



USAID
FROM THE AMERICAN PEOPLE

USAID PROCUREMENT EXECUTIVE

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SUBJECT: Partner Vetting For Acquisition: A Guide for Contracting Officers

1. Scope: This Bulletin applies to all USAID Contracting Officers (COs) and Acquisition staff worldwide.

2. Purpose: The purpose of this PEB is to:

Provide Contracting Officers and Acquisition staff with guidance on their roles and responsibilities when partner vetting is conducted during an acquisition award process and during the performance of a contract.

NOTE: At the present time, Partner Vetting as described in this PEB and as set forth in the AIDAR is being implemented only as a pilot program in Guatemala, Kenya, Lebanon, Philippines, and Ukraine. Partner Vetting is not currently permitted in Missions other than in these pilot program countries. Additional guidance and a revised PEB will be issued if vetting of Washington-based awards is authorized.

3. Background:

USAID (in conjunction with a joint program at the Department of State) is implementing a Partner Vetting System pilot program for USAID assistance and acquisition awards. The purpose of the Partner Vetting System pilot program is to help ensure that USAID funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners. USAID already has taken a number of steps to help ensure that agency funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists. However, more can be done to ensure adequate due diligence in certain situations. Information collected during the vetting process will be used to conduct national security screening of key individuals and organizations to ensure that USAID funds do not inadvertently or otherwise provide support to entities or individuals associated with terrorism.

USAID is implementing a pilot program in five missions: Guatemala, Kenya, Lebanon, Philippines, and Ukraine. This pilot program will help establish best practices and resource implications for the potential use of a Partner Vetting Systems Agency-wide. The results of the pilot program will be reported to Congress in accordance with Public Law 112-74. System at USAID.

Attachment 1 - Partner Vetting For Acquisition - A Guide for Contracting Officers

Purpose

The purpose of this document is to provide Contracting Officers (COs) with guidance on their roles and responsibilities when Partner Vetting is conducted under acquisition actions.

Partner Vetting

In April 2012, USAID amended AIDAR parts 713, 714, 715, and 716 and added a new subpart, 704.40, to implement the Agency's Partner Vetting System (PVS) for acquisition. The PVS will complement the Agency's other requirements for terrorist financing clauses, terrorist financing certifications, and review of public lists of designated groups and individuals.

Partner vetting is conducted on the organization's "key individuals." "Key individuals" means

- Principal officers of the organization's governing body (for example, chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees);
- The principal officer and deputy principal officer of the organization (for example, executive director, deputy director, president, vice president);
- The program manager or chief of party for the USG-financed program; and
- Any other person with significant responsibilities for administration of the USG-financed activities or resources, such as key personnel whether or not they are employees of the prime contractor.

Although all key personnel are key individuals for the purpose of vetting, key individuals are not the same as key personnel. Key personnel are those employees of the contractor, or any subcontractor, affiliates, joint venture partners, or consultants considered to be essential to the work being performed under the contract.

Pre-solicitation

USAID determines whether a particular acquisition is subject to vetting using a Risk-Based Assessment (RBA), in accordance with the *USAID Guidance for Preparing RBAs for the Joint Partner Vetting System Pilot Program*. The Contracting Officer's Representative (COR) conducts an RBA for all new programs or activities to be implemented in a pilot country that may result in an award. If the Vetting Support Unit (VSU) determines that vetting is warranted for an acquisition based on the outcome of the RBA, the VSU directs the COR to include the requirement for vetting in the purchase request. To the extent practicable, for all awards in the pilot missions for the duration of the pilot, the RBA will be conducted for each acquisition and vetting will be conducted for each acquisition.

Required Clauses for Vetting. The CO must then include the following provision and clause in the solicitation, as prescribed in AIDAR 704.70:

- AIDAR 752.204-70 Partner Vetting Pre-Award Requirements (Feb 2012).
- AIDAR 752.204-71 Partner Vetting (Feb 2012) and its alternative I, as applicable. The CO must also include the contact information for the vetting official or mailbox for submissions of vetting information (see below) in 752.704-71(d).

If awarding an Indefinite Delivery Contract, include the following clause:

- AIDAR 752.216-71 Partner Vetting in Indefinite Delivery Contracts (Feb 2012). Use this clause in all Indefinite Delivery/Indefinite Quantity, Indefinite Delivery/Definite Quantity and Requirements contracts (See FAR 16.5, Indefinite-Delivery contracts, for contract types and AIDAR subpart 716.5 for vetting procedures for Indefinite Delivery contracts, and task and delivery orders).

Determining the Stage for Conducting Vetting. When drafting the solicitation, the CO, in consultation with the COR that conducted the RBA, must specify in the solicitation provision, AIDAR 752.204-70, section (b)(2), the stage of the source selection process when offerors must submit the USAID Partner Information Form, USAID Form 500-13 (PIF).

In determining the appropriate stage for vetting, COs should consider the following factors:

- The benefit of knowing whether all offerors or just those more likely to receive the award have passed vetting prior to making the source selection decision;
- The resource impacts, both on offerors and USAID, of vetting multiple offerors;
- The urgency of the procurement;
- The number of offers anticipated;
- The reconsideration timelines;
- Any other factors that may have an impact on the vetting timeline.

For negotiated procurements using FAR Part 15, the appropriate stage for vetting should typically be when the CO establishes the competitive range. If award is being made without discussions, the appropriate stage for vetting should typically be prior to award. However, after considering the factors that affect the timing of the vetting process, the CO may decide to conduct vetting at a different stage in the source selection process.

For acquisitions under FAR Part 13 – Simplified Acquisition Procedures, FAR Part 14 – Sealed Bidding, and task orders issued under Indefinite Delivery Indefinite Quantity Contracts (IDIQCs) under FAR Part 16, the appropriate stage will most likely be just prior to award. In these or any

other cases when the CO determines that only the apparently successful offeror will be vetted, the solicitation will require only the apparently successful offeror to submit the completed PIF.

When the CO requires vetting at the proposal submission stage, all offerors will be required to submit the completed PIF. The CO should require vetting at the proposal submission stage only in rare situations, such as when market research suggests that very few offers will be submitted and the urgency of the procurement precludes waiting until the competitive range stage or just prior to award.

The CO must also include the contact information for the vetting official or mailbox for submissions of vetting information.

Pre-award

Source selection proceeds separately from vetting. The CO or other designated source selection authority makes the source selection determination separately from the vetting process and without knowledge of vetting-related information other than that the apparently successful offeror is either eligible or ineligible for award based on the vetting process.

The person responsible for the vetting process is the designated vetting official. The vetting official has the primary responsibility for receiving vetting information from offerors, responding to questions about information to be included on the PIF, coordinating with the USAID Office of Security (SEC), and conveying the vetting determination to each offeror that is subject to vetting, and the CO. The vetting official is not part of the contracting office and has no involvement in the source selection process.

After vetting has been completed, the vetting official will notify the CO that vetted offerors are either eligible or ineligible for award based on the vetting process. The CO must only award to an offeror who is eligible for award after the completion of vetting.

Source Selection Non-Disclosure Agreement for Vetting Officials. The designated vetting official must sign the attached non-disclosure agreement prior to receiving the names of the offerors, key individuals or any other information within the definition of “Source Selection Information” at FAR 2.101. The Contracting Officer will provide the agreement to the vetting official for signature and must have a signed copy of the agreement in the contract file.

Directing Offerors to Submit the PIF. The AIDAR Solicitation Provision “Partner Vetting Pre-Award Requirements (Feb 2012)” notifies prospective offerors of the vetting requirements and procedures. At the stage designated in the solicitation, the CO instructs offerors who are subject to vetting to submit the completed PIF to the vetting official identified in the solicitation.

Offerors with any questions about the PIF must contact the vetting official, not the CO, negotiator, or COR. The CO provides the Vetting Official with a list of the offerors, appropriately marked as “Source Selection Information,” who have been asked to submit the PIF. The Vetting Official, any vetting support staff, and SEC are prohibited from releasing any contractor bid or proposal information or source selection information to anyone without the CO’s approval.

Communications with Offerors Regarding Vetting. The vetting official is responsible for notifying offerors that they are either eligible or ineligible for award based on the vetting process. For offerors who have not passed, the vetting official will include in the notification a written explanation of the basis of the vetting determination. SEC determines which details of the vetting determination the Vetting Official may include in the written explanation. Only the vetting official can directly communicate with an offeror regarding the vetting process.

Vetting at the Competitive Range. Although the CO determines at what stage of the source selection process vetting will occur, vetting will most often occur at the competitive range stage. When vetting at the competitive range stage, after establishing the competitive range, the CO informs those offerors in the competitive range to submit the PIF to the Vetting Official. The CO may conduct discussions and request revised final proposals while the vetting of offerors is in process.

After all vetting determinations have been made, the vetting official notifies offerors that they are either eligible or ineligible for award based on the vetting process. Concurrently, the vetting official also notifies the CO that all vetting determinations have been provided to the offerors. The vetting official indicates to the CO whether or not all offerors have passed vetting but must not provide the CO with specific vetting information.

If not all offerors have been vetted, then the CO must consider how much time to allow for each offeror that has not passed vetting to request reconsideration, as described below. The CO will not know which of the vetted offerors has not passed vetting; only that one or more of the offerors still being considered have not passed vetting. The CO should provide as much time as is practicable for offerors to submit their revised final proposals to allow offerors to make changes to their proposals to accommodate any changes in key individuals or proposed subcontracts, if appropriate. Any offerors who change their proposals must also be re-evaluated pursuant to the RFP evaluation criteria prior to source selection. In determining how much time to allow for offerors to revise their proposals, COs should balance their procurement timeline against the competitive benefits of having as many eligible offerors as possible. The CO must require offerors who change any key individuals for any reason, including but not limited to failure to pass vetting or for reasons related to their technical proposals, to submit their revised

PIF to the vetting official as soon as possible to allow for vetting of individuals not previously vetted.

The CO must make the source selection decision independently from the vetting process. Since the CO does not know which offerors have passed or not passed vetting, after making the award decision, the CO must confirm with the vetting official that the apparently successful offeror has passed vetting. If the apparently successful offeror has passed, the CO may proceed with award. When the CO is ready to make an award but the vetting official has not completed the vetting of the apparently successful offeror, the CO will wait as long as is practicable for the vetting official's decision. However, at such time as the Government's need for the contract precludes delaying the award any longer, the CO will proceed with award to the next offeror(s) who represents the best value in accordance with the evaluation criteria of the solicitation and also passes vetting.

Vetting only the Apparently Successful Offeror. When vetting just prior to award, the CO will direct only the apparently successful offeror to submit its PIF to the vetting official. The vetting official will notify the offeror and the CO that the vetting determination is complete and that the offeror either has or has not passed vetting. If the offeror has passed vetting, the CO may proceed with award. If the offeror has not passed vetting, the CO must allow the apparently successful offeror to request reconsideration as described below. If the offeror does not request reconsideration of the vetting determination within the required number of days after being notified, or if reconsideration does not change the vetting decision, the CO will award to the next offeror(s) who represents the best value in accordance with the evaluation criteria of the solicitation and also passes vetting.

Vetting all Offerors. Vetting all of the offerors that submit proposals is not recommended. Vetting of all offerors should only occur when market research suggests that very few offers will be submitted and the urgency of the procurement precludes waiting until the competitive range or just prior to award for vetting. When the solicitation states that vetting will occur at submission of proposals, the CO must direct offerors in the solicitation to submit their forms directly to the vetting official by the date specified for submission of proposals in the RFP. After all vetting determinations have been made, the vetting official notifies offerors that they either have passed or have not passed vetting. Concurrently, the vetting official also notifies the CO that all vetting determinations have been provided to the offerors. The vetting official indicates to the CO whether or not all offerors have passed vetting but must not provide the CO with specific vetting information. If the CO determines a competitive range, then the CO should notify the vetting official which offerors are in the competitive range so that, if vetting is not yet completed, only those offerors in the competitive range continue to be vetted.

The CO must require offerors who change any key individuals for any reason, including but not limited to failure to pass vetting or for reasons related to their technical proposals, to submit their revised PIFs to the vetting official as soon as possible to allow for vetting of individuals not previously vetted. Any offerors who change their proposals must also be re-evaluated pursuant to the RFP evaluation criteria prior to source selection. The CO will proceed with the source selection independently from the vetting process. The CO must confirm with the vetting official that the apparently successful offeror has passed vetting and, if the offeror is eligible, proceed with award. If the offeror is not eligible, the CO must award to the next offeror(s) who represents the best value in accordance with the evaluation criteria of the solicitation and also passes vetting.

Reconsideration. Within seven (7) calendar days after the date of the vetting official's notification, any offeror that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. Within seven (7) calendar days after the vetting official receives the request for reconsideration, the vetting official will provide the reconsideration decision to the offeror. The Agency's vetting determination after reconsideration is final.

Post-award Process

For those contracts and task orders the agency has determined are subject to vetting, the contractor must submit to the vetting official the completed PIF any time it changes key individuals, or subcontractors for which vetting is required. The contractor must notify the CO that it has submitted the PIF to the vetting official but does not provide the PIF itself to the CO. The contractor complies with the terms of the contract regarding changes to Key Personnel. If the contractor requests approval to change Key Personnel but has not notified the CO that it has submitted the PIF to the vetting official, and then the CO must remind the contractor of the post-award vetting requirements in the AIDAR clause AND notify the vetting official of the proposed change in Key Personnel. Key Personnel are key individuals, but not all key individuals are Key Personnel.

USAID may vet key individuals of the contractor and any required subcontractors at any time during contract performance using the information already submitted on the PIF.

Attachment 2 - Source Selection Non-Disclosure Agreement for Vetting Officials

I acknowledge and agree to the following:

1. I will not disclose nor seek to obtain source selection information, including but not limited to bid prices, proposed costs or prices submitted in response to a solicitation, source selection plans, technical evaluation plans, technical evaluations of proposals, cost or price evaluations, competitive range determinations, rankings, reports, information concerning the solicitation process, information marked as source selection information or information used to prepare for a source selection, before the award of a contract to which the information relates, without advance written authorization from the Contracting Officer.
2. If I obtain source selection sensitive information without prior written authorization by the Contracting Officer, I will: (i) promptly notify the Contracting Officer; (ii) return all source selection information in either "hard" or "soft" (i.e., electronic) form to the Contracting Officer; (iii) neither copy nor retain any copies; and (iv) not disclose the source selection information, except as permitted herein.
3. I will only use source selection information for official/authorized Government purposes.
4. I am aware that unauthorized disclosure of the source selection information could damage the integrity of a procurement and transmission or revelation of such information to unauthorized persons or use for other than the intended governmental purposes could subject me to penalties, prosecution and suspension and debarment under the Procurement Integrity Act or under applicable laws.
5. I will safeguard all materials pertaining to source selections, including following all directions from the Contracting Officer, and promptly return them to the Contracting Officer upon completion of the vetting process.
6. I will not participate personally and substantially in an official capacity in any source selection activity which I am aware will have a direct and predictable effect on my financial interest or those persons whose interest are imputed to me under laws, regulations or contractual obligations. I will not use the source selection information for my private gain or the private gain of others, either by my direct or indirect action or by giving counsel, recommendations, or suggestions to others.

7. I am not aware of any matter which might reduce my ability to participate in any of the abovementioned activities in an objective and unbiased manner or which might place me in a position of a conflict, real or apparent, between my responsibilities as a participant and other interests.
8. If after the date of execution of this agreement, an actual or potential conflict occurs, I will notify the Contracting Officer in writing and thereafter, until advised by the Contracting Officer to the contrary, will not participate further (by rendering advice, making recommendations, voting, or otherwise) in any procurement activities.
9. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this Agreement and are controlling.
10. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 13526 (75 Fed. Reg. 707), or any successor thereto; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); sections 7(c) and 8H of the Inspector General Act of 1978 (5 U.S.C. App.) (relating to disclosures to an inspector general, the inspectors general of the Intelligence Community, and Congress); section 103H(g)(3) of the National Security Act of 1947 (50 U.S.C. 403–3h(g)(3) (relating to disclosures to the inspector general of the Intelligence Community); sections 17(d)(5) and 17(e)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(5) and 403q(e)(3)) (relating to disclosures to the Inspector General of the Central Intelligence Agency and Congress); and the statutes which protect against disclosure that may compromise the national security,

including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this Agreement and are controlling.

Signature: _____

Name: _____

Date: _____