

## **CONSTRUCTION PROJECTS UNDER PEPFAR**

The following supplemental guidance (see Appendix 22 of the FY 2007 COP Guidance) is provided regarding implementation of projects involving construction services under PEPFAR programs. This guidance outlines the authorities and/or limitations of State, USAID, HHS, and DoD in procuring and managing construction projects, along with information on when acquisition of construction services through those agencies could be considered. It also provides information on interagency transfers.

### **Overview**

Options for implementing overseas construction through OGAC's usual interagency partners are limited. The State Department has legal authority to carry out overseas construction under the Foreign Assistance Act of 1961 (FAA). USAID, HHS, and DoD have limitations on their abilities to carry out overseas construction. Therefore, in most cases, country teams should plan to implement construction projects through the Department of State's Regional Procurement Support Offices (RPSO) in Fort Lauderdale, Florida, and Frankfurt, Germany, using Global HIV/AIDS Initiative (GHAI) funds. Procedures for working with State to obtain construction services are provided below.

### **State Department**

Under the FAA, the State Department has overseas construction authority for funds appropriated to carry out the purposes of the FAA, which includes the GHAI account. Given the technical nature of construction projects, construction procurement for State is handled by RPSO. The country team can contact the cognizant RPSO directly for construction procurement.

RPSO acquires supplies and services for U.S. diplomatic and service posts worldwide. Thus, RPSO is the State Department's means of procuring PEPFAR supplies, such as lab equipment, and constructing or renovating structures. There are two RPSO offices:

- RPSO/Fort Lauderdale serves Latin America, the Caribbean, and Canada. Contact: Rob Lloyd, LloydRE@state.gov, 954-630-1146. (See the attached brochure and *Client Assistance Guide* for using RPSO/Fort Lauderdale)
- RPSO/Frankfurt serves Europe, Near East, Asia, and Africa. Contact: Chris Sager, SagerCP@state.gov, +49(69)7535-3330 or IVG 757-3330. (RPSO Frankfurt has special expertise in acquiring equipment and knows many vendors in Europe who cater to Africa and have follow-on service representative capability.)

RPSO, a Working Capital funded organization, provides services at a minimal surcharge:

- Simplified Acquisitions           6%
- Contracts                           4%  
(maximum surcharge is \$150,000 for contract awards; \$100,000 for options exercised)
- Delivery Orders                   4%

RPSO is able to handle many of the acquisition tasks associated with construction projects. However, posts are still responsible for significant aspects of the acquisition process. Form

DS-1970 (included in the RPSO/Fort Lauderdale *Client Assistance Guide*) provides a list of the items RPSO needs from you to contract on your behalf. Country teams must provide:

- Statement of work
- Performance period (required delivery date for supplies, start and end date for services)
- Cost estimate, including whether the funds are expiring or no-year
- Suggested list of local or other firms capable of doing the job (with points of contact)

RPSO will handle the acquisition process, but country teams must identify a requisitioner and technical lead. RPSO will provide the contracting officer. A technical expert is required to ensure that construction with technical requirements (e.g., laboratories, health care centers, etc.), meets the specific requirements for its use. For example, for construction of a laboratory, a CDC representative could act as technical advisor to define the needs for the building and perform technical evaluation of the work as construction progresses. RPSO will generally contract with a local engineering or architectural firm for design work and to oversee performance of the construction contract if no USG direct hire architectural/engineering firm support is available.

RPSO/Frankfurt prefers that funds for construction procurement be channeled through Post. Country teams should assign GHAI funds to the appropriate State regional bureau in the Country Operational Plan (COP). The funds will then be sent through the regional bureau to the Post Financial Management Office (FMO). Before awarding a contract, RPSO/Frankfurt obtains fiscal data from the Post FMO and enters the fiscal data on the contract into the RPSO system. This process does not transfer the funds to the Frankfurt Financial Management Center (FMC), but the obligation of funds does show up in the central financial system. We provide copies of the contract to the Post FMO, which process the invoices.

RPSO/Fort Lauderdale does not have a preference as to how it receives funds; however, for PEPFAR purposes, country teams should assign GHAI funds to the appropriate State regional bureau in the COP.

Please note that RPSO/Frankfurt has completed a number of health-related construction projects, including blood treatment centers for PEPFAR purposes. It has a collection of blueprints that are available for use. Countries can contact RPSO/Frankfurt to get access to the blueprints.

## **USAID**

USAID also has legal authority to perform construction and renovation overseas, which, like the Department of State, is based on authorities under the Foreign Assistance Act. However, as a policy matter, USAID has placed restrictions on the use of health accounts for construction, including the Child Survival and Health (CSH) and GHAI accounts. The USAID policy is based on the view that use of health account funds for construction will not generally represent optimal use of such funds.

The USAID policy allows exceptions “if a mission wishes to make a case that facilities construction [would] constitute optimal use of CSH or GHAI funds.” Under USAID procedures, a request for an exception must be reviewed at USAID headquarters in Washington. This review

can be incorporated into the COP review process, and approval of the COP would equate with approval to construct with no further waivers required.

### **HHS: CDC and HRSA**

HHS authority to perform construction projects is substantially restricted under provisions of the Public Health Service Act and other laws. In general, HHS is unable to perform “new” construction, unless specifically authorized by statute. However, HHS may perform construction projects involving “renovation” or “alteration” only, which do not involve new construction, under certain specific and limited circumstances. Such renovation activities cannot add to the size of the facility.

HHS guidance advises that “Improvements (renovation/alteration)” includes:

Any betterment or change to an existing property to allow its continued or more efficient use within its designed purpose (renovation), or for the use of a different purpose or function (alteration). Building improvements also include improvements to or upgrading of primary mechanical, electrical, or other building systems. *Improvements do not include the addition of wings, floors, or other increases to useable program area cubage; such projects constitute new construction.* The only added areas or cubage which may be construed as a building improvement rather than new construction involves stairwells, elevator towers, pipe chases, etc., not providing useable program space.

Because of the restrictions on HHS construction authority, country teams are again advised generally to use GHAI funds other than those assigned to HHS/CDC or HHS/HRSA in the COP and assign construction funds to State through another agency rather than using HHS funding. However, country teams should consider using HHS/CDC GAP funding if a particular project clearly falls within HHS’s “Improvements (renovation/alteration)” authority.

HHS authority to perform renovation is also related to the ownership status of the facility to be renovated. Please see the attached Q&As regarding HHS renovation authority, and be encouraged to review proposed renovation projects with headquarters.

### **Department of Defense**

Under DoD auspices, funding from several sources, including PEPFAR and the Department of Defense HIV/AIDS Prevention Program, is authorized for use in HIV/AIDS-related military construction projects. Other opportunities available to the country team include funding allocated through the US DoD Office of Overseas Humanitarian Disaster Assistance and Civic Aid (as authorized by the Area of Responsibility Combatant Commander). If available, this Humanitarian Assistance and Humanitarian Civic Aid funding is authorized for construction projects that benefit civilian populations only.

All proposed projects should be evaluated on a case-by-case basis by the US Defense Attaché in the country, as well as at the Headquarters level, for authorization prior to beginning construction.

### **Interagency Transfers**

The reallocation of GHAI funding from one USG agency to another must be processed by OGAC headquarters, not at the field level. If a country team determines that it needs to change the USG agency identified for a particular activity in order to implement a construction project, the country team needs to submit a reprogramming request to their team leader during the quarterly reprogramming process. For example, if funds are currently identified with HHS/CDC as the implementing agency and the team determines that the funds should be moved to State/RPSO to implement a construction project, the team needs to submit a request to their core team leader to request this change as part of their next reprogramming submission. After the reprogramming request has been approved, the team or the core team leader will need to update the COPRS database to reflect the change. OGAC will initiate the movement of funds between the relevant agencies after these steps have been completed.

Correction to the FY 2007 COP Guidance: The COP guidance instructs teams to identify State's A bureau as the implementing agency in the COP for State/RPSO projects. We have since determined that countries should in fact list the relevant State regional bureau (e.g., Africa, etc.), rather than the A bureau. We apologize for any confusion resulting from this change.

### **Summary and Procedures**

Because of the authorities and limitations described above, country teams should follow the following guidance:

1. For identified construction/renovation projects, first determine whether such projects can be funded and managed by the host government, an international organization, or another implementing partner. Using USG mechanisms should be the option of last resort.
2. If a construction/renovation project can only be funded and managed by the USG, country teams should identify all planned construction projects in the Country Operational Plan (COP) (note: all procurements should be identified in the COP).
  - a. If planning to use RPSO, the State regional bureau should be identified in Table 3.1 as the USG agency that will receive the funding from OGAC. The funding source should be GAC (GHAI account). Country teams should contact the GSO and RPSO early with the information listed above to begin the process.
  - b. If planning to use USAID or CDC, identify in Table 3.1 the relevant agency as the USG agency that will receive the funding from OGAC. Country teams should contact the cognizant agency Contracting Officer early to determine what if any waivers must be obtained and what contracting procedures will be followed.