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ADS Chapter 302

USAID Direct Contracting

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ADS 302 – USAID Direct Contracting

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ADS 302 – USAID Direct Contracting

302.1 OVERVIEW

Effective Date: 04/20/2006

This chapter prescribes the Agency’s policy directives, required procedures, and internal guidance for the procurement of goods and services through direct contracts for the purposes of implementing Agency programs and supporting Agency logistics.

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

The guidance in this chapter does not apply to personal services contracts.

302.2 PRIMARY RESPONSIBILITIES

Effective Date: 04/20/2006

As described in [ADS 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 \(PEBs\)](#) [**Note: These documents are only available on the intranet.**], 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) Selecting and appointing contracting officers and terminating their appointments.
 - (2) 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.
 - (3) 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.

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- (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 programs and 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 programs and activities, subject to the policy stated in this chapter.
- d.** 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.
- e.** The **Contract Review Board** is responsible for reviewing solicitations and award documents exceeding \$10 million for acquisitions, consistent with the policy found in 302.3.1.2.
- f.** **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.
- g.** The **Activity Manager** is responsible for drafting a procurement request, including the Statement of Work and an appropriate evaluation plan.
- h.** The **Contracting Officer's Technical Representative (COTR)**, generally from the office of the Assistance Objective Team 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

Effective Date: 07/01/2007

302.3.1 Summary of Acquisition Policy, Regulations, and Procedures

Effective Date: 04/20/2006

302.3.1.1 Applicability of the Federal Acquisition Regulation (FAR), Agency for International Development Acquisition Regulations (AIDAR), Contract Information Bulletins (CIBs), Acquisition & Assistance Policy Directives (AAPDs), and Procurement Executive Bulletins (PEBs)

Effective Date: 04/20/2006

USAID executes all direct procurement in accordance with the [FAR](#) and the [AIDAR](#). 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 Contract Review Board (CRB)

Effective Date: 07/01/2007

a. The Contract Review Board

The Contract Review Board (CRB) comprises Contracting Officers (COs) and, when available, a General Counsel representative. The CRB is responsible for reviewing documentation for acquisition actions worth more than \$10 million. This includes basic Indefinite Quantity Contracts (IQCs) with the total estimated ceiling expected to exceed \$10 million for single or multiple awards in a sector.

The CRB reviews these actions in order to

- Minimize vulnerabilities that may lead to potential protests, disputes, claims, and litigation against the Agency;
- Provide senior level advice on contracting actions;
- Support the CO; and
- Ensure the consistency of procurement documentation.

b. Stages of Required CRB Review

For both USAID/W and Missions, COs must submit actions to the CRB at the following

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stages of the procurement process:

- Pre-solicitation,
- Competitive Range Determination, and
- Pre-award.

COs must follow the policies and procedures for CRB submissions and findings provided in the [Contract Review Board Guidelines](#).

c. CRB Findings

CRB findings are categorized as mandatory or advisory. The CO must include all previous CRB comments in the submittal of documentation for acquisition actions, including the corrective actions the CO has taken to address all (both mandatory and advisory) findings.

- (1) The cognizant CO must address all mandatory findings. He or she must advise the CRB in writing within three business days after receiving CRB mandatory findings, including pre-award ones, of the corrective action taken for each one. Within two business days after being advised, the CRB chairperson will inform the CO whether the corrective actions taken are acceptable to the Board. If the CO does not receive an e-mail response from the CRB chairperson within the two business days, he or she may proceed to the next phase.
- (2) The CRB provides advisory findings to the COs for serious consideration. Cognizant COs must annotate their contract files as to the disposition of the advisory findings.

302.3.1.3 Deviations

Effective Date: 07/01/2007

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

302.3.2 Expedited Acquisition and Assistance (A&A) Procedures for Specific, High-Profile Activities and Programs

Effective Date: 04/20/2006

The following sections provide Administrator-approved expedited A&A procedures for specific, high-profile activities and programs.

**An asterisk indicates that the adjacent information is new or substantively revised.*

302.3.2.1 USAID's Avian Influenza Pandemic Emergency Preparedness and Response Efforts

Effective Date: 03/27/2007

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

[AAPD 06-06, Expedited A&A Procedures for Activities and Programs Related to USAID's Avian Influenza Pandemic Emergency Preparedness and Response Efforts \(Revised\)](#)

302.3.2.2 HIV/AIDS and Infectious Disease Initiatives

Effective Date: 02/07/2008

This section currently consists of the information in the referenced AAPDs/CIBs. At a later time, USAID will incorporate them into this chapter.

[CIB 01-04, Expedited Acquisition and Assistance Procedures for the HIV/AIDS and Infectious Disease Initiatives](#)

[AAPD 07-05, USAID List of Approved HIV/AIDS Test Kits](#)

[AAPD 07-01 Procurement of Anti-Retrovirals for HIV/AIDS Programs](#)

302.3.2.3 Response to the Afghanistan Crisis

Effective Date: 04/20/2006

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

[AAPD 03-06, Expedited Acquisition and Assistance Procedures for Afghanistan](#)

302.3.3 Contracting with a Foreign Governmental Organization

Effective Date: 04/20/2006

This section prescribes the policy directives and required procedures for contracting and subcontracting with foreign governmental organizations, which are defined as foreign organizations that function as governing bodies, such as foreign ministries and local governments. The policy does not apply to contracts or subcontracts with foreign government-owned parastatal organizations, which function more like private sector commercial or non-profit organizations. They are covered by the nationality restrictions in [ADS Chapter 310](#).

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Both contracts and subcontracts with a foreign governmental organization may be necessary under some circumstances. These occur either as USAID direct contracts with foreign governments or as subcontracts executed by USAID recipients with foreign ministries or other foreign governmental organizations.

a. Justification and Approvals (J&As)

Prior to entering into a contract or approving a subcontract with a foreign governmental organization, USAID requires a written justification and approval (J&A) which confirms that USAID staff has thoroughly reviewed all considerations. This requirement applies to direct contracts, subcontracts under contracts, and contracts under grants.

- (1) The J&A must contain the following information:
 - (a) Identification of the J&A as a justification for procurement from a foreign governmental organization,
 - (b) A statement which concisely describes the specific need for a procurement from a foreign governmental organization,
 - (c) An explanation of why the foreign organization is the most appropriate source of supply, and
 - (d) A discussion of any required deviations, waivers, etc.
- (2) The Contracting Officer (CO) must coordinate and obtain advice from the Office of the General Counsel, Acquisition and Assistance, or the Regional Legal Advisor.
- (3) Required approvals and their thresholds are as follows:
 - (a) J&As for contracts and subcontracts worth \$500,000 or less require approval by the CO, and
 - (b) J&As for contracts and subcontracts worth more than \$500,000 require approval by the Procurement Executive.
- (4) The CO must include a copy of the J&A in the contract file.

b. Guidance for review of proposed subcontract awards to foreign governments.

COs should consider the following items before contracting or subcontracting with a foreign governmental organization:

- (1) Audit and accounting systems. Will the organization allow access to their books and records if USAID requires an audit provision in the contract?

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- (2) Reasonableness of cost/price. How will the CO determine the price/cost reasonableness?
- (3) Taxes. How will taxes be handled if they are required? [FAR 52.229-7 and 52.229-9](#) address taxes under USAID contracts with foreign governments.
- (4) Termination. Will the organization agree to contract termination provisions?
- (5) Host country contribution. Would it be appropriate for the foreign governmental organization to provide some or all of the goods or services as part of its contribution under the Assistance Objective Agreement?
- (6) Host country salary supplementation. As a general rule, USAID discourages salary supplements, except in very special circumstances and only with the proper justification.
- (7) Clauses. In cases when a mandatory clause may not be applicable, COs must obtain Head of Contracting Agency approval for a deviation.

302.3.4 Acquisition Planning Effective Date: 04/20/2006

This section provides policy directives and required procedures addressing the requirements that must be considered prior to issuance of a solicitation.

302.3.4.1 Limiting Competition – Justifications for Other than Full and Open Competition (JOFOCs) Effective Date: 07/01/2007

- a. Contracting Officers (COs) must provide the Agency Competition Advocate, as defined in [AIDAR 706.501](#), a copy of all Justifications for Other than Full and Open Competition (JOFOCs) for awards exceeding \$250,000 (US). The JOFOCs must be prepared and approved in accordance with [FAR 6.303](#).
- b. This section provides links to two prepared and approved class JOFOCs . Rather than preparing new justifications, COs may use these JOFOCs, provided the subject contract meets the Conditions for Use. The Conditions are specified in Section II of the relevant class JOFOC, which also includes the certification and file documentation requirements.

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- (1) For overseas contracts worth \$250,000 or less

[Class Justification for Other Than Full and Open Competition for Overseas Contracts of \\$250,000 or Less, and Personal Services Contracts with U.S. Citizens Contracted Locally and with CCNs and TCNs Subject to the Local Compensation Plan](#)

- (2) For procurements of U.S. manufactured vehicles through overseas contracts of \$250,000 or less. Note that this justification deals only with competition; a nationality waiver may also be necessary if a U.S. manufactured vehicle is purchased from a local dealer.

[Class Justification for Other than Full and Open Competition for Procurements by Missions of U.S. Manufactured Vehicles](#)

302.3.4.2 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 [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](#).

302.3.4.3 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](#).

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302.3.4.4 Branding
Effective Date: 04/20/2006

In accordance with [ADS 320.3.2](#), Assistance Objective Teams must provide the Contracting Officer with a branding strategy

302.3.4.5 Organizational Conflict of Interest (OCI)
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 99-17, Organizational Conflict of Interest](#)

302.3.4.6 Indefinite Quantity Contracts – Exception for Small Businesses
Effective Date: 04/20/2006

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

[AAPD 02-05, New Authority - Exception for Small Businesses under Indefinite Quantity Contracts \(IQCs\)](#)

302.3.4.7 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.

**An asterisk indicates that the adjacent information is new or substantively revised.*

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](#), 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.)

**An asterisk indicates that the adjacent information is new or substantively revised.*

- (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.

302.3.4.8 Grants Under Contracts (GUCs)

Effective Date: 04/20/2006

Subject to the conditions discussed below, the Contracting Officer (CO) may enter into a direct contract that allows the contractor to execute grants with non-governmental organizations (non-profits or for-profits).

- a.** This Grants Under Contracts (GUCs) authority is allowable only after the following clearance and approval have been obtained:
 - (1) Clearance from the cognizant General Counsel or Regional Legal Advisor and the CO, then
 - (2) Approval in writing from the Head of the Contracting Activity (HCA) for the specific contract for which it would be allowed.
- b.** The grant program under the GUCs authority must meet the following conditions:
 - (1) The total value of an individual grant to a U.S. organization must not exceed \$100,000. (This limitation does not apply to grant awards to non-U.S. organizations.)
 - (2) It is not feasible to accomplish USAID objectives through normal USAID contract and grant awards because either
 - (a) Executing a number of small grant activities is particularly difficult for the responsible USAID Mission or office, or

**An asterisk indicates that the adjacent information is new or substantively revised.*

- (b) 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) USAID must ensure that the requirements that apply to USAID-executed grants will also apply to grants that a USAID contractor executes.
- (5) USAID must retain within the contract the ability to terminate the grant activities unilaterally in extraordinary circumstances.

USAID does not authorize contractors to execute or administer cooperative agreements on its behalf. Nor does USAID require HCA approval when a contractor will only be managing or administering grants already awarded by USAID.

302.3.4.9 Information System Security

Effective Date: 07/01/2007

Information system security (ISS) is the protection of the integrity, availability, and confidentiality of automated information and the resources used to enter, store, process, and communicate the information. [ADS 545](#) details the security policies, consistent with Federal regulations, mandates and directives, that serve as the highest-level basis for USAID ISS.

In accordance with the [Contract Clause Guide for Unclassified Information System Security Systems and Services](#), Contracting Officers must ensure that appropriate ISS requirements are accurately specified, funded, and enforced for all USAID ISS acquisition, operation, and maintenance contracts under their supervision. The guide provides procedures for including ISS requirements in the acquisition of information systems and services.

This guide applies to all contracts, regardless of the source of funding, when the contracted systems or services will be connected to, or require the use of, a USAID general support system (GSS) in USAID/W or at the Missions. USAID staff may also apply the guide 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.

**An asterisk indicates that the adjacent information is new or substantively revised.*

302.3.4.10 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 [USAID Implementation of Section 508 of the Rehabilitation Act of 1973](#).

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 Branding*Reserved.***302.3.5.2 Standardization of Indefinite Quantity Contracts (IQCs)**

Effective Date: 04/20/2006

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

[AAPD 02-12, Standardizing USAID Indefinite Quantity Contracts](#)

*An asterisk indicates that the adjacent information is new or substantively revised.

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

Effective Date: 04/20/2006

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

[AAPD 02-05, New Authority – Exception for Small Businesses under Indefinite Quantity Contracts \(IQCs\)](#)

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,

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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	_____	/	_____
Name/Position Title	_____	/	_____
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 COTR reasonably in advance and submit written justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No replacement will be made by the Contractor without the written consent of the CO.

302.3.5.5 Reporting on Taxation of U.S. Foreign Assistance

Effective Date: 07/01/2007

[Section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of FY 2003](#)

requires certain steps to prevent countries from imposing taxes [defined as Value Added Tax (VAT) or custom duties] on U.S. foreign assistance, or if imposed, requires the countries to reimburse the assessed taxes. The Department of State has published guidance for implementing this section of the Act.

**An asterisk indicates that the adjacent information is new or substantively revised.*

The Act requires certain reporting to Congress. Contracting Officers (COs) must insert the provision “Reporting of Foreign Taxes” found in [Special Provisions for Acquisition](#) in all contracts that obligate fiscal year 2003 or later funds, except for the following:

- Contracts funded with Operating Expense or [Pub. L. 480](#) funds, or
- Contracts where there will be no commodity transactions in a foreign country over the amount of \$500.

The provision specifies that the contractor must submit certain reports to the Contracting Officer’s Technical Representative, with copies to the relevant Embassy, the Mission, or the Office of the Chief Financial Officer, Cash Management and Payments Division. **302.3.8.8** provides guidance to COs on the appropriate office to be specified in the provision.

302.3.5.6 Grants Under Contracts (GUCs)

Effective Date: 04/20/2006

- a. If the Head of the Contracting Activity (HCA) provides written approval per **302.3.4.8**, 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).
- b. Under this scenario, COs must
 - (1) Ensure that the requirements that apply to USAID-executed grants will also apply 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 **302.3.4.8**.
- c. Further information on the requirements for HCA approval is in **302.3.4.8**.

**An asterisk indicates that the adjacent information is new or substantively revised.*

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 price range. COs may not include estimated price ranges in solicitations for a cost-reimbursement term (LOE) contract.

302.3.5.8 Defense Base Act (DBA) Insurance

Effective Date: 07/01/2007

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.

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 through [Acquisition and Assistance Policy Directives \(AAPDs\)](#). COs should consult the most recent AAPD for current rates and coverage.

For further explanation of DBA insurance, as well as information on blanket waivers of coverage, see [Guidelines for DBA Coverage for Direct and Host Country Contracts](#).

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

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 99-17, Organizational Conflict of Interest](#)

**An asterisk indicates that the adjacent information is new or substantively revised.*

302.3.5.11 Implementation of Section 508 of the Rehabilitation Act of 1973

Effective Date: 07/01/2007

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 [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.

302.3.5.12 Information System Security

Effective Date: 07/01/2007

Information system security (ISS) is the protection of the integrity, availability, and confidentiality of automated information and the resources used to enter, store, process, and communicate the information.

The [Contract Clause Guide for Unclassified Information System Security Systems and Services](#) provides guidance on including ISS requirements in the acquisition of information systems and services.

Additional information on ISS can be found in **302.3.4.9**.

302.3.5.13 Homeland Security Presidential Directive – 12 (HSPD-12)

Effective Date: 07/01/2007

In response to the general threat of unauthorized access to Federal Government physical facilities and information systems, the President in 2004 issued [Homeland Security Presidential Directive \(HSPD\) 12](#).

- (a) In accordance with HSPD-12, USAID 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](#) and the [USAID HSPD-12 Program](#). **[Note: This document is only available on the intranet and is for internal use only.]**)
- (b) Accordingly, Contracting Officers must insert the provision “Personal Identity Verification of Contractor Personnel” found in [Special Provisions for Acquisition](#), in all contracts that contain provision [FAR 52.204-9\(a\)](#) and which require the contractor to have routine physical access to USAID-controlled facilities or have logical access to USAID’s information systems.

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302.3.5.14 Supporting USAID's Disability Policy in Contracts

Effective Date: 07/01/2007

USAID's [Disability Policy Paper](#) articulates the Agency's commitment to advocate for, outreach to, and include of 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.

- a. For information on the implementation of the general disability policy in awards, see [AAPD 04-17, Supporting USAID's Disability Policy in Contracts, Grants, and Cooperative Agreements](#).
- b. Accessibility Standards for USAID Construction Contracts. The Agency developed a provision setting forth its objectives for accessibility standards in USAID-financed construction. The provision requires the Contracting Officer (CO)'s sign-off where compliance with accessibility standards is technically infeasible or presents an undue burden. To issue this approval, the CO must first obtain a waiver (see **302.3.6.11** for details). The CO must also insert the clause ["Standards for Accessibility for the Disabled in USAID Construction Contracts"](#) in solicitations and resulting contracts for construction or renovation using Agency program funds.

***302.3.5.15 Incorporating Gender Issues into Solicitations**

Effective Date: 11/05/2009

USAID must address gender issues in all USAID-funded activities (see [ADS 201.3.11.6](#)). For solicitations, such as Requests for Proposals (RFPs) and Requests for Task Order Proposals (RFTOPs), the Contracting Officer (CO) must ensure that the requiring office integrated gender issues in the procurement request or provided the rationale, as approved in the Activity Approval Document, for why gender is not an issue for the particular activity to be implemented through the requested contract action (see [ADS 201.3.11.6](#) and [201.3.11.16](#)).

When the procurement request integrates gender issues into the different contract performance components, e.g., Statement of Work, project deliverables, key personnel qualifications, and monitoring and evaluation requirements, the CO must work with the technical office to ensure that the technical evaluation criteria (e.g., technical understanding and approach, monitoring and evaluation, personnel, etc.) correspond to these contract performance requirements. Within these major evaluation criteria, however, gender issues should not be separate subcriteria with maximum possible points assigned to them, since this dilutes their significance.

If the procurement request does not comply with the requirement in [ADS 201.3.11.6](#) and [201.3.11.16](#) to either include contract performance and qualification requirements that reflect gender issues or the rationale for why gender is not an issue for the particular

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contract action, 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.

For technical assistance and additional guidance, consult the USAID Mission, Office or Bureau gender specialist or the Office of Women in Development in the Bureau for Economic Growth, Agriculture, and Trade (EGAT).

302.3.5.16 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

**An asterisk indicates that the adjacent information is new or substantively revised.*

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 Regional Legal Advisor for any action overseas and to 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](#), 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\(a\)\(4\)](#).

**An asterisk indicates that the adjacent information is new or substantively revised.*

- 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 Information (CPI)

Effective Date: 03/27/2007

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

[AAPD 06-05 \(Revision 2\), Evaluation and Use of Contractor Past Performance Information \(CPI\)](#)

302.3.6.4 Branding

Reserved

*An asterisk indicates that the adjacent information is new or substantively revised.

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 Non-Expendable Property (NXP)**

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 92-25, Non-Expendable AID-Owned Property in Contractor's Custody](#)**302.3.6.7 Classified Contract and Contractor Security Requirements**

Effective Date: 04/20/2006

This section currently consists of the information in the referenced AAPDs/CIBs. At a later time, USAID will incorporate them into this chapter.

[CIB 98-23, Guidance Regarding Classified Contract Security and Contractor Personnel Security Requirements](#)**[AAPD 02-12, Standardizing USAID Indefinite Quantity Contracts](#)****302.3.6.8 Negotiation of Indirect Cost Rates**

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 92-17, Indirect Cost Rates](#)**302.3.6.9 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.

**An asterisk indicates that the adjacent information is new or substantively revised.*

302.3.6.10 USAID Contractor Salary Threshold (USAID CST)

Effective Date: 07/01/2007

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.

- a. The USAID CST is equivalent to the maximum rate at Federal agencies without a certified Senior Executive Service (SES) performance appraisal system [see [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.
- b. 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**.
- c. 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**.
- d. 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.

302.3.6.11 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.

**An asterisk indicates that the adjacent information is new or substantively revised.*

- 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.

302.3.6.12 Contract Reporting and Data Universal Numbering System (DUNS) Number

Effective Date: 07/01/2007

The Contract Reporting and Data Universal Numbering System (DUNS) Number is the unique identifier used to compile information on all companies, organizations, and people that have awards with the U.S. Government. All successful offerors are required to have a DUNS Number in accordance with [FAR Part 4.6, Contract Reporting](#), regardless of whether they are required to be registered in the Central Contractor Registration database. For more information, see [Guidance for Obtaining a DUNS Number](#).

302.3.6.13 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

**An asterisk indicates that the adjacent information is new or substantively revised.*

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”](#).

302.3.6.14 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.

302.3.7 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 Designation of the Contracting Officer’s Technical Representative (COTR)

Effective Date: 02/24/2009

Contracting Officers (COs) must follow the policy directives and required procedures below when designating a Contracting Officer’s Technical Representative (COTR) for a contract (including individual task orders under indefinite quantity contracts). Fixed price supply contracts and Personal Services Contracts (PSCs) (see AIDAR Appendix [D](#) & [J](#) for applicable information) are excepted.

a. Eligibility and Appointment

To be eligible to be a COTR or an alternate COTR, the appointee must work for USAID as a(n):

- Direct-hire employee,
- Employee of another U.S. Government agency through an interagency agreement or on detail, or
- PSC (U.S. citizen, Foreign Service National or Third Country National).

**An asterisk indicates that the adjacent information is new or substantively revised.*

COTR eligibility is not based on the program which brought the individual into the Agency, e.g. Fellows or Participating Agency Service Agreements (PASA), but on the individual's employment status as described above. The CO appoints the COTR (and alternate if applicable) by letter onto a contract in accordance with the [Procedures for Designating the Contracting Officer's Technical Representative \(COTR\) for Contracts and Task Orders](#). The appointees must meet the Agency's COTR mandatory training and certification program requirements specified in paragraph b of this section.

b. Certification and Training Requirements

The Office of Human Resources, Training and Education (HR/TE), in coordination with M/OAA, established a COTR/Agreement Officer's Technical Representative (AOTR) certification program. The program provides COTRs and their alternates with the basic knowledge and skills they need to effectively perform their role. Specific certification requirements are outlined in [ADS 458.3.5.5 \(b\)](#) and include successful completion of the

- Web-based Phoenix Accruals on-line course,
- A&A 102: Acquisition Management for COTRs, and
- A&A 103: Assistance Management for AOTRs.

COTRs designated after October 1, 2009, must be certified prior to designation, except as provided below in this section. COTRs designated prior to October 1, 2009 must have completed the web-based Phoenix Accruals online course and must be certified within six months of designation.

By issuing a designation letter, the CO confirms that he or she has verified the appointee's training. HR/TE tracks staff members' training and completed courses. For a COTR's certification status, check with the COTR Certification Point of Contact (**For Internal Use Only. See the POC on the COTR Certification Program Web page at <http://inside.usaid.gov/M/HR/lsd/ctocert.html> [Note: These documents are only available on the intranet.]**).

Exceptions

1. In exceptional circumstances, the Office of Acquisition and Assistance, Evaluation Division, may authorize the designation of an uncertified individual as a COTR for a contract at USAID/W for a period of up to six months; the Mission Director may do the same in the field. If a nominating office requests approval of such a COTR designation, 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

**An asterisk indicates that the adjacent information is new or substantively revised.*

- Confirmation from the individual's supervisor that the individual will complete COTR certification within six months.

Extension of the exception beyond six months can only be approved by the Director of M/OAA. The exception may not last more than one year in total.

2. The following individuals may be designated as COTRs without completion of the COTR/AOTR certification program:
 - Warranted Contracting/Agreement Officers,
 - Procurement Management Certification Program certified individuals, and
 - Federal Acquisition Certification in Contracting Level 1 certified individuals.

However, they must still complete the web-based Phoenix Accruals online course.

c. Issuing the COTR Designation Letter

COs must use the Standardized Designation Letter to appoint a COTR to perform contract or task order administrative responsibilities and authorities. The standardized letter is provided in [Procedures for Designating the Contracting Officer's Technical Representative \(COTR\) for Contracts and Task Orders](#). COs must use the standardized letter essentially as written, but some tailoring of the letter is acceptable as long as it does not affect the substance.

The CO may also designate an Alternate COTR to perform COTR duties during the absence of the COTR. The alternate must meet the COTR certification requirements and be appointed in the same designation letter as the COTR.

d. Limitations to the Designation

COTR authority does not include directing the contractor, either in writing or verbally, to make changes to the contract's statement of work, terms and conditions, or the total estimated cost or price. Only a CO has the authority to take such actions.

COTRs may ask others to conduct fact-finding, provide analyses or interpretations of technical requirements, and make recommendations, among other assistance that may be sought; however, the COTR remains accountable for the responsibilities delegated to him or her.

Finally, the COTR cannot further delegate his or her authority. If neither the COTR nor the alternate is available to perform their duties, the COTR must direct the contractor to the CO for guidance. No other individuals are authorized to provide direction to the contractor.

**An asterisk indicates that the adjacent information is new or substantively revised.*

The Standardized Designation Letter further states the specific limitations of the COTR designation.

e. Rescission/Expiration of a COTR Designation Letter

1. COs have the authority to rescind a designation letter at any time if the individual's performance as a COTR is unsatisfactory. For example, if the individual fails to perform his or her duties and responsibilities or if the individual exceeds his or her authority as specified in the designation letter, the CO may exercise this rescission authority. Specific examples of circumstances that might warrant rescinding a COTR designation include the COTR's failure to adequately monitor the available funding on a contract or to address contractor performance fairly, comprehensively, and promptly when tasked with assessments for the Contractor Performance Reports.
2. COs must rescind a designation letter if the COTR is assigned to a new post or position unrelated to the contract and designate another individual as COTR.
3. If a COTR has not completed the certification program within six months of his or her designation (only applicable to those COTRs who have an exception to the certification policy), the CO must rescind the designation unless the Director of M/OAA authorizes an extension. If such a COTR has not completed the certification program within one year of his or her designation, the CO must rescind the designation letter.

f. Documentation

The CO must ensure that the COTR designation is up to date in the appropriate electronic acquisition system and must maintain the signed designation letter in the contract file and in the Global Acquisition and Assistance System (GLAAS). COs may finalize a contract (including task orders), only after they have signed the COTR designation letter and received the signed COTR acknowledgement.

302.3.7.2 Congressional Award Notification System

Effective Date: 07/01/2007

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

- a.** COs must follow the notification procedures in [Congressional Award Notification](#). The sequential steps are:

1. Sign the award,

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2. Notify 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 notification include

- (1) Contracts of any value to an organization that has not previously received an award from USAID. Non-personal services 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 governmentwide acquisition contracts (GWACs).

**An asterisk indicates that the adjacent information is new or substantively revised.*

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 Award of Task Orders under Multiple Award Indefinite Quantity Contracts (IQCs) - Fair Opportunity Procedures

Effective Date: 01/08/2007

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

[AAPD 02-12, Standardizing USAID Indefinite Quantity Contracts](#)

Four 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:

- [The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs \(TEXT ONLY VERSION\)](#)
- [The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs \(VERSION WITH GRAPHICS\)](#)
- [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 to 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 project activities.

302.3.8.2 Award of Task Orders Under Indefinite Quantity Contracts (IQCs) – Exception to Fair Opportunity Procedures for Small Businesses

Effective Date: 04/20/2006

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

[AAPD 02-05, New Authority - Exception for Small Businesses Under Indefinite Quantity Contracts \(IQCs\)](#)

**An asterisk indicates that the adjacent information is new or substantively revised.*

302.3.8.3 IQC Task Orders, Design and Implementation, Organizational Conflict of Interest

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 99-17, Organizational Conflict of Interest

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 Technical Representative (COTR) for his or her concurrence. The COTR

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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 COTR must forward both the CO's and the COTR's memoranda to the cognizant Assistant Administrator or Mission Director for concurrence.
- (4) If concurrence is granted, the COTR 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](#)).

*An asterisk indicates that the adjacent information is new or substantively revised.

- 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: 07/01/2007

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

[AAPD 03-07, Revised Instructions to Contracting/Agreement Officers on their Role in the Debt Collection Process](#)

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, Administrative Accounts Receivable](#).

302.3.8.7 Evaluation of Contractor Performance

Effective Date: 03/27/2007

[AAPD 06-05 \(Revision 2\), Evaluation and Use of Contractor Performance Information \(CPI\)](#)

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

302.3.8.8 Reporting on Taxation of U.S. Foreign Assistance

Effective Date: 07/01/2007

So that the Agency may be informed of its foreign assistance being taxed and respond accordingly, Contracting Officer's Technical Representatives (COTRs) must ensure that their contractors submit an annual tax report (including negative reports) to them and that the reports are submitted to the Mission Controller or the Office of the Chief Financial Officer, Cash Management and Payments Division (M/CFO/CMP) as applicable. The report is due on or before April 16th of each year.

- (1) [USAID Missions](#). For existing contracts managed in the field, unless otherwise specified, contractors must send the originals of the reports directly to the COTR by April 16th of each year. COTRs are responsible

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for submitting them to the Mission Controller by April 16th as well. If the contract specifies another addressee to which the contractor or recipient must submit the reports, the COTR 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 COTR with a copy to the Chief, M/CFO/CMP, by April 16th of each year. If the contract specifies another addressee to which the contractor must submit the reports, the COTR must verify that the reports are submitted according to the terms of the award.

302.3.8.9 Close-out Procedures

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 90-12, Guidance for AID Missions -- Closing Out Contracts, Grants, and Cooperative Agreements](#)

302.4 MANDATORY REFERENCES

Effective Date: 07/01/2006

302.4.1 External Mandatory References

Effective Date: 07/01/2007

- 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 Circular \(FAC\) 97-27 "Electronic and Information Technology Accessibility"](#)
- d. [Federal Acquisition Regulation \(FAR\)](#)
- e. [Federal Acquisition Regulation \(FAR\) Case 2005-15](#)
- f. [Federal Information Processing Standards, Publication Number 201 \(FIPS PUB 201\)](#)

**An asterisk indicates that the adjacent information is new or substantively revised.*

- g. [Foreign Assistance Act of 1961, as amended](#)
- h. [The National Defense Authorization Act for FY 1997 \(Public Law No. 104-201\), Section 821\(b\)](#)
- i. [The Office of Federal Procurement Policy \(OFPP\) Act of 1974 \(Pub. L. 93-400\), as amended by Pub. L. 96-83](#)
- j. [OMB Guidance M-05-24, dated August 5, 2005](#)

302.4.2 Internal Mandatory References

Effective Date: 07/01/2007

- a. [Acquisition and Assistance Policy Directives \(AAPDs\)](#)
- b. [ADS 103, Delegations of Authority](#)
- c. [ADS 201, Planning](#)
- d. [ADS 320, Branding and Marking](#)
- e. [ADS 458, Training and Career/Professional Development](#)
- f. [ADS 545, Information Systems Security](#)
- g. [Agency for International Development Acquisition Regulation \(AIDAR\)](#)
- h. [Class Justification for Other Than Full and Open Competition for Overseas Contracts of \\$250,000 or Less and for Personal Services Contracts with U.S. Citizens Contracted Locally, and with CCNs and TCNs Subject to the Local Compensation Plan](#)
- i. [Class Justification for Other Than Full and Open Competition for Procurements by Missions for U.S. Manufactured Vehicles](#)
- j. [Congressional Award Notification](#)
- k. [Contract Clause Guide for Unclassified Information System Security Systems and Services](#)
- l. [Contract Information Bulletins \(CIBs\)](#)
- m. [Contract Review Board Guidelines](#)

**An asterisk indicates that the adjacent information is new or substantively revised.*

- n. [Contractor Performance Reports \(CPRs\) for Architect and Engineer Services and CPR Amendments in General](#)
- o. [Guidance on Funding Foreign Government Delegations to International Conferences](#)
- p. [Guidelines for Submitting Unsolicited Contract Proposals](#)
- q. [Model Letter and Procedures for Designating the Contracting Officer's Technical Representative \(COTR\) for Contracts and Task Orders](#)
(Only available to USAID employees.)
- r. [Procurement Executive Bulletins \(PEBs\)](#) (Only available to USAID employees.)
- s. [Special Provisions for Acquisition](#)
- t. [Updated Guidance for Modified Acquisition & Assistance Request Document \(MAARD\) Usage](#)
- u. [USAID Implementation of Section 508 of the Rehabilitation Act of 1973](#)
- v. [USAID Procedures for Partnership Agreement between SBA and USAID for Expedited 8\(a\) Awards](#)

302.5 ADDITIONAL HELP

Effective Date: 07/01/2007

- a. [Certification and Agreement for the Use and Disclosure of Proposals](#)
- b. [Contract Employee Use of Department of State Diplomatic Pouch Alternate Pouch Address for Contractor Employee Mail](#)
- c. [Contractor Travel vs. Direct-Hire Travel Policy](#)
- d. **Contract Review Board (CRB) - Identified Issues/Trends, June 2005 (For Internal Use Only. Please contact ads@usaid.gov if you need a copy.)**
- e. [Contract Types to Address Global Technical Leadership with Field Support and/or Cost-Contributions](#)
- f. [Cumulative Listing of Revisions to AAPD 06-05: Evaluation and Use of Contractor Performance Information](#)
- g. [Field Support Action Process](#)

**An asterisk indicates that the adjacent information is new or substantively revised.*

- h. [Guidance for Award Fee Contracting](#)
- i. [Guidelines for DBA Coverage for Direct and Host Country Contracts](#)
- j. [Guidebook for Managers and Contracting Officer's Technical Representatives on Acquisition and Assistance](#)
- k. [Guidance for Obtaining a DUNS Number](#)
- l. [The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs \(TEXT ONLY VERSION\)](#)
- m. [The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs \(VERSION WITH GRAPHICS\)](#)
- n. [Operational Security – General Information](#)
- o. [USAID Contractor Salary Threshold \(USAID CST\)](#)

302.6 DEFINITIONS

Effective Date: 04/20/2006

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. The Agency competition advocate is the Deputy Director in the Office of Procurement (M/OP) responsible for Policy, Evaluation and Support, or his/her designee. For Washington contracting activities it is the Deputy Director in the Office of Procurement responsible for operations. For Missions it is the Deputy Mission Director, or the Mission Director where there is not a Deputy. [Chapter 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)

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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. ([Chapter 301](#))

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 702.170-10 lists each HCA for USAID and the limits on the contracting authority for each are in AIDAR 706.601. Also see contracting activity. (Chapters 302, [330](#), and [331](#))

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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