposed foreign governmental or parastatal organization resists USAID audit requirements under [ADS 591](#), the Mission/OU must determine whether the funds at issue are subject to audit pursuant to a Development Objective Agreement (DOAG) (previously known as a Strategic Objective Agreement (SOAG) (see [ADS 350](#)). In situations where the subject funds were obligated in a DOAG, the Mission or Operating Unit (OU) must arrange for audits in accordance with the DOAG. In situations where the funds are not obligated in a DOAG, the Mission/OU, with clearance from the Mission Controller or M/CFO, must otherwise ensure that USAID funds are subject to sufficient accountability and controls to fulfill the audit requirements in [ADS 591](#).
- (v) Determine reasonableness of cost/price. The CO must determine the price/cost to be reasonable in accordance with [FAR 15](#) cost and price analysis requirements. In accordance with [FAR Part 44](#), in the case of subcontracts, the CO must consider whether the contractor performed adequate cost or price analysis or price comparisons. Subcontracts to foreign governmental organizations must not include overhead or indirect costs.
- (vi) Taxes. Provide a statement discussing how taxes will be handled if the taxes are required. [FAR 52.229-7 and 52.229-9](#) address taxes under USAID contracts with foreign governments.
- (vii) Termination. Include a statement confirming that applicable contract termination clauses will be included in the award.
- (viii) Host country salary supplementation. As a general rule, USAID discourages salary supplements, except in very special circumstances and only with the proper justification (see [ADS 200](#),

ADS 302, and [AIDAR 731.205-71](#)). Provide a summary of any authorization received for host country salary supplementation.

- (ix)** Clauses. All mandatory clauses must be included in the award, unless the CO obtains approval of a deviation, and includes it in the D&F package.
- (x)** Partner government laws. COs, in consultation with the cognizant RLO or GC, must determine the foreign governmental organization's ability to legally receive funds directly from USAID or a prime contractor vs. receiving funds through the partner government's own financial management systems.
- (xi)** Funds flow. Statement regarding who will receive funds (entity, individual, etc.) and the relationship of the proposed funds flow with the partner government's own financial management systems.
- (xii)** Disclaimers of liability. The D&F must include a discussion of any disclaimers of liability by the foreign governmental or parastatal organization that will be included in the contract. The discussion must address what measures will be taken to adequately protect the interests of the U.S. Government.
- (xiii)** The D&F must include a statement addressing how the Mission or the implementing partner will handle or mitigate any issues that may come up if: a) the foreign governmental entity fails to perform; and/or b) the Mission or implementing partner finds other fraud or funds mismanagement issues.
- (xiv)** Disputes and applicable law. The D&F must include a statement that the award will contain the applicable FAR disputes clause.
- (xv)** The D&F must include a statement regarding adequacy of information supporting a responsibility determination. Prior to entering into direct contracts with foreign governmental or parastatal organizations, the CO must determine the foreign governmental or parastatal organization to be responsible in accordance with the requirements at [FAR Part 9](#). In accordance with [FAR Part 44](#) in the case of subcontracts, the CO must consider whether the prime contractor also performed an adequate responsibility determination.
- (xvi)** Determination. The D&F must include a statement that, based on the above findings, the Mission Director for Mission-executed awards or the cognizant Bureau AA, with clearance from the Pillar

or Regional Bureau AA, for USAID/Washington executed awards, has determined that making an award to a foreign governmental organization is in the best interest of the government.

- e. The Operating Unit or COR, as appropriate, must obtain prior written approval of the D&F from the Mission Director for overseas Mission executed contracts or subcontracts; and from the cognizant Bureau AA, with clearance from the relevant Pillar or Regional Bureau AA for USAID/Washington executed contracts or subcontracts. The following clearances are required:
- All D&Fs must be cleared by the CO, RLO/GC, and M/CFO Controller.
  - D&Fs for contracts and subcontracts at or above \$500,000 also require prior written clearance by the Senior Procurement Executive (SPE).

#### **302.3.4 Acquisition Planning** Effective Date: 08/06/2013

This section provides policy and procedures for planning agency acquisitions.

##### **302.3.4.1 Individual Acquisition Plans** Effective Date: 08/06/2013

Acquisition planning is required to promote and provide for acquisition of commercial items or non-developmental items and full and open competition to the maximum extent practicable; and for selection of the appropriate contract type. Acquisition planning and market research is the joint responsibility of program, technical, and contracting officers, and must be conducted in accordance with [FAR 7, ADS 300, Agency Acquisition and Assistance \(A&A\) Planning](#), and [ADS 201, Program Cycle Operational Policy](#). The Planner (as defined in ADS 300) must prepare a written acquisition plan for all cost-reimbursement and high-risk procurements following the policies and procedures in [ADS 300](#) and must use the Individual Acquisition Plan template for actions at or above \$10 million. [ADS 300](#) contains mandatory templates, policies and procedures on:

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

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

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

Effective Date: 08/06/2013

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

As stated in [ADS 221](#), the following categories of procurement actions are covered by the DAC Recommendation:

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

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

### **302.3.4.3 Source and Nationality for Procurement of Commodities and Services**

Effective Date: 08/06/2013

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

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

### **302.3.4.4 Contract Review Board (CRB)**

Effective Date: 07/06/2012

### a. Objectives of the CRB

The main objectives and expected benefits of the CRB are to:

- Assure the quality of USAID acquisition actions;
- Minimize the potential for sustainable protests and strengthen the Agency's position to the extent possible in the event of future claims;
- Provide a basis for strengthened mentoring and training of USAID staff; and
- Provide a process for communicating best practices.

The function of the CRB is to identify problems and recommend corrective actions for all proposed contract awards of \$25 million and above. The CRB does not review actions associated with the execution of Task Orders. Recommendations will be either mandatory or advisory depending on the nature of the problem.

CRB review policies, procedures, and parameters are contained in the [ADS 302mao, Contract Review Board Guidelines](#).

### b. CRB Submission Requirements

All COs must submit any action with a total estimated contract award amount of \$25 million and above to the CRB. This includes limited competition contracts, but excludes sole source actions which are subject to a separate review and approval requirement (see **302.3.4.1**). Mission COs with warrants that are \$10 million or less are encouraged to submit all actions greater than \$10 million to the CRB for review, if they will be responsible for signing the award and do not have a Supervisory CO. Any CO may choose to submit a complex acquisition action of any dollar amount to the CRB, but must submit at the pre-solicitation stage, rather than requesting CRB review at a later stage.

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

- Pre-solicitation,
- Competitive range determination (as applicable), and
- Pre-award.

The documents the CO must submit at each stage are provided in the [ADS 302mao, Contract Review Board Guidelines](#).

### c. Waivers

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

#### **302.3.4.5 Limiting Competition** Effective Date: 03/29/2021

### a. Competition in Contracting Act (CICA)

#### New Awards

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

#### Modifications

### (1) Competition Requirements

CICA also applies to the modification of contracts. Modifications that “materially change” the terms of the contract trigger the CICA competition requirements (*i.e.*, the requirement to issue a new solicitation or execute a J&A). Several factors are used to assess whether a modification materially changes a contract. These include the extent of any changes in the type of work, performance period, and costs between the modification and the original contract, as well as whether the original solicitation adequately advised offerors of the potential for the change or whether the change was the type that reasonably could have been anticipated, and whether the modification materially changed the field of competition for the requirement.

Consistent with the Agency's goal of flexibly managing contracts within legal boundaries, COs are encouraged to utilize contract terms to achieve the award's objectives during administration. One such contract term is the FAR “Changes”

clause (FAR 52.243-1 through FAR 52.243-5), which authorizes modifications within the “general scope” of the contract. An action specifically authorized by a contract term, such as the Changes clause, does not trigger competition and does not require a J&A. Depending on the circumstances, COs may also rely on other contract terms to modify the contract without invoking competition (see [ADS 302sax, Guide on the Use of the Changes Clause](#)).

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

## (2) Documentation and Consultation Requirements

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

When submitting a request for ACA consultation for citing the “Changes” clause, the CO may use the [sample Determination Memo](#) or the draft Negotiation Memo. COs must send emails requesting ACA consultation for citing the “Changes” clause to [changesclause@usaid.gov](mailto:changesclause@usaid.gov).

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

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

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

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

## Gifted, Non-appropriated Funds

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

### **b. AIDAR Authority to Limit Competition**

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

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

### Expedited Procedures Packages or EPPs

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

Before using the approved D&F in the EPP to limit competition to award a contract or modification, the CO must first consider the feasibility of using full and open competitive procedures as described in the FAR, the AIDAR, and related federal policies. This includes category management as well as utilization of small business, including Section 8(a) procurement authorities and use of minority serving institutions. The CO is responsible for determining the level of competition (if any) that is appropriate to the particular procurement. When not providing for full and open competition, the CO must

solicit offers from as many potential sources as is practicable under the circumstances. Once the CO determines that the AIDAR 706.302-70(b)(3)(ii) authority applies, the CO may rely upon the Administrator approved D&F without determining whether other non-competitive authorities may also be available.

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

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

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

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

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

When competition for a prime contract will be limited to a geographic source or nationality within the otherwise authorized Geographic Code, the Operating Unit must appropriately justify the reason for limiting competition. The limited competition must be approved in accordance with the policies of this section. Even if a limited Geographic Code is authorized for the prime award, the CO must include the otherwise applicable Geographic Code in the resulting contract for the procurement of commodities and services by the contractor.

For example, when the default authorized geographic code for USAID-direct procurements is Code 937, in order to limit competition to just one source or nationality within Code 937, e.g., just the U.S., the CO must ensure that a J&A is prepared and

approved prior to such limitation of competition for the award of the prime contract. The CO must insert Geographic Code 937 as the authorized code in the resulting contract.

**d. Indefinite Delivery/Indefinite Quantity (IDIQ) Contract Task Orders (TOs)**

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

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

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

**(2) FAR Part 6 and AIDAR Part 706**

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

- Task orders with a period of performance beyond the IDIQ period of performance, or modifications that extend the period of performance of an existing task order beyond the basic IDIQ contract's stated period of performance.
- Task orders and modifications to task orders in an amount that will exceed the remaining Total Estimated Ceiling (TEC) of the IDIQ.
- Task order modifications issued after the ordering period has expired that will expand the SOW or requirements; or increase the total dollar value of a task order (or Total Estimated Cost in the case of a cost-reimbursement-type task order).

**e. Administrator Clearance Requirement for Specific Non-competitive Actions**

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

- Modifications: The action increases the total estimated cost of a current award by \$40 million or more for any of the same activities performed by the contractor, or
- New Awards: The action is a follow-on award of \$40 million or more and is for any of the same activities performed by the contractor under a previous award.

### Applicability

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

This requirement does not apply to:

- Transactions awarded under “Notwithstanding authority”
- Humanitarian and Disaster Assistance activities (BHA)
- Transition Initiative Activities (OTI)
- Food Emergency activities (BHA)
- Competitions limited to local entities
- Changes due to budget revisions when competitive procedures are not applicable
- Actions where the amount of appropriated funds do not exceed \$40 million but the addition of non-appropriated funds gifted to USAID (see ADS 628) to the total amount of the contract action cause the modification or follow-on award to exceed \$40 million.
- Awards made based on a D&F citing the foreign impairment authority at [AIDAR 706-302\(b\)\(3\)\(ii\)](#) for an Administrator-approved class of contracts, for example, as part of the HIV/AIDS Expedited Procedures Package (EPP).

### Procedures and Clearances

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

19

*Text highlighted in yellow indicates that the material is new or substantively revised.*

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

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

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

#### **f. Limiting Competition to Local Entities**

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

The Sec. 7077 definition of local entities is provided at [ADS 302mbe, Local Competition Authority Pilot Program](#).

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

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

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

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

The authority has been extended and applies to new contracts not exceeding \$5 million to be awarded using FY2014 or prior year funds. The pilot may be extended again by means of a future Appropriations Act; OUs and COs must consult with their GC/RLO before using the authority with funds made available after fiscal year 2014. Note that the definition of local entity was revised in the FY14 Appropriations Act (Section 7028) to require that local entities be both owned and managed by a majority of citizens or lawful permanent residents of the country in which competition is to be limited. COs must use the revised version of the required provision referenced below in all solicitations and awards financed fully or in part with FY14 funds.

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

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

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

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

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

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

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

### (1) J&A Templates

COs may use either template, as applicable:

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

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

### (2) FAR Requirement to Post J&As on FedBizOpps.

[FAR 6.305](#) requires COs to make J&A documents publicly available 14 days after award (30 days for cases based on unusual and compelling urgency), except for information exempt from public disclosure. FAR 6.305(a) requires posting at both the Federal Business Opportunities (FBO) Web site ([www.fedbizopps.gov](http://www.fedbizopps.gov)) and on the Agency Web site, which may provide access to the justifications by linking to [fedbizopps.gov](http://fedbizopps.gov). USAID has established such a link from its Internet Web site directly to FBO to facilitate public access to the FBO J&A postings. Therefore, COs must post J&A documents on the FBO Web site but do not have to post to USAID's Internet Web site.

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

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

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

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

Exemptions from the clearance requirement:

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

In addition, careful screening of J&As is required to identify information that must be redacted, such as contractor personally identifiable information (PII), proprietary data, and any other sensitive data. The exemptions to disclosure of information contained in the [Freedom of Information Act \(FOIA\) \(5 U.S.C. 552\)](#), and the prohibitions against disclosure in [FAR 24.202](#) must be considered during this review. The CO is responsible for working with GC and USAID’s FOIA Team (M/MS/IRD) to prepare the justification for public posting, as appropriate. See [FAR subpart 6.305\(e\)](#) for additional information and prohibitions.

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

Effective Date: 09/13/2018

As part of the Agency's USAID Forward procurement reform goals, this section sets forth policy and procedures that reflect greater priority on increasing competition and reducing reliance on Task Orders issued under IDIQ contracts (previously referred to as IQCs) to accomplish large scale, long-term projects/activities. In addition to the FAR requirements in Part 16 for selecting contract type, Contracting Officers (COs) and Operating Units (OUs) must comply with the following Agency policy and procedures when contemplating the selection of an IDIQ as the contract type or the issuance of a

task order under an IDIQ (see [ADS 300](#) for general policies and procedures for acquisition planning and see [ADS 302mbi, Acquisition Planning for Indefinite Delivery Indefinite Quantity Contracts and Task Orders](#) for guidance specific to IDIQs and Task Orders.

#### **a. Single-Award IDIQ Determination**

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

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

Per FAR 16.504, no task or delivery order contract in an amount estimated to exceed \$103 million (including all options) may be awarded to a single source unless the head of the agency makes a determination in writing. The Administrator has delegated the authority to make this determination to the Director, M/OAA.

#### **b. Reducing Use of High-Risk Contract Types**

OMB has requested that all federal agencies reduce the use of High-Risk contract types, to include Time and Materials (T&M) type contracts. In accordance with FAR Part 16.501(d), a time-and-materials contract may be used only if the CO prepares a Determination and Findings (D&F) that no other contract type is suitable. COs are discouraged from awarding T&M type IDIQ contracts. Instead, COs are encouraged to solicit and award IDIQs that allow task orders to be negotiated either on a cost-reimbursable or fixed price basis.

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

#### **c. Ordering Period and Period of Performance**

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

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

- (1) The terms and conditions of the basic IDIQ to remain in effect for the duration of all Task Orders; and
- (2) The CO to issue contract modifications that may become necessary or required during the additional two-year period of performance.

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

#### **d. IDIQ Small Business Considerations**

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

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

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

- Reserve one or more IDIQ awards for small businesses;
- Set aside part or parts of IDIQ awards for small businesses; or
- Set aside task orders under IDIQs for small businesses.

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

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

FAR 16.5 requires that the CO provide each awardee a fair opportunity to be considered for each order exceeding \$3,000 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in FAR 16.505(b)(2). The exceptions to the fair opportunity process listed in that referenced subparagraph are all directly derived from statute and the Agency may not deviate from these FAR requirements without statutory authority to do so.

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

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

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

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

- (a) Small Business Set Asides.** If market research and the history for comparable activities show that two or more small business holders have

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

- (b) Small Business Reserves.** If a total small business set-aside is not appropriate, the OU must perform market research to identify the total number of awards to be issued and the number of those awards to be reserved for small businesses. The more the expertise exists in the market place within small business, the greater the number of awards to be reserved for small business. Market research must also be the basis for setting any threshold for small business task orders.
- (c) Small Business Thresholds.** COs may establish small business dollar thresholds for small business task orders under IDIQs. Only small businesses will be considered for task orders below the threshold; however, small businesses must also be considered for task orders above the threshold. Market research must be the basis for setting any threshold for small business task orders. The threshold amount must be identified in the solicitation and resulting contracts.

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

#### **e. Award of Task Orders**

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

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

The following Additional Help documents are available to provide further guidance and clarification on the task order award process in general, as well as on field support

actions. OUs should follow the current guidance at [Field Support Action Process](#) when determining the magnitude of any one task order.

- [The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IDIQs \(TEXT ONLY VERSION\)](#)
- [The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IDIQs \(VERSION WITH GRAPHICS\)](#)
- [Field Support Action Process](#). This document addresses task orders that accept Mission funding and outlines the processes that should be completed before Mission-specific work is authorized under such a task order.
- [Contract Types to Address Global Technical Leadership with Field Support and/or Cost-Contributions](#). This document helps determine alternative contracting mechanisms available to USAID/W technical officers when accepting field support or cost-contributions from Missions or other operating units to co-fund activities.

#### **302.3.4.7 Unsolicited Proposals**

Effective Date: 07/01/2007

a. The Evaluation Division of the Office of Acquisition and Assistance is responsible for the policy directives and required procedures concerning unsolicited proposals. Detailed guidance on submission requirements and criteria for consideration for these proposals are found in [ADS 302map, Guidelines for Submitting Unsolicited Contract Proposals](#).

b. A Federal agency must not use any data, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with another firm unless the offeror agrees to the use. However, this prohibition does not preclude using the same or similar data or ideas from an unsolicited proposal that is available without restriction from another source. An offeror may restrict the data included in its unsolicited proposal by marking the proposal with the legend set forth in [FAR 15.609](#).

#### **302.3.4.8 Expediting Awards Made Under Section 8(a) of the Small Business Act**

Effective Date: 07/01//2007

USAID and the U.S. Small Business Administration (SBA) have entered into a Partnership Agreement (PA) for expediting prime contract awards and purchase orders that are made under Section 8(a) of the [Small Business Act](#). For guidelines on the current PA, see [USAID Procedures for Partnership Agreement between SBA and USAID for Expedited 8\(a\) Awards](#).

**302.3.4.9 Branding**

Effective Date: 08/01/2019

In accordance with [ADS 320, Branding and Marking](#), the Planner must provide the Contracting Officer with a branding strategy.

**302.3.4.10 Organizational Conflict of Interest (OCI)**

Effective Date: 09/13/2018

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

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

**302.3.4.11 Reserved****302.3.4.12 Logistic Support Overseas to USAID Direct Contractors**

Effective Date: 04/20/2006

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

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

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

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

- (1) Each type of logistic support to be made available, e.g., transportation of personnel, personal goods or commodities; quarters; furnishings; equipment; utilities; supplies for residence and office; maintenance; and, medical facilities.
- (2) Whether each type of logistic support must be in cash or in-kind, and whether it will be provided by the cooperating country, the Mission, or the contractor itself.

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

**b. Financing of logistic support**

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

- (1) The cooperating country's own budgetary or private resources,
- (2) Cooperating country-owned local currency that USAID or Pub. L. 480 programs generate, and
- (3) U.S. Government-owned country-use local currency that USAID or Pub. L. 480 programs generate.

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

**c. Arrangements for logistic support**

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

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

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

**d. Exceptions**

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

**302.3.4.13 Grants Under Contracts (GUCs)**

Effective Date: 09/28/2016

- a. Subject to the conditions discussed below, the Contracting Officer may enter into a direct contract (including a task order) that allows the USAID contractor to execute grants with non-governmental organizations (non-profits or for-profits) and partner government entities (also known as partner government implementing entity as defined in [ADS 220](#)). This Grants Under Contracts authority is allowable only after the following clearances and approvals have been obtained:
  - Clearance from the cognizant General Counsel or Resident Legal Officer and the CO; and
  - Approval, in writing, from the Head of the Contracting Activity (HCA) for the specific contract for which it would be allowed.
- b. Additional Requirements for GUCs Providing Funds to Partner Government Entities.
  - (1) In exceptional circumstances, GUCs to partner government entities to provide funds may be authorized if they meet the conditions, requirements, and approvals below. This requirement does not apply to GUCs that are solely in-kind grants, technical assistance, or other activities by the recipient to or for the benefit of a partner government entity. Note that COs do not have the authority to execute grants to a foreign government; [ADS 103.3.5.1.c](#) delegates such authority to AAs, and as further delegated.

- (2)** Prior to obligating funds into a contract for any GUC to a partner government entity that provides funds for activities that the entity will implement (excluding “in-kind” grants, technical assistance, and other activities provided to or on behalf of the partner government entity), the CO must verify that these types of GUCs have been approved in a Determination and Findings, in accordance with paragraph (3) below.
- (3)** If the OU has not addressed GUCs to partner government entities in the PAD (or PAD Amendment), the OU must prepare a D&F that documents:
- (i)** The results of a pre-financing assessment conducted under [ADS 220.3.3.1 and 220.3.4.3](#) that complies with all statutory assessment requirements; a risk mitigation plan to address any weaknesses identified in the assessment; and how all identified weakness will be mitigated in the GUC that provides funds to a partner government entity;
  - (ii)** How a GUC that provides funds to a partner government entity is consistent with any other decisions and results under the Public Financial Management Risk Assessment Framework (PFMRAF), if any (see [ADS 220](#));
  - (iii)** How a GUC that provides funds to a partner government entity will contribute to sustainability other than in cases where immediate development results outweigh sustainability goals.
  - (iv)** That there are no alternative means to achieve the foreign assistance purpose other than through GUCs issued by the USAID prime awardee to a partner government entity.
- (4)** If the cumulative amount of GUCs to partner government entities exceeds \$10 million for the duration of a prime contract award, the Operating Unit must complete a Congressional Notice with the pre-financing assessment results (see [ADS 220](#)).
- (5)** All D&Fs must be cleared by the RLO/GC, CO, and M/CFO/Mission Controller. The D&F must be approved by the Mission Director for GUCs under Mission executed contracts, and by the cognizant Pillar Bureau Assistant Administrator, in consultation with the relevant Regional AAs, for GUCs under USAID/Washington executed awards. The OU must provide a copy of the signed D&F to the CO to be included in the contract file.
- (6)** 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. As such, no prime award may contain GUCs that provide funds to partner government entities unless a D&F specified in **302.3.4.13 b(3)** above is approved by the cognizant Bureau AA (in consultation with relevant Pillar or Regional AAs, as applicable) and the AA for Management and provided to the CO.

c. The grant program under the GUC's authority must meet the following conditions:

**(1) Award Amount Thresholds**

- Non-Governmental Organizations: The total value of an individual grant to a U.S. NGO must not exceed \$100,000. This limitation does not apply to grant awards to non-U.S. NGOs.
- Partner Government Entities: The total value of all GUCs that provide funds (as opposed to in-kind assistance) to a particular partner government entity (for example, ministry, municipality, district, etc.) must not exceed \$300,000 for the duration of the prime contract.

**(2)** It is not feasible to accomplish USAID objectives through normal USAID contract and grant awards because either:

- Executing a number of small grant activities is particularly difficult for the responsible USAID Mission or office, or
- The grant program is incidental and relatively small in comparison to the other technical assistance activities of the contractor.

**(3)** USAID must be significantly involved in establishing the selection criteria and must approve the recipients. USAID may be less significantly involved when grants are quite small and are incidental to the contractor's technical activities.

**(4) Applicable Policies**

- (i)** Non-Governmental Organizations. USAID must ensure that the requirements that apply to USAID-executed grants (including the agency policies regarding construction activities in [ADS 303, Grants and Cooperative Agreements to Non-Governmental Organizations](#), applicable standard provisions in ADS 303 are also applied to grants that a USAID contractor executes.

(ii) Partner Government Entities. For GUCs that provide funds to partner government entities, the contractor must be required to:

- Incorporate into the grant all required terms and conditions from the prime contract award specifically relating to GUCs, and those regarding audit, monitoring and oversight by the prime recipient. This is not subject to deviation.
- For additional information on applicable standard provisions see [ADS 303.3.21](#). When questions arise concerning the appropriate provisions for GUCs, the CO must consult with the cognizant attorney in GC or the cognizant RLO on the terms and conditions of the GUC before approving a GUC providing funds to a partner government entity.

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

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

d. USAID does not authorize contractors to execute or administer cooperative agreements on its behalf. USAID does not require HCA approval when a contractor will only be managing or administering grants already awarded by USAID. COs must not award contracts in which the contractor disclaims liability for any GUCs it awards on USAID's behalf.

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

Effective Date: 06/21/2018

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

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

#### **302.3.4.15 Acquisition of Custom-Developed Software**

Effective Date: 06/21/2018

In accordance with [ADS 300](#) and [ADS 547maa, Limits on Custom-Developed Software](#), all B/IO/Ms must consult with, and receive approval from, M/CIO before

procuring any custom-developed software for an USAID IT Investment as defined in ADS 547maa.

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

### **302.3.4.16 Information System Security**

Effective Date: 11/15/2017

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

- a. Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;
- b. Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and
- c. Availability, which means ensuring timely and reliable access to and use of information.

These are collectively referred to as the “CIA triad.” INFOSEC is a general term that can be used regardless of the form the data may take (e.g. electronic, physical).

[ADS 302mah, Information Security Acquisition Requirements for Acquisition of Unclassified Information Technology](#) provides policy and procedures on including INFOSEC requirements in the acquisition of information systems and services, i.e., the protection of agency information in electronic format.

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

For questions on whether INFOSEC is required under a specific planned award, CORs and COs must coordinate with the Designated Information System Security Officer (ISSO) as discussed in [ADS 302mah](#). Additional information on INFOSEC is available in [ADS 545, Information Systems Security](#), which details the security policies,

consistent with federal regulations, mandates, and directives that serve as the highest-level basis for USAID ISS.

#### **302.3.4.17 Implementation of Section 508 of the Rehabilitation Act of 1973**

Effective Date: 07/01/2007

[Section 508 of the Rehabilitation Act](#) requires that Federal electronic information technology (EIT) be accessible according to standards developed by the Access Board, an independent Federal agency charged with accessibility for people with disabilities. These standards cover a variety of products, including computer hardware and software, Web sites, phone systems, fax machines, copiers, and similar technologies. [FAR 39.2](#) implements **Section 508** for direct contracts.

For any procurement actions that include qualifying EIT, Contracting Officers must ensure that the requesting office provides in the purchase request a determination that the requirement is qualifying EIT as defined by **Section 508**. Procurement actions include, but are not limited to, contracts, task orders, delivery orders, and purchase orders. The determination must be provided even if the EIT is an incidental component of a technical assistance services contract. Guidance for acquisition considerations of EIT is available from [ADS 302mak, USAID Implementation of Section 508 of the Rehabilitation Act of 1973](#).

#### **302.3.4.18 Designation of the Contracting Officer's Representative (COR)**

Effective Date: 08/01/2019

A Contracting Officer's Representative (COR) assists in the technical monitoring and administration of a contract. The COR designation is specific to a particular individual for the specified award. This authority is independent of any other roles, responsibilities, and duties the designee may fulfill in his or her technical capacity.

Contracting Officers (COs) must comply with [FAR Part 1.6](#) and follow the policy directives and required procedures below when designating a COR. A COR must be designated for all contracts and orders other than those that are firm-fixed price (including individual task orders under indefinite delivery indefinite quantity contracts).

The CO must designate the COR (and alternate, if applicable) as early in the acquisition process as practical. The CO may not finalize a contract (including task orders) until after they have signed the COR designation letter in accordance with [ADS 302mar, Model Letter and Procedures for Designating the Contracting Officer's Representative \(COR\) for Contracts and Task Orders](#) and received the signed COR acknowledgement.

The Operating Unit (OU) must nominate a COR/AOR as early in the Acquisition and Assistance (A&A) planning process as possible. At the time of the award, the CO must identify the COR by name in the relevant section of the award and enter the COR's

name in the Global Acquisition and Assistance System (GLAAS). When the award is executed, the CO must distribute the designation letter as appropriate, including sharing a copy of the letter with the contractor and maintaining the signed letter in the contract file.

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

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

- Proof of 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**

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

- Have a direct employee–employer relationship with the U.S. Government that allows him or her to perform inherently governmental functions. COR eligibility is not based on the program which brought the individual into the Agency (for example, 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. National, Cooperating Country National or Third Country National).
- Be certified prior to designation through the Agency's mandatory training and certification program requirements specified in paragraph “b” of this section.

- Possess experience commensurate with the responsibilities to be delegated.

## (2) Approvals for Designating an Uncertified COR

An uncertified COR is an individual who has never been certified or a COR whose certification has expired as a result of not having completed the mandatory continuous learning requirements discussed in **302.3.4.16.b**. In exceptional circumstances, the CO may designate an uncertified COR 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 a COR for a period of up to six months. The recommendation must be in writing and be prepared 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 individual's supervisor that the individual will complete the COR certification and Agency training requirements within six months.

Recommendations for extension of the designation of an uncertified COR beyond the 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 CO may designate an uncertified COR 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 (see [ADS 458, Training and Career/Professional Development](#)). Certification requirements include successful completion of the following courses or the predecessor course:

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

- Introduction to the Program Cycle (IPC),
- Web-based Phoenix Accruals on-line course,
- Web-based COR/AOR on-line course,
- ASIST/GLAAS Filing Overview course, and
- Contractor Performance Assessment for CORS online course.

M/OAA's Professional Development and Training Division (M/OAA/PDT) maintains a record of the qualifying predecessor courses.

In order to maintain the FAC-COR certification, the COR must complete 40 hours of continuous learning points (CLPs) every two years from the initial certification. If the COR fails to complete the CLPs, the FAC-COR certification will lapse and the COR will no longer have the authority to perform the functions of a COR.

### **(1) Exceptions**

The following individuals may be designated as CORs 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 CO can designate the individuals as CORs.

### **c. Issuing the COR Designation Letter**

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

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

**d. Limitations on COR Authorities**

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

CORs may enlist the assistance of others to:

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

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

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

**e. Rescission/Expiration of a COR Designation Letter**

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

- Is assigned to a new Mission or position unrelated to the contract,

- Fails to maintain the COR certification by completing the required continuous learning points every two years after the initial COR certification, or
- Has not completed the certification program within the time specified for CORs who are designated under the exceptional circumstances listed in **302.3.4.16. a.(1)**.

In the event the COR's certification expires the COR must inform the CO of the expiration. The COR must not continue to perform COR duties, even if the CO has not formally revoked the COR's designation, as it may result in an unauthorized/informal commitment (FAR 1.602-3, FAR 50.1 and AIDAR 750.71) as the COR will be acting without authority. The COR will be held accountable and must accept responsibility for any unauthorized/informal commitments and assist the CO in processing any extraordinary contractual actions that result from acting without proper authority.

### **302.3.4.19 Simplified Acquisition**

Effective Date: 11/15/2017

COs must comply with the requirements of the FAR and Agency policies when using simplified acquisition procedures. Guidance on simplified acquisition procedures can be found in [ADS 302saw, Simplified Acquisition Guide](#).

### **302.3.5 Solicitation Requirements and Provisions**

Effective Date: 07/01/2007

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

#### **302.3.5.1 Uniform Use of Line items**

Effective Date: 10/15/2019

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

#### **302.3.5.2 Exception to Federal Excise Tax on Specific Foreign Contract Payments**

Effective Date: 06/02/2020

FAR subpart 29.4 requires agencies to withhold a two percent tax on behalf of the Internal Revenue Service (IRS) on payments made under contracts to certain foreign entities unless an exception applies. The USAID Administrator made a blanket determination that all payments made pursuant to USAID-issued contracts and orders with foreign contracting parties fall under the exception in FAR 29.402-3(a)(5) for contracts providing "foreign humanitarian assistance." As such, contracting officers

must not incorporate the provision at FAR 52.229-11 into any solicitations when the resulting contract or order will be issued by USAID.

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

Effective Date: 08/30/2016

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

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

**302.3.5.4 Key Personnel**

Effective Date: 07/01/2007

Contracts must designate as key personnel only the following:

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

**a. Number of Key Personnel**

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

**b. Multiple Candidates**

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

**c. Sample Solicitation Provisions**

**(1) Availability of proposed key personnel**

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

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

**(2) Contracting Officer consent to replace key personnel**

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

**“Key Personnel”**

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

Name/Position Title \_\_\_\_\_ / \_\_\_\_\_  
Name/Position Title \_\_\_\_\_ / \_\_\_\_\_

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

**302.3.5.5 Preventing and Addressing Sexual Misconduct**  
Effective Date: 03/29/2021

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

COs must insert the special contract requirement “Sexual Misconduct” from [ADS 302mas, Special Contract Requirements](#) in the solicitation and resulting contract where contractor employees will be required to have access to USAID facilities.

### **302.3.5.6 Grants Under Contracts (GUCs)**

Effective Date: 10/01/2014

- a.** If the Head of the Contracting Activity (HCA) provides written approval per **302.3.4.13**, the Contracting Officer (CO) may enter into a contract that provides for a USAID direct contractor to execute grants with non-governmental organizations (non-profits or for-profits) and partner government entities (also known as partner government implementing entity as defined in [ADS 220](#)).
- b.** Under this scenario, COs must
- (1)** Ensure that the requirements that apply to USAID-executed grants (including the agency policies regarding construction activities in [ADS 303](#) and applicable standard provisions in [ADS 303](#) and [ADS 308](#)) are also applied to grants that a USAID contractor executes,
  - (2)** Ensure that the contract provides USAID the ability to
    - (a)** Terminate the grant activities unilaterally in extraordinary circumstances, and
    - (b)** Require significant USAID involvement in establishing selection criteria and approving the selection of the grant recipients, as required by **302.3.4.13**.
- c.** Further information on the requirements for HCA approval is in **302.3.4.13**.

### **302.3.5.7 The Government Cost Estimate in Negotiated Procurements**

Effective Date: 04/20/2006

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

### **302.3.5.8 Defense Base Act (DBA) Insurance**

Effective Date: 06/30/2016

- a. Defense Base Act (DBA) insurance is worker's compensation coverage for employees injured while working on a U.S. Government contract performed outside the U.S. [FAR 28.305](#) requires DBA coverage for employees performing contracts approved or financed under the [Foreign Assistance Act of 1961 \(Pub. L. 87-195\)](#). Contracting Officers (COs) must include both [FAR 52.228-3, Workers' Compensation Insurance \(Defense Base Act\)](#) and the supplemental [AIDAR 752.228-3, Worker's Compensation Insurance](#) (Defense Base Act) in each contract, unless the Department of Labor (DOL) approves a blanket waiver of coverage.

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

- (1) A citizen of the United States,
- (2) A resident of the United States, or
- (3) Hired in the United States.

b. Waivers

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

c. USAID Contract Rates

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

**302.3.5.9 Reserved**

**302.3.5.10 Organizational Conflict of Interest (OCI)**

Effective Date: 09/13/2018

This section consists of the information in [ADS 302mbm, Organizational and Consultant Conflicts of Interest](#).

**302.3.5.11 Implementation of Section 508 of the Rehabilitation Act of 1973**

Effective Date: 06/21/2018

Where an office determines that its purchase request qualifies as electronic information technology (EIT), as defined by [Section 508 of the Rehabilitation Act of 1973](#) (see section **302.3.4.10**), Contracting Officers must refer to [ADS 302mak, USAID Implementation of Section 508 of the Rehabilitation Act of 1973](#). This document provides detailed guidance and required language for use in developing solicitations and contracts that are subject to Section 508 requirements.

See also [AAPD 16-02 \(Revised\) Clauses And Special Contract Requirements For Facilities Access, Security, and Information Technology \(IT\)](#) for additional policy and contract requirement “Information and Communication Technology (ICT) (April 2018)”.

**302.3.5.12 Required Approvals for Information Technology (IT) Acquisition**

Effective Date: 06/21/2018

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

The Federal Information Technology Acquisition Reform Act (FITARA) requires the Agency CIO to review and approve contracts for, or that include a component of, information technology. This requirement applies when such information technology is “used by an agency” as defined and further clarified in [OMB M-15-14 Management and Oversight of Federal Information Technology](#). COs may submit inquiries on the applicability of the special contract requirements for the purchase of IT under a specific solicitation/award to M/CIO at [itauthorization@usaid.gov](mailto:itauthorization@usaid.gov). [AAPD 16-02 \(Revised\) Clauses and Special Contract Requirements for Facilities Access, Security, and Information Technology \(IT\)](#) also uses this definition of information technology as authorized by an approved FAR class deviation. This definition applies for purposes of the policy and procedures of this section.

In addition to acquisition plan requirements in FAR Part 7, Agency policy and procedures for acquiring information technology are found in [ADS 300](#). The Operating Unit must obtain M/CIO approval as required in ADS 300.

The requirement for Agency CIO approval applies for the duration of a contract award. If new requirements for information technology are identified after award, the COR must obtain CIO approval and the CO must modify the contract to include the applicable

clauses and/or special contract requirements contained in FAR, AIDAR, and AAPD 16-02 (Revised).

## **b. Clauses and Agency-specific Special Contract Requirements**

CO and CORs must ensure that all approved information technology is identified in the Schedule of the solicitation and award. In addition to the clauses required by the FAR and [AIDAR, AAPD 16-02 \(Revised\)](#) provides special contract requirements for information technology, including a contract requirement and a clause listed below, which provide limitations on contractors regarding the acquisition of information technology under an award.

- “Approved Information Technology” is applicable to solicitations and contracts for, or that include a component of, information technology. COs must specify the M/CIO-approved information technology in the Schedule of the solicitation and contract. The contractor is limited to purchasing only the information technology specified in the award.
- “Limitation on Acquisition of Information Technology” is applicable to all other solicitations and contracts. This clause prohibits the contractor from acquiring any information technology unless written approval has been provided by the CO.

During performance under the award, the contractor may submit a request for approval to purchase information technology (or additional information technology, as applicable) in accordance with the procedures in the special contract requirement and clause described above. The COR must contact M/CIO at [ITAuthorization@usaid.gov](mailto:ITAuthorization@usaid.gov) to obtain M/CIO’s prior approval for the specified information technology before the CO may provide written approval to the contractor.

### **302.3.5.13 Access to USAID Facilities and USAID’s Information Systems**

Effective Date: 05/11/2015

In accordance with [Homeland Security Presidential Directive \(HSPD\) 12](#), federal agencies must include implementation of [Federal Information Processing Standards, Publication Number 201 \(FIPS PUB 201\)](#), as amended, and [OMB guidance M-05-24](#), as amended, in solicitations and contracts that require the contractor to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system. (For more information on the requirements of HSPD-12, see [FAR Case 2005-15](#), [FAR 4.1303](#), and the [USAID HSPD-12 Program](#).)

Accordingly, CO must incorporate FAR Clause 52.204-9, Personnel Identity Verification of Contractor Personnel and AIDAR clause 752.204-72, Access to USAID Facilities and USAID’s Information Systems, in solicitations and contracts, as applicable.

As specified in the AIDAR clause 752.204-72, the contractor (typically through its Facilities Security Officer) must return the identification cards (including the Personal Identity Verification [PIV] card/Facility Access Card [FAC]) and remote authentication token to the COR at the conclusion of the contract or upon termination of the individual's employment. The COR, in turn, must return the identification cards to the Office of Security (SEC) and the remote authentication token to the B/IO Administrative Management Staff (AMS). The COR must maintain documentation in the COR contract files to verify that the above actions were completed in accordance with the [Contracting Officer Representative \(COR\) Checklist: Exit Procedures for Institutional Support Contractors and Federal Employees Under Interagency Agreements](#).

### **302.3.5.14 Supporting USAID's Disability Policy in Contracts**

Effective Date: 05/11/2015

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

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

### **302.3.5.15 Incorporating Gender Issues into Solicitations**

Effective Date: 01/22/2021

USAID must address gender analyses findings and recommendations in their project designs (see [ADS 201](#) and [ADS 205, Integrating Gender Equality and Female Empowerment in USAID's Program Cycle](#)). For solicitations, such as Requests for Proposals (RFPs) and Requests for Task Order Proposals (RFTOPs), the Planner or COR, as appropriate, must submit the procurement request package to the CO in accordance with the policy and procedures at [ADS 205](#) regarding gender integration in solicitations. Specifically, Chapter 205 requires that the requiring office provide a statement indicating either 1) how the results of the gender analysis are incorporated into the request; or 2) the rationale for why gender inequality is not included in the activities under the requested contract action.

If the procurement request package does not comply with the requirement in [ADS 205](#), then the CO will notify the requiring office that he or she is unable to take any further action on the request until the office meets one of the requirements.

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

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

Effective Date: 11/15/2017

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

- (1) “Conscience Clause Implementation – Solicitation Provision” for solicitations;
- (2) “Conscience Clause Implementation” for contracts;
- (3) “Condoms”; and
- (4) “Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking (Acquisition)”.

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

**302.3.5.17 Awards Limited to Local Competition**

Effective Date: 07/31/2012

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

**302.3.5.18 Prohibition on USAID-Specific Experience Requirements in Evaluation Criteria**

Effective Date: 07/01/2007

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

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

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

**a. Key personnel**

Minimum qualification requirements:

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

**b. Corporate experience**

Evaluation criteria/Selective factors:

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

**302.3.5.19 USAID-Financed Third Party Web Sites**

Effective Date: 08/01/2019

A third-party Web site, including a project Web site, is one that is hosted on environments external to USAID boundaries and not directly controlled by USAID policies and staff, except through the terms and conditions of a contract (see [ADS 545](#)).

COs must insert the provision “USAID-Financed Third-party Web Sites” found in [ADS 302mas, Special Contract Requirements](#) in all USAID-funded solicitations and contracts that require development and/or maintenance of a third-party Web site to achieve activity implementation goals.

If the contract includes a requirement to develop and/or maintain a Web site to support activities under the award, which is defined as a third-party Web site, the COR must first obtain approvals as required in [ADS 545.3.21.1, Third-Party Web Sites](#) (see also [ADS](#)

[557, Public Information](#)). The COR also serves as a liaison between the contractor and the Chief Information Security Officer (CISO), maintains a record of all approvals/clearance obtained and/or required contractor reports filed in the COR file, and informs the CO of any non-compliance with the contract requirements pertaining to Web site development, launch, or maintenance.

### **302.3.5.20 Conference Costs and Required Approvals**

Effective Date: 06/21/2018

[ADS 580, Conference Planning and Attendance](#) provides the Agency policy directives and required procedures for conferences funded in whole or in part by USAID.

When the requirement for a USAID-funded conference, as defined in ADS 580 is included in the Statement of Work, the CO must incorporate into the award the AIDAR clause 752.231-72 “Conference Planning and Required Approvals”. If all the required data is available at the time of award, the Mission or B/IO requesting office is required to obtain the appropriate Agency approvals and provide such approvals to the CO to be incorporated into the award. If all the required data is not available at the time of award, the AIDAR clause requires that, prior to committing any conference related costs, the contractor submit a request for approval of the conference to the COR. The COR is responsible for obtaining the required agency approvals and communicating such approval to the contractor in writing.

### **302.3.5.21 Submission of Datasets to the Development Data Library (DDL)**

Effective Date: 10/01/2014

In accordance with [Executive Order 13642, “Making Open and Machine Readable the New Default for Government Information”](#) and the accompanying [OMB Open Data Policy, M-13-13, “Managing Information as an Asset”](#), issued on May 9, 2013, USAID must create an Enterprise Data Inventory that accounts for Datasets used in the Agency’s information systems. USAID must also list those Datasets that can be made publicly available at [www.usaid.gov/data](http://www.usaid.gov/data). Per [OMB Open Data Policy \(M-13-13\)](#), an agency’s “public data listing should also include, to the extent permitted by law and existing terms and conditions, Datasets that were produced through agency-funded grants, contracts, and cooperative agreements.”

Accordingly, COs must include the provision “Submission of Datasets to the Development Data Library (DDL)” found in [ADS 302mas, Special Contract Requirements](#), in all solicitations and contracts. The provision requires the contractor to submit the appropriate Datasets and supporting documentation generated under the award to the Agency’s Development Data Library. USAID’s policy for implementing these open data requirements is found in [ADS 579, USAID Development Data](#).

### **302.3.5.22 Climate Risk Management**

Effective Date: 12/05/2018

Climate risk management (CRM) is the process of assessing, addressing, and adaptively managing climate risks that may impact the ability of USAID to achieve its activity objectives. Climate risks are defined as potential negative consequences due to changing climatic conditions. All USAID Operating Units (OUs) must adhere to CRM requirements in project/activity design and implementation as required in [ADS 201mal](#), with limited exceptions described in Section 1 of the reference.

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

### **302.3.6 Pre-Award Requirements**

Effective Date: 04/20/2006

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

#### **302.3.6.1 Composition of Technical Evaluation Committees (TECs)**

Effective Date: 02/24/2009

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

- a. USAID staff (direct-hires, Personal Services Contractors (PSCs), and Participating Agency Services Agreement (PASA) direct-hire employees) must constitute a majority of the membership on all TECs. Evaluators from other Federal agencies and non-governmental evaluators, including fellows, may participate, provided that they comply with any applicable requirements for, or limitations on, their participation as stated in this chapter, [FAR Parts 3 and 15](#), and [AIDAR Part 715](#).
- b. Contracting Officers (COs) must take reasonable precautionary steps to avoid the conflicts of interest arising on the part of technical evaluation team members. One step is to verify with TEC members that they, their spouse, and their dependents do not have connections, such as financial interests, with any of the offerors prior to commencing evaluations. COs must refer any potential problems to their cognizant Resident Legal Officer for any action overseas and to

52

*Text highlighted in yellow indicates that the material is new or substantively revised.*

the Assistant General Counsel for Ethics and Administration for any USAID/W action.

- c.** As required in [AIDAR 715.305\(c\)](#), a Non-Governmental Evaluator or an Evaluation Assistance Contractor participating in a technical evaluation must sign a [Certification and Agreement for the Use and Disclosure of Proposals \(ADS 302sae\)](#), which states that they will safeguard the proposals and information in them and that they perceive no actual or potential conflict of interest.

### **302.3.6.2 Dissemination of Cost Proposal Information to TECs in Negotiated Procurements**

Effective Date: 04/20/2006

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

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

- (1)** If the cost proposals vary significantly either from the Government estimate or in comparison to each other, then the TEC may assist in analyzing the discrepancies. While there may be circumstances in which the entire cost proposal is provided to the TEC, in many cases, only certain components of the cost proposals need to be provided; for example, in-country housing costs, number of trips and their duration, and the proposed level and distribution of effort under completion-form contracts.
- (2)** The preferred timing for the CO to share cost information with the TEC is after the initial technical assessment and scoring has taken place, but early enough in the process to ensure adequate attention to discrepancies and questions during negotiations. The CO may also share with the TEC any revisions to cost proposals resulting from negotiations, if, in the CO's judgment, doing so aids the analysis of the revisions.

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

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

Effective Date: 06/30/2015

- a. [FAR Subpart 15.3](#) requires COs to consider contractor past performance information in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold. [ADS 302mbh, Policy Guide for Assessment and Use of Contractor Performance and Integrity Information](#) (referred to in this chapter as CPII Policy Guide) provides policy, procedures, and additional guidance for using and documenting CPII. The guide requires COs to base the solicitation provisions on the model language contained in the ANNEX of the CPII Policy Guide. COs must provide the comparative evaluation factor for contractor performance information (CPI) sufficient weight to make it a significant element in distinguishing between the offerors and the outcome of the selection. The expected weight range for CPI is 20-30% of the total non-cost evaluation criteria.

Further, as described in OFPP memorandum dated July 10, 2014 entitled "[Making Better Use of Contractor Performance Information](#)", evaluators must perform additional research and outreach when assessing CPI for complex information technology (IT) development, systems, and services exceeding \$500,000 and high-risk contracts and orders. For the definition of high-risk contracts and details on additional research and outreach steps refer to section 4.1.4 and Appendixes II and V of the CPII Policy Guide).

- b. [FAR Subpart 9.1](#) prescribes policies, standards, and procedures for making responsibility determinations for prospective contractors and subcontractors. The Subpart requires COs to consider the information in the [Federal Awardee Performance and Integrity Information System \(FAPIS\)](#) and other past performance information (see [Subpart 42.15](#)) when making these determinations. Section 4.2 of the CPII Policy Guide provides guidance for making and documenting contractor responsibility determinations.

### 302.3.6.4 Branding

*Reserved*

### 302.3.6.5 Pre-award Audits and Surveys

Effective Date: 04/20/2006

This section currently consists of the information in the referenced CIB. At a later time, USAID will incorporate it into this chapter.

#### [CIB 92-16, Pre-award Audits and Surveys](#)

### 302.3.6.6 Classified Contract and Contractor Security Requirements

Effective Date: 06/21/2018

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

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

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

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

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

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

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

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

### **302.3.6.7 Negotiation of Indirect Cost Rates**

Effective Date: 06/21/2018

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

### **302.3.6.8 Determining Profit and Fee Objectives**

Effective Date: 04/20/2006

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

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

Effective Date: 07/21/2014

#### **a. USAID Contractor Salary Threshold (USAID CST)**

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

- (1) The USAID CST is equivalent to the maximum rate at Federal agencies without a certified Senior Executive Service (SES) performance appraisal system [see [ADS 302sar, USAID Contractor Salary Threshold \(USAID CST\)](#)]. While the amount of the CST is derived from the SES system, there is no other connection between the USAID contractor salary policy and the SES system.
- (2) Before the Contracting Officer (CO) may authorize payment for any contractor salary that **exceeds** the USAID CST under a USAID direct contract, he or she must obtain approval in accordance with the procedures in **302.3.8.4**.

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

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

**b.** Salary Supplements to Host Government (HG) Employees

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

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

- (1) The eligibility criteria for salary supplements;
- (2) Required approvals by the appropriate Assistant Administrator;
- (3) Documentation of the justification for payment of salary supplements, including the legality of such payments under host country laws and regulations;
- (4) Restrictions on such payments to policy-making officials; and
- (5) Required approvals for exceptions to the policy and the eligibility criteria.

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

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

Effective Date: 07/01/2007

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

- a. New construction. All new construction will comply with the standards for accessibility set forth in the provision “Standards for Accessibility for the Disabled in USAID Construction Contracts” (see **302.3.5.14**).
- b. Alterations to existing structures. Before deviating from accessibility standards when altering existing structures, a contractor must obtain the CO’s advance affirmation that compliance with the standards is technically infeasible or presents an undue burden. The CO provides this affirmation by obtaining a waiver in accordance with the procedures at [USAID Policy on Standards for Accessibility for the Disabled in USAID-Financed Construction](#).
- c. A request for a waiver must include the following:
  - (1) Identification of the specific requirements and procedures of the standards from which a waiver is sought;
  - (2) A detailed explanation, including appropriate information or documentation, as to why a waiver should be granted; and,
  - (3) A statement that, where feasible, persons with disabilities will be accommodated, and which describes how these accommodations will allow the disabled access to the programs and services being provided.

### **302.3.6.11 Contract Reporting and System for Award Management (SAM)**

Effective Date: 08/01/2019

The System for Award Management (SAM) is the system used to compile information on all companies, organizations, and people that have direct awards with the U.S. Government. There is currently no requirement in the FAR for subcontractors to register in SAM.

In order to receive an award, all contractors and subcontractors are required to have a unique entity identifier (Data Universal Numbering System (DUNS) Number) in accordance with [FAR Part 4.6, Contract Reporting](#), and [4.11 System for Award Management](#) regardless of whether they are required to be registered in the SAM database. For more information, see [Exceptions to Contract Reporting in the Federal Acquisition Regulation Part 4.6](#) and the M/OAA [Acquisition and Assistance Applications Vendor Information website](#).

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

Effective Date: 07/01/2007

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

The OFAC List (or Specially Designated Nationals (SDN) and Blocked Persons List) is available at the OFAC Web site under “[Specially Designated Nationals \(SDN\) List](#).”

### **302.3.6.13 Incorporating Successful Competitive Proposals into Contracts by Reference**

Effective Date: 04/20/2006

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

### **302.3.6.14 FAR Part 4.21 Prohibition On Contracting for Certain Covered Telecommunications And Video Surveillance Services or Equipment (Section 889)**

Effective Date: 11/10/2020

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

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

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

#### a. Part A

Effective August 13, 2019, FAR 4.2102(a)(1) implemented the statutory prohibition 889(a)(1)(A) for agencies to “procure or obtain, or extend or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system,” unless an exception or waiver as described in the FAR applies.

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

Offerors/contractors are required to complete the annual [FAR provision 52.204-26 Covered Telecommunications Equipment or Services—Representation](#). If the offeror represents in the annual representation that it “does not provide covered telecommunications equipment or services,” the offeror will not be required to submit the representation at [FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment](#) with its offer.

If the offeror represents in the annual representation at FAR 52.204-26 (October 2020) that it “does provide covered telecommunications equipment or services,” then the offeror must also submit the representation in [FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment](#) and the applicable disclosures.

The CO must include the FAR clause [52.204-25](#) in all contracts and orders. Paragraph (d) of the clause requires a contractor to report any use of covered equipment or services identified during the period of performance. If a contractor reports such use, the CO must immediately advise the COR and provide the information the contractor provided under paragraph (d)(2)(i) to M/CIO (by emailing [Section889waiver@usaid.gov](mailto:Section889waiver@usaid.gov)) within one business day of such notification. The clause requires that within 10 business days of the original submission, the contractor must provide any further available information about mitigation actions undertaken or recommended. The CO must promptly forward such additional information to M/CIO. M/CIO will review the mitigation actions proposed by the contractor and provide guidance on the next steps.

#### b. Part B

Effective August 13, 2020, FAR 4.2102(a)(2) implemented the statutory prohibition 889(a)(1)(B) for agencies to “enter into a contract to procure or obtain or extend or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system,” unless an exception or waiver as described in the FAR applies.

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

### **(1) Mandatory FAR provisions and clause, and Section L provision**

i. COs must include [FAR provision 52.204-24](#) (October 2020):

- In solicitations issued on or after August 13, 2020;
- Through an amendment to solicitations issued before August 13, 2020, provided the resulting contract(s) is made on or after August 13, 2020; and
- Before modifying a contract to extend the period of performance, or to exercise an option.

ii. Additionally, COs must include the provision at [FAR provision 52.204-26 \(October 2020\) Covered Telecommunications Equipment or Services—Representation](#):

- In solicitations issued on or after October 26, 2020, and resultant contracts; and
- Through an amendment to solicitations issued before October 26, 2020, provided the resulting contract(s) is made on or after October 26, 2020.
- For commercial items under the FAR part 12, COs must instead use the FAR 52.212-3 (October 2020), which contains the same annual representation requirements in FAR 52.204-26(c)(2).

If the offeror represents in the annual representation at FAR 52.204-26 (October 2020) that it “does not use covered telecommunications equipment or services,”

the offeror will not be required to submit the representation at FAR 52.204-24 with its offer.

To ensure compliance with the statutory requirements, the CO must check the offeror's annual representation in SAM to confirm that the offeror has represented at FAR 52.204-26 (October 2020) that it "does not use covered telecommunications equipment or services" if the offeror has not completed the representation at FAR 52.204-24. If the offeror has not completed the updated representation at FAR 52.204-26 after October 26, 2020, the CO must notify the offeror and require submission of the representation at FAR 52.204-24.

If the offeror represents in the annual representation at FAR 52.204-26 (October 2020) that it "does use covered telecommunications equipment or services," then the offeror must also submit the representation at FAR 52.204-24 (October 2020) and the applicable disclosure information required in paragraphs (e)(2)(i) or (e)(2)(ii) of the provision. When this occurs, the CO must not execute an award or modification without an approved waiver.

ii. COs must include [FAR clause 52.204-25](#):

- In solicitations issued on or after August 13, 2020, and resultant contracts;
- Through an amendment to solicitations issued before August 13, 2020, and in resulting contracts, where the award is made on or after August 13, 2020;
- In contract modifications that exercise an option; at least three (3) months in advance to provide notice for exercising the option and to provide contractors with adequate time to comply with the clause; and
- In contract modifications that extend the period of performance, including those issued under the authority of the applicable Excusable Delays clause in the contract.

COs are not required to incorporate the clause into modifications that provide incremental funding only or that deobligate funds only.

- iii. COs must modify existing IDIQs at the contract level to incorporate the FAR clause 52.204-25 applicable to future orders, before any new TOs may be issued; and before any existing TO is modified to extend the period of performance or exercise an option. After August 13, 2020, all TOCOs must first verify that the IDIQ has been modified before issuing any new TOs and before modifying any existing TOs to extend the period of performance or exercise an option.

COs must incorporate the FAR provision 52.204-24 into all Requests for Task Order Proposals (RFTOPs), including those issued before August 13, 2020, if the resulting TO is issued on or after August 13, 2020, under an existing IDIQ award.

iv. COs must include the Section L provision [Waivers under FAR Part 4.21 Prohibition On Covered Telecommunications And Video Surveillance Services](#):

- In solicitations issued on or after August 13, 2020;
- Through an amendment in solicitations issued before August 13, 2020, provided the award is made on or after August 13, 2020; and
- Before modifying a contract or order to extend the period of performance or exercise an option.

COs must modify the Section L language accordingly for use in RFTOPs.

COs may request additional information from offerors who submit an affirmative representation in 52.204-24(d)(2) (see [Section L provision](#) for further details). This information will be necessary for the waiver process.

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

The CO may rely on the representation in 52.204-26 or 52.204-24 unless the CO has reason to question the representation, *e.g.*, where the other offerors have affirmatively indicated their use of internet services in a particular country that are known to contain the covered components and the apparently successful offeror has not. If the CO decides to question the representation, see [ADS 302mbp](#) for further guidance.

If the offeror submits an affirmative representation, an award to that offeror cannot be made unless a waiver as described in paragraph (3) below is granted, or a statutory exception applies.

**(3) Waivers**

FAR 4.2104 implements the statutory authority for waivers allowing the procurement of the prohibited equipment or services as described at FAR 4.2102(a)(2). The head of the Agency, on a case-by-case basis, may approve one-time waivers for offers that confirm the offeror's use of the covered products/services for a two-year period not to extend beyond August 13, 2022.

The Head of the Agency authority for approval of waivers is delegated to the Deputy Administrator. This authority must not be further delegated below the level of the Deputy Administrator.

Per the agency waiver requirements at FAR 4.2102(a)(2), the Agency has:

- Designated a senior agency official for supply chain risk management (CIO), responsible for ensuring the Agency effectively carries out the supply chain risk management functions and responsibilities described in law, regulation, and policy; and
- Established participation in an information-sharing environment as required by the Federal Acquisition Security Council (FASC) to facilitate interagency sharing of relevant acquisition supply chain risk information.

In addition to the agency waiver authority in the FAR, the statute authorizes the Director of National Intelligence to provide a waiver extending beyond August 13, 2022 if the Director determines the waiver is in the national security interests of the United States (paragraph (d)(2) of Section 889).

If the Agency has any existing waivers, the Agency will review the offeror's/contractor's disclosure of the presence of any covered technology to determine if such waivers apply, prior to determining whether it is necessary to approve an Agency level waiver before making an award. The waiver process requires several internal and external clearances and is estimated to take a minimum of 8-10 weeks.

[ADS 302mbp, Waiver Process for FAR Prohibition on Covered Telecom and Video Surveillance Services or Equipment](#) provides the policy and procedures for approval of waiver requests (including for emergency acquisitions).

#### **(4) CO Actions on Contractor Reporting Requirement under FAR clause 52.204-25**

As required in paragraph (d) of FAR clause [52.204-25](#), the contractor is required to report any use of covered equipment or services identified during the period of performance. If a contractor reports such use, the CO must immediately advise the COR and provide the information the contractor provided under the paragraph (d)(2)(i) to M/CIO (by emailing [Section889waiver@usaid.gov](mailto:Section889waiver@usaid.gov)) within one business day of notification. The clause requires that within 10 business days of the original submission, the contractor must provide any further available information about mitigation actions undertaken or recommended. The CO must promptly forward such additional information to M/CIO. M/CIO will review the mitigation actions proposed by the contractor and provide guidance on the next steps.

#### **302.3.7 Award**

Effective Date: 04/20/2006

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

**302.3.7.1 Reserved**

**302.3.7.2 Congressional Award Notice System**

Effective Date: 08/08/2018

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

- a. COs must follow the notification procedures in [ADS 302man, Congressional Award Notice](#). The sequential steps are:
- (1) Sign the award,
  - (2) Provide notice to LPA,
  - (3) Allow the 48-hour embargo period to elapse, then
  - (4) Release (or allow to be released) an announcement of the award. The Agency may not announce the award beforehand. This applies to notifying the awardee that the Agency has signed the award. See also Congressional Award Notification, Section II, Other Considerations.
- b. Types of awards which require notice include
- (1) Contracts of any value to an organization that has not previously received an award from USAID. Contracts with individuals are not included.
  - (2) Any award with which there was Congressional correspondence during the pre-award stage. LPA will alert the CO that such correspondence has occurred, and the CO will flag the award as falling under these notification criteria and procedures.
  - (3) Any award for a particular program or geographic region that the operating unit or LPA identifies as being of particular interest to Congress, the Agency, or the general public; for example, earthquake relief in Haiti or the international HIV/AIDS program. LPA will coordinate with its liaison in the operating unit to identify these awards and will alert the operating unit, the CO, or both of them at the earliest opportunity before the award decision.

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

Included in this category are:

- (i) Contracts awarded under the U.S. Small Business Administration (SBA)'s 8(a) program. NOTE: Report the award to the subcontractor [the 8(a) firm] rather than the SBA.
  - (ii) Basic indefinite quantity contracts with maximum ordering limits over the \$500,000 threshold.
  - (iii) Task orders awarded under USAID multiple award indefinite quantity contracts, as well as under GSA Federal Supply Schedule contracts and other government-wide acquisition contracts (GWACs).
- (5) Awards greater than or equal to \$40 million require additional notices to the Assistant Administrator, Executive Secretariat (ES) ([aid.estaskermaillistusaid@usaid.gov](mailto:aid.estaskermaillistusaid@usaid.gov)), and [soar@usaid.gov](mailto:soar@usaid.gov).

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

Effective Date: 08/06/2013

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

### 302.3.7.4 File Documentation

Effective Date: 06/21/2018

The Agency Secure Image and Storage Tracking (ASIST) System is the Agency's official electronic repository for all Acquisition & Assistance (A&A) award documentation. A&A staff must file all documentation relating to an award, from pre-

solicitation through close-out, in ASIST. CORs must also maintain their award administration files in ASIST. The requirements and procedures for filing award documents in ASIST, as well as standards for file documentation by contract type are available internally at the [ASIST Homepage](#). The ASIST guidelines also contain guidance for maintaining older awards in the paper-based format.

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

### **302.3.8 Post-Award Administration**

Effective Date: 04/20/2006

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

#### **302.3.8.1 Reserved**

#### **302.3.8.2 Extraordinary contractual actions under AIDAR part 750**

Effective Date: 11/15/2017

[AIDAR part 750](#) provides the regulatory basis for implementing certain authorities authorized by Section 633 of the Foreign Assistance Act and Executive Order 11223 in a manner that is analogous to FAR part 50. As is the case with the similar FAR part 50 authorities, AIDAR 750.7107 - Limitations upon exercise of authority, only authorizes these authorities for use when other legal authority in the Agency is deemed to be lacking or inadequate (see [ADS 302mbk, Procedures for Processing Extraordinary Contractual Actions in accordance with AIDAR Part 750](#) for further policies and procedures).

#### **302.3.8.3 Reserved**

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

Effective Date: 07/01/2007

In accordance with **302.3.6.10**, the following procedures must be followed to obtain approval of contractor salaries exceeding the USAID Contractor Salary Threshold (USAID CST).

- a. The Director, M/OAA, must approve any contractor salary that exceeds the USAID CST before the Contracting Officer (CO) may authorize the payment of the salary under a USAID direct contract.
- b. The CO must determine if the proposed salary exceeding the USAID CST is fair and reasonable in accordance with applicable **FAR** and **AIDAR** guidance. If the CO determines that the proposed rate is fair and reasonable, the following procedures must be followed to obtain the approval of the Director, M/OAA, for the salary:
  - (1) The CO must prepare a memorandum in which the proposed salary is evaluated as fair and reasonable in accordance with the applicable FAR guidance. The memorandum must include discussion of the following items:
    - Comparison of the proposed salary with the pre-solicitation independent government cost estimate (IGCE),
    - Comparison of the proposed salary with the individual's salary history for similar work, and
    - The specific basis upon which the proposed rate is considered fair and reasonable in accordance with the applicable **FAR** cost principles.
  - (2) The CO must forward the memorandum to the Contracting Officer's Representative (COR) for his or her concurrence. The COR must prepare a supplemental memorandum indicating concurrence or non-concurrence, discussing relevant technical issues, such as
    - Technical competence of the individual compared to that required for the work,
    - Scope of responsibility, and
    - Any inconsistencies with independent government cost estimates.
  - (3) The COR must forward both the CO's and the COR's memoranda to the cognizant Assistant Administrator or Mission Director for concurrence.
  - (4) If concurrence is granted, the COR returns the memoranda to the CO who will then forward it to the Director, M/OAA, for a decision.

- (5) After the Director, M/OAA, renders a decision, the CO must convey that decision in writing to the contractor to facilitate the contractor's compliance with the relevant cost principle in [AIDAR 731](#).
  - (6) The CO must document the actions required in this section in the contract file (see [AIDAR 731.205-6, 731.371\(b\), and 731.772](#)). The approval document must be placed in the contract file.
- c. An increase in the maximum annual rate for the USAID CST cannot, by itself, be the basis for salary increases for contractor employees. Revisions to salaries should only be considered along with changes to the scope of work or in accordance with other contract terms. Salary increases should not be granted without corresponding increases in the quality or quantity of services rendered.

**302.3.8.5 Post Award Requirements Concerning Prohibition on Transactions with Designated Entities – Office of Foreign Assets Control (OFAC)**  
Effective Date: 07/01/2007

- a. COs must check the [Office of Foreign Assets Control \(OFAC\) List](#) to ensure that the names of the contractor, subcontractors, and individuals from those organizations who are known to the CO are not on the list **before**:
- **Awarding** an option or a modification to increase the scope of a contract,
  - **Issuing** modifications for incremental funding, and
  - **Consenting** to subcontracts (see [FAR Subpart 44.2](#)).
- b. COs must ensure that contractors **are aware** that the requirements of [FAR 52.225-13, Restrictions on Certain Foreign Purchases](#), apply in all USAID-funded awards; contractors must include the clause in all subcontracts.

**302.3.8.6 The Role of the Contracting Officer in the Debt Collection Process**  
Effective Date: 08/06/2013

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

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

**302.3.8.7 Performance Monitoring and Evaluation of Contractor Performance**  
Effective Date: 08/01/2019

1. **Site Visits.** Site visits are an important part of effective contract performance monitoring; joint visits by the CO and the COR are encouraged. Each time the COR or a designated representative makes a site visit, the COR must ensure that a brief report highlighting the findings is placed in the official award file in ASIST.
2. As required in [FAR Subpart 42.15](#), USAID must evaluate contractor performance using the Contractor Performance Assessment Reporting System (CPARS). When evaluating CPI, COs and CORs must follow the mandatory requirements described below and refer to the [CPII Policy Guide](#) for Agency policies, procedures, general guidance and best practice for conducting contractor performance assessments.

**a. Training Requirements**

All participants of the contractor performance evaluation process must complete the required training in order to have a better understanding of the CPARS reporting requirements. The training is role specific and is available online at <https://www.cpars.gov/allapps/cpcbtdlf.htm>. For information on CPARS roles and the mandatory and elective training and course descriptions see Sections 2, 5, and Appendix VI of the CPII Policy Guide.

**b. Access to CPARS**

COs and CORs who require access to CPARS must complete the applicable forms and submit them to **ppformance@usaid.gov** and file the original signed copies in the award file.

**c. CO/COR Transfer or Separation**

When the CO or COR responsibilities are transferred to another individual, depending upon where in the performance reporting cycle the report falls, the CO/COR must either initiate or complete a CPARS report for the current reporting period to ensure that feedback on a contractor's performance is properly captured and considered. The departing CO/COR, or another individual, as specified below, must adhere to the following procedures:

- (1) To the extent possible, the departing COR must notify M/OAA/CAS at **ppformance@usaid.gov** of their separation date 30 days in advance. To keep others informed, the COR should copy the CO and M/CFO or the Mission Controller on the message.

- (2) Prior to the departure, the COR must initiate or complete a CPAR for the current reporting period or provide up-to-date substantive pre-assessment notes in CPARS for awards that have advanced at least three months into the reporting cycle. A departing CO must provide the COR with, and leave in the contract file, the detailed notes on any critical contractor performance information that must be included in an upcoming assessment.
- (3) The departing COR's supervisor must notify M/OAA/CAS at **ppformance@usaid.gov** of the COR's replacement prior to the departure. To ensure the system roles are kept up-to-date, the individual must copy their CPARS focal point on the message. When there is a gap in COR designation, the alternate COR is responsible for all CPARS assessments until a new COR is designated.
- (4) Washington-based COs and CORs must submit the Exit Clearance Form to M/OAA/CAS at **ppformance@usaid.gov** as soon as possible and prior to the scheduled departure/separation, identifying the contract (TO/DO) number and the contractor's name for all awards where the individual is performing the CO/COR functions. For CORs, the request should include confirmation from the newly-designated COR (or the alternate COR) that the award file, including any documentation of contractor's performance, was transferred to their possession. COs must identify their replacement in the clearance request. The Past Performance Coordinator will provide electronic exit clearance and, in case of separation, rescind the individual's CPARS/PPIRS access. In Missions, the focal point signs off on the Mission Departure Checklist, confirming completion of all applicable assessments and, in case of the CO/COR's separation, rescinds the separating individual's access to CPARS and contacts the Past Performance Coordinator at **ppformance@usaid.gov** to ensure that PPIRS access is rescinded.
- (5) The replacement CO/COR must ensure the transfer of responsibilities is reflected in CPARS.

**d. CPARS Quality Checklists and file documentation.**

To ensure that contractor performance evaluations are accurate, detailed, and complete, each assessment must be performed using one of the two CPAR Quality Checklists included as Appendix III and Appendix IV of the CPII Policy Guide. The CO must determine which checklist needs to be used for each individual evaluation. The COR must use the checklist when preparing an evaluation and must forward it to the CO together with the evaluation. COs must review all evaluations using the CPAR Quality Checklist before validating the rating and sending the CPARS evaluation to the contractor.

Upon completion of each past performance evaluation, the CO must retain a copy of the CPAR Quality Checklist in the award file. For additional guidance on the checklist selection, see section 3.9 of the CPII Policy Guide.

**e. CPARS Quality Reviews**

Each contracting activity must closely monitor the integrity (e.g., quality) and timeliness of contractor performance assessments. As part of its procurement review process, M/OAA/E will also examine the timeliness and integrity of the CPARS submittals by reviewing the award files for evidence of timely CPARS reporting and use of the quality checklists (Appendix III or Appendix IV of the CPII Policy Guide). M/OAA/E will report the findings to the Supervisory CO. When necessary, the contracting activity will develop corrective action plans to address any delinquent or deficient past performance reports (see section 3.15 of the CPII Policy Guide for additional guidance and best practice information).

**f. Assessments of multi-year and expired awards**

For guidance on performance assessments of multi-year and expired contracts where the factual information on the contractor's performance is not available, see sections 3.10 and 3.11 of the CPII Policy Guide.

**302.3.8.8 Reporting of Foreign Taxes**

Effective Date: 08/30/2016

AIDAR clause 752.229-70 requires contractors to report the amounts of foreign taxes assessed by the foreign government on commodities financed with U.S. Foreign Assistance funds. The reporting is used to require countries to reimburse the taxes or duties imposed on USG funds and for certain reporting to Congress.

Contracting Officer's Representatives (CORs) must monitor contractor compliance with the requirements of this clause and take the following actions:

- (1) USAID Missions. For existing contracts managed in the field, unless otherwise specified, contractors must send the originals of the reports directly to the COR by April 16<sup>th</sup> of each year. CORs are responsible for submitting them to the Mission Controller by April 16<sup>th</sup> as well. If the contract specifies another addressee to which the contractor or recipient must submit the reports, the COR must verify that the reports are submitted according to the terms of the award.
- (2) USAID/Washington, DC. For existing contracts managed in Washington, DC, unless otherwise specified, contractors must send reports directly to the COR with a copy to the Chief, M/CFO/CMP, by April 16<sup>th</sup> of each year.

72

*Text highlighted in yellow indicates that the material is new or substantively revised.*

If the contract specifies another addressee to which the contractor must submit the reports, the COR must verify that the reports are submitted according to the terms of the award.

### **302.3.8.9 Processing of Award Modifications in GLAAS**

Effective Date: 08/06/2013

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

### **302.3.8.10 USAID Implementing Partner Notices (IPN) Portal for Acquisition**

Effective Date: 08/30/2016

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

This policy applies to all awards except:

- Individual task orders under IDIQs,
  - Acquisitions below the micro-purchase threshold,
  - Purchase card transactions,
  - Purchase orders, and
  - Orders and Blanket Purchase Agreements (BPAs) issued under GSA Multiple Award Schedules.
- b. When necessary, the IPN Portal Administrator, as designated by the Director, M/OAA, will generate bilateral award modifications and notices and post the modifications/notices to the IPN Portal. Examples of such modifications include required FAR or USAID clause updates affecting all awards (or classes of awards to be specified in the modification). The IPN Portal Administrator will provide advance notice to COs that a policy clause update is being prepared for posting on the IPN Portal. COs are responsible for modifying awards in accordance with FAR or USAID clause changes unless the IPN Portal Administrator provides advance notice to COs that a policy clause update is being prepared for posting on the IPN Portal.

73

*Text highlighted in yellow indicates that the material is new or substantively revised.*

IPN Portal modifications must not change the:

- Amount of obligated funds,
  - Total estimated cost,
  - Statement of Work, or
  - Period of performance.
- c. Proposed bilateral modifications provided through the IPN Portal are not effective until the Contractor and the CO sign the modification. Additional policy guidance and specific instructions for subscribing to the IPN Portal can be found in [ADS 303max, USAID Implementing Partner Notices \(IPN\) Portal](#). COs and contract specialists must register for access to the IPN Portal in order to finalize the processing of the IPN Portal modifications under their respective awards, and complete GLAAS requirements in accordance with this policy.
- d. COs must insert the AIDAR clause 752.7036 entitled “**USAID Implementing Partner Notices (IPN) Portal for Acquisition (July 2014)**” in all solicitations and resulting contracts, except for: orders under indefinite delivery contracts issued pursuant to (48 CFR) FAR subpart 16.5; orders under Federal Supply (GSA) Schedules issued pursuant to (48 CFR) FAR subpart 8.4; and contracts and purchase orders awarded under the simplified acquisitions procedures of (48 CFR) FAR part 13.

### **302.3.8.11 Reporting of Terminations for Default/Cause**

Effective Date: 08/06/2013

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

- Contractor’s name,
- DUNS No.,
- Address,
- Contract and/or task order number,
- CO and COR names,
- Award Period of Performance,
- Award value (TEC), and
- Reasons for termination.

### 302.3.8.12 Contractor Code of Business Ethics and Conduct - Contractor Disclosures

Effective Date: 08/06/2013

COs must insert the FAR clause FAR 52.203-13, Contractor Code of Business Ethics and Conduct, in solicitations and contracts when the estimated value of the contract is over \$5,000,000 and the period of performance is 120 days or more. Pursuant to this clause, contractors that have credible evidence of violations of Federal criminal law, (including fraud, conflict of interest, bribery, or gratuity violations found in [Title 18 U.S.C.](#)) or violations under the Civil False Claims Act (31 U.S.C. 3729-3733), must make timely written disclosure of the violation(s) to the Office of the Inspector General (OIG), and provide a copy to the CO.

Within three (3) business days of receipt of such a contractor disclosure, the CO must forward a copy of the contractor's disclosure documents directly to M/MPBP/Comp at [compliance@usaid.gov](mailto:compliance@usaid.gov). M/MPBP/Comp in coordination with GC/LE and the agency's OIG will take appropriate action.

At the post-award orientation meeting with the contractor, the CO must discuss the importance of the ethics clause, and when and to whom to disclose the relevant information. COs are further encouraged to share with the contractors the [Fraud Reporting Guidance for USAID Implementing Partners](#) during the post-award orientation or as soon as practicable during award implementation.

### 302.3.8.13 Debarment and Suspension

Effective Date: 08/06/2013

- a. M/MPBP/Comp, in consultation with GC/LE, provides direct support and recommendations to the SDO on all matters related to suspension and/or debarment.
- b. COs must notify M/MPBP/Comp in writing at [compliance@usaid.gov](mailto:compliance@usaid.gov) when they become aware of any of the causes of suspension or debarment, with regard to contractors and subcontractors, as specified in [FAR 9.4](#).
- c. Upon receiving notification from a CO that a contractor may have engaged in actions that could lead to debarment, M/MPBP/Comp, 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 [FAR Part 9](#), the SDO decides to initiate a suspension and /or debarment action, M/MPBP/Comp, in consultation with GC/LE will:
- Issue a written notice of suspension or proposed debarment action to the contractor and any affiliates involved; and
  - Enter the contractor's exclusion information into the System for Award Management (SAM).

### **302.3.8.14 Civilian Board of Contract Appeals Procedures**

Effective Date: 07/21/2014

- a. In accordance with AIDAR 733.270, the Civilian Board of Contract Appeals (CBCA) resolves all contractor appeals of final decisions issued by USAID COs.
- b. In accordance with **FAR Subpart 33.2**, the CO must attempt to resolve all controversial contractual issues by mutual agreement with the contractor. When this is not possible, the CO must consult with the Assistant General Counsel for Litigation and Enforcement (GC/LE) prior to issuing a CO final decision. The contractor may appeal a CO's final decision and failure by a CO to issue a timely final decision.
- c. When a contractor files an appeal with CBCA, GC/LE, working with the CO, will compile and submit to the Board and the contractor, all documentation relevant to the appeal. To comply with CBCA requirements, the CO must follow the procedures and timeframe specified below:

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

- The CO's decision, if any, from which the appeal is taken;
- The contract, including modifications, specifications, plans and drawings, if any;
- All correspondence between the parties relevant to the appeal, including the written claim or claims that are the subject of the appeal, and evidence of their certification, if any;
- Affidavits or statements of any witnesses on the matter in dispute and transcripts of any testimony taken before the filing of the notice of appeal;

- All documents and other tangible things on which the CO relied in making the decision, and any related correspondence;
- The abstract of bids, if relevant; and
- Any additional evidence or information deemed necessary to determine the merits of the appeal.

### **302.3.8.15 Reporting and Disposition of Government Property**

Effective Date: 06/21/2018

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

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

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

#### **c. Disposition**

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

### **302.3.8.16 Close-out Procedures**

Effective Date: 09/17/2010

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

## **302.4 MANDATORY REFERENCES**

**302.4.1 External Mandatory References**

Effective Date: 06/21/2018

- a. [Executive Order 11223, Relating to the Performance of Functions Authorized by the Foreign Assistance Act of 1961, as amended](#)
- b. [Executive Order 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism](#)
- c. [Federal Acquisition Regulation \(FAR\)](#)
- d. [Federal Acquisition Regulation \(FAR\) Case 2005-15](#)
- e. [Federal Information Processing Standards, Publication Number 201 \(FIPS PUB 201\)](#)
- f. [Foreign Assistance Act of 1961, as amended](#)
- g. [The National Defense Authorization Act for FY 1997 \(Public Law No. 104-201\), Section 821\(b\)](#)
- h. [The Office of Federal Procurement Policy \(OFPP\) Act of 1974 \(Pub. L. 93-400\), as amended by Pub. L. 96-83](#)
- i. [OMB Guidance M-05-24, dated August 5, 2005](#)
- j. [State cable 119780 dated April 15, 1988 "Policy Guidance on Criteria for Payment of Salary Supplements for Host Government Employees"](#)

**302.4.2 Internal Mandatory References**

Effective Date: 08/10/2020

- a. [Acquisition and Assistance Policy Directives \(AAPDs\)/Contract Information Bulletins \(CIBs\)](#)
- b. [ADS 103, Delegations of Authority](#)
- c. [ADS 201, Program Cycle Operational Policy](#)
- d. [ADS 205, Integrating Gender Equality and Female Empowerment in USAID's Program Cycle](#)
- e. [ADS 221, USAID's Procedures for Implementing International Agreements or Tied and Untied Aid](#)

- f. [ADS 300, Agency Acquisition and Assistance \(A&A\) Planning](#)
- g. [ADS 300mat, Guidance for Broad Agency Announcements](#)
- h. [ADS 302mah, Information Security Acquisition Requirements for Acquisition of Unclassified Information Technology](#)
- i. [ADS 302mak, USAID Implementation of Section 508 of the Rehabilitation Act of 1973](#)
- j. [ADS 302mam, Class Justification for Other Than Full and Open Competition for Procurements by Missions for U.S. Manufactured Vehicles](#)
- k. [ADS 302man, Congressional Award Notification](#)
- l. [ADS 302mao, Contract Review Board Guidelines](#)
- m. [ADS 302map, Guidelines for Submitting Unsolicited Contract Proposals](#)
- n. [ADS 302mar, Model Letter and Procedures for Designating the Contracting Officer's Representative \(COR\) for Contracts and Task Orders](#)
- o. [ADS 302mas, Special Contract Requirements](#)
- p. [ADS 302mbe, Local Competition Authority Pilot Program](#)
- q. [ADS 302mbh, Policy Guide for Assessment and Use of Contractor Performance and Integrity Information](#)
- r. [ADS 302mbi, Acquisition Planning for Indefinite Delivery Indefinite Quantity Contracts and Task Orders](#)
- s. [ADS 302mbj, Exceptions to Contract Reporting in the Federal Acquisition Regulation Part 4.6](#)
- t. [ADS 302mbk, Procedures for Processing Extraordinary Contractual Actions in accordance with AIDAR Part 750](#)
- u. [ADS 302mbi, Best Practices Guide for Indirect Costing](#)
- v. [ADS 302mbm, Organizational and Consultant Conflicts of Interest](#)
- w. [ADS 302mbn, Uniform Use of Line items](#)

- x. [ADS 302mbo, Guidance for Use of the Authorities under Expedited Procedures Packages \(EPPs\)](#)
- y. [ADS 302mbp, Waivers for Covered Telecommunications and Video Surveillance Services or Equipment under FAR 4.2104](#)
- z. [ADS 303max, USAID Implementing Partner Notice \(IPN\) Portal](#)
- aa. [ADS 304, Selecting Between Acquisition and Assistance \(A&A\) Implementing Instruments](#)
- ab. [ADS 306mah, Contracting Officer Representative \(COR\) Checklist: Exit Procedures for Institutional Support Contractors and Federal Employees Under Interagency Agreements](#)
- ac. [ADS 309mad, AIDAR revisions of Competition and Publicizing of Personal Services Contracts \(PSCs\); and Class Justification and Approval \(J&A\) for Limited Competition for Overseas PSCs and Local Purchases](#)
- ad. [ADS 310, Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID](#)
- ae. [ADS 320, Branding and Marking](#)
- af. [ADS 330, Source and Nationality Rules for Administrative Procurement](#)
- ag. [ADS 350maa, Guidance on Funding Foreign Government Delegations to International Conferences](#)
- ah. [ADS 458, Training and Career/Professional Development](#)
- ai. [ADS 511, Essential Records Program](#)
- aj. [ADS 545, Information Systems Security](#)
- ak. [ADS 547maa, Limits on Custom-Developed Software](#)
- al. [ADS 548, Program-Funded Independent Verification and Validation \(IV&V\) Reviews](#)
- am. [ADS 557, Public Information](#)
- an. [ADS 580, Conference Planning and Attendance](#)
- ao. [ADS 624, Host Country-Owned Foreign Currency](#)

- ap. [ADS 625, Accounts Receivable and Debt Collection](#)
- aq. [ADS 628, Gifts and Donations and Dollar Trust Fund Management](#)
- ar. [Agency for International Development Acquisition Regulation \(AIDAR\)](#)

**302.5**      **ADDITIONAL HELP**  
Effective Date: 03/29/2021

- a. [ADS 302sad, Contract Types to Address Global Technical Leadership with Field Support and/or Cost-Contributions](#)
- b. [ADS 302sae, Certification and Agreement for the Use and Disclosure of Proposals](#)
- c. [ADS 302sag, Contractor Travel vs. Direct-Hire Travel Policy](#)
- d. [ADS 302sal, Field Support Action Process](#)
- e. [ADS 302sam, The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs \(TEXT ONLY VERSION\)](#)
- f. [ADS 302sam1, The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs \(VERSION WITH GRAPHICS\)](#)
- g. [ADS 302sar, USAID Contractor Salary Threshold \(USAID CST\)](#)
- h. [ADS 302sat, Guidance on Closeout Procedures for A&A Awards](#)
- i. [ADS 302sav, Contracting Officer's Role in Debt Collection](#)
- j. [ADS 302saw, Simplified Acquisition Guide](#)
- k. [ADS 302sax, Guide on the Use of the Changes Clause: What Modifications Trigger Competition?](#)
- l. [ADS 302say, Guidance for use of the Expedited Procedures Package \(EPP\) for Responding to Outbreaks of Contagious Infectious Diseases](#)
- m. [ADS 303sae, Operational Security – General Information](#)
- n. [ADS 579sab, Protecting Sensitive Information Prior to Publication of USAID Foreign Assistance Data](#)

o. [Procurement Executive Bulletins \(PEBs\)](#)

**302.6 DEFINITIONS**

Effective Date: 08/01/2019

**Acquisition & Assistance Policy Directives (AAPDs)**

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

**Agency competition advocate**

See competition advocate. (**Chapter 302**)

**competition advocate**

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

**Contract Information Bulletins (CIBs)**

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

**Contract Review Board (CRB)**

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

**Contracting Officer (CO)**

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

**direct acquisition**

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

**direct procurement**

See direct acquisition. (**Chapter [302](#)**)

**Federal Acquisition Regulation (FAR)**

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

**head of the contracting activity (HCA)**

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

**Planner**

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

**Procurement Executive Bulletin (PEB)**

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

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