



USAID
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ADS Chapter 303

Grants and Cooperative Agreements to Non-Governmental Organizations

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**Functional Series 300 – Acquisition and Assistance
ADS 303 – Grants and Cooperative Agreements to Non-Governmental
Organizations**

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ADS 303 – Grants and Cooperative Agreements to Non-Governmental Organizations

303.1 OVERVIEW

Effective Date: 06/01/2006

This chapter describes the Agency's internal guidance, policy directives, required procedures, and standards for the award and administration of USAID grants and cooperative agreements to:

- Institutions of higher education,
- Hospitals,
- Nonprofit non-governmental organizations, and
- Commercial organizations.

USAID provides assistance to U.S. or non-U.S organizations, individuals, nonprofits, and for-profit entities. Authorizing legislation (including the [Foreign Assistance Act of 1961, as amended](#)), other statutes, Government-wide directives and regulations, and governing program requirements specify the eligibility requirements for individual assistance programs.

303.2 PRIMARY RESPONSIBILITIES

Effective Date: 06/01/2006

- a. **The Bureau for Management, Office of Acquisition and Assistance (M/OAA)** develops and interprets policy on behalf of USAID for the award and administration of grants and cooperative agreements. M/OAA carries out this responsibility in accordance with the requirements of [Office of Management and Budget \(OMB\) Circular A-110](#), USAID's implementing regulation [22 CFR Part 226](#), and OMB circulars establishing cost principles ([A-122](#) and [A-21](#)) and audit responsibilities ([A-133](#)).
- b. The **M/OAA Director** is also the Assistance Executive and coordinates all matters that OMB circulars or USAID regulations govern or which may require OMB approval. The M/OAA Director may:
 - Authorize limited competition, in accordance with **303.3.6.5**;
 - Make the final decision on the choice of implementing instrument in the event of a dispute between the requesting official and the Agreement Officer, in accordance with ADS 304; and
 - Make the final decision on any appeals brought under 22 CFR 226.90 or the Mandatory Standard Provision entitled "Disputes," when it involves non-US organizations.

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c. The Agency Liaison

- Reviews information for the Catalog of Federal Domestic Assistance (CFDA) for completeness and accuracy and forwards the information to the Office of Management and Budget (OMB) for entry into the CFDA by the General Services Administration (GSA).
- Updates CFDA entries annually.
- Submits an annual crosswalk that references program transactions occurring during the year, such as additions, deletions, consolidations of programs, and changes to program titles.
- Assigns CFDA numbers.
- Prepares the CFDA entry describing the Agency's general program description.

NOTE: The Chief of the Strategic Planning and Performance Division of the Bureau for Policy and Program Coordination (PPC/SPP/SPA) was serving as the Agency Liaison to the CFDA (see **303.3.5.1**). However, this office has been superseded by the establishment of the Office of the Director of Foreign Assistance. Details of the liaison function will be revised. For further information, contact PPC and OAA.

d. The Agreement Officer (AO) has legal responsibility for the award. Therefore, only the AO can take action on behalf of USAID to enter into, change, or terminate an award. The AO is authorized for this responsibility either by a warrant issued by the Director, M/OAA, or receives the authority through a delegation by virtue of his or her position by:

- The Mission Director or other principal officer of a USAID field post (see [ADS 103.3.8.5](#)),
- The Assistant Administrator for the Bureau for Democracy, Conflict, and Humanitarian Assistance (AA/DCHA), or
- The directors of DCHA offices, as re-delegated by the AA/DCHA (see ADS 103.3.15).

For information regarding added assistance authorities for Mission Directors, see [Guidelines for Expanded Assistance Authority for Mission Directors](#).

e. Prior to award, the Activity Manager ensures that USAID exercises prudent management over assistance funds. The Activity Manager will:

- Ensure adequate notice and time for the AO to compete and award an assistance instrument by using an annual procurement plan or by obtaining the AO's consent.

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- Prepare competitive announcements or justify an exception to competition, in accordance with this chapter and as directed by the AO.
 - Provide the Agency Liaison with an annual update on the information in Catalog of Federal Domestic Assistance (CFDA) entries for which the Activity Manager is responsible (see **303.3.4.1**).
 - Comply with [22 CFR 216, Environmental Procedures](#), requirements during the design process.
 - Manage the technical evaluation of applications on behalf of the AO, including completing past performance reviews of the applicants.
 - Carry out elements of the pre-award survey and provide a technical analysis of specific costs when asked by the AO.
 - Advise the AO whether an application is responsive to the published competitive notice and otherwise complies with established USAID Assistance Objectives.
 - Determine the expected level of cost sharing, in accordance with specific program requirements and **303.3.10**.
 - Process all necessary USAID documentation for the request that the AO consider awarding a grant or cooperative agreement to a selected applicant. This documentation includes advice on the technical and professional aspects of the application and provides a program description with clearly established goals that are realistic, measurable, and represent the highest objective that the recipient can expect to achieve and for which the recipient will be held accountable.
 - Help the AO determine the potential recipient's level of technical and managerial competence.
 - Perform other duties, as requested by the AO, to ensure prudent management of assistance funds.
- f. After award, **the Agreement Officer's Technical Representative (AOTR)** is the person, as designated in writing by the AO, who will administer certain aspects of the assistance instrument. This authority is not re-delegable other than as specified in the AO's designation letter. The AOTR ensures that USAID exercises prudent management over its awarded assistance and makes the

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achievement of program objectives easier by monitoring and evaluating the recipient and its performance during the award. The AOTR will:

- Maintain contact, including through site visits and liaison, with the recipient;
- Review and analyze reports and monitor reporting requirements. (See [ADS 540.3.2.3](#));
- Verify timely performance.
- Ensure compliance with the terms and conditions of the award;
- Carry out all responsibilities in the schedule of the award as delegated by the AO and as noted under the “Substantial Involvement” section of Cooperative Agreements;
- Monitor the recipient's financial reports to ensure that the recipient makes progress toward meeting the required cost sharing, when applicable;
- Notify the AO promptly of any developments that could have a significant impact on the recipient's performance;
- Prepare internal documents to support amendments to the award;
- Assist the AO in the review of proposed Branding Strategies and Marking Plans and monitor the execution of approved Marking Plans;
- Ensure all mitigative environmental measures and conditions in the award are implemented throughout the life of the award and that timely amendments are undertaken as needed with the relevant Bureau environmental officer approval in writing (see [ADS 204](#)).
- Monitor classified recipients' compliance with the security specifications included in their grants and cooperative agreements, and notify the AO and the Office of Security of any problems or suspected noncompliance with those requirements (see [ADS 545](#), [ADS 565](#), and [ADS 567](#)).
- Evaluate the recipient's program effectiveness at the end of the program, and produce a final report on the award for the AO and the Activity Manager; and,

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- Perform other duties, as requested or delegated by the AO, to ensure prudent management of assistance funds.
- g. The Office of the General Counsel (GC)** or the cognizant Regional Legal Advisor (RLA) makes the final legal determinations on behalf of the Agency. USAID staff must refer all contacts from a potential recipient or recipient's lawyer to GC or the RLA. Staff must also consult GC or the RLA on significant policy matters.
- h. Assistant Administrators** approve termination of awards based on the decision that continued assistance would not be in the national interest of the United States.
- i. A recipient** carries out an assistance program on behalf of USAID, in accordance with the terms and conditions of the award and all applicable laws and regulations.

303.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 06/01/2006

303.3.1 Policy Directives

Effective Date: 06/01/2006

[22 CFR Part 226, Administration of Assistance Awards to U.S. Non-Governmental Organizations](#), establishes the requirements that USAID must follow when administering grants and cooperative agreements to U.S. non-governmental organizations. **22 CFR 226** is the Agency's regulatory implementation of [OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations](#).

22 CFR 226 and **OMB Circular A-110** do not directly apply to non-U.S. non-governmental organizations. However, as a matter of policy and to the extent practicable, USAID applies these regulations to non-U.S. non-governmental organizations through this ADS chapter and the [Mandatory Standard Provisions for Non-U.S. Non-governmental Organizations](#).

303.3.2 Required Procedures

Effective Date: 06/01/2006

USAID generally implements new acquisition and assistance requirements through [Acquisition and Assistance Policy Documents \(AAPDs\)](#) when it is necessary to implement a change prior to formal amendment of this chapter, **22 CFR 226**, or the **Mandatory Standard Provisions**. M/OAA generally uses [Procurement Executive Bulletins \(PEBs\)](#) to issue guidance, best practices, reminders, and answers to frequently asked questions (**available only on the USAID intranet**).

303.3.3 Type and Length of Assistance Instrument

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

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Effective Date: 06/01/2006

Assistance (grants or cooperative agreements) is used when the principal purpose of the transaction is to accomplish a public purpose of support or stimulation, as authorized by the [Foreign Assistance Act of 1961, as amended \(FAA\)](#). For further guidance on the differences between assistance and acquisition (contracts), see [ADS 304](#).

The Assistance Objective Team (AOT) makes a preliminary determination on the duration and type of assistance instrument. The AOT bases this decision on the purpose of the transaction and the intended nature of the relationship (see [ADS 201](#)). The AOT describes the purpose and proposed instrument in the programming and requesting documents. The AO makes the final decision regarding whether an award will be an acquisition or assistance instrument.

303.3.4 Deviations

Effective Date: 06/01/2006

When it is necessary to achieve program objectives under an award or when special circumstances make it in the best interests of the U.S. Government, USAID may grant a deviation from

- [22 CFR 226](#),
- The policy directives and required procedures of this chapter,
- The [Mandatory Standard Provisions for U.S. Non-governmental Organizations](#), or
- The [Mandatory Standard Provisions for Non-U.S. Non-governmental Organizations](#).

NOTE: This section does not apply to the requirements of [22 CFR 216, Environmental Procedures](#).

a. Approving Officials

- (1) U.S. organizations. For grants and cooperative agreements to U.S. organizations, only the Director, M/OAA, may approve deviations. The Office of Management and Budget (OMB) must also approve any class deviations from [22 CFR 226](#), [OMB Circular A-110](#), and deviations from other **OMB circulars**.
- (2) Non-U.S. organizations. For grants and cooperative agreements to non-U.S. organizations, the Director, M/OAA or the Mission Director with program responsibility may approve deviations.

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b. Procedure

- (1) The AO or the Activity Manager may initiate a deviation request through an action memorandum to the appropriate approving official noted in **303.3.4(a)**.
- (2) Before deviation requests may be submitted to the approving authority, the AO must have cleared them.
- (3) The AO or Activity Manager must consult with the Office of the General Counsel (GC) or the Regional Legal Advisor (RLA) on all deviations. GC or the RLA must clear the action memorandum before the AO or Activity Manager may submit it to the approving authority.
- (4) Before submitting the action memorandum, the requestor also must obtain written comments from M/OAA's Policy Division regarding the information provided to meet the requirements of **paragraph c.** of this section. M/OAA/P should respond within 10 working days. If more time is needed, M/OAA/P must alert the requestor and provide an estimate of when comments will be provided. The AO must maintain a copy of the comments submitted by M/OAA/P as part of the deviation request file.
- (5) If the deviation request involves the cost principles or the applicant's Negotiated Indirect Cost Rate Agreement, the AO must also obtain written comments from M/OAA's Contract Audit and Support Division (CAS), Overhead/Special Costs and Closeout Branch, before submitting the request to the approving official. M/OAA/CAS has 10 working days in which to respond. If more time is needed, M/OAA/CAS must alert the requestor and provide an estimate of when it will provide comments. If M/OAA/CAS does not provide comments within 10 working days or within the requested extension period, the requestor may treat the non-response as concurrence.
- (6) If the approving official does not approve the deviation request, the approving official should provide a written explanation to the requestor regarding why the request was not approved. If the requestor can revise the request to address the approving official's objections, the requestor may do so and resubmit the request. The approving official's denial of a deviation request may not be appealed.
- (7) The requestor must provide a copy of each approved deviation record to M/OAA/P, and the AO must retain the approved deviation in the award file.

c. Content of a Deviation Request

Each deviation request must

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- (1) List the name of the recipient and identify the grants or cooperative agreements affected. Include the dollar value of each award;
- (2) Identify the provision, policy, or procedure from which a deviation is necessary;
- (3) Provide a full description of the deviation and the circumstances in which it will be used;
- (4) Detail the reasons supporting the request, including any background information that contributes to a fuller understanding of the sought deviation;
- (5) Describe the intended effect of the deviation; and
- (6) State whether a previous deviation from the same requirement had been requested and, if so, the circumstances of the request and whether the approving official approved or disapproved the request.

(For an example, see a [sample action memorandum for a deviation.](#))

303.3.5 Public Notice and Advertising

Effective Date: 06/01/2006

- a. USAID has a responsibility to notify the public of its funding priorities in assistance programs ([22 CFR 226.11\(b\)](#)). The Agency generally fulfills this responsibility by announcing assistance programs in the [Catalog of Federal Domestic Assistance](#) (CFDA) and at [Grants.Gov](#).
- b. As Office of Management and Budget policy requires (see [Office of Federal Financial Management Policy Directive on Use of Grants.Gov](#)), USAID must synopsise and post all funding opportunities and application packages to the **Grants.Gov** site except
 - Assistance programs that are only published through an Assistance Objective Team CFDA entry;

NOTE: USAID, at present, does not publish assistance programs solely through CFDA entries;

 - Awards that USAID limits to non-U.S. recipients, and which will be for less than \$25,000; and
 - Noncompetitive agreements authorized in accordance with **303.3.6.5 (a), (b), (c), (h), (i), or (j)** that USAID will specifically direct to a known recipient.

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The [USAID Policy Guidance on Posting Grant Opportunities](#) and the **Application Packages on Grants.Gov** provide specific instructions for posting synopses and application packages to the **Grants.Gov** Web site.

303.3.5.1 Catalog of Federal Domestic Assistance

Effective Date: 06/01/2006

Pub. L. 95-220, [31 U.S.C. 6104](#), and [OMB Circular A-89](#) established the [Catalog of Federal Domestic Assistance \(CFDA\)](#) as the database for all Federal programs available to U.S. non-governmental organizations, individuals, educational institutions, and state and local governments. An individual or organization can search this database, find assistance programs, determine if an assistance program matches the individual or organization's requirements, and determine if the individual or organization is eligible for the assistance program. The individual or organization may then contact the office that administers the program and find out how to apply.

Use of the CFDA allows an individual or organization to find information in one location, instead of having to search through 26 different Federal Agency Web sites. All agencies of the U.S. Government, including USAID, must collect, coordinate, and submit information on all current Federal domestic assistance programs.

OMB defines a Federal domestic assistance program as any program that provides assistance to a domestic profit or nonprofit corporation; institution or individual; a State or Territory; or, any county, city, or other local government subdivision. This includes programs that finance grants or cooperative agreements to U.S. recipients for activities abroad. It does not include programs that finance grants or cooperative agreements to non-U.S. recipients for activities abroad or for the acquisition or recruitment of personnel.

USAID satisfies the requirements of the Federal Program Information Act (Pub. L. 95-220) by publishing a general entry about its programs in the CFDA. This information must also be published in [Grants.Gov](#) and issued as Requests for Applications or Annual Program Statements.

If the Assistance Objective Team wishes to submit an entry into the CFDA, it should send the information through the cognizant Bureau program office to the Agency Liaison. The program officer must annually update the USAID information in the CFDA.

See **303.3.6.4** concerning the review and evaluation of entries in response to the CFDA.

303.3.5.2 Request for Applications

Effective Date: 06/01/2006

USAID uses a Request for Applications (RFA) when the intent is to provide assistance for an activity or methodology that supports or is in keeping with USAID's program objectives.

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The minimum period for the receipt of applications in response to an RFA is 30 days after the RFA is issued. USAID should provide longer response periods for sizeable activities or more detailed applications used to ensure high quality applications. If USAID cannot provide 30 days for the receipt of applications, the competition may proceed only with the express written approval of the AO.

In cases where USAID will make multiple awards, the RFA may include a closing date of up to one year after issuance, with provisions for multiple reviews (**see 303.3.6.3**).

The RFA must follow an established format (see the [Office of Federal Financial Management Policy Directive on Financial Assistance Program Announcements](#)) as follows:

- a. Section I, Funding Opportunity Description, contains the full programmatic description of the funding opportunity. Specifically, it must include:
 - (1) A general description of the proposed program, with an indication of the range of activities that might be involved, and the established goals of the activity which the applicant must meet. The level of detail in the program description depends on the requirements of the assistance objective.
 - (2) A statement identifying the authorizing legislation (generally the [Foreign Affairs Act](#)) and whether the award is subject to [22 CFR 226 -- Administration of Assistance Awards to U.S. Non-Governmental Organizations](#).
 - (3) Program eligibility requirements.
 - (4) How the award will be administered. For U.S. organizations, the RFA must state that [22 CFR 226](#), [OMB circulars](#), and the [Standard Provisions for U.S. Non-governmental Recipients](#) are applicable. For non-U.S. organizations, the RFA must state that the [Standard Provisions for Non-U.S. Non-governmental Recipients](#) will apply. USAID prefers that, instead of attaching complete copies of [22 CFR 226](#) and the **OMB circulars** to the RFA, instead, the RFA direct applicants to the source. For example, indicate the USAID homepage or other Web site (see **ADS 303.4** and **ADS 303.5**).
- b. Section II, Award Information, provides sufficient information for a potential applicant to decide whether to submit an application. This section must include:
 - (1) An estimate of funds available, the number of awards USAID expects to make, and the financial range of the awards;

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- (2) The anticipated start dates and performance periods of the programs; and
 - (3) Whether the award will be a grant or a cooperative agreement. If the Agency expects to award a cooperative agreement, describe the intended substantial involvement (see **303.3.11**).
- c.** Section III, Eligibility Information, addresses the considerations and factors that make an applicant or application eligible or ineligible for consideration for the award. This section must:
- (1) Identify what types of entities may apply when there are eligibility restrictions.
 - (2) Include a statement to the effect that USAID encourages applications from potential new partners.
 - (3) Describe the cost sharing element, if applicable, and state whether the inclusion of cost share is required or suggested (**see 303.3.10**). If there is no cost sharing requirement or if there are any special conditions regarding the types of costs that are acceptable for cost sharing (consistent with [22 CFR 226](#)), USAID must explicitly state it.
 - (4) State any other minimum qualification requirements.
- d.** Section IV, Application and Submission Information, must include:
- (1) Information for a point of contact, including the name, title, street address, e-mail, and phone and fax numbers, so that an applicant may obtain from the POC any materials needed for the application or otherwise communicate with the POC regarding the application requirements.
 - (2) A statement directing the applicant to submit the application using the SF-424 series, which includes the
 - [SF-424, Application for Federal Assistance](#),
 - [SF-424A, Budget Information – Non-construction Programs](#), and
 - [SF-424B, Assurances – Non-construction Programs](#).
 - (3) The required certifications in **303.3.8**.
 - (4) The required format for the application. In accordance with [5 CFR 1320](#), which implements the [Paperwork Reduction Act](#), USAID may require no more than the original and two copies of any application.

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- (5) The deadline for submission of an application, how USAID makes the determination that an application has been received in time, and consequences of late submission (see **303.3.6.7**).
 - (6) Any funding restrictions, such as limitations on allowable activities or direct costs for the particular program.
 - (7) A statement regarding whether the award will or will not allow the reimbursement of pre-award costs.
 - (8) Other submission requirements. This might include the format of submission (paper or electronic) and where the applicant must submit the application. If USAID authorizes electronic submission, advise what the applicant should do in the event of technical difficulties and provide a point of contact.
- e.** Section V, Application Review Information, must include:
- (1) The criteria and any sub-criteria that USAID will use to evaluate applications, including an indication of their relative importance (see **303.3.6.3**).
 - (2) A clear statement of how USAID evaluates cost sharing as part of the review process (see **303.3.10**). If USAID considers cost sharing as more than just an eligibility factor (see **303.3.5.2.c(3)**), do not use vague statements such as “cost sharing is encouraged” nor use it as a separate evaluation factor. If USAID evaluates it, include cost sharing as a sub-element of cost effectiveness.
 - (3) A description of the review and selection process. The RFA may indicate who evaluates the applications (e.g., USAID personnel, representatives from the local American embassy, host governments, or private sector individuals) and who makes the final selection.
- f.** Section VI, Award and Administration Information, must include:
- (1) What a successful applicant can expect to receive following selection. State that a notice of award signed by the AO is the authorizing document, whether USAID will provide it electronically, and to whom USAID will provide it. USAID may include a description of the form, the content of notifications to unsuccessful applicants, and whether debriefings will be considered.
 - (2) A statement identifying the standard provision and the deviation when the award includes any deviations from the **Standard Provisions**.

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- (3) General information on all reporting requirements.
- g.** Section VII, Agency Contacts, must include points of contact (POC) for questions while the funding opportunity is open. In addition to the name and address of the POC, USAID may establish a generic e-mail address for inquiries.
- h.** Section VIII, Other Information, should include:
 - (1) A statement that USAID reserves the right to fund any or none of the applications submitted, and
 - (2) Any other relevant information.

303.3.5.3 Cancellation of Requests for Applications

Effective Date: 06/01/2006

The cancellation of a Request for Applications (RFA) costs the U.S. Government and applicants time, effort, and money. USAID should cancel RFAs only when cancellation is in the public interest. For example:

- (1) When there is no longer a program or project or when USAID is no longer supporting the program or project.
- (2) When amendments to the RFA would be of such magnitude that a new RFA is desirable.

If USAID cancels an RFA, USAID will return any applications it has received unopened and will issue a notice of cancellation, either posted electronically as a general notice or sent to all prospective applicants, or both. USAID must purge any electronic applications for a cancelled RFA from primary and backup data storage systems. The notice of cancellation must:

- (1) Identify the RFA number and provide the title or the subject matter,
- (2) Briefly explain the reason why USAID cancelled the invitation, and
- (3) Assure prospective applicants that they will be given an opportunity to apply for any subsequent or future RFA for the program, if appropriate.

The AO must document the:

- (1) Circumstances and rationale for the cancellation;
- (2) Applications received, returned, and purged; and
- (3) Cancellation notice and RFA issuance dates.

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303.3.5.4 Annual Program Statement

Effective Date: 06/01/2006

When USAID intends to support a variety of creative approaches towards developing methodologies to assess and implement assistance objective activities, the Agency may use an Annual Program Statement (APS) to generate competition for these awards.

When used, USAID will publish an APS at least once a year, either with an open-ended response time or a closing date of at least six months after issuance.

The APS must contain:

- (1) The specific statutory authority and program eligibility requirements, when applicable. USAID must state that the program is authorized in accordance with the [Foreign Assistance Act](#).
- (2) The activity objectives, including any areas of special interest and what information will be requested.
- (3) A brief statement describing how USAID evaluates resulting applications, including how the Agency will ensure environmental soundness and compliance in design and implementation when required by the [22 CFR 216](#) determination, and evaluation criteria along with an indication of their relative importance.
- (4) An estimate of funds available, if appropriate, and the anticipated number of awards.
- (5) Any cost sharing element, as applicable (see [22 CFR 226.23](#)).
- (6) How USAID will administer the award. For U.S. organizations, state that [22 CFR 226](#), [OMB circulars](#), and the **Standard Provisions** apply. For non-U.S. non-governmental organizations, state that the [Standard Provisions for Non-U.S. Non-Governmental Organizations](#) apply. It is preferred that complete copies of these documents are not attached to the APS. Rather, link to the documents through the Internet.
- (7) A point of contact, including name, title, address, and phone number.
- (8) A statement that USAID reserves the right to fund any or none of the applications submitted.
- (9) The required or suggested format for the application. In accordance with [5 CFR 1320, the Paperwork Reduction Act](#), no more than the original and two copies of any application will be required.

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(10) Any other relevant information.

303.3.5.5 Unsolicited Concept Papers and Applications

Effective Date: 06/01/2006

The [Guide to USAID's Assistance Application Process and to Submitting Unsolicited Assistance Applications](#) provides guidance for submitting unsolicited concept papers and applications. USAID should encourage the general public to review it.

303.3.6 Competition

Effective Date: 06/01/2006

The Agreement Officer (AO) guarantees the integrity of the competitive process by ensuring overall fairness and consideration of all eligible applications. The AO also has the ultimate authority to make award decisions for grants and cooperative agreements on behalf of USAID.

303.3.6.1 Competition Requirements

Effective Date: 06/01/2006

In accordance with the [Federal Grant and Cooperative Agreement Act](#), USAID encourages competition in the award of grants and cooperative agreements so that it may identify and fund the best projects to achieve program objectives. Unless USAID authorizes an exception in accordance with **303.3.6.5**, USAID must award all grants and cooperative agreements competitively. Competition requires that the Agency publish an announcement in accordance with **303.3.5**, seek applications from all eligible and qualified entities, conduct an impartial review and evaluation of all applications (see **303.3.6.4**), and make an objective recommendation to the AO for award.

303.3.6.2 Eligibility

Effective Date: 06/01/2006

The AO verifies that a Request for Application (RFA) or Annual Program Statement (APS) correctly identifies applicant eligibility requirements and essential program qualifications in accordance with the following standards:

- a. Authorizing legislation and governing program requirements specify eligibility requirements for individual grant programs. Generally, and in compliance with the [Foreign Assistance Act of 1961, as amended](#), USAID may provide assistance to any U.S. or non-U.S. organization, individual, non-profit, or for-profit entity. When specific program requirements restrict eligibility (for example, Title XII Collaborative Research Support Programs or the program for expanding Minority Serving Institutions), USAID must identify it in the Catalog of Federal Domestic Assistance, RFA, APS, or other appropriate notice.

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- b.** To be eligible for assistance under the private voluntary organization (PVO) grant program, both U.S. and international PVOs must be registered with USAID as required by [22 CFR 203](#). The registration requirement does not apply to local PVOs.
- c. Qualifications.** The AOT establishes the minimum qualifications for applicant consideration. However, if the AO determines that the criteria is so restrictive that it severely limits competition, the AO may request that the Activity Manager broaden the criteria or require the Activity Manager to process an exception to competition, as provided in **303.3.6.6**, in order to make the planned award.
- d. Multi-tiered Competition.** The AOT, with the approval of the AO, may establish a two or more tiered competition system. The AOT may ask potential applicants to submit an executive summary or concept paper and corresponding budget information first. After it reviews and evaluates these submissions, the AOT selects the best submissions and conducts a second level of competition that uses more specific evaluation criteria. The AOT may conduct additional levels of competition only if the second level does not adequately identify applicants for the activities to be funded. Section V of the RFA for a multi-tiered competition must explain the intended process so that potential applicants know what to expect at each phase of the competition.

303.3.6.3 Evaluation Criteria

Effective Date: 11/05/2009

The AOT develops evaluation criteria. The criteria must include the:

- Technical merits of the applications,
- Cost effectiveness and cost realism of the application,
- Past performance of the applicant, and
- Branding Strategy and Marking Plan.

The evaluation criteria in an announcement must provide as much information as practical to allow potential applicants to judge whether it is in their best interest to incur costs to apply for the award. The criteria must address the importance of the technical and administrative elements, but must not be unduly restrictive. It is not necessary to quantify the relative weight of the criteria. But the announcement must identify the relative importance of the criteria. The Activity Manager must obtain the AO's approval of the criteria before publishing it in the Request for Applications (RFA) or Annual Program Statement (APS).

- a. Past Performance.** An applicant's past performance can serve as an indicator of the quality of its future performance. An applicant must provide a list of all its contracts, grants, or cooperative agreements involving similar or related programs during the past three years. The reference information for these

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awards must include the performance location, award number (if available), a brief description of the work performed, and a point of contact list with current telephone numbers. The Activity Manager determines whether to require this information as part of the initial application or later from a limited number of applicants who have the best chance of being selected for an award. Requiring the information at a later date may be appropriate when USAID is conducting a prequalification competition (see **303.3.6.2.d**). The Activity Manager must obtain past performance information before selection and make that information part of the written evaluation that he or she forwards to the AO. (See [Best Practices for Collecting and Using Current and Past Performance Information](#).)

- (1) **Evaluating Past Performance.** The Activity Manager and the Technical Evaluation Committee (TEC) (defined in **303.3.6.4**) evaluate an applicant's past performance. The Activity Manager and TEC validate the applicant's past performance reference information based on existing evaluations to the maximum extent possible, and make a reasonable, good faith effort to contact all references to verify or corroborate the following evaluation criteria:
- How well an applicant performed,
 - The relevancy of the work performed under the program,
 - Instances of good performance,
 - Instances of poor performance,
 - Significant achievements,
 - Significant problems, and
 - Any indications of excellent or exceptional performance in the most critical areas.

To ensure that the past performance evaluation is effective, the Activity Manager or TEC, must:

- Assess how recent and relevant the past performance information is.
- Evaluate the past performance of the entire team - consortia, joint venture members, and proposed sub-award organizations, as applicable.
- Include analysis and rationale for their conclusions about an applicant's past performance.

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The TEC may use the Contractor Performance System (CPS) and the Past Performance Information Retrieval System (PPIRS) if there is information available on the recipient in these systems, taking into account the differences between performance under acquisition and performance under assistance.

The Activity Manager and the TEC may contact references other than those provided in the application, if the RFA or APS state that it is allowed.

- b. No Requirement for Prior USAID Experience.** RFA and APS documents for the award of USAID assistance instruments may not require prior USAID experience.
- c. Gender issues.** USAID must address gender issues in all USAID-funded activities (see **ADS 201.3.11.6**). In RFAs (including those for Leader/Associate Awards) and APSs, the Agreement Officer must ensure that the RFA or APS:
- Integrates gender issues into the solicitation or includes a rationale for not addressing gender in the project or activity, in accordance with **ADS 201.3.11.6**. When USAID directs applicants to incorporate gender issues into their applications, the RFA or APS must state the requirements in the different performance components, e.g., Program Description, key personnel qualifications, and monitoring and evaluation requirements.
 - Integrates gender issues into the technical selection criteria (e.g., technical understanding and approach, monitoring and evaluation, personnel, etc.) that correspond to the performance requirements stated above, unless an approved rationale for not incorporating gender issues has been included in the RFA or APS.

If the program/project office provides the Agreement Officer with a procurement request for a program that does not include the requirements in **ADS 201.3.11.6** for either integrating gender issues in the Program Description or the rationale for why gender is not an issue for the particular assistance program it intends to fund, then the Agreement Officer will notify the program/project office that he/she is unable to take any further action on the request until it meets one of these requirements.

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

- d. Volunteers for Prosperity.** [Executive Order 13317](#) requires that an applicant's use of highly-skilled U.S. volunteers be an evaluation factor in the selection of

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applications for assistance activities to be implemented abroad under the following initiatives:

- Emergency Plan for AIDS Relief,
 - Digital Freedom Initiative,
 - Water for the Poor Initiative,
 - Trade for African Development and Enterprise Initiative,
 - Middle East Partnership Initiative, and
 - Other Presidential initiatives as identified in the future.
- e. **Environmental Concerns.** The Activity Manager must ensure that the requirements in [22 CFR 216](#) for an environmental impact assessment have been met, approved in writing by the relevant Bureau environmental officer, and are incorporated into the RFA, APS and award as necessary. When USAID directs applicants to address environmental concerns in an activity, the RFA or APS must state the requirement. [ADS 204](#) provides detailed guidance on environmental concerns, and [ADS 201](#), [ADS 202](#), and [ADS 203](#) provide guidance on incorporating [ADS 204](#) into the planning, achieving, and learning processes.
- f. **Branding and Marking.** It is a Federal statutory and regulatory requirement (see [Section 641, Foreign Assistance Act of 1961, as amended](#), and [22 CFR 226.91](#)) that all overseas programs, projects, activities, public communications, and commodities that USAID partially or fully funds under an assistance award or sub-award must be appropriately marked with the USAID identity. Under [22 CFR 226.91](#), USAID requires the submission of a Branding Strategy and a Marking Plan by the “apparently successful applicant.” The apparently successful applicant’s proposed Marking Plan may include a request for approval of one or more exceptions to the marking requirements in [22 CFR 226.91](#). The AO evaluates the apparently successful applicant’s Branding Strategy and Marking Plan (including any requests for exceptions) for approval, consistent with the provisions “Branding Strategy,” “Marking Plan,” and “Marking of USAID-funded Assistance Awards” contained in [AAPD 05-11](#), [22 CFR 226.91](#), and [ADS 320](#). Please note that in contrast to “exceptions” to marking requirements, waivers to these requirements based on circumstances in the host country must be approved by the cognizant Mission Director or other USAID principal officer [see [22 CFR 226.91\(j\)](#)]. Please contact OAA/Policy, General Counsel/Acquisition & Assistance, or USAID’s Senior Advisor on Brand Management if you have any questions about the applicability of either [AAPD 05-11](#) or [22 CFR 226.91](#).

303.3.6.4 **Reviewing and Evaluating Applications**

Effective Date: 06/01/2006

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

- a. At least two people (three or more is preferable) will be appointed to serve on each TEC to evaluate applications. The TEC must evaluate the applications using the evaluation criteria stated in the Request For Applications (RFA). The TEC must keep selection information and applicant proprietary data confidential.
- b. Committee members must possess the requisite technical knowledge or expertise to evaluate the technical merit of the applications. The Agency may make exceptions with the approval of the AO.
- c. When necessary, other Federal agencies and non-governmental evaluators may participate in reviewing and evaluating applications. USAID staff (direct-hire and contract employees) must comprise a majority of the members on the TEC.
- d. The AO must take steps to ensure that members of the TEC, both USAID staff and outside evaluators, do not have conflicts of interest with the organizations whose applications are being reviewed. A conflict of interest includes situations when:
 - A member of the TEC works for or has any other financial interest (including being an unpaid member of a Board of Directors) in the organization that submits an application for the committee's review,
 - His or her spouse/partner or minor child works for or has any other financial interest (including being an unpaid member of a Board of Directors) in the organization that submits an application for the committee's review,
 - An organization or entity in which a TEC member serves as an officer, director, trustee, general partner, or employee, has a financial interest in an application under the committee's review. This includes situations where the TEC member is negotiating for one of the positions noted in this bullet and is serving as an unpaid member of the organization or entity's Board of Directors.
 - An employee of an external organization (e.g., technical advisors in AIDS, child survival, infectious diseases, population, basic education) participates in the review of a potential competitor's proposal, which allows him or her access to financial or other data that may be competitively useful to the reviewer's organization.

The AOT must make all efforts to identify potential conflicts early in the competitive process. Because resolution of conflicts of interest is fact-driven and case-specific, the AOT must coordinate with the AO and the cognizant General Counsel or Regional Legal Advisor on the issues.

- e. When periodic reviews are specified, the Activity Manager collects the applications as they are received until the Agency can review and evaluate a reasonable number in accordance with the provisions of the announcement. If

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the AOT established a specific timeframe for the review of applications in the RFA, for example, quarterly reviews, and only a small number of applications was received during that time, the AOT may consider the received applications to be a reasonable number. The TEC may also include applications it received in response to earlier notices in a periodic review.

- f. For Office of Foreign Disaster Assistance (OFDA) programs, the OFDA director may authorize selection of a sole application received, if he or she determines that it is not advisable to wait for more applications. The Activity Manager must provide a copy of such an authorization to the AO.
- g. When evaluating applications against a criterion related to gender issues, the Activity Manager must coordinate with the Office of Economic Growth and Trade, Women in Development (EGAT/WID).
- h. If an unsolicited application reasonably fits an existing program, the AOT may include the application in a relevant competition under an RFA or APS. If it does not, an exception to competition under **303.3.6.5** is necessary before USAID can issue an award to the applicant.
- i. The same individuals should review all applications for each specific award. If this is not possible or if there are established procedures for review by separate committees, the Activity Manager must document the reason and the procedure and submit it to the AO for the agreement files.
- j. The AO provides the TEC with a written evaluation plan that specifies the criteria and methodology for evaluating the applications consistent with the information published in the RFA or APS.
- k. The TEC must prepare a written evaluation of each application and compare it against the established criteria.
- l. If USAID did not assign numerical values to the evaluation criteria, then the comparison will be in the form of a narrative. The narrative will detail each application's strengths and weaknesses relative to the evaluation criteria. If the RFA does not indicate the relative importance of the evaluation criteria, then all evaluation criteria are equally weighted.
- m. If USAID assigns numerical values to the criteria, the evaluation must include a discussion of the numerical scoring and a narrative explaining each application's strengths and weaknesses when compared to the evaluation criteria. The TEC must also include a discussion of its review procedure. The Activity Manager then must forward the written evaluation to the AO, who must place a copy in the agreement file.

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- n. AOs must ensure that the solicitation, selection, award, and administration of USAID grants and cooperative agreements follow all the requirements and guidance of [22 CFR 205, Participation By Religious Organizations In USAID Programs](#) (see **ADS 303.3.28**).

303.3.6.5 Exceptions to Competition Requirements

Effective Date: 06/01/2006

USAID does not require competition for assistance awards when the Activity Manager has prepared a justification based on one of the following exceptions:

- a. **Follow-on Assistance Agreements and Amendments.** A follow-on assistance award is a new agreement subsequent to the completion of an existing agreement for either the same activity or to further develop an existing assistance relationship. USAID may implement a follow-on assistance award through an amendment to the original award or as an entirely separate award. This authority must not be used to extend an award made to U.S. organizations beyond 10 years of its original award date, unless an exception is approved by the Director, M/OAA; or, for awards extended beyond 10 years to non-U.S. organizations, an exception is approved by the Director, M/OAA, or the cognizant Mission director. USAID also must not use the follow-on exception to continue a relationship with a recipient that received a noncompetitive award based on the small grant exception (see **303.3.6.5d** below).

The Activity Manager must justify, in writing and with specificity, why the benefits of continuing the assistance activity with the same recipient exceeds the benefits of a competitive process favored by Federal law and Agency policy. Specifically, amendments which require justifications are those which extend the life of an award and simultaneously either increase the total estimated amount of the award or change the program description. USAID does not require a justification if the amendment is strictly for administrative purposes (such as incremental funding, changes which do not require an increase to the total estimated amount of the award, or a non-substantive change to the program description).

USAID may not extend an award through the exercise of an option clause. It is inappropriate for the Agency to reserve the authority to unilaterally extend an assistance award at its discretion because it would be inconsistent with the limited management role available to the Agency when establishing an assistance relationship (see [ADS 304](#)).

- b. **Unsolicited applications.** USAID may make an award based on an unsolicited application, without the benefit of competition, when the application:
- Clearly demonstrates a unique, innovative, or proprietary program;
 - Represents appropriate use of USAID funds to support or stimulate a public purpose; and

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- Fits within an existing Assistance Objective.

Unsolicited applications are those submitted to USAID for an award by an applicant solely on his or her initiative, without prior formal or informal solicitation by USAID. In such cases, the AOT leader or the head of the Operating Unit must certify that

- USAID did not solicit the application.
- Based on a review by an appropriate technical specialist and an AO, the application is considered unique, innovative, or proprietary.
- Funding the application is an appropriate use of USAID funds to support or stimulate a public purpose.
- It fits within an assistance objective.

When the terms of an unsolicited application fits within the scope of a published and open Annual Program Statement (APS), the application may be considered under the APS. The unsolicited application is then considered to have competed under the APS and no justification for an exception to competition is required. A recipient request to extend an ongoing relationship must not be considered an unsolicited application. In order to make such an extension without competition, USAID must prepare a justification for it as an amendment or follow-on assistance award.

See [Guide to USAID's Assistance Application Process and to Submitting Unsolicited Assistance Applications](#) for further information.

- c. **Exclusive or predominant capability.** USAID does not require competition when it considers a recipient to have exclusive or predominant capability based on the following criteria:

- Proprietary capability,
- Specialized facilities or technical expertise,
- An existing and unique relationship with the cooperating country or beneficiaries, or
- Participation in a Global Development Alliance, USAID's business model promoting public-private alliances as a central element of the Agency's strategic assessment, planning, and programming efforts.

In these cases, the Activity Manager must describe in sufficient detail the uniqueness of the proposed recipient and how it applies to the activity to be supported. The justification must also describe what, if any, other options USAID explored.

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This exception may not be used to continue an ongoing relationship when the applicant developed the exclusive or predominant capability during performance of a USAID award. In order to make such an extension without competition, USAID must prepare a justification for it as an amendment or follow-on assistance award. This exception may also not be used to continue an ongoing relationship based on a noncompetitive award using the small grant exception.

- d. **Small grant awards.** These are awards with an estimated value each of \$100,000 or less and a term of no more than one year. These awards may not be amended to either add funds beyond \$100,000 or extend the date beyond one year from the original date of the award. The justification must explain how the proposed award fits this exception.
- e. **Local competition.** Competition may be limited to local or regional (indigenous) organizations. If a competition is limited to local or regional organizations, U.S. organizations may not compete for the award unless the program is re-advertised to provide all U.S. organizations with a fair opportunity to compete.
- f. **The Director, Office of Acquisition and Assistance (M/OAA).** The director, M/OAA, may authorize limited competition among a select group of applicants when it is necessary for efficiency. The AO must submit a justification that describes in sufficient detail what other options USAID explored, including other exceptions and the multiple review alternative discussed at **303.3.6.4e**.
- g. **New entrants.** When a grant is estimated to be worth less than \$5 million, the AO may limit competition to organizations that have received USAID direct assistance of less than \$500,000 during the past five years in order to expand the number and sustainability of development partners. In such cases, the AO will consult with the Activity Manager on limiting competition and document the rationale when limiting it. The solicitation will specify the eligibility restrictions.
- h. **Congressionally mandated programs.** When a Congressional earmark specifies an award to a particular organization, no competition is required. The award must be stated in legislation, and the justification must include a copy of the statute specifically describing the award and any information supporting the planned activity as requested by the AO.

USAID may also use the exception if the award is based on language in a Congressional Conference Report that clearly indicates that Congress intends for USAID to make an award to a particular recipient or when both House and Senate committee reports indicate a Congressional intent. In these cases, in addition to the approvals in **303.3.6.6**, General Counsel or the cognizant Regional Legal Advisor, and the Assistant Administrator for the Bureau for Legislative and Public Affairs must provide approval for the justification before it may be submitted to the AO.

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- i. **Critical objectives of the foreign assistance program.** When no other exception applies, the cognizant Assistant Administrator (AA) or Office director who reports directly to the Administrator may authorize an award without competition after determining that it is critical to the objectives of the foreign assistance program. The AA or Office director must not re-delegate this authority. The justification must explain the circumstances that require using the exception, discuss what other options USAID explored, and may not rely on any of the other exceptions. The responsible AA or Office director who reports directly to the Administrator has final approval authority over the exception.
- j. **Associate Awards.** USAID may make awards of Associate grants or cooperative agreements under a Leader with Associate instrument without competition (see **303.3.26**).
- k. **Other Exceptions.** Specific blanket justifications for a particular purpose or period of time, e.g., HIV/AIDS and tsunami relief (see **303.5**).

303.3.6.6 Justifications for Exceptions to Competition

Effective Date: 06/01/2006

Note these requirements for the justifications for exceptions to competition.

- a. **Noncompetitive awards in excess of \$5 million.** For all noncompetitive awards in excess of \$5 million, the cognizant General Counsel or Regional Legal Advisor must review all justifications under **ADS 303** that support a noncompetitive award or award augmentation before the Activity Manager submits it to the AO.
- b. **Noncompetitive awards in excess of \$10 million.** Before a justification for any noncompetitive award in excess of \$10 million is submitted to the AO, the cognizant Assistant Administrator (AA) must submit an action memorandum in support of the exception. The memorandum must include as an attachment a copy of the justification for non-competition. The memorandum must indicate that the AA has personally reviewed the proposed decision to ensure that there will be no negative public policy implications of such an award and has cleared the grant on this basis. Both the Director, M/OAA, and the Assistant General Counsel for Acquisition and Assistance must then review the action memorandum for clearance. They may not delegate this approval authority; however, individuals serving in those positions in an "acting" capacity also have the authority to clear the action memorandum.
- c. **Amendments and follow-on awards in excess of \$20 million.** If the noncompetitive assistance award exceeds \$20 million and is justified by the "amendment and follow-on" exception, an action memorandum with the approval of the Administrator or Deputy Administrator (DA) is required for it. The Administrator or DA reviews the proposed decision to ensure that there will be no negative public policy implications and clears the grant on this basis. The

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Director, M/OAA, and the Office of the General Counsel must also review the memorandum for clearance. These approvals may not be delegated; however, individuals serving in the clearance positions in an "acting" capacity also have the authority to clear the action memorandum. This exception includes amendments to Associate Awards under Leader with Associate assistance instruments.

If the AO rejects the justification, he or she must notify the Activity Manager in writing, explaining the reasons for rejection. The Activity Manager may appeal to the Director, M/OAA, who will make the final determination.

303.3.6.7 Late or Incomplete Submissions
Effective Date: 06/01/2006

USAID may review and consider late or incomplete Request For Applications (RFA) or Annual Program Statement (APS) award applications if:

- USAID's treatment of the material is consistent with the terms of the RFA or APS,
- All late applications are treated the same, and
- They are evaluated before any agreements are awarded under the RFA or APS.

The AO consents in writing to the review of late or incomplete applications.

303.3.7 The Award Decision
Effective Date: 06/01/2006

The AO's decision to fund or not to fund an award is final and not subject to review. Any information that may impact the AO's decision must be directed to the AO.

303.3.7.1 Notification
Effective Date: 06/01/2006

- a. Only the AO may notify the apparently successful awardee that they are being further considered. It is essential that no one on the evaluation team make any commitment, expressed or implied, to the selected applicant. Only the AO is authorized to make a commitment on behalf of USAID.
- b. USAID must individually notify each applicant in writing on the success of its application. Once USAID decides which applicant the Agency will consider for award, the AO or the Activity Manager (if authority is delegated by the AO) must notify all unsuccessful applicants that they will not be considered further and briefly explain why USAID did not select their application. The letters must garner the approval of the AO before the Activity Manager may send them.

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303.3.7.2 Request for Additional Information or Debriefings

Effective Date: 06/01/2006

Within 10 working days after an applicant receives notice that USAID will not fund its application, the unsuccessful applicant may send a written request for additional information to the USAID Bureau/Independent Office (B/IO) that issued the Request For Applications (RFA) or Annual Program Statement (APS).

USAID's responses must be limited to the Agency's interest in supporting the applicant's program as described in the application. In general, comparing one application to another is neither advisable nor helpful to the applicant. The Agency encourages the Technical Evaluation Committee (TEC) chair and the AO to give additional information that would be useful to the applicant in preparing future applications.

Debriefings may be provided at the discretion of the AO. USAID may respond orally, in writing, or electronically. If responding orally, the AO or the technical representative from the B/IO must make a written summary of the response for the agreement file. The AO must be present at and should lead any oral debriefing. If responding in writing, staff members must obtain the AO's approval for any written communication before it is sent. The cognizant B/IO has 30 days to respond to the request or inform the applicant that more time is necessary.

If the applicant has questions about the program or about the technical evaluation, the TEC chair will provide constructive feedback that may assist the applicant when developing proposals in the future. The TEC chair explains the basis for the decision and the strengths and weaknesses of the technical application in terms of the published evaluation and review criteria. When the applicant has questions about process, accountability, and business considerations, the AO will respond. The TEC chair and the AO will jointly respond when the applicant raises both types of questions.

***303.3.8 Pre-Award Certifications, Assurances, and Other Statements of the Recipient**

Effective Date: 03/16/2011

In addition to the certifications included in the [Standard Form 424](#), the AO must obtain the following certifications, assurances, and other statements from both U.S. and non-U.S. organizations (except as specified below) before making an award and as otherwise required by the regulations listed in this section. When awarding a Fixed Obligation Grant (FOG) the following are to be used instead of those specified in this section:

- The procedures in **303.3.25**

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

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- The additional help document, [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#), and
- [Fixed Obligation Grant \(FOG\) Entity Eligibility Checklist](#).

The AO may choose to ask that the applicant submit the certifications either as part of the application or during negotiations. The AO should consider the administrative burden of requiring certifications as part of the application in light of potential delays in making the award while waiting for the certifications. The required certifications, assurances, and other statements are:

- a. A signed copy of [Certifications and Assurances](#), which includes:
 1. **Assurance of Compliance with Laws and Regulations Governing Nondiscrimination in Federally Assisted Programs** (This assurance applies to Non-U.S. organizations, if any part of the program will be undertaken in the U.S.);
 2. **Restrictions on Lobbying** ([22 CFR 227](#));
 3. **Prohibition on Assistance to Drug Traffickers** ([ADS 206](#)); and
 4. **Certification Regarding Terrorist Funding** ([AAPD 04-14](#)).
- *b. Other certifications and statements found in [Certifications, Assurances, and Other Statements of the Recipient](#):
 1. The **Survey on Ensuring Equal Opportunity for Applicants**;
 2. A Data Universal Numbering System (DUNS) number (See [Use of a Universal Identifier by Grant Applicants](#) for background information.);
 3. A signed copy of **Key Individual Certification Narcotics Offenses and Drug Trafficking**, ([ADS 206.3.10](#)) when applicable;
 4. A signed copy of **Participant Certification Narcotics Offenses and Drug Trafficking** ([ADS 206.3.10](#)) when applicable; and

303.3.9 Pre-Award Responsibility Determination

Effective Date: 11/08/2010

The recommendation or selection of an application for award by an Activity Manager or a Technical Evaluation Committee, respectively, does not in any way guarantee the award. The AO makes the final determination on the award and must be fully satisfied that the applicant has the capacity to adequately perform on the award in accordance with the principles established by USAID and the Office of Management and Budget (OMB). Depending on the result of this responsibility determination, the AO may

- Make the award,
- Deny the recommendation of the Activity Manager and not create the award, or

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

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- Award with "special award conditions" ([22 CFR 226.14](#) and [303.3.9.2](#)).

A positive responsibility determination means that the applicant possesses or has the ability to obtain the necessary management competence to plan and carry out the assistance program to be funded, and that the applicant will practice mutually agreed upon methods of accountability for funds and other assets provided by USAID.

Note that while an organization's past performance on USAID awards should be a factor in determining its responsibility, a history of receiving grants from USAID does not guarantee that an organization is responsible. Changes in personnel, accounting practices, or financial status may affect an organization's performance on a new award. The AO must also verify that the applicant has a record of business integrity and does not appear on the [Excluded Parties List System \(EPLS\)](#) or the [Specially Designated Nationals \(SDN\) and Blocked Persons List](#). Before adding incremental funding, the AO must again verify that the applicant does not appear on these lists.

The AO addresses the responsibility of the prospective recipient in the Negotiation Memorandum (See [PEB 2005-12](#), only available on the intranet). When awarding a FOG, the following are to be used instead of those specified in this section:

- The procedures in [303.3.25](#),
- The additional help document, [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#), and
- The mandatory reference, [Fixed Obligation Grant \(FOG\) Entity Eligibility Checklist](#).

For all other assistance awards, the following is specific guidance by category for making the determination of responsibility:

CATEGORY A: U.S. ORGANIZATIONS THAT HAVE BEEN RECIPIENTS OR CONTRACTORS UNDER USAID OR OTHER U.S. GOVERNMENT (USG) ACQUISITION OR ASSISTANCE INSTRUMENTS

When a U.S. organization has been previously determined responsible by USAID or another USG Agency, the AO may rely on:

- An **A-133** or similar audit maintained by M/OAA/Contract Audit and Support Division, Contract Audit Management;
- A signed copy of the statutory and regulatory certifications in [303.3.8](#);
- The quality of the applicant's past performance on similar USAID projects, including compliance with the terms and conditions of the funding agreement, as evaluated by the AOT in accordance with [303.3.6.3](#); or
- Other information as necessary, including formal pre-award surveys (see [303.3.8](#), [303.3.5.2](#), [303.3.9.1](#) and [303.3.25](#)).

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

CATEGORY B: NON-U.S. ORGANIZATIONS THAT HAVE BEEN RECIPIENTS OR CONTRACTORS UNDER USAID OR OTHER U.S. GOVERNMENT (USG) ACQUISITION OR ASSISTANCE INSTRUMENTS

To make a responsibility determination for a non-U.S. organization that has been previously determined responsible by USAID or another USG Agency, the AO may rely on:

- Audits performed in accordance with [ADS 591.3.4.2](#);
- A signed copy of the applicable statutory and regulatory certifications in **303.3.8**;
- The quality of the applicant's past performance on similar USAID projects, including compliance with the terms and conditions of the funding agreement, as evaluated by the AOT in accordance with **303.3.6.3**; or
- Other information as necessary and appropriate, including pre-award surveys, (see **303.3.8**, **303.3.5.2**, **303.3.9.1** and **303.3.25**).

CATEGORY C: ORGANIZATIONS NEW TO USAID OR ORGANIZATIONS WITH OUTSTANDING AUDIT FINDINGS

If a criteria found in **303.3.9.1**, applies to the selected or recommended applicant, the AO must perform a survey in conformance with that provision before making a responsibility determination. The survey must be considered when making the determination. At a minimum, the determination for such an applicant will be based on the same considerations as in categories **a** or **b** of this section, depending on whether it is a U.S. or non-U.S. organization. Additionally, the AO must obtain the following information from these applicants, when appropriate:

- Copies of audited financial statements for the last three years, which a Certified Public Accountant or other auditor satisfactory to USAID has performed;
- Projected budget, cash flow, and organization charts; and
- Copies of applicable policies and procedures (e.g., accounting, purchasing, property management, personnel).

303.3.9.1 Pre-Award Surveys

Effective Date: 11/08/2010

a. Pre-Award Survey Requirements. When awarding a FOG the following are to be used instead of those specified in this section:

- The procedures in **303.3.25**;
- The Additional Help document, [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#); and

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- [FOG Entity Eligibility Checklist.](#)

For all other assistance awards, if any of the following criteria apply, the AO establishes a formal survey team to conduct an examination that will help inform the responsibility determination (see **303.3.9**):

- The AO or Activity Manager is uncertain about the prospective recipient's capacity to perform financially or technically.
- The prospective recipient has never had a USAID grant, cooperative agreement, or contract. This requirement does not apply to awards of Fixed Obligation Grants.
- The prospective recipient has not received an award from any other Federal agency within the last five years. This requirement does not apply to awards of Fixed Obligation Grants.
- The AO has knowledge of deficiencies in the applicant's A-133 (or equivalent) audit.
- The AO determines it to be in the best interest of the U.S. Government.

b. Contents of the Pre-Award Survey. The survey team examines the applicant's systems to determine whether the prospective recipient has the necessary organization, experience, accounting and operational controls, and technical skills — or the ability to obtain them — in order to achieve the objectives of the program.

- (1) For a U.S. organization, the AO applies the standards in [22 CFR 226](#) – **22 CFR 226.20 - 226.28** (Financial and Program Management); **22 CFR 226.30 - 226.37** (Property Standards); **22 CFR 226.40 - 226.49** (Procurement Standards); and, **22 CFR 226.50 - 226.53** (Reports and Records).

The AO or his or her representative must conduct a detailed analysis that addresses whether

- The applicant's accounting, recordkeeping, and overall financial management systems meet the applicable standards in **22 CFR 226**.
- The applicant's system of internal controls is reasonable in accordance with applicable cost principles. This includes the segregation of duties, handling of cash, contracting procedures, and personnel and travel policies.
- The applicant's property management system, if applicable, meets the property standards in **22 CFR 226**.

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

- The applicant meets the requirements in [OMB Circular A-133](#) for the administration and monitoring of sub-awards.
 - The applicant's procurement system, if procurement is significant to the award, meets the standards set forth in **22 CFR 226**.
- (2) For a non-U.S. applicant, although **22 CFR 226** does not directly apply, the AO must use this regulation in determining whether a potential non-U.S. recipient is responsible.

c. Formal Pre-Award Survey Team Guidelines. When assembling a formal survey team, the AO must select one with appropriate expertise. A typical team consists of:

- An AOT member,
- The AO,
- A financial officer from the Bureau for Management, Office of the Chief Financial Officer, or the Mission or regional controller's office, and
- One or more representatives of either M/OAA/Contract Audit and Support Division, Contract Audit Management Branch, or the cognizant regional inspector general for audit, if appropriate.

The survey team reviews the applicant's systems against the standards discussed in paragraph **b** of this section and submits its findings to the AO for review, consideration, and the responsibility determination.

d. Making the Responsibility Determination. Before the award of any grant or cooperative agreement, the AO must

- (1) Review the proposed program description and financial plan to ensure that they adequately describe the objectives of the program, the activities funded by USAID that will achieve the objectives, and a monitoring system to measure the recipient's success. The Activity Manager advises the AO on the professional and technical experience and competence of the applicant and the conformity of the applicant's program to USAID program criteria.
- (2) Make a written final determination of the applicant's responsibility in the Memorandum of Negotiation. If affirmative, the AO must state in the memorandum that the applicant
- Has adequate financial resources or the ability to obtain such resources, as required during the performance of the award.

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

- Has the ability to meet the award conditions, considering all existing prospective recipient commitments, both non-governmental and governmental.
- Has a satisfactory record of performance. Generally, relevant unsatisfactory performance in the past is enough to justify a finding of non-responsibility, unless there is clear evidence of subsequent satisfactory performance or the applicant has taken adequate corrective measures to assure that it will be able to perform its functions satisfactorily.
- Has a satisfactory record of business integrity.
- Is otherwise qualified to receive an award under applicable laws and regulations.

303.3.9.2 High Risk Recipients

Effective Date: 06/01/2006

If, after conducting a comprehensive review of a potential recipient, the AO is unable to make a positive responsibility determination, the AO may either deny the Activity Manager's recommendation and not make the award or award with "special award conditions" (high risk) (see [22 CFR 226.14](#)). The AO, however, may consider this choice only if it appears likely that the potential recipient can correct its deficiencies within a reasonable period of time. Because regulation authorizes "special award conditions," a deviation is not needed.

While **22 CFR 226** is not directly applicable to awards to non-U.S. organizations, as a matter of USAID policy the standards in this section may be used for non-U.S. recipients.

It is the AO's responsibility to minimize the risk to USAID posed by high risk organizations. When the AO makes an award, he or she may consider requiring any of the following additional conditions:

- a. Special award conditions, such as more detailed or more frequent financial reports, and
- b. Technical assistance to the recipient. When the AO determines that more Federal oversight is necessary, the AO may
 - Issue a contract to a third party to provide technical assistance to the recipient;
 - Require the recipient to contract for technical assistance; or
 - Have USAID staff provide technical assistance directly to the recipient.

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

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These additional conditions are intended to be for a limited time period and not for the life of the award.

303.3.10 Cost Share

Effective Date: 06/01/2006

Cost share refers to the resources a recipient contributes to the total cost of an agreement. Cost sharing becomes a condition of an award when it is part of the approved award budget. Cost sharing must be verifiable from the recipient's records, is subject to the requirements of [22 CFR 226.23](#), and can be audited. If a recipient does not meet its cost sharing requirement, questioned costs can be a result.

303.3.10.1 Cost Sharing Determination

Effective Date: 06/01/2006

Although there is no general legislative requirement that recipients of grants or cooperative agreements must cost share, cost sharing is an important element of the USAID-recipient relationship. When used, its application should be flexible, case-specific, and used to support or contribute to the achievement of results. USAID should use cost sharing after considering whether it is appropriate for the recipient organization in the particular circumstances, in particular, the programmatic and technical context. There is no set formula for cost sharing. There is not a suggested numeric reference point. Cost sharing should be based on the needs or purpose of the activity. Examples of when cost-sharing may be appropriate include:

- When there is a programmatic rationale for cost sharing, such as helping to ensure that the recipient will build its organizational capacity for mobilizing resource. For example, when building fundraising capability is an objective of an activity, it would be appropriate to require the recipient to meet specific private financing targets as a condition of USAID funding.
- When it is critical that the activity continues after USAID assistance ends, cost sharing requirements can ensure that the recipient establishes adequate alternate sources of funding.
- When an award supports an activity initiated by the recipient or an unsolicited proposal. Because most USAID funding is reserved for development priorities the Agency has already established, only limited funding may be available for even the best of other programs. USAID may only be able to partially fund these other activities.
- To otherwise give the recipient a financial stake in the success of a program.

In all of these cases, the AOT should discuss the amount and terms of cost sharing with potential recipients prior to award (see [Legal and Policy Considerations When](#)

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Involving Partners and Customers on Strategic Objective Teams and Other Consultations and Guidance on Consultation and Avoidance of Unfair Competitive Advantage).

The Activity Manager determines the appropriate cost sharing for individual grants and cooperative agreements. The Activity Manager must include this determination in the financial analysis of the program prior to issuance of a Request for Applications (RFA) or an Annual Program Statement (APS). In the case of competitive awards, the Activity Manager is encouraged to communicate with a broad range of potential applicants regarding appropriate cost sharing prior to issuance of the RFA or APS. Even after USAID issues an RFA or APS, it may be appropriate to consider special circumstances and change the cost sharing requirement. In the case of noncompetitive awards, the Activity Manager may wish to discuss or negotiate cost sharing with the applicant, especially those who submit unsolicited proposals.

USAID may not use a set formula in determining the level of cost sharing. The Activity Manager should take several considerations into account when making cost sharing decisions. For example, it might be difficult for a recipient to meet a cost sharing requirement during an activity with a short timeframe. A specific program may be risky and discourages potential recipients from providing meaningful contributions. Competition may be limited to indigenous organizations with limited resources.

The Activity Manager must write a memorandum to the AO documenting the factors that he or she considered when determining the amount of cost sharing.

USAID may require cost sharing regardless of the type of organization, whether non-profit (U.S. and international private voluntary organizations, local nongovernmental organizations, universities, foundations, and others) or commercial organizations, including for-profit businesses. In the case of a non-U.S. recipient, it is important to be flexible when establishing cost sharing requirements.

If an activity generates a profit, USAID should consider the best uses of program income. In accordance with [22 CFR 226.24](#) and the approval of the AO, USAID may use program income to finance the non-Federal cost share of an award. USAID may also make the program income additive to USAID's contribution without a cost sharing requirement when this would help achieve program objectives, such as sustainability.

303.3.10.2 Cost Sharing and Leveraging

Effective Date: 06/01/2006

Leveraging represents all of the non-USAID resources that are expected to be applied to a program. It may include cost sharing, but may also include resources that third-parties bring to the program without necessarily providing them to the recipient. These parties may include the host government, private foundations, businesses, or individuals. The recipient is not responsible for any leveraging in excess of the agreed-upon cost share.

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For more information regarding leveraging and its application to Global Development Alliance (GDA) activities, please refer to the **GDA home page** (available only to those with access to the USAID internal Web site) and [USAID Global Partnerships](#).

303.3.10.3 Cost Sharing in RFAs and APS

Effective Date: 06/01/2006

If USAID makes a determination to require cost sharing in a competitive award, it must state the requirements in the announcement. If USAID issues an announcement [Request for Applications (RFA) or Annual Program Statement (APS)] and then the Activity Manager decides that the amount of cost sharing required should be changed, the Activity Manager must provide an adequate justification and request the AO to amend the RFA or APS document, as applicable. Applications that do not meet the minimum cost sharing requirement, when applicable, are not eligible for award consideration.

Cost sharing, when required, is encompassed in cost effectiveness, a required evaluation criterion in all competitive awards (see **303.3.6.3**). You should not create a separate evaluation criterion category for cost sharing because it is already included within cost-effectiveness. Note that excessive reliance on cost sharing as an evaluation factor may unfairly favor larger, better-funded organizations in a competition.

303.3.10.4 Meeting Cost Sharing Requirements

Effective Date: 06/01/2006

As part of the analysis of the applicant's proposed budget, the AO must review the applicant's proposed cost sharing contributions for cost realism. The AO must verify that the proposed contributions meet the standards set in [22 CFR 226.23](#) for U.S. organizations or the Standard Provision "Cost Sharing" for non-U.S. organizations. USAID does not apply its source, origin, and nationality requirements or the restricted goods provision established in the Standard Provision "USAID Eligibility Rules for Goods and Services" to cost sharing contributions. The AO may authorize the recipient to attribute cost sharing contributions from sub-recipients to the prime award.

Cost sharing applies throughout the life of an agreement, and the AOTR should monitor the recipient's financial reports to ensure that the recipient is making progress toward meeting the required cost sharing. If it appears that the recipient is not making adequate progress, the AOTR must bring this to the attention of the AO. The AO then must initiate discussions with the recipient to resolve the issue. The AO has the authority to reduce the amount of USAID incremental funding in the following funding period or to reduce the amount of the agreement by the difference between the expended amount and what the recipient agreed to provide. If the award has expired or been terminated, the AO may request the recipient to refund the difference to USAID.

In-kind contributions are allowable as cost sharing in accordance with [OMB Circular A-110](#) and [22 CFR 226.23](#). This includes things such as volunteer time; valuation of

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donated supplies, equipment, and other property; and, use of unrecovered indirect costs.

303.3.11 Substantial Involvement and Cooperative Agreements

Effective Date: 06/01/2006

USAID substantial involvement in awards is limited to cooperative agreements. USAID cannot be substantially involved in grants. When making an award, the AO must select, in accordance with [ADS 304](#), either a grant or a cooperative agreement as the appropriate implementing instrument.

In determining whether an award will need substantial USAID involvement, the AO should not be looking at a single factor or proposed involvement. The AO should instead evaluate the type of overall relationship expected between USAID and the recipient.

Office of Management and Budget policy on substantial involvement proscribes that agencies "should limit their involvement in assisted activities to the minimum consistent with program requirements." Therefore, the AO must be satisfied that USAID's proposed involvement in an assistance activity is reasonable and necessary. Anticipated substantial USAID involvement is a relative, rather than an absolute concept. USAID must always have some involvement in assistance awards, e.g., monitoring performance, reviewing reports, or providing approvals required by [22 CFR 226.25](#) and [22 CFR 226.91](#). But these are not instances of substantial involvement.

Substantial involvement is defined by the following elements at **303.3.11 a – d**, unless USAID authorizes a deviation in accordance with **303.3.4**. The AOT must describe this substantial involvement in the cooperative agreement if the AOT anticipates such Agency involvement during the performance of an award. The AOT must consult with the AO and describe USAID's interests so that the award adequately reflects the level of USAID's necessary planned involvement. Furthermore, USAID must directly and specifically tie each substantial involvement to an activity in the program description to the AO's satisfaction.

On behalf of the Agency, an AOTR will substantially be involved in the administration of a cooperative agreement to help the recipient achieve the agreement objectives. The AO may delegate the approvals listed in items **a - d** below to the AOTR, except for authority to change the program description and the approved budget. Only the AO may approve such changes after review by the AOTR.

ELEMENTS OF SUBSTANTIAL INVOLVEMENT

a. Approval of the Recipient's Implementation Plans

If at the time of award, the program description does not establish a timeline in sufficient detail for the planned achievement of milestones or outputs, USAID may delay approval of the recipient's implementation plan for a later date.

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

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USAID will not require approval of implementation plans more often than annually. If the AO has delegated authority to the AOTR to approve implementation plans, the AOTR should review the agreement's terms and conditions to ensure that he or she does not inadvertently approve a change to them.

b. Approval of Specified Key Personnel

USAID may designate as key personnel only those positions that are essential to the successful implementation of an award. USAID's policy limits this to a reasonable number of positions, generally no more than five positions or five percent of recipient employees working under the award, whichever is greater.

c. Agency and Recipient Collaboration or Joint Participation

When the recipient's successful accomplishment of program objectives would benefit from USAID's technical knowledge, the AO may authorize the collaboration or joint participation of USAID and the recipient on the program. There should be sufficient reason for Agency involvement and the involvement should be specifically tailored to support identified elements in the program description. When these conditions are met, the AO may include appropriate levels of substantial involvement such as the following:

- (1) Collaborative involvement in selection of advisory committee members, if the program will establish an advisory committee that provides advice to the recipient. USAID may participate as a member of this committee as well. Advisory committees must only deal with programmatic or technical issues and not routine administrative matters.
- (2) Concurrence on the substantive provisions of sub-awards. [22 CFR 226.25](#) already requires the recipient to obtain the AO's prior approval for the sub-award, transfer, or contracting out of any work under an award. This is generally limited to approving work by a third party under the agreement. If USAID wishes to reserve any further approval rights for sub-awards or contracts, it must clearly spell out such Agency involvement in the substantial involvement provision of the agreement.
- (3) Approval of the recipient's monitoring and evaluation plans.
- (4) Monitor to authorize specified kinds of direction or redirection because of interrelationships with other projects. All such activities must be included in the program description, negotiated in the budget, and made part of the award.

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

d. Agency Authority to Immediately Halt a Construction Activity

USAID may include the statement “The AO may immediately halt a construction activity if identified specifications are not met.” In such cases, the AO must also attach the identified specifications to the award when it is being executed. Any material changes to the specifications must be treated as an amendment to the award.

303.3.12 Negotiation of the Award

Effective Date: 06/01/2006

- a. Review of Proposed Award Budget (Cost Analysis).** The AO must review the applicant’s proposal to ensure that costs, including cost sharing, are in compliance with Office of Management and Budget and USAID policies. The recipient must justify in advance the proposed costs for each element of the program. If the recipient expects to earn program income during the award period, the schedule of the award must specifically state how the income will be applied. (The definition of program income is located in [22 CFR 226.2](#) and income application suggestions can be found in [22 CFR 226.24](#).)

When performing the cost analysis, the AO obtains cost breakdowns; verifies cost data; evaluates specific elements of costs; and, analyzes data to determine the necessity, reasonableness, and allowability of the costs reflected in the budget, and the allowability of the costs under the applicable cost principles. The cost analysis helps the AO determine:

- (1) The extent of the prospective recipient’s understanding of the financial aspects of the program and the recipient’s ability to perform the grant activities within the amount requested;
- (2) Whether the applicant’s plans will achieve the program objectives with reasonable economy and efficiency; and
- (3) Any special conditions relating to costs that are in the award.

The AO determines the detail of the cost analysis based on the nature of the program, the amount and type of costs involved, and past experience with the applicant.

The AO may ask M/OAA/Contract Audit and Support Division (CAS) for help with the cost analysis. M/OAA/CAS could address whether a prospective recipient’s proposal is fair and reasonable for the program proposed, and provide an evaluation of whether the proposal is consistent with the Agency’s cost accounting policies, procedures, and practices. This includes ensuring that the recipient’s indirect cost rates are consistent with any Negotiated Indirect Cost Rate Agreements. The AO must negotiate with the applicant to resolve any

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issues related to proposed costs that do not comply with USAID policies before award can be made.

- b. Memorandum of Negotiation.** The AO must document the negotiation process for a new assistance agreement or a modification of an existing agreement, along with other pre-award determinations in a Memorandum of Negotiation. The Memorandum must include a cost analysis. Guidelines for filing the Memorandum can be found in **PEB 2005-6** (available on the USAID intranet only).

303.3.13 The Award Process and Elements of an Award

Effective Date: 01/25/2007

It is USAID's policy to award a grant or cooperative agreement to support a specific or separate program. The AO must ensure that an award clearly defines the activities that will make up the program that USAID will support. The program description must clearly identify the purpose of the program, contain an implementation plan that specifically identifies each element of the program, and specify the duration of the assistance instrument.

The Branding Strategy and Marking Plan must meet regulatory and USAID policy requirements. All representations and certifications must be complete and current. The AO must ensure that the Agency's role in administration is limited to measuring and evaluating the recipient's progress and any appropriate involvement. The Agency and its representatives will not control or try to control the recipient's or any sub-recipient's day-to-day management of the program.

The AO must ensure that all of the elements of a legally binding agreement are present. These are:

- Competent parties,
- Proper subject matter,
- Sufficient consideration,
- Mutual understanding, and
- Agreement on the terms of the assistance instrument.

All "special award conditions" – such as branding requirements, cost sharing, environmental procedures required by [22 CFR 216](#), and pre-award representations and certifications– must be met. All elements of the award – including items in the schedule such as period of performance, award amount, place of performance, and program description – must clearly and coherently express the specific understandings of both parties. The program description must have clearly established goals that are:

- Realistic,
- Measurable, and

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- Represent the highest objective that the recipient can expect to achieve and for which it will be held accountable.

The AO must ensure that the award complies with applicable OMB circulars, all CFRs and Executive Orders in the mandatory references (**303.4.1**), the Mandatory Standard Provisions, other ADS chapters, and other USAID guidance, as appropriate.

The AO should advise the AOT to check [ADS 540](#) when drafting the “Program Reporting” language in the schedule of the award for detailed guidance on the submission of copies of reports and other information to USAID’s Development Experience Clearinghouse (DEC) (see **ADS 540.2, Primary Responsibilities**, which describes the role of the AO in supporting the Agency’s strategic plan to manage for results).

The schedule of the award may require detailed programmatic information under the “Program Reporting” section. The Activity Manager, along with the AO, describes, with as much specificity as possible, the programmatic information to be produced and the timing of its submission to the DEC.

The types and frequency of financial and programmatic reports are strictly limited to those detailed in [22 CFR 226](#). Imposing the same reporting requirement on ten or more recipients may have Paperwork Reduction Act, ([5 CFR 1320](#)), implications. The AO should contact General Counsel or the cognizant Regional Legal Advisor for guidance. Also, the schedule may require output or unit cost data (see [22 CFR 226.51\(d\)\(1\)](#)).

The AO’s signature serves to obligate funds under a grant or cooperative agreement (see [ADS 621.3.4b](#)), as long as the AO accepts the recipient’s application without substantial modification or negotiates any changes to the proposal with the applicant. The AO will provide a copy of the grant or cooperative agreement to the recipient to ensure it agrees with the terms and conditions of the award. If the AO makes any substantive change to the program description or the budget or adds terms to the agreement that were not addressed during negotiations, such as a Substantial Involvement Understanding or “special award conditions” (see [22 CFR 226.14](#) and **ADS 303.3.9.2** and **303.3.11**), the AO must obtain the applicant’s agreement to the changes or additional terms before obligating funds.

[Section 635\(h\) of the Foreign Assistance Act](#) states that a grant or cooperative agreement may not run at any time for more than five years. This means that any current period of performance may not be for more than five years. As long as this is the case, USAID may extend the agreement. For example, after the completion of the first year, subject to competition requirements, USAID may extend the award for one more year. Alternatively, prior to the end date of the award, it may be extended for up to five years, subject to the competition requirements in **303.3.6.5**.

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303.3.14 Designation of the Agreement Officer's Technical Representative (AOTR)

Effective Date: 02/20/2009

The AO must designate the AOTR for each grant or cooperative agreement in accordance with the policy directives and required procedures of this chapter. The AO must use the AOTR designation letter to define the scope of authority of the AOTR to carry out grant or cooperative agreement administration duties which would otherwise be the AO's responsibility.

a. Eligibility and Appointment

To be an AOTR (or alternate), the appointee must be working for USAID as a(n):

- Direct-hire employee,
- Employee of another U.S. Government Agency and working for USAID through an interagency agreement or on detail, or
- Personal services contractor (PSC) working in the Agency. PSCs include U.S. citizens, Foreign Service Nationals, and Third Country Nationals.

The AOTR must be appointed by letter by an AO in accordance with the [Agreement Officer's Technical Representatives Appointment Procedures](#) and must meet the Agency's AOTR mandatory training and certification program requirements specified below.

b. Certification and Training Requirement

The Office of Human Resources, Training and Education (HR/TE), in coordination with M/OAA, established a Contracting Officer's Technical Representative (COTR)/AOTR certification program. The program provides Agreement Officer's Technical Representatives 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.

AOTRs designated after October 1, 2009, must be certified prior to designation, except as provided below in this section. AOTRs designated prior to October 1, 2009, must complete or have completed the web-based Phoenix Accruals online course and become certified.

By issuing a designation letter, the AO confirms that he or she has verified the appointee's training. HR/TE tracks staff members' training and completed courses. For

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an AOTR's certification status, check with the AOTR 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 an AOTR for a grant or cooperative agreement at USAID/W for a period of up to six months, or the Mission Director may do the same in the field. If a nominating office requests approval of such an AOTR 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
 - Confirmation from the individual's supervisor that the individual will complete AOTR 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.

The following individuals may be designated as AOTRs 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 AOTR Designation Letter.

AOs must use the Standardized Designation Letter to appoint an AOTR to perform award administrative responsibilities and authorities. The standardized letter is provided in [Agreement Officer's Technical Representatives Appointment Procedures](#). AOs must use the standardized letter essentially as

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written, but some tailoring of the letter is acceptable as long as it does not affect the substance.

The AO may also designate an Alternate AOTR to perform AOTR duties during the AOTR's absence. The alternate must be appointed in the same designation letter as the AOTR.

The AOTR cannot further delegate the authority designated to him or her by the AO. If neither the AOTR nor the alternate are available to perform their duties, the AOTR must direct the recipient to the AO for guidance.

d. Rescission/Expiration of an AOTR Designation Letter.

- (1) AOs have the authority to rescind a designation letter at any time if the individual's performance as a AOTR 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 AO may exercise this rescission authority. Specific examples of circumstances that might warrant rescinding a AOTR designation include the AOTR'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) AOs must rescind a designation letter if the AOTR is assigned to a new post or position unrelated to the contract and designate another individual as AOTR.
- (3) If an AOTR has not completed the certification program within six months of his or her designation (only applicable to those AOTRs who have an exception to the certification policy), the AO must rescind the designation unless the Director of M/OAA authorizes an extension. If such an AOTR has not completed the certification program within one year of his or her designation, the AO must rescind the designation letter.

e. Documentation and Monitoring

The AO must ensure that the AOTR 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). AOs may finalize a contract (including task orders), only after they have signed the AOTR designation letter and received the signed AOTR acknowledgement.

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303.3.15 Congressional Award Notification System

Effective Date: 02/20/2009

The Congressional Award Notification System requires the AO to notify the Bureau for Legislative and Public Affairs (LPA) when they make certain awards to U.S. organizations.

- a. AOs must follow the notification procedures in [Congressional Award Notification](#). This requires the AO to notify LPA AFTER signing but BEFORE releasing, or allowing to be released, an announcement of the awards listed below. This restriction on announcing the award applies to notifying the awardee that the award has been signed. For further details, see Section II, Other Considerations of that same document.
- b. Types of awards that require notification include the following:
- (1) Awards of any value to an organization that has not previously received an award from USAID.
 - (2) Any award with which there was Congressional correspondence during the pre-award stage. LPA will alert the AO that such correspondence has occurred, and the AO 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 AO, or both of them at the earliest opportunity before the award decision.
 - (4) Grants, cooperative agreements, and any amendment so them with a total estimated cost (TEC) or TEC increase of US \$500,000 or more, respectively. Modifications providing only incremental funding (and involving no increase to the contract TEC) are not included.

303.3.16 Distribution of Awards

Effective Date: 06/01/2006

Generally, distribution of awards is at the discretion of the AO. At the minimum, a copy of the agreement document and all modifications to the award must be part of the official award file and provided to the:

- Recipient,

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- AOTR,
- Office responsible for payment under the agreement, and
- Accounting station, if it is different than the office responsible for payment.

If payment is by letter of credit, the AO must immediately send a copy of the award and any modification to the Bureau for Management, Office of the Chief Financial Officer, Cash Management and Payment Division (M/CFO/CMP). Because the funds are obligated when the AO signs the award, the AO should not obtain the recipient's signature before sending the award to M/CFO/CMP. The AO must provide M/CFO/CMP with the signed award letter or modification cover page, accounting and appropriation data, and the schedule. The AO may send a scanned copy by e-mail at the FM/CMP Letter of Credit Activity mailbox or a copy faxed to LOC Unit, M/CFO/CMP at (202) 216-3234. The AO must send the award or modification to M/CFO/CMP within 10 business days after signing it.

303.3.17 Award Administration

Effective Date: 08/14/2008

Award administration includes all interactions concerning the award between USAID officials and the recipient from the time the award is made until the end of USAID support. The specific nature and extent of award administration varies from award to award in the normal exercise of Federal responsibilities. It ranges from reviewing and analyzing performance reports and performing site visits to specific elements of substantial involvement by USAID under a cooperative agreement.

- a. Administrative Duties.** The AOTR and the AO share in the oversight of an assistance award. It is essential that they work as a team in order to administer the grant or cooperative agreement effectively. While there is a clear division of responsibility between the functions, AO and AOTR functions are closely related and cannot be performed in isolation from each other.

The AO provides oversight of the financial management aspects of the award through reviews of reports, correspondence, site visits, or other appropriate means. When necessary, the AO will request or arrange for special audits. The AO is responsible for all award suspensions and terminations, except for national interest terminations, which the Assistant Administrator has authority over.

The AO should give a post-award orientation to the recipient and AOTR to clarify the roles and responsibilities of the USAID officials who will administer the award. If the AO delegates specific authority to the AOTR, the AO must notify the recipient in writing of the delegation, either in the schedule of the award or a letter. The AO must ensure that the award does not include administrative approvals that are in conflict with the regulations and policies of [22 CFR 226](#), the [Standard Provisions for U.S. Nongovernmental Recipients](#), and the [Standard Provisions for Non-U.S. Nongovernmental Recipients](#). If the AOTR becomes aware of any other administrative requirements levied on the recipient, the AOTR must immediately notify the AO.

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The AO is the records custodian for all official communication that constitutes a modification of the award. The AOTR keeps the AO informed of the recipient's performance. The AOTR must ensure that the AO receives copies of all performance and financial status reports, as appropriate. The AOTR reviews all performance and financial reports for adequacy and responsiveness. When reports are not on time, inadequate, or some other problem becomes apparent, the AOTR advises the AO to take the necessary action.

The AOTR ensures the recipient submits reports or deliverables under the award to the DEC. The types of documentation the recipient must submit are found in [ADS 540.3.2.5, Documentation Grantees Submit to the Development Experience Clearinghouse \(DEC\)](#). Documentation that is not considered development experience material is described in **ADS 540.3.2.6, Documentation Agency Contractors Must Not Submit. ADS 540.3.2.11, Where to Submit Development Experience Documentation**, provides the Web site and mailing address for submitting material.

When a modification to the award is necessary, the AOTR prepares internal USAID documentation that supports the modification and meets the satisfaction of the AO.

- b. Site Visits.** Site visits are an important part of effective award management because they usually allow a more effective review of the project. Site visits occur as needed and do not take place on a set schedule. Joint visits by the AO and the AOTR are encouraged. When the AO or AOTR makes a site visit, the AO or AOTR must write a brief report highlighting his or her findings and put a copy in the official award file.

303.3.18 Unauthorized Commitments and Expenditures Requiring Prior Approvals

Effective Date: 06/01/2006

- a. Unauthorized Commitments.** When a USAID official, who does not have the authority to do so, acts in a way that leads a recipient or potential recipient acting in good faith to believe that USAID has committed to make a specific award; change the amount of an existing award; or, revise an existing award budget, program description, or any of the terms and conditions of the award, the official has made an unauthorized commitment. It is against U.S. Government and USAID policy to enter into unauthorized commitments.

When the AO believes that an unauthorized commitment should be ratified and recommends payment, and the cognizant General Counsel or Regional Legal Advisor concurs in the recommendation, the AO submits an action memorandum through the M/OAA/Evaluation Division to the Director, M/OAA, for ratification. The memorandum must show:

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- Evidence that the grant would otherwise have been proper, if made by an appropriate AO;
- The AO reviewing the unauthorized commitment must determine the cost to be reasonable;
- The provided program has furthered USAID's objectives;
- The findings of facts essential to the situation, arranged chronologically with cross-references to supporting enclosures;
- The nature of the unauthorized commitment and funds citation;
- Funds are available and was available at the time the unauthorized commitment was made;
- The recommended disposition; and
- A written statement from the person who made the unauthorized commitment. This statement must detail how the mistake occurred, what training he or she has received from the AO on proper procedures since the incident, and what steps will be taken to prevent future unauthorized commitments.

Only the Director, M/OAA, has the authority to ratify unauthorized commitments.

- b. Expenditures Requiring Prior Approval.** Recipients must comply with prior approval requirements that are established in the agreement. Failure to comply with prior approval requirements generally causes USAID to deem the costs unallowable.

When it is in the best interest of the Federal Government and funds are available, the AO may review the facts and circumstances of the expenditure made without prior approval and approve the expense if the

- Expenditures must be otherwise allocable, allowable, and reasonable.
- AO could have approved the expenditures at the time that they were made.
- AO has the authority to approve the same type of expenditure at the time of the request for approval.
- Approval promotes efficient implementation of USAID's program, or
- Facts and circumstances of the expenditure show that the recipient was not grossly negligent and did not intend to circumvent USAID requirements.

The recipient must submit a written request to the AO addressing the criteria set out above and the AO must make a written determination.

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303.3.19 Controlling Language
Effective Date: 06/01/2006

It is USAID policy that English is the official language of all award documents because a translation may not convey the full meaning of the original. If an award or any supporting documents are provided in both English and a foreign language, each document must state that the English language version is the controlling version.

303.3.20 File Documentation
Effective Date: 06/01/2006

Policy regarding the maintenance of the Agreement File may be found in the mandatory reference, **PEB 2005-06, File Standardization Pilot** (only available on the USAID intranet).

303.3.21 Sub-awards
Effective Date: 06/01/2006

a. Source/Origin/Nationality Rules

- (1) [22 CFR 228](#) is the regulation that governs the Source/Origin/Nationality of goods and services procured with USAID funds. **22 CFR 228** applies to USAID-financed goods and services procured by a recipient.
- (2) [22 CFR 228](#) also applies to USAID-financed goods and services procured by sub-recipients (see the provision entitled “USAID Eligibility Rules for Goods and Services” and Standard Provision for U.S. Nongovernmental Recipients and Standard Provisions for Non-U.S. Nongovernmental Recipients).
- (3) [22 CFR 228](#) Source/Origin/Nationality rules do not apply to award of sub-agreements.

b. Sub-awards to PIOs and Foreign Governmental Organizations

If appropriate, a recipient may enter into a sub-agreement with organizations that are not non-governmental organizations, including a Public International Organization (PIO) or a host country governmental organization. If it takes this action, the recipient may require the sub-recipient to comply with some of the terms and conditions that flow down from the prime recipient’s agreement with USAID and not necessarily with the provisions that would apply to a USAID direct award to a PIO or foreign governmental organization. An approved deviation (**303.3.3**) is necessary before the recipient may deviate from the terms and conditions of its agreement. Other factors to consider in a sub-award may be found in [Contracting with a Foreign Governmental Organization](#). The AO

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will consult with the cognizant General Counsel or Regional Legal Advisor to determine the appropriate provisions for the sub-agreement.

303.3.22 The Role of the Agreement Officer in the Debt Collection Process

Effective Date: 06/01/2006

The Federal Claims Collection Act of 1966 and the [Debt Collection Improvement Act of 1996 \(DCIA\)](#) mandates that agencies comply with standard, Government-wide debt collection procedures and centralize the Government-wide collection of delinquent debt. For the process for recovering debt see [ADS 625, Administrative Accounts Receivable](#) or [AAPD 03-07 \(Revised\) – Instructions to Contracting Officers/Agreement Officers on their Role in the Debt Collection Process](#).

303.3.23 Disputes and Appeals

Effective Date: 06/01/2006

[22 CFR 226.90](#) and the [Standard Provision for Non-U.S. Nongovernmental Recipients](#) “Disputes” establishes that the AO decides any dispute between the recipient and USAID arising under or related to an assistance award. The AO’s decision is final unless the recipient appeals the decision to the Assistance Executive. Appeals must be conducted in writing.

303.3.23.1 Disputes

Effective Date: 06/01/2006

The AO must give the recipient a written final decision within 60 calendar days of receiving notice from the recipient of a dispute. If the AO is not able to reach a final decision within that time, the AO must notify the recipient that he or she requires more time to consider the dispute. The AO must place a copy of the final decision in the award files.

303.3.23.2 Appeals

Effective Date: 06/01/2006

If the recipient is not satisfied with the AO’s final decision, the recipient may appeal to the Assistance Executive within 30 days of receiving the final decision. The appeal must be in writing, and the recipient must provide a copy to the AO. If USAID has issued a Bill of Collection, the Bill of Collection is suspended pending resolution of the appeal.

The Assistance Executive forwards the appeal to M/OAA/Evaluation Division. M/OAA/E determines which other divisions within OAA review the appeal – usually M/OAA/Policy or M/OAA/Contract Audit and Support Division, or both. M/OAA/E asks the Office of General Counsel, Acquisition and Assistance (GC/A&A) and GC Litigation (GC/LE) for a review, as appropriate. In addition, M/OAA/E determines if other participants need to review the appeal, based on its dollar value and complexity. Within 60 days of receiving the appeal, the Assistance Executive, or, if a decision has not yet been made,

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M/OAA/E, must notify the recipient of the status (i.e., denied, approved, or more time is needed).

The Director, M/OAA, makes recommendations to the Assistance Executive on how to resolve the dispute based on the review undertaken by M/OAA/E.

303.3.24 Simplified Grants

Effective Date: 11/08/2010

A deviation is not required from the requirements of **22 CFR 226** or the policies of this chapter in order to use a Simplified Grant for small awards on a cost reimbursement basis as described below. For FOGs, see **303.3.25**. Except as discussed in paragraphs **a** through **h** below, because a grant using the Simplified Grant Format generally does not include any of the Standard Provisions used for USAID grants.

USAID may authorize advance payments if the conditions for advance payments in **ADS 636** and **22 CFR Part 226** Section C apply.

The AO may award a Simplified Grant, if the grant meets all of the following conditions:

- a.** The assistance instrument is a grant, not a cooperative agreement.
- b.** If the recipient is a U.S. organization, the grant must not exceed \$500,000 per year. If the recipient is a non-U.S. organization, the grant must not exceed \$500,000 per year. The period of the grant must not exceed three years. If the AO anticipates that a non-U.S. organization will expend \$300,000 or more in USAID awards (i.e., organizations that receive USAID funds either directly or through a prime contractor or recipient) in its fiscal year, then the AO must include, in the Simplified Grant, the standard provisions "Allowable Costs" and "Accounting, Audit, and Records" from the [Mandatory Standard Provisions for Non-U.S. Nongovernmental Recipients](#).
- c.** The recipient will not purchase any goods or services, except as authorized pursuant to 22 CFR 228, ADS 310, 311 or any applicable waivers, and the recipient will not purchase any single item that has a useful life over one year and a cost of \$5,000 or more.
- d.** The recipient has signed pre-award certifications as required in **303.3.8**.
- e.** The grant requires the recipient to allow USAID access to its records for up to three years after the end date of the grant, and the recipient will refund USAID for any funds it receives for any costs that did not meet the terms and conditions of the grant.
- f.** USAID will reimburse only those direct costs that are identified in the grant text. The Simplified Grant Format is not authorized for use when the recipient has a negotiated indirect rate agreement with a U.S. Government Agency.

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- g. The AO may modify the Simplified Grant Format as long as the agreement includes the applicable Standard Provision for related costs in the small grant award, and if the support of international travel or the purchase of equipment is necessary for performance of the grant.
- h. The grant must be included in any audit required by **OMB A-133** or **ADS 591.3.2**.

303.3.25 Fixed Obligation Grants to Non-Governmental Organizations

Effective Date: 11/08/2010

A deviation is not required from the requirements of **22 CFR 226** or the policies of this chapter in order to use a Fixed Obligation Grant (FOG) (see [Sample Fixed Obligation Grant](#)). Except as discussed in paragraph **b** below, a grant using the Fixed Obligation Grant Format generally does not include any of the Standard Provisions used for USAID grants.

When USAID awards a grant to support a program with very specific elements, the FOG format allows performance without monitoring the actual costs incurred by the recipient. The FOG is appropriate for supporting specific projects when the AO is confident that a reasonable estimate of the actual cost of the overall effort can be established and USAID can define accomplishment of the purpose of the grant through defined milestones.

It is essential that the AO have sufficient cost information to allow for negotiation of a reasonable estimate of the actual cost of the overall effort, so that the U.S. Government does not pay more than the reasonable value for the completion of the grant.

Because payments under FOGs are based on the achievement of milestones, the structure of the payments is very important. USAID pays the recipient a set amount when it accomplishes a milestone. The AO may follow the guidance in [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#) for structuring the grant milestones to provide the recipient with the necessary financial liquidity for the performance of the activity.

USAID may also authorize advance payments when recipients meet the conditions for advance payments in **ADS 636, 22 CFR Part 226 Section C**, and if providing liquidity through an initial financing milestone is not sufficient to meet implementation requirements.

The procedures in this ADS section, [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#), and [FOG Entity Eligibility Checklist](#) are to be used in lieu of those specified in **303.3.8** and **303.3.9**. The criteria in the section of the Checklist for pre-award financial review for advances, adequately address the conditions for advances in **ADS 636** and **22 CFR 226 Section C**.

Grant closeout is accomplished by the AOTR's acceptance of the final milestone and approval of payment.

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A prime recipient may use FOGs in subgrants when the same standards for their use are met. In those cases, the prime recipient is substituted for USAID in these policies and procedures. Prime recipients must report on the use of FOGs.

The recipient will not purchase any goods or services except as authorized pursuant to **22 CFR 228, ADS 310, 311**, or any applicable waivers.

a. Factors for Determining the Use of a FOG

In order for an AO to use a FOG, the following conditions apply:

- (1) The assistance instrument is a grant, not a cooperative agreement.
- (2) The AO and technical office have complied with the requirements of the [FOG Entity Eligibility Checklist](#), including ensuring that the recipient has signed pre-award certifications, as specified in Section 6 of the checklist.
- (3) The prospective recipient, technical office, and AO must be able to identify and quantify programmatic accomplishments or results in establishing grant milestones. For further guidance, see [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#).
- (4) The AO, with the advice of the technical office and controller, must assess the risk factors that could prevent the proposed recipient from completing the activity or require a substantial change in the milestones. The operating unit should not use the FOG mechanism if there is an unacceptably high risk of failure or substantial changes in the milestones are expected as the recipient implements its program. The AO and technical office must document the risk assessment and may use the guidance in [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#).
- (5) Adequate cost information must be available to allow the AO to determine and negotiate the fixed price of the grant and payment structure. The fixed price may include an amount based on the recipient's demonstrated indirect costs and cost incurred in application preparation. For further guidance concerning the cost information required and payment structuring, see [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#) and the [FOG Entity Eligibility Checklist](#).
- (6) The AO must document the rationale for selecting the FOG mechanism.
- (7) The amount for each year of the FOG must not exceed \$500,000. The duration of the FOG must not exceed three years.

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- (8) The FOG must not include any infrastructure or construction projects.

b. Required Provisions for a Fixed Obligation Grant

- (1) USAID has the right to terminate the grant in whole or in part or suspend payments should the recipient become insolvent during performance of the award, the recipient has materially failed to comply with the terms and conditions of the grant, or continuation of the grant would not be in the national interest of the United States;
- (2) The recipient agrees to maintain records of transactions related to the FOG agreement for at least three years. After the end of the agreement, USAID retains the right, at its discretion, to examine all or a sample of the recipient's records or transactions related to a FOG where concerns of implementation irregularities arise; and
- (3) On submission of the voucher for payment for the final milestone, the recipient must certify that the grant is completed and the recipient will make no further claim against the grant.

c. Amending Milestones

The AO may amend milestones during the period of the grant, if the original milestones are no longer feasible or appropriate due to circumstances beyond the control of the recipient, and if the amended milestones are compatible with and satisfy the original purpose of the grant. The AO may terminate the grant if he/she concludes that multiple or substantial amendments indicate that continuing the grant is no longer in the best interests of the Agency. For additional guidance, see [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#).

d. Disposition of Equipment or Property

Recipients must not procure real property under a FOG. Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

If, in order to accomplish any of the milestones under a FOG, the recipient must procure equipment or property other than real property, then the following applies:

- (1) The milestone must incorporate or describe the equipment or property,
- (2) The grant must state that title to the equipment or property is with the recipient, and

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- (3) The grant must include disposition instructions for the equipment or property. For additional guidance, see [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#).

303.3.26 Leader/Associate Awards

Effective Date: 06/01/2006

A Leader/Associate Award involves the issuance of an award that covers a specified worldwide activity. The Leader Award includes language that allows a Mission or other office to award a separate grant to the Leader Award recipient without additional competition and which supports a distinct local or regional activity that fits within the terms and scope of the Leader Award. This is called an Associate Award.

Leader/Associate Awards should not to be confused with Indefinite Quantity Contracts (IQC) that are used in acquisition or any of the procedures used under an IQC. As examples, a Leader Award cannot be made without a program description and a budget with sufficient funds to carry out that program, and Associate Awards are not made using fair opportunity procedures.

a. Competition of Leader Award

The AO or Activity Manager must issue a Request For Applications (RFA) for every Leader/Associate Award program, following the procedures in **303.3.5**. These arrangements may not be based on unsolicited applications or waivers of competition, unless a deviation is authorized in accordance with the requirements of **303.3.4**. The RFA must state that the competition covers both the initial Leader Award and all subsequent Associate Awards and include an estimate of the total grant amount, again including all Associate Awards.

The funding announcement for the Leader/Associate assistance program must include an estimate of the dollar amount of anticipated Associate Awards; however, it is not necessary to amend the Leader Award if the amount of Associate awards exceeds the estimate. The Leader Award and each Associate Award must specify the total award amount for that instrument. Likewise, the RFA will state that there is no guarantee regarding of the number or amount of each Associate Award.

Leader and Associate Awards are separately obligated instruments. Associate Award estimates included in the Leader Award do not suggest that funds obligated under a Leader Award can be moved to an Associate Award without a deobligation of those funds.

Once USAID selects a recipient pursuant to a Leader/Associate Award program RFA, it does not require any further competition or waiver of competition for any Associate Award issued within the terms of the Leader RFA. The AO's determination of the responsibility of the recipient for the Leader Award applies to Associate awards. However, before awarding an Associate Award, the AO must

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verify that the applicant does not appear on the [Excluded Parties List System](#). The AO for the Associate Award should not require additional documentation concerning the recipient's financial or other management systems, unless there is reason to believe that the recipient does not meet the criteria in **303.3.9**.

The AO must obtain the required certifications (see **303.3.8**) prior to the execution of the Leader Award. Before the AO may award an Associate Award, the recipient must affirm that those certifications remain valid or provide new certifications (see [Affirmation of Certifications](#)).

USAID may issue more than one Leader Award for a program under the RFA if the Bureau determines that it is appropriate. However, USAID must not compete Associate Awards among the different recipients of the Leader Awards.

The AO has the discretion to issue one or more Associate Awards to a Leader Award recipient or to issue more than one Associate Award under different Leader Awards for a program. When a Leader Award recipient works with a consortium or sub-recipients, any Associate Awards under the Leader Award must be issued to the Leader Award recipient, not to any of the consortium or sub-recipient members. The recipient of the Leader Award may make sub-awards as necessary for the program. The Leader Award recipient must provide a programmatic report to the AOTR that summarizes activities undertaken, progress made/results achieved, trends, or problems under both the Leader Award and all Associate Awards. The report may be provided either semi-annually or annually.

b. Length of Award

Normally, a Leader Award is for five years. An award may be extended up to cumulative of ten years for purposes of the Leader Award activities using a justification based on **303.3.6.5a**. Associate Awards may be issued until the Leader Award expires for up to an initial five years. Associate Awards may then be extended for a cumulative term of up to ten years, but not more than five years beyond the expiration of the Leader Award. A Leader or Associate Award may not be extended more than five years into the future at any given time.

USAID does not fund activities under the Leader Award after its expiration date.

After completion of the activities under the Leader Award, if funds are available, the AOTR may request that the recipient provides a report on lessons learned.

c. Procedures for issuing an Associate Award

After the AO awards the Leader Award, the AO sends a copy of the award to all Missions, along with any necessary guidance or instructions regarding issuance of Associate Awards. AOs responsible for the program of the activity, within the

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limits of their authority, may issue Associate Awards. Leader Awards are also posted on the USAID Business and Acquisition and Assistance Intranet site (<http://inside.usaid.gov/M/OAA/lwa/index.html>).

Before requesting the AO to issue an Associate Award, the Activity Manager must consult with the AOTR of the Leader Award. After receiving the AOTR's concurrence, the Activity Manager asks the Leader Award recipient to provide an application. The request includes a background statement; a discussion of the area of activity; host country involvement; funding; any period limitation; and, description of why the activity falls under the Leader Award. The application for an Associate Award contains a specific program description and budget.

An SF-424 is not required. The Activity Manager reviews the application and provides his or her comments to the AO responsible for the Associate Award. The AO issuing the Associate Award must ensure that the Associate Award is within the scope of the Leader Award when reviewing the recipient's proposed costs and negotiating the final award. The AO has the decision authority whether or not to award the Associate Award.

An Associate Award may be a grant or a cooperative agreement, independent of whether the Leader Award is a grant or cooperative agreement. An Associate cooperative agreement must specify the terms of any substantial involvement. Such substantial involvement must be consistent with the requirements of **303.3.11** and the program description for the particular Associate Award. The Associate Award will use the standard grant or cooperative agreement award format.

The AO must include appropriate language in the schedule of the Associate Award, requiring the recipient to provide copies of all program and financial reports to the AOTR with copies of all programmatic reports to the AOTR of the Leader Award. The schedule of the Associate Award must also specify:

- The Authorized Geographic Code for procurement, if it is different from the Leader Award;
- Any cost sharing requirements; and
- Any additional standard provisions, such as Title to and Care of Property (Cooperating Country), that are not included in the Leader Award, but are necessary to the Associate Award.

d. File Documentation

The AO's file documentation for Associate Awards must include

1. A copy of the Activity Manager's consultation with the AOTR for the Leader Award;

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

2. The request for the recipient's application;
3. The recipient's application with affirmation of certifications;
4. A memorandum of negotiation, including a cost analysis; and
5. A copy of the final Associate Award (a copy must be sent to the AOTR for the Leader Award) and a copy of the Leader Award.

303.3.27 Global Development Alliance (GDA)

Effective Date: 06/01/2006

Global Development Alliance (GDA) awards provide resource leverage (see **303.3.10**) from sources outside USAID. The Activity Manager should consult closely with the GDA Office, the Assistance Executive, the General Counsel or Regional Legal Advisor when developing the program description for these types of awards. Additional guidance may be found at the **GDA Web site** (available only to those with access to the USAID internal Web site) and in [AAPD 04-16, Public-Private Alliance Guidelines and Collaboration Agreement](#).

303.3.28 Participation Of Faith-Based And Community Organizations

Effective Date: 02/04/2010

- a. In accordance with [Executive Order 13279, Equal Protection for the Laws for Faith-Based and Community Organizations](#), and [22 CFR part 205, Participation by Religious Organizations in USAID Programs](#), the following principles guide USAID on the participation of faith-based and community organizations in USAID-funded programs:
 - (1) The Federal Government must distribute Federal financial assistance for social service programs in the most effective and efficient manner possible (see [Executive Order 13279](#)).
 - (2) All eligible organizations, including faith-based and other community organizations, must be able to compete on an equal footing for Federal financial assistance used to support social service programs and participate in any program for which they are eligible.
 - (1) USAID, and organizations that make and administer sub-awards of USAID funds, must not discriminate for or against an organization on the basis of the organization's religious character or affiliation [see [22 CFR 205.1\(a\)](#)]. USAID must not disqualify religious organizations from participating in USAID's programs because such organizations are motivated or influenced by religious faith to provide social services (see [22 CFR 205.1\(f\)](#)). Additionally, when limiting competition using the local competition exception (**ADS**

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

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303.3.6.5e), USAID must not limit competition solely to either faith-based or secular organizations.

- (2) All organizations, whether religious or secular, that participate in USAID programs must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USAID-funded activities, including those prohibiting the use of direct financial assistance from USAID to engage in inherently religious activities (see [22 CFR 205.1\(f\)](#)).
- a. Faith-based organizations may not be required, as a condition of Federal assistance, to sacrifice their independence, autonomy, expression, or religious character. A faith-based organization that applies for or participates in a USAID program retains its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance to support any inherently religious activity, such as worship, religious instruction, or proselytizing. Among other things, faith-based organizations may use their facilities to provide social services supported by USAID, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization may retain religious terms in its name, select its board members on a religious basis, and include religious references in its mission statements and other chartering or governing documents [see [22 CFR 205.1\(c\)](#)].
- (3) Organizations that receive direct financial assistance under any USAID program may not engage in inherently religious activities as part of the programs or services thus funded. Inherently religious activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. These restrictions on inherently religious activities do not apply to programs where USAID funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where USAID funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties [see [22 CFR 205.1\(b\)](#)].
- (4) USAID funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. USAID funds may be used for the acquisition, construction, or rehabilitation of structures only

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

to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, USAID funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USAID funds in this part. Sanctuaries, chapels, or other rooms that a USAID-funded religious congregation uses as its principal place of worship, however, are ineligible for USAID-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to Government-wide regulations governing real property disposition [see [22 CFR 205.1\(d\)](#)].

- (5) An organization that participates in programs funded by financial assistance from USAID must not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief [see [22 CFR 205.1\(e\)](#)].
- (6) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization receives financial assistance from USAID [see [22 CFR 205.1\(g\)](#)].
- (7) Solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation [see [22 CFR 205.1\(h\)](#)]. In USAID programs in which an applicant must show that it is a nonprofit organization, other than programs which are limited to registered Private and Voluntary Organizations, the applicant may do so using any of the following:
 - Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;
 - A statement from a state taxing body or the state secretary of state certifying that the organization is a nonprofit organization operating within the state; and no part of its net earnings lawfully benefit any private shareholder or individual;
 - A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

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

- Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the state or parent organization that the applicant is a local nonprofit affiliate.
- b. The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States [see [22 CFR 205.1\(i\)](#)].
- c. **Survey On Ensuring Equal Opportunity For Applicants.** All USAID Requests For Applications (RFA)'s must include the Survey on Ensuring Equal Opportunity for Applicants as an attachment to the RFA package. Applicants under unsolicited applications must also be provided the survey.
- (1) **Voluntary Completion and Submission.** AOs must include the survey in all RFA packages. However, applicants are not required to complete the survey, and completion of the survey must not be a requirement of the RFA. The absence of a completed survey in an application may not be a basis upon which the application is determined incomplete or non-responsive. Applicants who volunteer to complete and submit the survey under a competitive or noncompetitive action are instructed within the text of the survey to submit it as part of the application process.
 - (2) **Use of Survey Data and Processing/Disposition.** The information collected through the survey is intended for data collection purposes only.
 - (3) **Survey Distribution.** As a part of the award distribution process, after entering the required data, the AO must forward each completed survey to the following address:

Center for Faith-Based and Community Initiatives
A/AID, Rm. 3.9-023
U.S. Agency for International Development
Washington, D.C. 20523
- d. **Clarification Regarding Proper Implementation and Use Of Data**
- [Executive Order 13279, Equal Protection for the Laws for Faith-Based and Community Organizations](#), and [22 CFR part 205, Participation by Religious Organizations in USAID Programs](#), call for equal opportunity for faith-based organizations. They do not provide for set-asides or evaluation preferences for faith-based organizations, and data collected is not to be used for purposes of funding decisions. The AO must not:

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

- Provide for set-asides, reservations, or evaluation preferences for faith-based organizations in RFAs.
 - Include participation of faith-based organizations as a specific evaluation factor or requirement for award. It may, however, be referred to as an example of one of the many types of organizations whose participation could potentially enhance the quality and impact of development assistance programs.
 - Provide completed surveys to the technical evaluation committee for evaluation along with the technical portion of the applications.
- e. AOs must ensure that the Mandatory Standard Provision, “Equal Protection Of The Laws For Faith-Based And Community Organizations (December 2009),” is included in all solicitations and awards (see **ADS 303.4.2**).

***303.4 MANDATORY REFERENCES**

Effective Date: 03/16/2011

303.4.1 External Mandatory References

Effective Date: 06/01/2006

- a. [5 CFR 1320, Controlling Paperwork Burdens on the Public](#)
- b. [22 CFR 203, Registration of Agencies for Voluntary Foreign Aid](#)
- c. [22 CFR part 205, Participation by Religious Organizations in USAID Programs](#)
- d. [22 CFR 208, Government-wide Debarment and Suspension \(Non-procurement\)](#)
- e. [22 CFR 216, Environmental Procedures](#)
- f. [22 CFR 226, Administration of Assistance Awards to U.S. Non-Governmental Organizations](#)
- g. [22 CFR 227, New Restrictions on Lobbying](#)
- h. [22 CFR 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID](#)
- i. [31 USC 6301- 6308, Federal Grant and Cooperative Agreement Act](#)
- j. [Excluded Party List System](#)

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

- k. [Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations](#)
- l. [Executive Order 13280, Responsibilities of the Department of Agriculture and the Agency for International Development With Respect to Faith-Based and Community Initiatives.](#)
- m. [Executive Order 13317, Volunteers for Prosperity](#)
- n. [Foreign Assistance Act of 1961, as amended](#)
- o. [OMB Circular A-21, Cost Principles for Educational Institutions](#)
- p. [OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations](#)
- q. [OMB Circular A-122, Cost Principles for Non-Profit Organizations](#)
- r. [OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations](#)
- s. [Paperwork Reduction Act](#)
- t. [Specially Designated Nationals \(SDN\) and Blocked Persons List](#)

***303.4.2 Internal Mandatory References**

Effective Date: 03/16/2011

- a. [AAPD 04-14, Implementation of E.O. 13224 - Certification Regarding Terrorist Financing](#)
- *b. [AAPD 05-04 Amendment 3, Implementation of the United States Leadership against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, as amended – Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking](#)
- c. [ADS 103, Delegations of Authority](#)
- d. [ADS 201, Planning](#)
- e. [ADS 204, Environmental Procedures](#)
- f. [ADS 206, Prohibition of Assistance to Drug Traffickers](#)
- g. [ADS 216, USAID-Higher Education Community Partnership](#)
- h. [ADS 260, Geographic Codes](#)

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

- i. [ADS 304, Choice of Implementation Instrument](#)
- j. [ADS 312, Eligibility of Commodities](#)
- k. [ADS 458, Training and Career/Professional Development](#)
- l. [ADS 540, USAID Development Experience Information and Reference Services](#)
- m. [ADS 591, Financial Audits of USAID Contractors, Grantees, and Host Government Entities](#)
- n. [ADS 625, Administrative Accounts Receivable](#)
- o. [Affirmation of Certifications](#)
- p. [Agreement Officer's Technical Representatives Appointment Procedures](#)
- q. [A.I.D. Partnership in International Development with Private and Voluntary Organizations \(Policy Paper\)](#)
- r. [Contract Clause Guide for Unclassified Information System Security Systems and Services](#)
- s. [Fixed Obligation Grant \(FOG\) Entity Eligibility Checklist](#)
- t. [Guidance on Funding Foreign Government Delegations to International Conferences](#)
- u. **Guide to USAID's Assistance Application Process and to Submitting Unsolicited Assistance Applications (only available on the USAID intranet.)**
- v. [Guidelines for Delegation of Assistance Authority](#)
- w. [Guidelines for Expanded Assistance Authority for Mission Directors](#)
- x. **PEB 2005-06, File Standardization Pilot (only available on the USAID intranet)**
- y. [Policy Determination 21, Endowments Financed With Appropriated Funds](#)
- z. **Procurement and Assistance Procedures for the HIV/AIDS and Infectious Disease Initiatives (Policy Notice only available on the USAID intranet)**
- aa. [Simplified Grant Format](#)

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

- ab. [Standard Provisions for an Endowment with Non-U.S., Nongovernmental Recipient](#)
- ac. [Standard Provisions for an Endowment with U.S., Nongovernmental Recipient](#)
- ad. [Standard Provisions for Non-U.S. Nongovernmental Recipients](#)
- ae. [Standard Provisions for U.S., Nongovernmental Recipients](#)
- af. [Updated Guidance for Modified Acquisition and Assistance Request Document \(MAARD\) Usage](#)
- ag. [USAID Guidance on Congressional Award Notification System](#)
- ah. [USAID Policy Guidance on Posting Grant Opportunities and Application Packages on Grants.Gov](#)

303.4.3 Mandatory Forms

Effective Date: 06/01/2006

- a. [SF-269, Financial Status Report \(Long Form\)](#)
- b. [SF-269a, Financial Status Report \(Short Form\)](#)
- c. [SF-270, Request for Advance or Reimbursement](#)
- d. [SF-271, Outlay Report and Request for Reimbursement for Construction Programs](#)
- e. [SF-272, Federal Cash Transactions Report](#)
- f. [SF-272a, Federal Cash Transactions Report, Continuation](#)
- g. [SF-424, Application for Federal Assistance](#)
- h. [SF-424a, Budget Information, Non-Construction Programs](#)
- i. [SF-424b, Assurances, Non-Construction Programs](#)

303.5 ADDITIONAL HELP

Effective Date: 09/17/2010

- a. [AAPD 03-06 Expedited Acquisition and Assistance Procedures for Afghanistan](#)
- b. [AAPD 05-01 Procurement of HIV-AIDS Test Kits from Code 935 Countries](#)

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

- c. [AAPD 05-09 Expedited Acquisition and Assistance Procedures for Tsunami Relief and Reconstruction in South and Southeast Asia](#)
- d. [AOTR Designation - Cooperative Agreement Administration](#)
[The Microsoft Word version is only available at <http://inside.usaid.gov/ADS/300/303sag.doc> to USAID employees.]
- e. [AOTR Designation – Grant Administration](#)
[The Microsoft Word version is only available at <http://inside.usaid.gov/ADS/300/303sah.doc> to USAID employees.]
- f. [Awarding Fixed Obligation Grants to Non-Governmental Organizations](#)
- g. [Certifications, Assurances, and Other Statements of the Recipient \(May 2006\)](#)
- h. [CIB 01-04 Expedited Acquisition and Assistance Procedures for the HIV/AIDS and Infectious Disease Initiatives](#)
- i. [Contracting with a Foreign Governmental Organization](#)
- j. [Cross Reference Index](#)
- k. [Guidance on Closeout Procedures for A&A Awards](#)
- l. [Operational Security – General Information](#)
- m. [Profit Under USAID Assistance Instruments](#)
- n. [Policy Paper, Women in Development](#)
- o. [Procurement Reform Documentation Requirements for Non-Profit Recipients \(self-certification\)](#)
- p. [Sample Action Memorandum for Deviation](#)
- q. [Sample Award Format and Schedule](#)
- r. [Sample CTO Letter of Designation for Cooperative Agreements](#)
- s. [Sample CTO Letter of Designation for Grants](#)
- t. [Sample Fixed Obligation Grant](#)

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

303.5.1 Optional Forms
Effective Date: 06/01/2006

a. [Survey on Ensuring Equal Opportunity for Applicants](#)

303.6 DEFINITIONS
Effective Date: 06/01/2006

Agreement Officer (see also Contracting Officer)

A person with the authority to (1) enter into, administer, terminate, and close out assistance agreements, and (2) make related determinations and findings on behalf of USAID. An Agreement Officer may only act within the scope of a duly authorized warrant or other valid delegation of authority. The term "Agreement Officer" includes persons warranted as "Grant Officers." It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer. (Chapters 303, 304)

assistance

Financial support to accomplish a public purpose, including grants, cooperative agreements and other agreements in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include technical assistance, the provision of services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; or, contracts which are required to be entered into and administered under procurement laws and regulations. (Chapter 303, 304)

Assistance Executive

The Director, Office of Acquisition and Assistance (M/OAA/OD), or his or her designee in USAID/W who

- Acts as the Agency's coordinator for all assistance matters (that is, financial assistance that provides support to a non-governmental entity to accomplish a public purpose), which may require OMB approval (such as deviations to OMB circulars or class deviations to OMB Circular A-110);
- Makes final decisions for any appeals brought under 22 CFR 226.90 or the Standard Provision entitled "Disputes," as applicable to non-US organizations; and
- Makes the final determination of the choice of implementation instrument when there is disagreement between the contracting activity and the Assistance Objective team. (Chapters 303 and 304)

award

Financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and cooperative agreements. (Chapter 303)

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

recipient

An organization that receives direct financial assistance (a grant or cooperative agreement) to carry out an activity or program. (Chapters 303, 304, 305, 591)

303_062311



Mandatory Standard Provisions for U.S. Nongovernmental Recipients

A Mandatory Reference for ADS Chapter 303

Revision Date: 06/10/2011
Responsible Office: M/OAA/P
File Name: 303maa_061011

Mandatory Standard Provisions for U.S. Nongovernmental Recipients

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I. MANDATORY STANDARD PROVISIONS FOR U.S. NONGOVERNMENTAL RECIPIENTS

1. APPLICABILITY OF 22 CFR PART 226 (May 2005)

a. All provisions of 22 CFR 226 and all Standard Provisions attached to this agreement are applicable to the recipient and to subrecipients which meet the definition of "Recipient" in part 226, unless a section specifically excludes a subrecipient from coverage. The recipient shall assure that subrecipients have copies of all the attached standard provisions.

b. For any subawards made with Non-U.S. subrecipients the recipient shall include the applicable "Standard Provisions for Non-US Nongovernmental Grantees." Recipients are required to ensure compliance with monitoring procedures in accordance with OMB Circular A-133.

[END OF PROVISION]

2. INELIGIBLE COUNTRIES (May 1986)

Unless otherwise approved by the USAID Agreement Officer, funds will only be expended for assistance to countries eligible for assistance under the Foreign Assistance Act of 1961, as amended, or under acts appropriating funds for foreign assistance.

[END OF PROVISION]

3. NONDISCRIMINATION (May 1986)

(This provision is applicable when work under the grant is performed in the U.S. or when employees are recruited in the U.S.)

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this award on the basis of race, color, national origin, age, handicap, or sex.

[END OF PROVISION]

4. NONLIABILITY (NOVEMBER 1985)

USAID does not assume liability for any third party claims for damages arising out of this award.

[END OF PROVISION]

5. AMENDMENT (NOVEMBER 1985)

The award may be amended by formal modifications to the basic award document or by means of an exchange of letters between the Agreement Officer and an appropriate official of the recipient.

[END OF PROVISION]

6. NOTICES (NOVEMBER 1985)

Any notice given by USAID or the recipient shall be sufficient only if in writing and delivered in person, mailed, or cabled as follows:

- To the USAID Agreement Officer, at the address specified in the award.
- To recipient, at recipient's address shown in the award, or to such other address designated within the award.

Notices shall be effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

[END OF PROVISION]

7. SUBAGREEMENTS (June 1999)

Subrecipients, subawardees, and contractors have no relationship with USAID under the terms of this agreement. All required USAID approvals must be directed through the recipient to USAID.

[END OF PROVISION]

8. OMB APPROVAL UNDER THE PAPERWORK REDUCTION ACT (December 2003)

Information collection requirements imposed by this grant are covered by OMB approval number 0412-0510; the current expiration date is 04/30/2005. The Standard Provisions containing the requirement and an estimate of the public reporting burden (including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information) are

<u>Standard Provision</u>	<u>Burden Estimate</u>
Air Travel and Transportation	1 (hour)
Ocean Shipment of Goods	.5
Patent Rights	.5
Publications	.5
Negotiated Indirect Cost Rates - (Predetermined and Provisional)	1
Voluntary Population Planning	.5
Protection of the Individual as a Research Subject	1
 <u>22 CFR 226</u>	 <u>Burden Estimate</u>
22 CFR 226.40-.49, Procurement of Goods and Services	1
22 CFR 226.30 -.36, Property Standards	1.5

Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to the Office of Procurement, Policy Division (M/OP/P) U.S. Agency for International Development, Washington, DC 20523-7801 and to the Office of Management and Budget, Paperwork Reduction Project (0412-0510), Washington, DC 20503.

[END OF PROVISION]

9. USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (April 1998)

(This provision is not applicable to goods or services which the recipient provides with private funds as part of a cost-sharing requirement, or with Program Income generated under the award.)

- a. Ineligible and Restricted Goods and Services: USAID's policy on ineligible and

restricted goods and services is contained in ADS Chapter 312.

- (1) Ineligible Goods and Services. Under no circumstances shall the recipient procure any of the following under this award:
 - (i) Military equipment,
 - (ii) Surveillance equipment,
 - (iii) Commodities and services for support of police or other law enforcement activities,
 - (iv) Abortion equipment and services,
 - (v) Luxury goods and gambling equipment, or
 - (vi) Weather modification equipment.

- (2) Ineligible Suppliers. Funds provided under this award shall not be used to procure any goods or services furnished by any firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the recipient with a copy of these lists upon request.

- (3) Restricted Goods. The recipient shall not procure any of the following goods and services without the prior approval of the Agreement Officer:
 - (i) Agricultural commodities,
 - (ii) Motor vehicles,
 - (iii) Pharmaceuticals,
 - (iv) Pesticides,
 - (v) Used equipment,
 - (vi) U.S. Government-owned excess property, or
 - (vii) Fertilizer.

Prior approval will be deemed to have been met when:

- (i) The item is of U.S. source/origin;
- (ii) The item has been identified and incorporated in the program description or schedule of the award (initial or revisions), or amendments to the award; and
- (iii) The costs related to the item are incorporated in the approved budget of the award.

Where the item has not been incorporated into the award as described above, a separate written authorization from the Agreement Officer must be provided before the item is procured.

- b. Source and Nationality: The eligibility rules for goods and services based on

source and nationality are divided into two categories. One applies when the total procurement element during the life of the award is over \$250,000, and the other applies when the total procurement element during the life of the award is not over \$250,000, or the award is funded under the Development Fund for Africa (DFA) regardless of the amount. The total procurement element includes procurement of all goods (for example, equipment, materials, supplies) and services. Guidance on the eligibility of specific goods or services may be obtained from the Agreement Officer. USAID policies and definitions on source, origin and nationality are contained in 22 CFR Part 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by the Agency for International Development, which is incorporated into this Award in its entirety.

- (1) For DFA funded awards or when the total procurement element during the life of this award is valued at \$250,000 or less, the following rules apply:
 - (i) The authorized source for procurement of all goods and services to be reimbursed under the award is USAID Geographic Code 935, "Special Free World," and such goods and services must meet the source, origin and nationality requirements set forth in 22 CFR 228 in accordance with the following order of preference:
 - (A) The United States (USAID Geographic Code 000),
 - (B) The Cooperating Country,
 - (C) USAID Geographic Code 941, and
 - (D) USAID Geographic Code 935.
 - (ii) Application of order of preference: When the recipient procures goods and services from other than U.S. sources, under the order of preference in paragraph b.(1)(i) above, the recipient shall document its files to justify each such instance. The documentation shall set forth the circumstances surrounding the procurement and shall be based on one or more of the following reasons, which will be set forth in the grantee's documentation:
 - (A) The procurement was of an emergency nature, which would not allow for the delay attendant to soliciting U.S. sources,
 - (B) The price differential for procurement from U.S. sources exceeded by 50% or more the delivered price from the non-U.S. source,
 - (C) Compelling local political considerations precluded consideration of U.S. sources,
 - (D) The goods or services were not available from U.S. sources, or

- (E) Procurement of locally available goods and services, as opposed to procurement of U.S. goods and services, would best promote the objectives of the Foreign Assistance program under the award.
- (2) When the total procurement element exceeds \$250,000 (unless funded by DFA), the following applies: Except as may be specifically approved or directed in advance by the Agreement Officer, all goods and services financed with U.S. dollars, which will be reimbursed under this award must meet the source, origin and nationality requirements set forth in 22 CFR 228 for the authorized geographic code specified in the schedule of this award. If none is specified, the authorized source is Code 000, the United States.
- c. Printed or Audio-Visual Teaching Materials: If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities financed by USAID, in whole or in part, and if other funds including U.S.-owned or U.S.-controlled local currencies are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources, in order of preference:
 - (1) The United States (USAID Geographic Code 000),
 - (2) The Cooperating Country,
 - (3) "Selected Free World" countries (USAID Geographic Code 941), and
 - (4) "Special Free World" countries (USAID Geographic Code 899).
- d. If USAID determines that the recipient has procured any of these goods or services under this award contrary to the requirements of this provision, and has received payment for such purposes, the Agreement Officer may require the recipient to refund the entire amount of the purchase.

This provision must be included in all subagreements which include procurement of goods or services which total over \$5,000.

[END OF PROVISION]

10. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (January 2004)

- a. The recipient agrees to notify the Agreement Officer immediately upon learning that it or any of its principals:
- (1) Are presently excluded or disqualified from covered transactions by any Federal department or agency;
 - (2) Have been convicted within the preceding three-year period preceding this proposal; been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
 - (3) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph a.(2); and
 - (4) Have had one or more public transactions (Federal, State, or local) terminated for cause or default within the preceding three years.
- b. The recipient agrees that, unless authorized by the Agreement Officer, it will not knowingly enter into any subagreements or contracts under this grant with a person or entity that is included on the Excluded Parties List System (www.epls.gov/). The recipient further agrees to include the following provision in any subagreements or contracts entered into under this award:

DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (DECEMBER 2003)

The recipient/contractor certifies that neither it nor its principals is presently excluded or disqualified from participation in this transaction by any Federal department or agency.

- c. The policies and procedures applicable to debarment, suspension, and ineligibility under USAID-financed transactions are set forth in 22 CFR 208.

[END OF PROVISION]

11. DRUG-FREE WORKPLACE (January 2004)

- a. The recipient agrees that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any Federal award. The statement must
 - (1) Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
 - (2) Specify the actions the recipient will take against employees for violating that prohibition; and
 - (3) Let each employee know that, as a condition of employment under any award, he or she
 - (i) Must abide by the terms of the statement, and
 - (ii) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than five calendar days after the conviction.
- b. The recipient agrees that it will establish an ongoing drug-free awareness program to inform employees about
 - (i) The dangers of drug abuse in the workplace;
 - (ii) Your policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
- c. Without the Agreement Officer's expressed written approval, the policy statement and program must be in place as soon as possible, no later than the 30 days after the effective date of this award or the completion date of this award, whichever occurs first.
- d. The recipient agrees to immediately notify the Agreement Officer if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, and the number of each award on which the employee worked. The notification must be sent to the Agreement Officer within 10 calendar days after the recipient learns of the conviction.

- e. Within 30 calendar days of learning about an employee's conviction, the recipient must either
 - (1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, or
 - (2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- f. The policies and procedures applicable to violations of these requirements are set forth in 22 CFR 210.

[END OF PROVISION]

12. EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND COMMUNITY ORGANIZATIONS (December 2009)

- a. All the requirements of 22 CFR Part 205, Participation By Religious Organizations In USAID Programs, are applicable to the recipient and to subrecipients which meet the definition of "Recipient" in 22 CFR 226. The requirements of 22 CFR 205 apply to both religious and secular organizations.
- b. If the recipient makes subawards under this agreement, faith-based organizations must be eligible to participate on the same basis as other organizations, and must not be discriminated for or against on the basis of their religious character or affiliation.
- c. The recipient must not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services directly funded with financial assistance from USAID. If the recipient engages in inherently religious activities, such as worship, religious instruction, and proselytization, it must offer those services at a different time or location from any programs or services directly funded by this award, and participation by beneficiaries in any such inherently religious activities must be voluntary. These restrictions do not apply to programs where USAID funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where USAID funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.
- d. The recipient must not use USAID funds for the acquisition, construction, or

rehabilitation of structures to the extent that those structures are used for inherently religious activities. Where a structure is used for both eligible and inherently religious activities, USAID funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with applicable cost accounting principles. Sanctuaries, chapels, or other rooms that the recipient uses as its principal place of worship are ineligible for acquisition, construction, rehabilitation, or improvements using USAID funds.

- e. The recipient may not discriminate against any beneficiary or potential beneficiary under this award on the basis of religion or religious belief. Accordingly, in providing services supported, in whole or in part, by this agreement or in its outreach activities related to such services, the recipient may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.
- f. When the recipient is a religious organization, the recipient
 - (1) Retains its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support any inherently religious activities, such as worship, religious instruction, or proselytization.
 - (2) Retains its authority over its internal governance and may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
 - (3) Retains its exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1.
 - (4) May use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols.
- g. The Secretary of State may waive the requirements of this provision in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

[END OF PROVISION]

13. IMPLEMENTATION OF E.O. 13224 -- EXECUTIVE ORDER ON TERRORIST FINANCING (March 2002)

The recipient is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all contracts/subawards issued under this agreement.

[END OF PROVISION]

14. MARKING UNDER USAID-FUNDED ASSISTANCE INSTRUMENTS (December 2005)

a. Definitions

Commodities mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and non-deliverable items for recipient's internal use, in administration of the USAID-funded grant, cooperative agreement, or other agreement or subagreement.

Principal Officer means the most senior officer in a USAID Operating Unit in the field, for example, USAID Mission Director or USAID Representative. For global programs managed from Washington but executed across many countries, such as disaster relief and assistance to internally displaced persons, humanitarian emergencies or immediate post conflict and political crisis response, the cognizant Principal Officer may be an Office Director, for example, the Directors of USAID/W/Office of Foreign Disaster Assistance and Office of Transition Initiatives. For non-presence countries, the cognizant Principal Officer is the Senior USAID officer in a regional USAID Operating Unit responsible for the non-presence country, or in the absence of such a responsible operating unit, the Principal U.S Diplomatic Officer in the non-presence country exercising delegated authority from USAID.

Programs mean an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the responsibilities assigned to it.

Projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

Public communications are documents and messages intended for distribution to audiences external to the recipient's organization. They include, but are not limited to,

correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID funded programs, projects or activities, including signage and plaques; Web sites/Internet activities; and events such as training courses, conferences, seminars, press conferences and so forth.

Subrecipient means any person or government (including cooperating country government) department, agency, establishment, or for profit or nonprofit organization that receives a USAID subaward, as defined in 22 CFR 226.2.

Technical Assistance means the provision of funds, goods, services, or other foreign assistance, such as loan guarantees or food for work, to developing countries and other USAID recipients, and through such recipients to subrecipients, in direct support of a Development Objective – as opposed to the internal management of the foreign assistance program.

USAID Identity (Identity) means the official marking for the United States Agency for International Development (USAID), comprised of the USAID logo or seal and new brandmark, with the tagline that clearly communicates that our assistance is “from the American people.” The USAID Identity is available on the USAID Web site at www.usaid.gov/branding and USAID provides it without royalty, license, or other fee to recipients of USAID-funded grants, or cooperative agreements, or other assistance awards.

b. Marking of Program Deliverables

- (1) All recipients must mark appropriately all overseas programs, projects, activities, public communications, and commodities partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward with the USAID Identity, of a size and prominence equivalent to or greater than the recipient's, other donor's, or any other third party's identity or logo.
- (2) The recipient will mark all program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) with the USAID Identity. The recipient should erect temporary signs or plaques early in the construction or implementation phase. When construction or implementation is complete, the recipient must install a permanent, durable sign, plaque, or other marking.
- (3) The recipient will mark technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID with the USAID Identity.

- (4) The recipient will appropriately mark events financed by USAID, such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials, such as signs and banners, with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, the recipient is encouraged otherwise to acknowledge USAID and the American people's support.
- (5) The recipient will mark all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies, and other materials funded by USAID, and their export packaging with the USAID Identity.
- (6) The Agreement Officer may require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant, and as appropriate depending on the audience, program goals, and materials produced.
- (7) The Agreement Officer may require marking with the USAID Identity in the event that the recipient does not choose to mark with its own identity or logo.
- (8) The Agreement Officer may require a pre-production review of USAID-funded public communications and program materials for compliance with the approved Marking Plan.
- (9) Subrecipients. To ensure that the marking requirements "flow down" to subrecipients of subawards, recipients of USAID-funded grants and cooperative agreements or other assistance awards will include the USAID-approved marking provision in any USAID-funded subaward, as follows:

"As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's, or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity."
- (10) Any 'public communications', as defined in 22 CFR 226.2, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

“This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.”

- (11) The recipient will provide the Cognizant Technical Officer (CTO) or other USAID personnel designated in the grant or cooperative agreement with two copies of all program and communications materials produced under the award. In addition, the recipient will submit one electronic or one hard copy of all final documents to USAID’s Development Experience Clearinghouse.

c. Implementation of marking requirements

- (1) When the grant or cooperative agreement contains an approved Marking Plan, the recipient will implement the requirements of this provision following the approved Marking Plan.
- (2) When the grant or cooperative agreement does not contain an approved Marking Plan, the recipient will propose and submit a plan for implementing the requirements of this provision within **[Agreement Officer fill-in]** days after the effective date of this provision. The plan will include:
- (i) A description of the program deliverables specified in paragraph b. of this provision that the recipient will produce as a part of the grant or cooperative agreement and which will visibly bear the USAID Identity.
 - (ii) The type of marking and what materials the applicant uses to mark the program deliverables with the USAID Identity,
 - (iii) When in the performance period the applicant will mark the program deliverables, and where the applicant will place the marking,
- (3) The recipient may request program deliverables not be marked with the USAID Identity by identifying the program deliverables and providing a rationale for not marking these program deliverables. Program deliverables may be exempted from USAID marking requirements when:
- (i) USAID marking requirements would compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials;

- (ii) USAID marking requirements would diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent;
 - (iii) USAID marking requirements would undercut host-country government “ownership” of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as “by” or “from” a cooperating country ministry or government official;
 - (iv) USAID marking requirements would impair the functionality of an item;
 - (v) USAID marking requirements would incur substantial costs or be impractical;
 - (vi) USAID marking requirements would offend local cultural or social norms, or be considered inappropriate;
 - (vii) USAID marking requirements would conflict with international law.
- (4) The proposed plan for implementing the requirements of this provision, including any proposed exemptions, will be negotiated within the time specified by the Agreement Officer after receipt of the proposed plan. Failure to negotiate an approved plan with the time specified by the Agreement Officer may be considered as noncompliance with the requirements of this provision.

d. Waivers

- (1) The recipient may request a waiver of the Marking Plan or of the marking requirements of this provision, in whole or in part, for each program, project, activity, public communication or commodity, or, in exceptional circumstances, for a region or country, when USAID required marking would pose compelling political, safety, or security concerns, or when marking would have an adverse impact in the cooperating country. The recipient will submit the request through the Agreement Officer’s Technical Representative (AOTR). The Principal Officer is responsible for approvals or disapprovals of waiver requests.
- (2) The request will describe the compelling political, safety, security concerns, or adverse impact that require a waiver, detail the circumstances and rationale for the waiver, detail the specific requirements to be waived, the specific portion of the Marking Plan to be

waived, or specific marking to be waived, and include a description of how program materials will be marked (if at all) if the USAID Identity is removed. The request should also provide a rationale for any use of recipient's own identity/logo or that of a third party on materials that will be subject to the waiver.

- (3) Approved waivers are not limited in duration but are subject to Principal Officer review at any time, due to changed circumstances.
 - (4) Approved waivers "flow down" to recipients of subawards unless specified otherwise. The waiver may also include the removal of USAID markings already affixed, if circumstances warrant.
 - (5) Determinations regarding waiver requests are subject to appeal to the Principal Officer's cognizant Assistant Administrator (AA). The recipient may appeal by submitting a written request to reconsider the Principal Officer's waiver determination to the cognizant AA.
- e. Non-retroactivity.** The requirements of this provision do not apply to any materials, events, or commodities produced prior to January 2, 2006. The requirements of this provision do not apply to program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) where the construction and implementation of these are complete prior to January 2, 2006 and the period of the grant does not extend past January 2, 2006.

[END OF PROVISION]

15. REGULATIONS GOVERNING EMPLOYEES (AUGUST 1992)

(The following applies to the recipient's employees working in the cooperating country under the agreement who are not citizens of the cooperating country.)

- a. The recipient's employees shall maintain private status and may not rely on local U.S. Government offices or facilities for support while under this grant.
- b. The sale of personal property or automobiles by recipient employees and their dependents in the foreign country to which they are assigned shall be subject to the same limitations and prohibitions which apply to direct-hire USAID personnel employed by the Mission, including the rules contained in 22 CFR 136, except as this may conflict with host government regulations.
- c. Other than work to be performed under this award for which an employee is

assigned by the recipient, no employee of the recipient shall engage directly or indirectly, either in the individual's own name or in the name or through an agency of another person, in any business, profession, or occupation in the foreign countries to which the individual is assigned, nor shall the individual make loans or investments to or in any business, profession, or occupation in the foreign countries to which the individual is assigned.

- d. The recipient's employees, while in a foreign country, are expected to show respect for its conventions, customs, and institutions, to abide by its applicable laws and regulations, and not to interfere in its internal political affairs.
- e. In the event the conduct of any recipient employee is not in accordance with the preceding paragraphs, the recipient's chief of party shall consult with the USAID Mission Director and the employee involved, and shall recommend to the recipient a course of action with regard to such employee.
- f. The parties recognize the rights of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this grant award of any third country national when, in the discretion of the Ambassador, the interests of the United States so require.
- g. If it is determined, either under e. or f. above, that the services of such employee should be terminated, the recipient shall use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

[END OF PROVISION]

16. CONVERSION OF UNITED STATES DOLLARS TO LOCAL CURRENCY (NOVEMBER 1985)

(This provision applies when activities are undertaken outside the United States.)

Upon arrival in the cooperating country, and from time to time as appropriate, the recipient's chief of party shall consult with the Mission Director who shall provide, in writing, the procedure the recipient and its employees shall follow in the conversion of United States dollars to local currency. This may include, but is not limited to, the conversion of currency through the cognizant United States Disbursing Officer or Mission Controller, as appropriate.

[END OF PROVISION]

17. USE OF POUCH FACILITIES (AUGUST 1992)

(This provision applies when activities are undertaken outside the United States.)

- a. Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for USAID recipients and their employees as a general policy, as detailed in items (1) through (6) below. However, the final decision regarding use of pouch facilities rest with the Embassy or USAID Mission. In consideration of the use of pouch facilities, the recipient and its employees agree to indemnify and hold harmless, the Department of State and USAID for loss or damage occurring in pouch transmission:
 - (1) Recipients and their employees are authorized use of the pouch for transmission and receipt of up to a maximum of .9 kgs per shipment of correspondence and documents needed in the administration of assistance programs.
 - (2) U.S. citizen employees are authorized use of the pouch for personal mail up to a maximum of .45 kgs per shipment (but see a.(3) below).
 - (3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this standard provision and are not authorized to be sent or received by pouch.
 - (4) Official and personal mail pursuant to a.(1) and (2) above sent by pouch should be addressed as follows:

Name of individual or organization (followed by letter symbol "G")
City Name of post (USAID/_____)
Agency for International Development
Washington, DC 20523-0001
 - (5) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.
 - (6) Recipient personnel are NOT authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide.
- b. The recipient shall be responsible for advising its employees of this authorization, these guidelines, and limitations on use of pouch facilities.
- c. Specific additional guidance on grantee use of pouch facilities in accordance with

this standard provision is available from the Post Communication Center at the Embassy or USAID Mission.

[END OF PROVISION]

18. INTERNATIONAL AIR TRAVEL AND TRANSPORTATION (JUNE 1999)

(This provision is applicable when costs for international travel or transportation will be paid for with USAID funds. This provision is not applicable if the recipient is providing for travel with private funds as part of a cost-sharing requirement, or with Program Income generated under the award.)

a. PRIOR BUDGET APPROVAL

In accordance with OMB Cost Principles, direct charges for foreign travel costs are allowable only when each foreign trip has received prior budget approval. Such approval will be deemed to have been met when:

- (1) The trip is identified. Identification is accomplished by providing the following information: the number of trips, the number of individuals per trip, and the destination country(ies).
- (2) The information noted at a.(1) above is incorporated in: the proposal, the program description or schedule of the award, the implementation plan (initial or revisions), or amendments to the award; and
- (3) The costs related to the travel are incorporated in the approved budget of the award.

The Agreement Officer may approve travel which has not been incorporated in writing as required by paragraph a.(2). In such case, a copy of the Agreement Officer's approval must be included in the agreement file.

b. NOTIFICATION

- (1) As long as prior budget approval has been met in accordance with paragraph a. above, a separate Notification will not be necessary unless:
 - (i) The primary purpose of the trip is to work with USAID Mission personnel, or
 - (ii) The recipient expects significant administrative or substantive programmatic support from the Mission.

Neither the USAID Mission nor the Embassy will require Country Clearance of employees or contractors of USAID recipients.

- (2) Where notification is required in accordance with paragraph b.(1)(i) or (ii) above, the recipient will observe the following standards:
 - (i) Send a written notice to the cognizant USAID Technical Office in the Mission. If the recipient's primary point of contact is a Technical Officer in USAID/W, the recipient may send the notice to that person. It will be the responsibility of the USAID/W Technical Officer to forward the notice to the field.
 - (ii) The notice should be sent as far in advance as possible, but at least 14 calendar days in advance of the proposed travel. This notice may be sent by fax or e-mail. The recipient should retain proof that notification was made.
 - (iii) The notification shall contain the following information: the award number, the cognizant Technical Officer, the traveler's name (if known), date of arrival, and the purpose of the trip.
 - (iv) The USAID Mission will respond only if travel has been denied. It will be the responsibility of the Technical Officer in the Mission to contact the recipient within five working days of having received the notice if the travel is denied. If the recipient has not received a response within the time frame, the recipient will be considered to have met these standards for notification, and may travel.
 - (v) If a subrecipient is required to issue a Notification, as per this section, the subrecipient may contact the USAID Technical Officer directly, or the prime recipient may contact USAID on the subrecipient's behalf.

c. SECURITY ISSUES

Recipients are encouraged to obtain the latest Department of State Travel Advisory Notices before travelling. These Notices are available to the general public and may be obtained directly from the State Department, or via Internet.

Where security is a concern in a specific region, recipients may choose to notify the US Embassy of their presence when they have entered the country. This may be especially important for long-term posting.

d. USE OF U.S.-OWNED LOCAL CURRENCY

Travel to certain countries shall, at USAID's option, be funded from U.S.-owned local currency. When USAID intends to exercise this option, USAID will either issue a U.S. Government S.F. 1169, Transportation Request (GTR) which the grantee may exchange for tickets, or issue the tickets directly. Use of such U.S.-owned currencies will constitute a dollar charge to this grant.

e. THE FLY AMERICA ACT

The Fly America Act (49 U.S.C. 40118) requires that all air travel and shipments under this award must be made on U.S. flag air carriers to the extent service by such carriers is available. The Administrator of General Services Administration (GSA) is authorized to issue regulations for purposes of implementation. Those regulations may be found at 41 CFR 301, and are hereby incorporated by reference into this award.

f. COST PRINCIPLES

The recipient will be reimbursed for travel and the reasonable cost of subsistence, post differentials and other allowances paid to employees in international travel status in accordance with the recipient's applicable cost principles and established policies and practices which are uniformly applied to Federally financed and other activities of the grantee.

If the recipient does not have written established policies regarding travel costs, the standard for determining the reasonableness of reimbursement for overseas allowance will be the Standardized Regulations (Government Civilians, Foreign Areas), published by the U.S. Department of State, as amended. The most current subsistence, post differentials, and other allowances may be obtained from the Agreement Officer.

g. SUBAWARDS

This provision will be included in all subawards and contracts which require international air travel and transportation under this award.

[END OF PROVISION]

19. OCEAN SHIPMENT OF GOODS (JUNE 1999)

(This provision is applicable for awards and subawards for \$100,000 or more and when goods purchased with funds provided under this award are transported to cooperating countries on ocean vessels whether or not award funds are used for the transportation.)

- a. At least 50% of the gross tonnage of all goods purchased under this agreement and transported to the cooperating countries shall be made on privately owned U.S. flag commercial ocean vessels, to the extent such vessels are available at fair and reasonable rates for such vessels.
- b. At least 50% of the gross freight revenue generated by shipments of goods purchased under this agreement and transported to the cooperating countries on dry cargo liners shall be paid to or for the benefit of privately owned U.S. flag commercial ocean vessels to the extent such vessels are available at fair and reasonable rates for such vessels.
- c. When U.S. flag vessels are not available, or their use would result in a significant delay, the grantee may request a determination of non-availability from the Office of Acquisition and Assistance, Transportation Division, Washington, DC 20523, giving the basis for the request which will relieve the grantee of the requirement to use U.S. flag vessels for the amount of tonnage included in the determination. Shipments made on non-free world ocean vessels are not reimbursable under this grant.
- d. The recipient shall send a copy of each ocean bill of lading, stating all of the carrier's charges including the basis for calculation such as weight or cubic measurement, covering a shipment under this agreement to:

U.S. Department of Transportation,
Maritime Administration, Division of National Cargo,
400 7th Street, SW.,
Washington, DC 20590, and

U.S. Agency for International Development,
Office of Acquisition and Assistance
Transportation Division
1300 Pennsylvania Avenue, NW.,
Washington, DC 20523-7900
- e. Shipments by voluntary nonprofit relief agencies (for example, PVOs) shall be governed by this standard provision and by USAID Regulation 2, "Overseas Shipments of Supplies by Voluntary Nonprofit Relief Agencies" (22 CFR 202).
- f. Shipments financed under this grant must meet applicable eligibility requirements set out in 22 CFR 228.21.

[END OF PROVISION]

20. LOCAL PROCUREMENT (April 1998)

(This provision applies when activities are undertaken outside the United States.)

- a. Financing local procurement involves the use of appropriated funds to finance the procurement of goods and services supplied by local businesses, dealers, or producers, with payment normally being in the currency of the cooperating country.
- b. Locally financed procurements must be covered by source and nationality waivers as set forth in 22 CFR 228, Subpart F, except as provided for in mandatory standard provision, "USAID Eligibility Rules for Goods and Services," or when one of the following exceptions applies:
 - (1) Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed \$100,000 exclusive of transportation costs.
 - (2) Commodities of Geographic Code 935, origin if the value of the transaction does not exceed the local currency equivalent of \$5,000.
 - (3) Professional Services Contracts estimated not to exceed \$250,000.
 - (4) Construction Services Contracts estimated not to exceed \$5,000,000.
 - (5) Commodities and services available only in the local economy (no specific per transaction value applies to this category). This category includes the following items:
 - (i) Utilities including fuel for heating and cooking, waste disposal, and trash collection;
 - (ii) Communications - telephone, telex, fax, postal and courier services;
 - (iii) Rental costs for housing and office space;
 - (iv) Petroleum, oils and lubricants for operating vehicles and equipment;
 - (v) Newspapers, periodicals and books published in the cooperating country;
 - (vi) Other commodities and services and related expenses that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the cooperating country, for example, vehicle

maintenance, hotel accommodations, etc.

- c. The coverage on ineligible and restricted goods and services in the mandatory standard provision entitled, "USAID Eligibility Rules for Goods and Services," also apply to local procurement.
- d. This provision will be included in all subagreements where local procurement of goods or services is a supported element.

[END OF PROVISION]

21. VOLUNTARY POPULATION PLANNING ACTIVITIES – MANDATORY REQUIREMENTS (MAY 2006)

Requirements for Voluntary Sterilization Programs

- (1) None of the funds made available under this award shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

Prohibition on Abortion-Related Activities:

- (1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.
- (2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not precluded.

[END OF PROVISION]

***22. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER (OCTOBER 2010)**

APPLICABILITY: *This provision is required in accordance with 2 CFR 25, Award Term for Central Contractor Registration and Universal Identifier. AOs must include this provision in all assistance solicitations and all awards made on or after October 1, 2010.*

CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER (OCTOBER 2010)

- a. **Requirement for Central Contractor Registration (CCR).** Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently, if required by changes in your information or another award term.
- b. **Requirement for Data Universal Numbering System (DUNS) numbers.** If you are authorized to make subawards under this award, you:
 - (1) Must notify potential subrecipients that no entity (see definition in paragraph c. of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
 - (2) May not make a subaward to an entity unless the entity has provided its DUNS number to you.
- c. **Definitions.** For purposes of this award term:
 - (1) Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at www.ccr.gov).
 - (2) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at fedgov.dnb.com/webform).
 - (3) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR 25, subpart C:

- (i) A governmental organization, which is a State, local government, or Indian tribe;
 - (ii) A foreign public entity;
 - (iii) A domestic or foreign nonprofit organization;
 - (iv) A domestic or foreign for-profit organization; and
 - (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (4) Subaward:
- (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - (iii) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
- (5) Subrecipient means an entity that:
- (i) Receives a subaward from you under this award; and
 - (ii) Is accountable to you for the use of the Federal funds provided by the subaward.

[END OF PROVISION]

***23. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (OCTOBER 2010)**

APPLICABILITY: *This provision is required in accordance with 2 CFR 170, Award Term for Reporting Subawards and Executive Compensation. AOs must include this provision in all assistance solicitations and all awards made on or after October 1, 2010.*

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (OCTOBER 2010)

a. Reporting of first-tier subawards.

- (1) Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
- (2) Where and when to report.
 - (i) You must report each obligating action described in paragraph a.(1) of this award term to www.fsrs.gov.
 - (ii) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- (3) What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

- (1) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
 - (i) The total Federal funding authorized to date under this award is \$25,000 or more;
 - (ii) In the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and

Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)
- (2) Where and when to report. You must report executive total compensation described in paragraph b.(1) of this award term:
- (i) As part of your registration profile at www.bpn.gov/ccr.
 - (ii) By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

- (1) Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if –
- (i) In the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

- (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)
- (2) Where and when to report. You must report subrecipient executive total compensation described in paragraph c.(1) of this award term:
- (i) To the recipient.
 - (ii) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (for example, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- (1) Subawards, and
- (2) The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions.

For purposes of this award term:

- (1) Entity means all of the following, as defined in 2 CFR 25:
 - (i) A governmental organization, which is a State, local government, or Indian tribe;
 - (ii) A foreign public entity;
 - (iii) A domestic or foreign nonprofit organization;
 - (iv) A domestic or foreign for-profit organization; and

- (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (2) Executive means officers, managing partners, or any other employees in management positions.
- (3) Subaward:
 - (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non- Profit Organizations").
 - (iii) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- (4) Subrecipient means an entity that:
 - (i) Receives a subaward from you (the recipient) under this award; and
 - (ii) Is accountable to you for the use of the Federal funds provided by the subaward.
- (5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - (i) Salary and bonus.
 - (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - (iii) Earnings for services under nonequity incentive plans. This does not include group life, health, hospitalization, or medical

reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

- (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (v) Above-market earnings on deferred compensation which is not tax-qualified.
- (vi) Other compensation, if the aggregate value of all such other compensation (for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

[END OF PROVISION]

***24. TRAFFICKING IN PERSONS (OCTOBER 2010)**

APPLICABILITY: *This provision is required in accordance with 2 CFR 175, Award Term for Trafficking in Persons. AOs must include this provision in all new awards. AOs must modify existing awards to include this provision at the earliest practicable opportunity.*

TRAFFICKING IN PERSONS (OCTOBER 2010)

a. Provisions applicable to a recipient that is a private entity.

- (1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (ii) Procure a commercial sex act during the period of time that the award is in effect; or
 - (iii) Use forced labor in the performance of the award or subawards under the award.
- (2) We, as the Federal awarding agency, may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

- (i) Is determined to have violated a prohibition in paragraph a.(1) of this award term; or
- (ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.(1) of this award term through conduct that is either—
 - (A) Associated with performance under this award; or
 - (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 22 CFR 208 or its superseding Part in 2 CFR.

b. Provisions applicable to a recipient other than a private entity.

- (1) We, as the Federal awarding agency, may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
 - (i) Is determined to have violated an applicable prohibition in paragraph a.(1) of this award term; or
 - (ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.(1) of this award term through conduct that is either—
 - (A) Associated with performance under this award; or
 - (B) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 22 CFR 208 or its superseding Part in 2 CFR.

c. Provisions applicable to any recipient.

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.(1) of this award term.
- (2) Our right to terminate unilaterally that is described in paragraph a.(2) or b.

of this section:

- (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
- (3) You must include the requirements of paragraph a.(1) of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this provision:

- (1) “Employee” means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (3) “Private entity”:
 - (i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25(b).
 - (ii) Includes:
 - (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - (B) A for-profit organization.
- (4) “Severe forms of trafficking in persons,” “commercial sex act,” and

“coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

[END OF PROVISION]

[END OF MANDATORY PROVISIONS]

Required As Applicable

Standard Provisions for U.S. Nongovernmental Recipients

The following standard provisions are required to be used when applicable. Applicability statements are contained in the parenthetical statement preceding the standard provision. When a standard provision is determined to be applicable in accordance with the applicability statement, the use of such standard provision is mandatory unless a deviation has been approved in accordance with ADS 303.3.4.

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II. REQUIRED AS APPLICABLE STANDARD PROVISIONS FOR U.S. NONGOVERNMENTAL RECIPIENTS

1. NEGOTIATED INDIRECT COST RATES - PREDETERMINED (April 1998)

***APPLICABILITY:** This provision is applicable to educational or nonprofit institutions whose indirect cost rates under this award are on a predetermined basis.*

NEGOTIATED INDIRECT COST RATES - PREDETERMINED (April 1998)

- a. The allowable indirect costs shall be determined by applying the predetermined indirect cost rates to the bases specified in the schedule of this award.
- b. Within the earlier of 30 days after receipt of the A-133 audit report or nine months after the end of the audit period, the recipient shall submit to the cognizant agency for audit the required OMB Circular A-133 audit report, proposed predetermined indirect cost rates, and supporting cost data. If USAID is the cognizant agency or no cognizant agency has been designated, the recipient shall submit four copies of the audit report, the proposed predetermined indirect cost rates, and supporting cost data to the Overhead, Special Costs, and Closeout Branch, Office of Procurement, USAID, Washington, DC 20523-7802. The proposed rates shall be based on the recipient's actual cost experience during that fiscal year. Negotiations of predetermined indirect cost rates shall begin soon after receipt of the recipient's proposal.
- c. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles.
- d. The results of each negotiation shall be set forth in an indirect cost rate agreement signed by both parties. Such agreement is automatically incorporated into this award and shall specify (1) the agreed upon predetermined rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply, and (4) the specific items treated as direct costs. The indirect cost rate agreement shall not change any monetary ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.
- e. Pending establishment of predetermined indirect costs rates for any fiscal year, the recipient shall be reimbursed either at the rates fixed for the previous fiscal year or at billing rates acceptable to the USAID Agreement Officer, subject to appropriate adjustment when the final rates for the fiscal year or other period are established.

[END OF PROVISION]

2. NEGOTIATED INDIRECT COST RATES - PROVISIONAL (Nonprofit) (April 1998)

APPLICABILITY: *This provision is applicable to any nonprofit organizations whose indirect cost rates under this award are on a provisional basis.*

NEGOTIATED INDIRECT COST RATES - PROVISIONAL (Nonprofit) (April 1998)

- a. Provisional indirect cost rates shall be established for each of the recipient's accounting periods during the term of this award. Pending establishment of revised provisional or final rates, allowable indirect costs shall be reimbursed at the rates, on the bases, and for the periods shown in the schedule of the award.
- b. Within the earlier of 30 days after receipt of the A-133 audit report or nine months after the end of the audit period, the recipient shall submit to the cognizant agency for audit the required OMB Circular A-133 audit report, proposed final indirect cost rates, and supporting cost data. If USAID is the cognizant agency or no cognizant agency has been designated, the recipient shall submit four copies of the audit report, along with the proposed final indirect cost rates and supporting cost data, to the Overhead, Special Costs, and Closeout Branch, Office of Procurement, USAID, Washington, DC 20523-7802. The proposed rates shall be based on the recipient's actual cost experience during that fiscal year. Negotiations of final indirect cost rates shall begin soon after receipt of the recipient's proposal.
- c. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles.
- d. The results of each negotiation shall be set forth in a written indirect cost rate agreement signed by both parties. Such agreement is automatically incorporated into this award and shall specify (1) the agreed upon final rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply, and (4) the items treated as direct costs. The agreement shall not change any monetary ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.
- e. Pending establishment of final indirect cost rate(s) for any fiscal year, the recipient shall be reimbursed either at negotiated provisional rates or at billing rates acceptable to the Agreement Officer, subject to appropriate adjustment when the final rates for the fiscal year are established. To prevent substantial overpayment or underpayment, the provisional or billing rates may be prospectively or retroactively revised by mutual agreement.
- f. Failure by the parties to agree on final rates is a 22 CFR 226.90 dispute.

[END OF PROVISION]

3. **NEGOTIATED INDIRECT COST RATE - PROVISIONAL (Profit) (April 1998)**

APPLICABILITY: *This provision applies to for-profit organizations whose indirect cost rates under this award are on a provisional basis.*

NEGOTIATED INDIRECT COST RATE - PROVISIONAL (Profit) (April 1998)

- a. Provisional indirect cost rates shall be established for the recipient's accounting periods during the term of this award. Pending establishment of revised provisional or final rates, allowable indirect costs shall be reimbursed at the rates, on the bases, and for the periods shown in the schedule of this award. Indirect cost rates and the appropriate bases shall be established in accordance with FAR Subpart 42.7.
- b. Within six months after the close of the recipient's fiscal year, the recipient shall submit to the cognizant agency for audit the proposed final indirect cost rates and supporting cost data. If USAID is the cognizant agency or no cognizant agency has been designated, the recipient shall submit three copies of the proposed final indirect cost rates and supporting cost data, to the Overhead, Special Costs, and Closeout Branch, Office of Procurement, USAID, Washington, DC 20523-7802. The proposed rates shall be based on the recipient's actual cost experience during that fiscal year. Negotiations of final indirect cost rates shall begin soon after receipt of the recipient's proposal.
- c. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles.
- d. The results of each negotiation shall be set forth in an indirect cost rate agreement signed by both parties. Such agreement is automatically incorporated into this award and shall specify (1) the agreed upon final rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply, and (4) the items treated as direct costs. The agreement shall not change any monetary ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.
- e. Pending establishment of final indirect cost rates for any fiscal year, the recipient shall be reimbursed either at negotiated provisional rates or at billing rates acceptable to the Agreement Officer, subject to appropriate adjustment when the final rates for the fiscal year are established. To prevent substantial overpayment or underpayment, the provisional or billing rates may be prospectively or retroactively revised by mutual agreement.
- f. Failure by the parties to agree on final rates is a 22 CFR 226.90 dispute.

[END OF PROVISION]

4. PUBLICATIONS AND MEDIA RELEASES (MARCH 2006)

APPLICABILITY: *This provision is applicable when publications are financed under the award.*

PUBLICATIONS AND MEDIA RELEASES (MARCH 2006)

- a. The recipient shall provide the USAID Cognizant Technical Officer one copy of all published works developed under the award with lists of other written work produced under the award. In addition, the recipient shall submit final documents in electronic format unless no electronic version exists at the following address:

Online (preferred)

dec.usaid.gov/index.cfm?p=docSubmit.home

Mailing address:

Document Acquisitions

USAID Development Experience Clearinghouse (DEC)

8403 Colesville Road, Suite 210

Silver Spring, MD 20910-6368

Contract Information

Telephone (301) 562-0641

Fax (301) 588-7787

E-mail: docsubmit@dec.cdie.org

Electronic documents must consist of only one electronic file that comprises the complete and final equivalent of a hard copy. They may be submitted online (preferred); on 3.5" diskettes, a Zip disk, CD-R, or by e-mail. Electronic documents should be in PDF (Portable Document Format). Submission in other formats is acceptable but discouraged.

Each document submitted should contain essential bibliographic elements, such as 1) descriptive title; 2) author(s) name; 3) award number; 4) sponsoring USAID office; 5) strategic objective; and 6) date of publication,;

- b. In the event award funds are used to underwrite the cost of publishing, in lieu of the publisher assuming this cost as is the normal practice, any profits or royalties up to the amount of such cost shall be credited to the award unless the schedule of the award has identified the profits or royalties as program income.
- c. Except as otherwise provided in the terms and conditions of the award, the author or the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under this award, but USAID reserves a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for

Government purposes.

5. PARTICIPANT TRAINING (April 1998)

APPLICABILITY: *This provision is applicable when any participant training is financed under the award.*

PARTICIPANT TRAINING (April 1998)

- a. Definition: A participant is any non-U.S. individual being trained under this award outside of that individual's home country.
- b. Application of ADS Chapter 253: Participant training under this award shall comply with the policies established in ADS Chapter 253, Participant Training, except to the extent that specific exceptions to ADS 253 have been provided in this award with the concurrence of the Office of International Training.
- c. Orientation: In addition to the mandatory requirements in ADS 253, recipients are strongly encouraged to provide, in collaboration with the Mission training officer, predeparture orientation and orientation in Washington at the Washington International Center. The latter orientation program also provides the opportunity to arrange for home hospitality in Washington and elsewhere in the United States through liaison with the National Council for International Visitors (NCIV). If the Washington orientation is determined not to be feasible, home hospitality can be arranged in most U.S. cities if a request for such is directed to the Agreement Officer, who will transmit the request to NCIV through EGAT/ED/PT.

[END OF PROVISION]

6. VOLUNTARY POPULATION PLANNING ACTIVITIES – SUPPLEMENTAL REQUIREMENTS (JANUARY 2009)

APPLICABILITY: *This provision is applicable to all awards involving any aspect of voluntary population planning activities.*

VOLUNTARY POPULATION PLANNING ACTIVITIES – SUPPLEMENTAL REQUIREMENTS (JANUARY 2009)

- a. Voluntary Participation and Family Planning Methods:
 - (1) The recipient agrees to take any steps necessary to ensure that funds made available under this award will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the recipient agrees to

conduct its activities in a manner which safeguards the rights, health, and welfare of all individuals who take part in the program.

- (2) Activities which provide family planning services or information to individuals, financed in whole or in part under this agreement, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

b. Requirements for Voluntary Family Planning Projects

- (1) A family planning project must comply with the requirements of this paragraph.
- (2) A project is a discrete activity through which a governmental, nongovernmental, or public international organization provides family planning services to people and for which funds obligated under this award, or goods or services financed with such funds, are provided under this award, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.
- (3) Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.
- (4) The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.
- (5) No person shall be denied any right or benefit, including the right of access to participate in any program of general welfare or health care,

based on the person's decision not to accept family planning services offered by the project.

- (6) The project shall provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method. This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.
 - (7) The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.
 - (8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no subaward or contract under this award, the organization implementing a project for which such assistance is provided shall agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.
 - (9)
 - i) The recipient shall notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs (3), (4), (5), or (7) of this paragraph.
 - ii) The recipient shall investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph (6) of this paragraph and shall notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project.
 - iii) The recipient shall provide USAID such additional information about violations as USAID may request.
- c. Additional Requirements for Voluntary Sterilization Programs
- (1) None of the funds made available under this award shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

- (2) The recipient shall ensure that any surgical sterilization procedures supported, in whole or in part, by funds from this award are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent anytime prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.
- (3) Further, the recipient shall document the patient's informed consent by (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or, (ii) when a patient is unable to read adequately a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation, the receipt of this oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall speak the same language as the patient.
- (4) The recipient must retain copies of informed consent forms and certification documents for each voluntary sterilization procedure for a period of three years after performance of the sterilization procedure.

d. Prohibition on Abortion-Related Activities:

- (1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and, (v) lobbying for or against abortion. The term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

- (2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent, or consequences of abortions is not precluded.
- e. The recipient shall insert this provision in all subsequent subagreements and contracts involving family planning or population activities that will be supported, in whole or in part, from funds under this award. The term subagreement means subgrants and subcooperative agreements.

[END OF PROVISION]

7. PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT (April 1998)

APPLICABILITY: *This provision is applicable when human subjects are involved in research financed by the award.*

PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT (April 1998)

- a. Safeguarding the rights and welfare of human subjects involved in research supported by USAID is the responsibility of the organization to which support is awarded. USAID has adopted the Common Federal Policy for the Protection of Human Subjects, Part 225 of Title 22 of the Code of Federal Regulations (the "Policy"). Additional interpretation, procedures, and implementation guidance of the Policy are found in USAID General Notice entitled "Procedures for the Protection of Human Subjects in Research Supported by USAID," issued April 19, 1995, as amended. USAID's Cognizant Human Subjects Officer (CHSO) in USAID/W has oversight, guidance, and interpretation responsibility for the Policy.
- b. Recipient organizations must comply with USAID policy when humans are the subject of research, as defined in 22 CFR 225.102(d), funded by the grant and recipients must provide "assurance", as required by 22 CFR 225.103, that they follow and abide by the procedures in the Policy. See also Section 5 of the April 19, 1995, USAID General Notice which sets forth activities to which the Policy is applicable. The existence of a bona fide, applicable assurance approved by the Department of Health and Human Services (HHS) such as the "multiple project assurance" (MPA) will satisfy this requirement. Alternatively, organizations can provide an acceptable written assurance to USAID as described in 22 CFR 225.103. Such assurances must be determined by the CHSO to be acceptable prior to any applicable research being initiated or conducted under the award. In some limited instances outside the U.S., alternative systems for the protection of

human subjects may be used provided they are deemed "at least equivalent" to those outlined in Part 225 (See 22 CFR 225.101[h]). Criteria and procedures for making this determination are described in the General Notice cited in the preceding paragraph.

- c. Since the welfare of the research subject is a matter of concern to USAID as well as to the organization, USAID staff consultants and advisory groups may independently review and inspect research and research processes and procedures involving human subjects, and based on such findings, the CHSO may prohibit research which presents unacceptable hazards or otherwise fails to comply with USAID procedures. Informed consent documents must include the stipulation that the subject's records may be subject to such review.

[END OF PROVISION]

8. CARE OF LABORATORY ANIMALS (MARCH 2004)

APPLICABILITY: *This provision is applicable when laboratory animals are involved in research performed in the U.S. and financed by the award.*

CARE OF LABORATORY ANIMALS (MARCH 2004)

- a. Before undertaking performance of any grant involving the use of laboratory animals, the recipient shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Public Law 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended by Public Law 91-579, Animal Welfare Act of 1970, December 24, 1970. The recipient shall furnish evidence of such registration to the Agreement Officer.
- b. The recipient shall acquire animals used in research under this award only from dealers licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in a. above.
- c. In the care of any live animals used or intended for use in the performance of this grant, the recipient shall adhere to the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animals Resources, National Academy of Sciences - National Research Council (NAS-NRC), and in the United States Department of Agriculture's (USDA) regulations and standards issued under the Public Laws enumerated in a. above. In case of conflict between standards, the higher standard shall be used. The recipient's reports on portions of the award in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources, NAS-NRC, and/or in

the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of 24 August 1966, as amended (P.L. 89-544 and P.L. 91-579). NOTE: The recipient may request registration of the recipient's facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which the recipient's research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Staff Office, Animal Care Staff, USDA/APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737-1234 and at www.aphis.usda.gov/animal_welfare/index.shtml.

[END OF PROVISION]

9. TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE) (NOVEMBER 1985)

APPLICABILITY: *This provision is applicable to property titled in the name of the cooperating country or such public or private agency as the cooperating country government may designate.*

TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE) (NOVEMBER 1985)

- a. Except as modified by the schedule of this grant, title to all equipment, materials and supplies, the cost of which is reimbursable to the recipient by USAID or by the cooperating country, shall at all times be in the name of the cooperating country or such public or private agency as the cooperating country may designate, unless title to specified types or classes of equipment is reserved to USAID under provisions set forth in the schedule of this award. All such property shall be under the custody and control of recipient until the owner of title directs otherwise or completion of work under this award or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guarantees and warranties obtained from suppliers shall be taken in the name of the title owner.
- b. The recipient shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this grant. The recipient shall take all reasonable steps to comply with all appropriate directions or instructions which the Agreement Officer may prescribe as reasonably necessary for the protection of the Government property.

- c. The recipient shall prepare and establish a program, to be approved by the appropriate USAID Mission, for the receipt, use, maintenance, protection, custody and care of equipment, materials and supplies for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program. The recipient shall be guided by the following requirements:
- (1) Property Control: The property control system shall include but not be limited to the following:
 - (i) Identification of each item of cooperating country property acquired or furnished under the award by a serially controlled identification number and by description of item. Each item must be clearly marked "Property of (insert name of cooperating country)."
 - (ii) The price of each item of property acquired or furnished under this award.
 - (iii) The location of each item of property acquired or furnished under this award.
 - (iv) A record of any usable components which are permanently removed from items of cooperating country property as a result of modification or otherwise.
 - (v) A record of disposition of each item acquired or furnished under the award.
 - (vi) Date of order and receipt of any item acquired or furnished under the award.
 - (vii) The official property control records shall be kept in such condition that at any stage of completion of the work under this award, the status of property acquired or furnished under this award may be readily ascertained. A report of current status of all items of property acquired or furnished under the award shall be submitted yearly concurrently with the annual report.
 - (2) Maintenance Program: The recipient's maintenance program shall be consistent with sound business practice, the terms of the award, and provide for:
 - (i) Disclosure of need for and the performance of preventive maintenance,
 - (ii) Disclosure and reporting of need for capital type rehabilitation, and

- (iii) Recording of work accomplished under the program:
 - (A) Preventive maintenance - Preventive maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.
 - (B) Records of maintenance - The recipient's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.
 - (C) A report of status of maintenance of cooperating country property shall be submitted annually concurrently with the annual report.

d. Risk of Loss:

- (1) The recipient shall not be liable for any loss of or damage to the cooperating country property, or for expenses incidental to such loss or damage except that the recipient shall be responsible for any such loss or damage (including expenses incidental thereto):
 - (i) Which results from willful misconduct or lack of good faith on the part of any of the recipient's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of all or substantially all of the recipient's business, or all or substantially all of the recipient's operation at any one plant, laboratory, or separate location in which this award is being performed;
 - (ii) Which results from a failure on the part of the recipient, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in (i) above:
 - (A) To maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of cooperating country property as required by (i) above; or
 - (B) To take all reasonable steps to comply with any appropriate written directions of the Agreement Officer under b. above;
 - (iii) For which the recipient is otherwise responsible under the express terms designated in the schedule of this award;

- (vi) Which results from a risk expressly required to be insured under some other provision of this award, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or
 - (v) Which results from a risk which is in fact covered by insurance or for which the grantee is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - (vi) Provided, that, if more than one of the above exceptions shall be applicable in any case, the recipient's liability under any one exception shall not be limited by any other exception.
- (2) The recipient shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the cooperating country property, except to the extent that USAID may have required the recipient to carry such insurance under any other provision of this award.
- (3) Upon the happening of loss or destruction of or damage to the cooperating country property, the recipient shall notify the Agreement Officer thereof, shall take all reasonable steps to protect the cooperating country property from further damage, separate the damaged and undamaged cooperating country property, put all the cooperating country property in the best possible order, and furnish to the Agreement Officer a statement of:
- (i) The lost, destroyed, or damaged cooperating country property;
 - (ii) The time and origin of the loss, destruction, or damage;
 - (iii) All known interests in commingled property of which the cooperating country property is a part; and
 - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (4) The recipient shall make repairs and renovations of the damaged cooperating country property or take such other action as the Agreement Officer directs.
- (5) In the event the recipient is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the cooperating country property, it shall use the proceeds to repair, renovate or replace the cooperating country property involved, or shall credit such proceeds

against the cost of the work covered by the award, or shall otherwise reimburse USAID, as directed by the Agreement Officer. The recipient shall do nothing to prejudice USAID's right to recover against third parties for any such loss, destruction, or damage, and upon the request of the Agreement Officer, shall, at the Government's expense, furnish to USAID all reasonable assistance and cooperation (including assistance in the prosecution of suits and the execution of instruments or assignments in favor of the Government) in obtaining recovery.

- e. Access: USAID, and any persons designated by it, shall at all reasonable times have access to the premises wherein any cooperating country property is located, for the purpose of inspecting the cooperating country property.
- f. Final Accounting and Disposition of Cooperating Country Property: Within 90 days after completion of this award, or at such other date as may be fixed by the Agreement Officer, the recipient shall submit to the Agreement Officer an inventory schedule covering all items of equipment, materials and supplies under the recipient's custody, title to which is in the cooperating country or public or private agency designated by the cooperating country, which have not been consumed in the performance of this award. The recipient shall also indicate what disposition has been made of such property.
- g. Communications: All communications issued pursuant to this provision shall be in writing.

[END OF PROVISION]

10. PUBLIC NOTICES (MARCH 2004)

APPLICABILITY: *This provision is applicable when the cognizant Activity Manager or SO Team determines that the award is of public interest and requests that the provision be included in the award.*

PUBLIC NOTICES (MARCH 2004)

It is USAID's policy to inform the public as fully as possible of its programs and activities. The recipient is encouraged to give public notice of the receipt of this award and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

"The U.S. Agency for International Development administers the U.S. foreign assistance program providing economic and humanitarian assistance in more than 120 countries worldwide."

The recipient may call on USAID's Bureau for Legislative and Public Affairs for advice regarding public notices. The recipient is requested to provide copies of notices or announcements to the cognizant Technical Officer and to USAID's Bureau for Legislative and Public Affairs as far in advance of release as possible.

[END OF PROVISION]

11. (RESERVED)

12. COST SHARING (MATCHING) (July 2002)

***APPLICABILITY:** This provision, along with 22 CFR 226, is applicable when the recipient has agreed or is required to cost share or provide a matching share.*

COST SHARING (MATCHING) (July 2002)

- a. If at the end of any funding period, the recipient has expended an amount of non-Federal funds less than the agreed upon amount or percentage of total expenditures, the Agreement Officer may apply the difference to reduce the amount of USAID incremental funding in the following funding period. If the award has expired or has been terminated, the Agreement Officer may require the recipient to refund the difference to USAID.
- b. The source, origin and nationality requirements and the restricted goods provision established in the Standard Provision entitled "USAID Eligibility Rules for Goods and Services" do not apply to cost sharing (matching) expenditures.

[END OF PROVISION]

13. PROHIBITION OF ASSISTANCE TO DRUG TRAFFICKERS (JUNE 1999)

***APPLICABILITY:** This provision is applicable where performance of the award will take place in "Covered" Countries, as described in ADS 206 (see 206.5.3).*

PROHIBITION OF ASSISTANCE TO DRUG TRAFFICKERS (JUNE 1999)

- a. USAID reserves the right to terminate assistance to, or take other appropriate measures with respect to, any participant approved by USAID who is found to

have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR 140.

- b. (1) For any loan over \$1,000 made under this agreement, the recipient shall insert a clause in the loan agreement stating that the loan is subject to immediate cancellation, acceleration, recall, or refund by the recipient if the borrower or a key individual of a borrower is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR 140.
- (2) Upon notice by USAID of a determination under section (1) and at USAID's option, the recipient agrees to immediately cancel, accelerate, or recall the loan, including refund in full of the outstanding balance. USAID reserves the right to have the loan refund returned to USAID.
- c. (1) The recipient agrees not to disburse, or sign documents committing the recipient to disburse, funds to a subrecipient designated by USAID ("Designated Subrecipient") until advised by USAID that: (i) any United States Government review of the Designated Subrecipient and its key individuals has been completed; (ii) any related certifications have been obtained; and (iii) the assistance to the Designated Subrecipient has been approved. Designation means that the subrecipient has been unilaterally selected by USAID as the subrecipient. USAID approval of a subrecipient, selected by another party, or joint selection by USAID and another party is not designation.
- (2) The recipient shall insert the following clause, or its substance, in its agreement with the Designated Subrecipient:

"The recipient reserves the right to terminate this [Agreement/Contract] or take other appropriate measures if the [Subrecipient] or a key individual of the [Subrecipient] is found to have been convicted of a narcotic offense or to have been engaged in drug trafficking as defined in 22 CFR 140."

[END OF PROVISION]

14. INVESTMENT PROMOTION (NOVEMBER 2003)

APPLICABILITY: *The following clause is required for grants and cooperative agreements when the program includes gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, as described in ADS 225 (see 225.3.1.8).*

INVESTMENT PROMOTION (NOVEMBER 2003)

- a. Except as specifically set forth in this award or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves investment promotion in a foreign country.
- b. In the event the recipient is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the recipient must notify the Agreement Officer and provide a detailed description of the proposed activity. The recipient must not proceed with the activity until advised by USAID that it may do so.
- c. The recipient must ensure that its employees and subrecipients and contractors providing investment promotion services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all contracts and other subagreements entered into hereunder.

[END OF PROVISION]

15. REPORTING OF FOREIGN TAXES (March 2006)

APPLICABILITY: *This provision is applicable to all USAID agreements that obligate or subobligate FY 2003 or later funds except for agreements funded with Operating Expense, Pub. L. 480 funds, or trust funds, or agreements where there will be no commodity transactions in a foreign country over the amount of \$500.*

REPORTING OF FOREIGN TAXES (March 2006)

- a. The recipient must annually submit a report by April 16 of the next year.
- b. Contents of Report. The report must contain:
 - (i) Contractor/recipient name.
 - (ii) Contact name with phone, fax and e-mail.
 - (iii) Agreement number(s).
 - (iv) Amount of foreign taxes assessed by a foreign government [each foreign government must be listed separately] on commodity purchase transactions valued at \$500 or more financed with U.S. foreign assistance funds under this agreement during the prior U.S. fiscal year.
 - (v) Only foreign taxes assessed by the foreign government in the country

receiving U.S. assistance is to be reported. Foreign taxes by a third party foreign government are not to be reported. For example, if an assistance program for Lesotho involves the purchase of commodities in South Africa using foreign assistance funds, any taxes imposed by South Africa would not be reported in the report for Lesotho (or South Africa).

- (vi) Any reimbursements received by the recipient during the period in (iv) regardless of when the foreign tax was assessed and any reimbursements on the taxes reported in (iv) received through March 31.
 - (vii) Report is required even if the recipient did not pay any taxes during the report period.
 - (viii) Cumulative reports may be provided if the recipient is implementing more than one program in a foreign country.
- c. Definitions. For purposes of this clause:
- (i) "Agreement" includes USAID direct and country contracts, grants, cooperative agreements and interagency agreements.
 - (ii) "Commodity" means any material, article, supply, goods, or equipment.
 - (iii) "Foreign government" includes any foreign governmental entity.
 - (iv) "Foreign taxes" means value-added taxes and custom duties assessed by a foreign government on a commodity. It does not include foreign sales taxes.
- d. Where. Submit the reports to: [insert address and point of contact at the Embassy, Mission, or FM/CMP as appropriate. See b. above] [optional with a copy to].
- e. Subagreements. The recipient must include this reporting requirement in all applicable subcontracts, subgrants and other subagreements.
- f. For further information see www.usaid.gov/policy/ads/300/302mac.pdf.

[END OF PROVISION]

16. FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (January 2002)

APPLICABILITY: *Include this provision in agreements funded from the following accounts:*

- *Development Assistance, including assistance for sub-Saharan Africa,*
- *Child Survival and Disease Programs Fund, and*
- *Micro and Small Enterprise Development Program Account.*

FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (January 2002)

Funds in this agreement may not be used to finance the travel, per diem, hotel expenses, meals, conference fees or other conference costs for any member of a foreign government's delegation to an international conference sponsored by a public international organization, except as provided in ADS Mandatory Reference "Guidance on Funding Foreign Government Delegations to International Conferences" or as approved by the Agreement Officer.

These provisions also must be included in the Standard Provisions of any new grant or cooperative agreement to a public international organization or a U.S. or non-U.S. nongovernmental organization financed with FY04 HIV/AIDS funds or modification to an existing grant or cooperative agreement that adds FY04 HIV/AIDS.

[END OF PROVISION]

17. ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JULY 2004)

APPLICABILITY: *This provision must be included in any Request for Application (RFA) or Annual Program Statement (APS) that could lead to a grant or cooperative agreement for activities related to human trafficking funded from any year program resources.*

ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JULY 2004)

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote, support or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are

out of the situation that resulted from such victims being trafficked. Foreign organizations, whether prime or subrecipients, that receive U.S. Government funds to fight trafficking in persons cannot promote, support or advocate the legalization or practice of prostitution when they are engaged in overseas activities. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.

[END OF PROVISION]

18. PROHIBITION ON THE USE OF FEDERAL FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE FOR THE LEGALIZATION OR PRACTICE OF PROSTITUTION - ASSISTANCE (JULY 2004)

APPLICABILITY: *This provision must be included in any grant or cooperative agreement that uses funds made available for activities related to human trafficking funded from any year program resources.*

PROHIBITION ON THE USE OF FEDERAL FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE FOR THE LEGALIZATION OR PRACTICE OF PROSTITUTION - ASSISTANCE (JULY 2004)

- a. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.
- b. [This subsection b. only applies to foreign nongovernmental organizations and Public International Organizations receiving U.S. Government funds to carry out programs that target victims of severe forms of trafficking as either prime awardees or subawardees.]
 - (1) For programs that target victims of severe forms of trafficking, as a condition of entering into this agreement or subagreement, the recipient/subrecipient agrees that in its activities outside of the United States and its possessions it does not promote, support, or advocate the legalization or practice of prostitution. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.
 - (2) The following definitions apply for purposes of this clause:

FOREIGN NONGOVERNMENTAL ORGANIZATION – The term “foreign nongovernmental organization” means an entity that is not organized under the laws of any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SEVERE FORMS OF TRAFFICKING IN PERSONS. -- The term “severe forms of trafficking in persons” means—

- (A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (C) The recipient shall insert this provision in all sub-agreements under this award.
- (D) This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination, in whole or in part, of the agreement by USAID prior to the end of its term.

[END OF STANDARD PROVISION]

19. ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JUNE 2005)

APPLICABILITY: *This provision must be included in any agreement financing HIV/AIDS activities.*

ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JUNE 2005)

An organization that is otherwise eligible to receive funds under this agreement to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

[END OF PROVISION]

20. CONDOMS (JUNE 2005)

APPLICABILITY: *This provision must be included in any agreement financing HIV/AIDS activities.*

CONDOMS (JUNE 2005)

Information provided about the use of condoms as part of projects or activities that are funded under this agreement shall be medically accurate and shall include the public health benefits and failure rates of such use and shall be consistent with USAID's fact sheet entitled, "USAID: HIV/STI Prevention and Condoms". This fact sheet may be accessed at:

www.usaid.gov/our_work/global_health/aids/TechAreas/prevention/condomfactsheet.html

[END OF PROVISION]

21. PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (JUNE 2005)

APPLICABILITY: *This provision must be included in any agreement financing HIV/AIDS activities.*

PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (JUNE 2005)

- a. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.
- b. Except as noted in the second sentence of this paragraph, as a condition of entering into this agreement or any subagreement, a nongovernmental organization or public international organization recipient/subrecipient must have a policy explicitly opposing prostitution and sex trafficking. The following organizations are exempt from this paragraph: the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency.

- c. The following definition applies for purposes of this provision:

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).
- d. The recipient shall insert this provision, which is a standard provision, in all subagreements.
- e. This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.

[END OF PROVISION]

22. USAID Disability Policy - Assistance (December 2004)

APPLICABILITY: *This provision must be included in Request for Applications (RFAs), and in awards.*

USAID DISABILITY POLICY - ASSISTANCE (DECEMBER 2004)

- a. The objectives of the USAID Disability Policy are (1) to enhance the attainment of United States foreign assistance program goals by promoting the participation and equalization of opportunities of individuals with disabilities in USAID policy, country and sector strategies, activity designs and implementation; (2) to increase awareness of issues of people with disabilities both within USAID programs and in host countries; (3) to engage other U.S. Government agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities; and (4) to support international advocacy for people with disabilities. The full text of the policy paper can be found at the following Web site:
pdf.usaid.gov/pdf_docs/PDABQ631.pdf
- b. USAID therefore requires that the recipient not discriminate against people with disabilities in the implementation of USAID funded programs and that it make every effort to comply with the objectives of the USAID Disability Policy in performing the program under this grant or cooperative agreement. To that end and to the extent it can accomplish this goal within the scope of the program objectives, the recipient should demonstrate a comprehensive and consistent approach for including men, women, and children with disabilities.

[END OF PROVISION]

23. STANDARDS FOR ACCESSIBILITY FOR THE DISABLED IN USAID ASSISTANCE AWARDS INVOLVING CONSTRUCTION (September 2004)

APPLICABILITY: *This provision must be included in Request for Applications (RFAs) and in awards involving construction.*

STANDARDS FOR ACCESSIBILITY FOR THE DISABLED IN USAID ASSISTANCE AWARDS INVOLVING CONSTRUCTION (September 2004)

- a. One of the objectives of the USAID Disability Policy is to engage other U.S. Government agencies, host country counterparts, governments, implementing organizations, and other donors in fostering a climate of nondiscrimination against people with disabilities. As part of this policy USAID has established standards for any new or renovation construction project funded by USAID to allow access by people with disabilities (PWDs). The full text of the policy paper can be found at the following Web site:
pdf.usaid.gov/pdf_docs/PDABQ631.pdf.
- b. USAID requires the recipient to comply with standards of accessibility for people with disabilities in all structures, buildings or facilities resulting from new or renovation construction or alterations of an existing structure.
- c. The recipient will comply with the host country or regional standards for accessibility in construction when such standards result in at least substantially equivalent accessibility and usability as the standard provided in the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) Accessibility Guidelines of July 2004. Where there are no host country or regional standards for universal access or where the host country or regional standards fail to meet the ADA/ABA threshold, the standard prescribed in the ADA and the ABA will be used.
- d. New Construction. All new construction will comply with the above standards for accessibility.
- e. Alterations. Changes to an existing structure that affect the usability of the structure will comply with the above standards for accessibility unless the recipient obtains the Agreement Officer's advance approval that compliance is technically infeasible or constitutes an undue burden or both. Compliance is technically infeasible where structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame or because other existing physical or site constraints prohibit modification or

addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements of the standard. Compliance is an undue burden where it entails either a significant difficulty or expense or both.

- f. Exceptions. The following construction related activities are excepted from the requirements of paragraphs a. through d. above:
- (1) Normal maintenance, reroofing, painting or wall papering, or changes to mechanical or electrical systems are not alterations and the above standards do not apply unless they affect the accessibility of the building or facility; and
 - (2) Emergency construction (which may entail the provision of plastic sheeting or tents, minor repair and upgrading of existing structures, rebuilding of part of existing structures, or provision of temporary structures) intended to be temporary in nature. A portion of emergency construction assistance may be provided to people with disabilities as part of the process of identifying disaster- and crisis-affected people as “most vulnerable.”

[END OF PROVISION]

[END OF STANDARD PROVISIONS]

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Mandatory Standard Provisions for Non-U.S. Nongovernmental Recipients

A Mandatory Reference for ADS Chapter 303

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Mandatory Standard Provisions for Non-U.S. Nongovernmental Recipients

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I. MANDATORY STANDARD PROVISIONS FOR NON-U.S. NONGOVERNMENTAL RECIPIENTS

1. ALLOWABLE COSTS (OCTOBER 1998)

a. The recipient shall be reimbursed for costs incurred in carrying out the purposes of this award which are determined by the Agreement Officer to be reasonable, allocable, and allowable in accordance with the terms of this award and the applicable* cost principles in effect on the date of this award. The recipient may obtain a copy from the Agreement Officer. Brief definitions of what may be considered as reasonable, allocable, and allowable costs are provided below, however, it is the recipient's responsibility to ensure that costs incurred are in accordance with the applicable set of Cost Principles.

(1) Reasonable. Shall mean those costs which are generally recognized as ordinary and necessary and would be incurred by a prudent person in the conduct of normal business.

(2) Allocable Costs. Shall mean those costs which are incurred specifically for the award.

(3) Allowable Costs. Shall mean those costs which conform to any limitations in the award.

b. Prior to incurring a questionable or unique cost, the recipient shall obtain the Agreement Officer's written determination on whether the cost will be allowable.

c. It is USAID policy that no funds shall be paid as profit or fee to a recipient under this agreement or any subrecipient. This restriction does not apply to contractual relationships under this agreement.

=====
*NOTE: For educational institutions use OMB Circular A-21; for all other non-profit organizations use OMB Circular A-122; and for profit making firms use Federal Acquisition Regulation 31.2 and USAID Acquisition Regulation 731.2.
=====

[END OF PROVISION]

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

2. ACCOUNTING, AUDIT, AND RECORDS (OCTOBER 1998)

- a. The recipient shall maintain financial records, supporting documents, statistical records and all other records pertinent to the award in accordance with generally accepted accounting principles formally prescribed by the U.S., the cooperating country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) to sufficiently substantiate charges to this award. Accounting records that are supported by documentation will, at a minimum, be adequate to show all costs incurred under the award, receipt, and use of goods and services acquired under the award, the costs of the program supplied from other sources, and the overall progress of the program. Unless otherwise notified, the recipient records and subrecipient records which pertain to this award shall be retained for a period of three years from the date of submission of the final expenditure report and may be audited by USAID and/or its representatives.
- b. Foreign for-profit and nonprofit organizations that expend \$300,000 or more per their fiscal year in "USAID awards" as recipients or subrecipients of USAID grants or cooperative agreements, or as cost reimbursable subcontractors of USAID grants or cooperative agreements, shall have an annual audit conducted in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the USAID Inspector General.
- c. Foreign for-profit and nonprofit organizations expending less than \$300,000 per their fiscal year under USAID cost-reimbursable contracts, grants, cooperative agreements, or agreements with host governments shall be exempt from the above financial audit requirements, but are subject to the requirement to make records available upon request for review by USAID officials or their designees.
- d. USAID shall retain the right to conduct a financial review, require an audit, or otherwise ensure adequate accountability of organizations expending USAID funds regardless of the audit requirement.
- e. Foreign organizations that provide USAID resources to other organizations to carry out the USAID program and activities shall be responsible for monitoring their subcontractors or subgrantees. Allowable costs for limited scope subrecipient audits charged to USAID funds shall be limited to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort; earmarking; and reporting.
- f. The audit report shall be submitted to USAID within 30 days after completion of the audit; the audit shall be completed, and the report submitted, not later than nine months after the close of the recipient's fiscal year. The USAID Inspector

General will review this report to determine whether it complies with the audit requirements of this award. No audit costs may be charged to this award if audits have not been made in accordance with the terms of this provision. In cases of continued inability or unwillingness to have an audit performed in accordance with the terms of this provision, USAID will consider appropriate sanctions which may include suspension of all or a percentage of disbursements until the audit is satisfactorily completed.

- g. This provision in its entirety shall be incorporated into all subawards with non-U.S. organizations which meet the \$300,000 threshold as described at paragraph b. of this provision. Subawards to non-U.S. organizations which are for more than \$10,000 but do not meet the \$300,000 threshold shall, at a minimum, incorporate paragraph d. of this provision. Subawards of grants and cooperative agreements made to U.S. organizations shall state that the U.S. organization is subject to the audit requirements contained in OMB Circular A-133.

[END OF PROVISION]

3. PAYMENT ADVANCES AND REFUNDS (OCTOBER 1998)

- a. Recipients shall maintain advances of USAID funds in interest bearing accounts, unless:
- (1) The recipient receives less than \$120,000 in U.S. Government (USG) awards per year;
 - (2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on U.S. Government cash balances; or
 - (3) The depository would require an average or minimum balance so high that it would not be practical to maintain the advance in an interest bearing account.
- b. Interest earned on advances will be remitted to USAID. However, the recipient may retain up to \$250 of interest earnings per account per year, for administrative expenses.
- c. At the time the award expires or is terminated, the following types of funds shall immediately revert to USAID:
- (1) USAID has obligated funds to the award, but has not disbursed them to the recipient; or

- (2) USAID has advanced funds to the recipient, but the recipient has not expended them.

Notwithstanding c.(1) and c.(2) above, funds which the recipient has obligated in legally binding transactions applicable to this award will not revert to USAID.

- d. USAID reserves the right to require refund by the recipient of any amount which the recipient did not spend in accordance with the terms and conditions of this award. In the event that a final audit has not been performed prior to the closeout of this award, USAID retains the right to a refund until all claims which may result from the final audit have been resolved between USAID and the recipient.

[END OF PROVISION]

4. REVISION OF AWARD BUDGET (OCTOBER 1998)

- a. The approved award budget is the financial expression of the recipient's program as approved during the award process.
- b. The recipient is required to report deviations from budget and program plans, and request prior approvals from the Agreement Officer for any of the following reasons:
 - (1) To change the scope or the objectives of the project and/or revise the funding allocated among project objectives.
 - (2) To change a key person where specified in the award, or allow a 25% reduction in time devoted to the project.
 - (3) Additional funding is needed.
 - (4) Where indirect costs have been authorized, the recipient plans to transfer funds budgeted for indirect costs to absorb increases in direct costs or vice versa.
 - (5) The inclusion of costs that require prior approval in accordance with the applicable set of Cost Principles.
 - (6) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.
 - (7) The recipient intends to contract or subaward any of the work under this award, and such contracts or subawards were not included in the approved award budget.

- c. If specified in the Schedule of the award, the recipient may be further restricted from transferring funds among cost categories. Such a restriction would require the recipient to get the prior approval of the Agreement Officer before making budget shifts which expect to exceed 10% of the total budget.
- d. USAID is under no obligation to reimburse the recipient for costs incurred in excess of the total amount obligated under the award. If the total obligated amount under the award has been increased, the Agreement Officer will notify the recipient in writing of the increase and specify the new total obligated award amount.

[END OF PROVISION]

5. TERMINATION AND SUSPENSION (OCTOBER 1998)

- a. The Agreement Officer may terminate this award at any time, in whole or in part, upon written notice to the recipient, whenever it is determined that the recipient has materially failed to comply with the terms and conditions of the award.
- b. This award may be terminated at any time, in whole or in part, by the Agreement Officer with the consent of the recipient. Both parties shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion of the award to be terminated. The agreement to terminate shall be set forth in a letter from the Agreement Officer to the recipient.
- c. This award may be terminated at any time, in whole or in part, by the recipient upon sending written notification to the Agreement Officer with the following information: the reasons for the termination, the effective date, and, in the case of a partial termination, the portion to be terminated. However, if USAID determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, USAID may terminate the award in its entirety in accordance with paragraphs a. or b. above.
- d. If at any time USAID determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then USAID may, following notice to the recipient, suspend or terminate this award, in whole or part, and prohibit the recipient from incurring additional obligations chargeable to this award other than those costs specified in the notice of suspension during the period of suspension. If the situation causing the suspension continues for 60 days or more, then USAID may terminate this award on written notice to the recipient and cancel that portion of this award which has not been disbursed or irrevocably committed to third parties.

- e. Termination and Suspension Procedures. Upon receipt of, and in accordance with a termination notice as specified above, the recipient shall take immediate action to minimize all expenditures and obligations financed by this award and shall cancel such unliquidated obligations whenever possible. Except as provided below, the recipient shall not incur costs after the effective date of termination.

The recipient shall within 30 calendar days after the effective date of such termination repay to the U.S. Government all unexpended USAID funds which are not otherwise obligated by a legally binding transaction applicable to this award. Should the funds paid by USAID to the recipient prior to the effective date of the termination of this award be insufficient to cover the recipient's obligations in the legally binding transaction, the recipient may submit to the Government within 90 calendar days after the effective date of such termination a written claim covering such obligations. The Agreement Officer shall determine the amount(s) to be paid by USAID to the recipient under such claim in accordance with the applicable Cost Principles.

This provision must be included in all subagreements.

[END OF PROVISION]

6. DISPUTES (OCTOBER 1998)

- a. Any dispute under this award shall be decided by the USAID Agreement Officer. The Agreement Officer shall furnish the recipient a written copy of the decision.
- b. Decisions of the USAID Agreement Officer shall be final unless, within 30 days of receipt of the decision of the Agreement Officer, the recipient appeals the decision to USAID's Assistance Executive. Any appeal made under this provision shall be in writing and addressed to the Assistance Executive, U.S. Agency for International Development, Office of Procurement, 1300 Pennsylvania Ave, NW., Washington, DC 20523. A copy of the appeal shall be concurrently furnished to the Agreement Officer.
- c. In order to facilitate review on the record by the Assistance Executive, the recipient shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.
- d. A decision under this provision by the Assistance Executive shall be final.

[END OF PROVISION]

7. INELIGIBLE COUNTRIES (MAY 1986)

Unless otherwise approved by the USAID Agreement Officer, funds will only be expended for assistance to countries eligible for assistance under the Foreign Assistance Act of 1961, as amended, or under acts appropriating funds for foreign assistance.

[END OF PROVISION]

8. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (JANUARY 2004)

- a. The recipient agrees to notify the Agreement Officer immediately upon learning that it or any of its principals:
- (1) Are presently excluded or disqualified from covered transactions by any Federal department or agency;
 - (2) Have been convicted within the preceding three-year period preceding this proposal; been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
 - (3) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph a.(2); and
 - (4) Have had one or more public transactions (Federal, State, or local) terminated for cause or default within the preceding three years.
- b. The recipient agrees that, unless authorized by the Agreement Officer, it will not knowingly enter into any subagreements or contracts under this grant with a person or entity that is included on the Excluded Parties List System (www.epls.gov/). The recipient further agrees to include the following provision in any subagreements or contracts entered into under this award:

*DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION
(DECEMBER 2003)*

The recipient/contractor certifies that neither it nor its principals is presently excluded or disqualified from participation in this transaction by any Federal department or agency.

- c. The policies and procedures applicable to debarment, suspension, and ineligibility under USAID-financed transactions are set forth in 22 CFR 208.

[END OF PROVISION]

9. DRUG-FREE WORKPLACE (JANUARY 2004)

- a. The recipient agrees that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any Federal award. The statement must
 - (1) Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
 - (2) Specify the actions the recipient will take against employees for violating that prohibition; and
 - (3) Let each employee know that, as a condition of employment under any award, he or she
 - (i) Must abide by the terms of the statement, and
 - (ii) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than five calendar days after the conviction.
- b. The recipient agrees that it will establish an ongoing drug-free awareness program to inform employees about
 - (1) The dangers of drug abuse in the workplace;
 - (2) Your policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation and employee assistance programs; and

- (4) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
- c. Without the Agreement Officer's expressed written approval, the policy statement and program must be in place as soon as possible, no later than the 30 days after the effective date of this award, or the completion date of this award, whichever occurs first.
- d. The recipient agrees to immediately notify the Agreement Officer if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the number of each award on which the employee worked. The notification must be sent to the Agreement Officer within ten calendar days after the recipient learns of the conviction.
- e. Within 30 calendar days of learning about an employee's conviction, the recipient must either
 - (1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, or
 - (2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- f. The policies and procedures applicable to violations of these requirements are set forth in 22 CFR 210.

[END OF PROVISION]

10. NONLIABILITY (NOVEMBER 1985)

USAID does not assume liability for any third party claims for damages arising out of this award.

[END OF PROVISION]

11. AMENDMENT (OCTOBER 1998)

The award may be amended by formal modifications to the basic award document or by means of an exchange of letters or forms between the Agreement Officer and an appropriate official of the recipient.

[END OF PROVISION]

12. NOTICES (OCTOBER 1998)

Any notice given by USAID or the recipient shall be sufficient only if in writing and delivered in person or mailed as follows:

- (1) To the USAID Agreement Officer and Agreement Officer's Technical Representative (AOTR), at the addresses specified in the award; and
- (2) To recipient, at recipient's address shown in the award, or to such other address designated within the award.

Notices shall be effective when delivered in accordance with this provision, or on effective date of the notice, whichever is later.

[END OF PROVISION]

13. METRIC SYSTEM OF MEASUREMENT (AUGUST 1992)

Wherever measurements are required or authorized, they shall be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the Agreement Officer in writing when it has found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.

[END OF PROVISION]

14. EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND COMMUNITY ORGANIZATIONS (December 2009)

- a. All the requirements of 22 CFR 205, Participation By Religious Organizations In USAID Programs, are applicable to the recipient and to subrecipients which meet the definition of "Recipient" in 22 CFR 226. The requirements of 22 CFR 205 apply to both religious and secular organizations.
- b. If the recipient makes subawards under this agreement, faith-based organizations must be eligible to participate on the same basis as other organizations, and must not be discriminated for or against on the basis of their religious character or affiliation.
- c. The recipient must not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services directly funded with financial assistance from USAID. If the recipient engages in inherently religious activities, such as worship, religious instruction, and proselytization, it must offer those services at a different time or location from any programs or services directly funded by this award, and participation by beneficiaries in any such inherently religious activities must be voluntary. These restrictions do not apply to programs where USAID funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where USAID funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.
- d. The recipient must not use USAID funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Where a structure is used for both eligible and inherently religious activities, USAID funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with applicable cost accounting principles. Sanctuaries, chapels, or other rooms that the recipient uses as its principal place of worship are ineligible for acquisition, construction, rehabilitation, or improvements using USAID funds.
- e. The recipient may not discriminate against any beneficiary or potential beneficiary under this award on the basis of religion or religious belief. Accordingly, in providing services supported, in whole or in part, by this agreement or in its outreach activities related to such services, the recipient may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

- f. When the recipient is a religious organization, the recipient
- (1) Retains its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support any inherently religious activities, such as worship, religious instruction, or proselytization.
 - (2) Retains its authority over its internal governance and may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
 - (3) Retains its exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1.
 - (4) May use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols.
- g. The Secretary of State may waive the requirements of this provision in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

[END OF PROVISION]

15. IMPLEMENTATION OF E.O. 13224 -- EXECUTIVE ORDER ON TERRORIST FINANCING (MARCH 2002)

The recipient is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all contracts/subawards issued under this agreement

[END OF PROVISION]

16. MARKING UNDER USAID-FUNDED ASSISTANCE INSTRUMENTS (DECEMBER 2005)

a. Definitions

Commodities mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and nondeliverable items for recipient's internal use, in administration of the USAID-funded grant, cooperative agreement, or other agreement or subagreement.

Principal Officer means the most senior officer in a USAID Operating Unit in the field, for example, USAID Mission Director or USAID Representative. For global programs managed from Washington but executed across many countries, such as disaster relief and assistance to internally displaced persons, humanitarian emergencies or immediate post conflict and political crisis response, the cognizant Principal Officer may be an Office Director, for example, the Directors of USAID/W/Office of Foreign Disaster Assistance and Office of Transition Initiatives. For nonpresence countries, the cognizant Principal Officer is the Senior USAID officer in a regional USAID Operating Unit responsible for the nonpresence country, or in the absence of such a responsible Operating Unit, the Principal U.S Diplomatic Officer in the nonpresence country exercising delegated authority from USAID.

Programs mean an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the responsibilities assigned to it.

Projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

Public communications are documents and messages intended for distribution to audiences external to the recipient's organization. They include, but are not limited to, correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID-funded programs, projects or activities, including signage and plaques; Web sites/Internet activities; and events such as training courses, conferences, seminars, press conferences, and so forth.

Subrecipient means any person or government (including cooperating country government) department, agency, establishment, or for profit or nonprofit organization that receives a USAID subaward, as defined in 22 CFR 226.2.

Technical Assistance means the provision of funds, goods, services, or other foreign assistance, such as loan guarantees or food for work, to developing countries and other USAID recipients, and through such recipients to subrecipients, in direct support of a

Development Objective – as opposed to the internal management of the foreign assistance program.

USAID Identity (Identity) means the official marking for the United States Agency for International Development (USAID), comprised of the USAID logo or seal and new brandmark, with the tagline that clearly communicates that our assistance is “from the American people.” The USAID Identity is available on the USAID Web site at www.usaid.gov/branding and USAID provides it without royalty, license, or other fee to recipients of USAID-funded grants, or cooperative agreements, or other assistance awards.

b. Marking of Program Deliverables

- (1) All recipients must mark appropriately all overseas programs, projects, activities, public communications, and commodities partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward with the USAID Identity, of a size and prominence equivalent to or greater than the recipient’s, other donor’s, or any other third party’s identity or logo.
- (2) The recipient will mark all program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) with the USAID Identity. The recipient should erect temporary signs or plaques early in the construction or implementation phase. When construction or implementation is complete, the recipient must install a permanent, durable sign, plaque or other marking.
- (3) The recipient will mark technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID with the USAID Identity.
- (4) The recipient will appropriately mark events financed by USAID, such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials, such as signs and banners, with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, the recipient is encouraged otherwise to acknowledge USAID and the American people’s support.

- (5) The recipient will mark all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies, and other materials funded by USAID, and their export packaging with the USAID Identity.
- (6) The Agreement Officer may require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant, and as appropriate depending on the audience, program goals, and materials produced.
- (7) The Agreement Officer may require marking with the USAID Identity in the event that the recipient does not choose to mark with its own identity or logo.
- (8) The Agreement Officer may require a preproduction review of USAID-funded public communications and program materials for compliance with the approved Marking Plan.
- (9) Subrecipients. To ensure that the marking requirements "flow down" to subrecipients of subawards, recipients of USAID-funded grants and cooperative agreements or other assistance awards will include the USAID-approved marking provision in any USAID-funded subaward, as follows:

"As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's, or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity."

- (10) Any 'public communications', as defined in 22 CFR 226.2, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

"This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government."

- (11) The recipient will provide the Agreement Officer's Technical Representative (AOTR) or other USAID personnel designated in the grant or cooperative agreement with two copies of all program and communications materials produced under the award. In addition, the recipient will submit one electronic or one hard copy of all final documents to USAID's Development Experience Clearinghouse.

c. Implementation of Marking Requirements

- (1) When the grant or cooperative agreement contains an approved Marking Plan, the recipient will implement the requirements of this provision following the approved Marking Plan.
- (2) When the grant or cooperative agreement does not contain an approved Marking Plan, the recipient will propose and submit a plan for implementing the requirements of this provision within **[Agreement Officer fill-in]** days after the effective date of this provision. The plan will include:
- (i) A description of the program deliverables specified in paragraph (b) of this provision that the recipient will produce as a part of the grant or cooperative agreement, and which will visibly bear the USAID Identity.
 - (ii) The type of marking and what materials the applicant uses to mark the program deliverables with the USAID Identity,
 - (iii) When in the performance period the applicant will mark the program deliverables, and where the applicant will place the marking.
- (3) The recipient may request program deliverables not be marked with the USAID Identity by identifying the program deliverables and providing a rationale for not marking these program deliverables. Program deliverables may be exempted from USAID marking requirements when:
- (i) USAID marking requirements would compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials;
 - (ii) USAID marking requirements would diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent;

- (iii) USAID marking requirements would undercut host-country government “ownership” of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as “by” or “from” a cooperating country ministry or government official;
 - (iv) USAID marking requirements would impair the functionality of an item;
 - (v) USAID marking requirements would incur substantial costs or be impractical;
 - (vi) USAID marking requirements would offend local cultural or social norms, or be considered inappropriate;
 - (vii) USAID marking requirements would conflict with international law.
- (4) The proposed plan for implementing the requirements of this provision, including any proposed exemptions, will be negotiated within the time specified by the Agreement Officer after receipt of the proposed plan. Failure to negotiate an approved plan with the time specified by the Agreement Officer may be considered as noncompliance with the requirements of this provision.

d. Waivers

- (1) The recipient may request a waiver of the Marking Plan or of the marking requirements of this provision, in whole or in part, for each program, project, activity, public communication or commodity, or, in exceptional circumstances, for a region or country, when USAID required marking would pose compelling political, safety, or security concerns, or when marking would have an adverse impact in the cooperating country. The recipient will submit the request through the Agreement Officer’s Technical Representative (AOTR). The Principal Officer is responsible for approvals or disapprovals of waiver requests.
- (2) The request will describe the compelling political, safety, security concerns, or adverse impact that require a waiver, detail the circumstances and rationale for the waiver, detail the specific requirements to be waived, the specific portion of the Marking Plan to be waived, or specific marking to be waived, and include a description of how program materials will be marked (if at all) if the USAID Identity is removed. The request should also provide a rationale for any use of recipient’s own identity/logo or that of a third party on materials that will be subject to the waiver.

- (3) Approved waivers are not limited in duration but are subject to Principal Officer review at any time, due to changed circumstances.
- (4) Approved waivers “flow down” to recipients of subawards, unless specified otherwise. The waiver may also include the removal of USAID markings already affixed, if circumstances warrant.
- (5) Determinations regarding waiver requests are subject to appeal to the Principal Officer’s cognizant Assistant Administrator (AA). The recipient may appeal by submitting a written request to reconsider the Principal Officer’s waiver determination to the cognizant AA.

e. Non-retroactivity

The requirements of this provision do not apply to any materials, events, or commodities produced prior to January 2, 2006. The requirements of this provision do not apply to program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) where the construction and implementation of these are complete prior to January 2, 2006 and the period of the grant does not extend past January 2, 2006.

[END OF PROVISION]

17. VOLUNTARY POPULATION PLANNING ACTIVITIES – MANDATORY REQUIREMENTS (MAY 2006)

Requirements for Voluntary Sterilization Programs

- (1) None of the funds made available under this award shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

Prohibition on Abortion-Related Activities:

- (1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term “motivate”, as it

relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

- (2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent, or consequences of abortions is not precluded.

[END OF PROVISION]

***18. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER (OCTOBER 2010)**

APPLICABILITY: *This provision is required in accordance with 2 CFR 25, Award Term for Central Contractor Registration and Universal Identifier. AOs must include this provision in all assistance solicitations and all awards made on or after October 1, 2010.*

CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER (OCTOBER 2010)

- a. **Requirement for Central Contractor Registration (CCR).** Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently, if required by changes in your information or another award term.
- b. **Requirement for Data Universal Numbering System (DUNS) numbers.** If you are authorized to make subawards under this award, you:
 - (1) Must notify potential subrecipients that no entity (see definition in paragraph c. of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
 - (2) May not make a subaward to an entity unless the entity has provided its DUNS number to you.

c. Definitions. For purposes of this award term:

- (1) Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at www.ccr.gov/).
- (2) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at fedgov.dnb.com/webform).
- (3) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR 25, subpart C:
 - (i) A governmental organization, which is a State, local government, or Indian tribe;
 - (ii) A foreign public entity;
 - (iii) A domestic or foreign nonprofit organization;
 - (iv) A domestic or foreign for-profit organization; and
 - (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (4) Subaward:
 - (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you, as the recipient, award to an eligible subrecipient.
 - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - (iii) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

- (5) Subrecipient means an entity that:
 - (i) Receives a subaward from you under this award; and
 - (ii) Is accountable to you for the use of the Federal funds provided by the subaward.

[END OF PROVISION]

***19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (OCTOBER 2010)**

APPLICABILITY: *This provision is required in accordance with 2 CFR 170, Award Term for Reporting Subawards and Executive Compensation. AOs must include this provision in all assistance solicitations and all awards made on or after October 1, 2010.*

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (OCTOBER 2010)

a. Reporting of First-Tier Subawards.

- (1) Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
- (2) Where and when to report.
 - (i) You must report each obligating action described in paragraph a.(1) of this award term to www.fsrs.gov.
 - (ii) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- (3) What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

- (1) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
- (i) The total Federal funding authorized to date under this award is \$25,000 or more;
 - (ii) In the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)
- (2) Where and when to report. You must report executive total compensation described in paragraph b.(1) of this award term:
- (i) As part of your registration profile at www.ccr.gov/.
 - (ii) By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

- (1) Applicability and what to report. Unless you are exempt, as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if –

- (i) In the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)
- (2) Where and when to report. You must report subrecipient executive total compensation described in paragraph c.(1) of this award term:
- (i) To the recipient.
 - (ii) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (for example, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- (1) Subawards, and
- (2) The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions.

For purposes of this award term:

- (1) Entity means all of the following, as defined in 2 CFR 25:
 - (i) A governmental organization, which is a State, local government, or Indian tribe;
 - (ii) A foreign public entity;
 - (iii) A domestic or foreign nonprofit organization;
 - (iv) A domestic or foreign for-profit organization;
 - (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (2) Executive means officers, managing partners, or any other employees in management positions.
- (3) Subaward:
 - (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - (iii) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- (4) Subrecipient means an entity that:
 - (i) Receives a subaward from you (the recipient) under this award; and
 - (ii) Is accountable to you for the use of the Federal funds provided by the subaward.

- (5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- (i) Salary and bonus.
 - (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - (iii) Earnings for services under nonequity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - (v) Above-market earnings on deferred compensation which is not tax-qualified.
 - (vi) Other compensation, if the aggregate value of all such other compensation (for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

[END OF PROVISION]

***20. TRAFFICKING IN PERSONS (OCTOBER 2010)**

APPLICABILITY: *This provision is required in accordance with 2 CFR 175, Award Term for Trafficking in Persons. AOs must include this provision in all new awards. AOs must modify existing awards to include this provision at the earliest practicable opportunity.*

TRAFFICKING IN PERSONS (OCTOBER 2010)

a. Provisions applicable to a recipient that is a private entity.

- (1) You, as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (ii) Procure a commercial sex act during the period of time that the award is in effect; or
 - (iii) Use forced labor in the performance of the award or subawards under the award.
- (2) We, as the Federal awarding Agency, may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - (i) Is determined to have violated a prohibition in paragraph a. (1) of this award term; or
 - (ii) Has an employee who is determined by the Agency official authorized to terminate the award to have violated a prohibition in paragraph a. (1) of this award term through conduct that is either—
 - (A) Associated with performance under this award; or
 - (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 22 CFR 208 or its superseding Part in 2 CFR.

b. Provisions applicable to a recipient other than a private entity.

- (1) We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
 - (i) Is determined to have violated an applicable prohibition in paragraph a. (1) of this award term; or
 - (ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a. (1) of this award term through conduct that is either—

- (A) Associated with performance under this award; or
- (B) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 22 CFR 208 or its superseding Part in 2 CFR.

c. Provisions applicable to any recipient.

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. (1) of this award term.
- (2) Our right to terminate unilaterally that is described in paragraph a. (2) or b. of this section:
 - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
- (3) You must include the requirements of paragraph a. (1) of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this provision:

- (1) “Employee” means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- (3) “Private entity”:
- (i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25(b).
 - (ii) Includes:
 - (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - (B) A for-profit organization.
- (4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

[END OF PROVISION]

[END OF MANDATORY PROVISIONS]

Required, As Applicable, Standard Provisions For Non-U.S. Nongovernmental Recipients

The following standard provisions are required to be used when applicable. Applicability statements are contained in the parenthetical statement preceding the standard provision. When a standard provision is determined to be applicable in accordance with the applicability statement, the use of such standard provision is mandatory unless a deviation has been approved in accordance with ADS Chapter 303.3.4. **EACH AWARD IS REQUIRED TO HAVE A PAYMENT PROVISION.**

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

II. REQUIRED, AS APPLICABLE, STANDARD PROVISIONS FOR NON-U.S. NONGOVERNMENTAL RECIPIENTS

1. PAYMENT – ADVANCE (OCTOBER 1998)

APPLICABILITY: This provision is applicable when the recipient's accounting and financial management systems conform to the standards for funds control and accountability required under: the standard provision of this agreement entitled "Accounting, Audit, and Records", ADS Chapter 303.5.9 and 22 CFR 226.20 through 226.22.

PAYMENT – ADVANCE (OCTOBER 1998)

- a. In accordance with the Standard Provision entitled "Payment Advances and Refund": USAID funds shall not be commingled with other recipient owned or controlled funds; the recipient shall deposit all USAID cash advances in a separate bank account and shall make all disbursements for goods and services from this account.
- b. Advances shall be limited to the minimum amounts needed to meet current disbursement needs (generally 30 days) and shall be scheduled so that the funds are available to the grantee as close as is administratively feasible to the actual disbursements by the grantee for program costs. Advances made by the recipient to subrecipients or the recipient's field organizations shall conform substantially to the same standards of timing and amount as apply to cash advances by USAID to the recipient.
- c. Procedures. After receipt of the initial advance, the recipient shall submit a Standard Form 1034 for each upcoming month (30-day period), with the statement "Request for Advance" printed at the top of the form. The recipient may submit a set of these forms on a quarterly basis (i.e. submission of three SF 1034s, one for each month in the upcoming quarter). At the end of each quarter the recipient shall submit a SF 1034 (marked "Liquidation of Advances") to liquidate the advances of the previous quarter. The recipient may submit a new set of SF 1034s ("Request for Advance") once the "Liquidation of Advances" has been submitted. Each SF 1034 shall be identified by the appropriate award number.

[END OF PROVISION]

2. PAYMENT – REIMBURSEMENT (MAY 1986)

APPLICABILITY: This provision is applicable to grants for construction or to awards where the recipient does not meet the conditions for periodic advance payment.

PAYMENT – REIMBURSEMENT (MAY 1986)

- a. The recipient shall submit to the USAID Controller, noted in the Schedule of the award, an original and two copies of SF 1034, "Public Voucher for Purchases and Services Other Than Personal" and SF 1034A, Continuation of SF 1034, on a monthly basis and in no event no later than on a quarterly basis. Each voucher shall be identified by the award number and shall state the total costs for which reimbursement is being requested.
- b. Copies of SF 1034 and 1034A may be obtained from the Controller.

[END OF PROVISION]

3. INTERNATIONAL AIR TRAVEL AND TRANSPORTATION (JUNE 1999)

APPLICABILITY: This provision is applicable when costs for international travel or transportation will be funded by USAID. This provision is not applicable if the recipient is providing for travel with private funds as part of a cost-sharing requirement, or with Program Income generated under the award.

INTERNATIONAL AIR TRAVEL AND TRANSPORTATION (JUNE 1999)

a. PRIOR BUDGET APPROVAL

In accordance with OMB Cost Principles, direct charges for foreign travel costs are allowable only when each foreign trip has received prior budget approval. Such approval will be deemed to have been met when:

- (1) The trip is identified. Identification is accomplished by providing the following information: the number of trips, the number of individuals per trip, and the destination country(s).
- (2) The information noted at a.(1) above is incorporated in: the proposal, the program description or schedule of the award, the annual implementation plan (initial or revisions), or amendments to the award; and

- (3) The costs related to the travel are incorporated in the approved budget of the award.

The Agreement Officer may approve travel which has not been incorporated in writing as required by paragraph a.(2). In such case, a copy of the Agreement Officer's approval must be included in the agreement file.

b. NOTIFICATION

- (1) As long as prior budget approval has been met in accordance with paragraph a. above, a separate Notification will not be necessary unless:
 - (i) The primary purpose of the trip is to work with USAID Mission personnel, or
 - (ii) The recipient expects significant administrative or substantive programmatic support from the Mission.

Neither the USAID Mission nor the Embassy will require Country Clearance of employees or contractors of USAID Recipients.

- (2) Where notification is required in accordance with paragraph (1)(i) or (ii) above, the recipient will observe the following standards:
 - (i) Send a written notice to the USAID Agreement Officer's Technical Representative (AOTR) in the Mission. If the recipient's primary point of contact is a Technical Officer in USAID/W, the recipient may send the notice to that person. It will be the responsibility of the USAID/W AOTR to forward the notice to the field.
 - (ii) The notice should be sent as far in advance as possible, but at least 14 calendar days in advance of the proposed travel. This notice may be sent by fax or e-mail. The recipient should retain proof that notification was made.
 - (iii) The notification shall contain the following information: the award number, the AOTR, the traveler's name (if known), date of arrival, and the purpose of the trip.
 - (iv) The USAID Mission will respond only if travel has been denied. It will be the responsibility of the AOTR in the Mission to contact the recipient within five working days of having received the notice if the travel is denied. If the recipient has not received a response within the time frame, the recipient will be considered to have met these standards for notification, and may travel.

- (v) If a subrecipient is required to issue a Notification, as per this section, the subrecipient may contact the AOTR directly, or the prime recipient may contact USAID on the subrecipient's behalf.

c. SECURITY ISSUES

Recipients are encouraged to obtain the latest Department of State Travel Advisory Notices before traveling. These Notices are available to the general public and may be obtained directly from the State Department, or via Internet.

Where security is a concern in a specific region, recipients may choose to notify the U.S. Embassy of their presence when they have entered the country. This may be especially important for long-term posting.

d. USE OF U.S.-OWNED LOCAL CURRENCY

Travel to certain countries shall, at USAID's option, be funded from U.S.-owned local currency. When USAID intends to exercise this option, USAID will either issue a U.S. Government S.F. 1169, Transportation Request (GTR) which the grantee may exchange for tickets, or issue the tickets directly. Use of such U.S.-owned currencies will constitute a dollar charge to this grant.

e. THE FLY AMERICA ACT

The Fly America Act (49 U.S.C. 40118) requires that all air travel and shipments under this award must be made on U.S. flag air carriers to the extent service by such carriers is available. The Administrator of General Services Administration (GSA) is authorized to issue regulations for purposes of implementation. Those regulations may be found at 41 CFR 301, and are hereby incorporated by reference into this award.

f. COST PRINCIPLES

The recipient will be reimbursed for travel and the reasonable cost of subsistence, post differentials, and other allowances paid to employees in international travel status in accordance with the recipient's applicable cost principles and established policies and practices which are uniformly applied to federally financed and other activities of the recipient.

If the recipient does not have written established policies regarding travel costs, the standard for determining the reasonableness of reimbursement for overseas allowance will be the Standardized Regulations (Government Civilians, Foreign Areas), published by the U.S. Department of State, as from time to time amended. The most current subsistence, post differentials, and other allowances may be obtained from the Agreement Officer.

g. SUBAWARDS

This provision will be included in all subawards and contracts which require international air travel and transportation under this award.

[END OF PROVISION]

4. OCEAN SHIPMENT OF GOODS (JUNE 1999)

APPLICABILITY: *This provision is applicable for awards and subawards for \$100,000 or more and when goods purchased with funds provided under this award are transported to cooperating countries on ocean vessels whether or not award funds are used for the transportation.*

OCEAN SHIPMENT OF GOODS (JUNE 1999)

- a. At least 50% of the gross tonnage of all goods purchased under this award and transported to the cooperating countries shall be made on privately owned U.S. flag commercial ocean vessels, to the extent such vessels are available at fair and reasonable rates.
- b. At least 50% of the gross freight revenue generated by shipments of goods purchased under this award and transported to the cooperating countries on dry cargo liners shall be paid to or for the benefit of privately owned U.S. flag commercial ocean vessels to the extent such vessels are available at fair and reasonable rates for such vessels.
- c. When U.S. flag vessels are not available, or their use would result in a significant delay, the recipient may request a determination of non-availability from the USAID, Office of Procurement, Transportation and Commodities Division, 1300 Pennsylvania Avenue, NW., Washington, DC 20523, giving the basis for the request which will relieve the recipient of the requirement to use U.S. flag vessels for the amount of tonnage included in the determination. Shipments made on non-free world ocean vessels are not reimbursable under this award.
- d. The recipient shall send a copy of each ocean bill of lading, stating all of the carrier's charges including the basis for calculation such as weight or cubic measurement, covering a shipment under this agreement to:

U.S. Department of Transportation,
Maritime Administration, Division of National Cargo,
400 7th Street, SW.,
Washington, DC 20590, and

U.S. Agency for International Development,
Office of Procurement, Transportation Division
1300 Pennsylvania Avenue, NW.,
Washington, DC 20523-7900

- e. Shipments by voluntary nonprofit relief agencies (for example, PVOs) shall be governed by this standard provision and by USAID Regulation 2, "Overseas Shipments of Supplies by Voluntary Nonprofit Relief Agencies" (22 CFR 202).
- f. Shipments financed under this award must meet applicable eligibility requirements set out in 22 CFR 228.21.
- g. This provision will be included in all subagreements which will finance goods to be shipped on ocean vessels.

[END OF PROVISION]

5. PROCUREMENT OF GOODS AND SERVICES (OCTOBER 1998)

APPLICABILITY: This provision is applicable when the procurement element of an award is over \$10,000.

PROCUREMENT OF GOODS AND SERVICES (OCTOBER 1998)

The recipient may use its own procurement policies and practices for the procurement of goods and services under this award, provided they conform to all of USAID's requirements listed below and the standard provision entitled "USAID Eligibility Rules For Goods and Services".

- a. General Requirements:
 - (1) The recipient shall maintain a written code or standards of conduct that shall govern the performance of its employees engaged in the awarding and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such conflict would arise when the employee, officer or agent, or any member of the employee's immediate family, the employee's partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subagreements. However,

recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

- (2) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements. Contracts shall be made to the offeror whose offer is responsive to the solicitation and is most advantageous to the recipient, price, quality, and other factors considered. Solicitations shall clearly establish all requirements that the bidder or offeror shall fulfill in order to be evaluated by the recipient. Any and all offers may be rejected when it is in the recipient's interest to do so.
- (3) All recipients shall establish written procurement procedures. These procedures shall provide, at a minimum, that:
 - (i) Recipients avoid purchasing unnecessary items,
 - (ii) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement, and
 - (iii) Solicitations for goods and services provide for all of the following:
 - (A) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
 - (B) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
 - (C) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

- (D) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
 - (E) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 - (F) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- (iv) Positive efforts shall be made by the recipients to utilize U.S. small business, minority-owned firms, and women's business enterprises, whenever possible. Recipients of USAID awards shall take all of the following steps to further this goal:
- (A) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises. To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under the award, the recipient shall to the maximum extent possible provide the following information to the Office of Small and Disadvantaged Business Utilization (OSDBU/MRC), USAID, Washington, DC 20523, at least 45 days prior to placing any order or contract in excess of \$100,000:
 - (a) Brief general description and quantity of goods or services;
 - (b) Closing date for receiving quotations, proposals, or bids; and
 - (c) Address where solicitations or specifications can be obtained.
 - (B) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

- (C) Encourage contracting with consortiums of small businesses, minority-owned firms, and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - (D) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms, and women's business enterprises.
- (v) The type of procurement instruments used (for example, fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts), shall be determined by the recipient but, shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.
 - (vi) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. Contracts shall not be made with firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the grantee with copy of this list upon request.
 - (vii) Recipients shall, on request, make available for USAID, preaward review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:
 - (A) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part, and
 - (B) The procurement is expected to exceed \$10,000.
 - (viii) The recipient shall document some form of price or cost analysis in its procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, and market prices, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability,

and allowability.

- (ix) Procurement records and files for purchases in excess of the recipient's own small purchase threshold shall include the following at a minimum:
 - (A) Basis for contractor selection;
 - (B) Justification for lack of competition when competitive bids or offers are not obtained, and;
 - (C) Basis for award cost or price.
- (x) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions, and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

- b. The recipient shall include, in addition to provisions to define a sound and complete contract, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.
 - (1) Contracts in excess of \$10,000 shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
 - (2) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the recipient, including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
 - (3) All negotiated contracts (except those for less than the recipient's small purchase threshold) awarded by the recipient shall include a provision to the effect that the recipient, USAID, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

- (4) In all contracts for construction or facility improvement awarded for more than \$100,000, the recipient shall observe generally accepted bonding requirements.
- (5) Contracts, the principal purpose of which is to create, develop, or improve products, processes, or methods; or for exploration into fields that directly concern public health, safety, or welfare; or contracts in the fields of science or technology in which there has been little significant experience outside of work funded by the U.S. Government (USG), shall contain a notice to the effect that matters regarding rights to inventions, intellectual property, and materials generated under the contract are subject to the regulations included in these grant provisions. The contractor shall be advised as to the source of additional information regarding these matters.

[END OF PROVISION]

6. USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (SEPTEMBER 1998)

APPLICABILITY: This provision is applicable when the costs for goods or services will be paid for with USAID funds. This provision is not applicable if the recipient is providing for the goods or services with private funds as part of a cost-sharing requirement, or with Program Income generated under the award.

USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (SEPTEMBER 1998)

- a. Ineligible and Restricted Goods and Services: USAID's policies on ineligible and restricted goods and services are contained in ADS Chapter 312.
 - (1) Ineligible Goods and Services. Under no circumstances shall the recipient procure any of the following under this award:
 - (i) Military equipment,
 - (ii) Surveillance equipment,
 - (iii) Commodities and services for support of police or other law enforcement activities,
 - (iv) Abortion equipment and services,
 - (v) Luxury goods and gambling equipment, or
 - (vi) Weather modification equipment.
 - (2) Ineligible Suppliers. Funds provided under this award shall not be used to procure any goods or services furnished by any firm or individual whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the recipient with this list upon request.

- (3) Restricted Goods. The recipient shall not procure any of the following goods and services without the prior approval of the Agreement Officer:
- (i) Agricultural commodities,
 - (ii) Motor vehicles,
 - (iii) Pharmaceuticals,
 - (iv) Pesticides,
 - (v) Used equipment,
 - (vi) U.S. Government-owned excess property, or
 - (vii) Fertilizer.

Prior approval will be deemed to have been met when:

- (i) The item is of U.S. source/origin;
- (ii) The item has been identified and incorporated in the program description or schedule of the award (initial or revisions), or amendments to the award; and
- (iii) The costs related to the item are incorporated in the approved budget of the award. Where the item has not been incorporated into the award as described above, a separate written authorization from the Agreement Officer must be provided before the item is procured.

- b. Source, Origin and Nationality: The eligibility rules for goods and services based on source, origin, and nationality are divided into two categories. One applies when the total procurement element during the life of the award is over \$250,000 and the other applies when the total procurement element during the life of the award is not over \$250,000, or the award is funded under the Development Fund for Africa (DFA) regardless of the amount. The total procurement element includes procurement of all goods (for example, equipment, materials, supplies) and services. Guidance on the eligibility of specific goods or services may be obtained from the Agreement Officer. USAID policies and definitions on source, origin and nationality are contained in 22 CFR 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by the Agency for International Development, which is incorporated into this Award in its entirety. A copy will be provided upon request.

- (1) For DFA funded awards or when the total procurement element during the life of the award is valued at \$250,000 or less, the following rules apply:
- (i) The authorized source for procurement of all goods and services to be reimbursed under the award is USAID Geographic Code 935, "Special Free World," and such goods and services must meet the

source, origin and nationality requirements set forth in 22 CFR 228 in accordance with the following order of preference:

- (A) The United States (USAID Geographic Code 000),
- (B) The Cooperating Country,
- (C) USAID Geographic Code 941, and
- (D) USAID Geographic Code 935.

(ii) Application of Order of Preference: When the recipient procures goods and services from other than U.S. sources, under the order of preference in paragraph b.(1)(i) above, the recipient shall document its files to justify each such instance. The documentation shall set forth the circumstances surrounding the procurement and shall be based on one or more of the following reasons, which will be set forth in the recipient's documentation:

- (A) The procurement was of an emergency nature, which would not allow for the delay attendant to soliciting U.S. sources,
- (B) The price differential for procurement from U.S. sources exceeded by 50% or more the delivered price from the non-U.S. source,
- (C) Compelling local political considerations precluded consideration of U.S. sources,
- (D) The goods or services were not available from U.S. sources, or
- (E) Procurement of locally available goods and services, as opposed to procurement of U.S. goods and services, would best promote the objectives of the Foreign Assistance program under the award.

(2) When the total procurement element exceeds \$250,000, (unless funded by DFA), the following applies: Except as may be specifically approved or directed in advance by the Agreement Officer, all goods and services financed with U.S. dollars, which will be reimbursed under this award must meet the source, (including origin) and nationality requirements set forth in 22 CFR 228 for the authorized geographic code specified in the schedule of this award. If none is specified, the authorized source is Code 000, the United States.

c. Printed or Audio-Visual Teaching Materials: If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities

financed by USAID, in whole or in part, and if other funds including U.S.-owned or U.S.-controlled local currencies are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources in order of preference:

- (1) The United States (USAID Geographic Code 000),
 - (2) The Cooperating Country,
 - (3) "Selected Free World" countries (USAID Geographic Code 941), and
 - (4) "Special Free World" countries (USAID Geographic Code 899).
- d. If USAID determines that the recipient has procured any of these specific restricted goods under this award without the prior written authorization of the Agreement Officer, and has received payment for such purposes, the Agreement Officer may require the recipient to refund the entire amount of the purchase.
- e. This provision will be included in all subagreements which include procurement of goods or services which total over \$5,000.

[END OF PROVISION]

7. SUBAGREEMENTS (OCTOBER 1998)

APPLICABILITY: This provision is applicable when subgrants or cooperative agreements are financed under the award.)

SUBAGREEMENTS (OCTOBER 1998)

- a. Subawards shall be made only with responsible recipients who possess the potential ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such matters as integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. Awards shall not be made to firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the grantee with a copy of this list upon request.
- b. All subagreements shall at a minimum contain provisions to define a sound and complete agreement in addition to those that are specifically required by any other provisions in this award. Whenever a provision within this award is required to be inserted in a subagreement, the recipient shall insert a statement in the subagreement that in all instances where USAID is mentioned, the

recipient's name will be substituted. If subagreements are being made to U.S. organizations, a suggested subaward format incorporating 22 CFR 226 and standard provisions will be provided.

[END OF PROVISION]

8. LOCAL PROCUREMENT (OCTOBER 1998)

APPLICABILITY: This provision is applicable when goods or services are procured under the award.

LOCAL PROCUREMENT (OCTOBER 1998)

- a. Financing local procurement involves the use of appropriated funds to finance the procurement of goods and services supplied by local businesses, dealers, or producers, with payment normally being in the currency of the cooperating country. Regardless of which source, origin, and nationality rules in paragraph b. of the provision entitled "USAID Eligibility Rules for Goods and Services" apply, these rules may be followed for local procurement. Rules on Ineligible and Restricted goods continue to apply.
- b. Locally financed procurements must be covered by source and nationality waivers as set forth in 22 CFR 228, Subpart F, except as provided for in the standard provision "USAID Eligibility Rules for Goods and Services," or when one of the following exceptions applies:
 - (1) Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed \$100,000 exclusive of transportation costs.
 - (2) Commodities of Geographic Code 935 origin if the value of the transaction does not exceed the local currency equivalent of \$5,000.
 - (3) Professional services contracts estimated not to exceed \$250,000.
 - (4) Construction services contracts estimated not to exceed \$5,000,000.
 - (5) Commodities and services available only in the local economy (no specific per transaction value applies to this category). This category includes the following items:
 - (i) Utilities including fuel for heating and cooking, waste disposal, and trash collection;

- (ii) Communications - telephone, telex, fax, postal and courier services;
 - (iii) Rental costs for housing and office space;
 - (iv) Petroleum, oils, and lubricants for operating vehicles and equipment;
 - (v) Newspapers, periodicals, and books published in the cooperating country;
 - (vi) Other commodities and services and related expenses that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the cooperating country, for example, vehicle maintenance, hotel accommodations, etc.
- c. The coverage on ineligible and restricted goods and services in the standard provision entitled, "USAID Eligibility Rules for Goods and Services," also apply to local procurement.
- d. This provision will be included in all subagreements where local procurement of goods or services will be financed with USAID funds.

[END OF PROVISION]

9. PATENT RIGHTS (JUNE 1993)

APPLICABILITY: This provision is applicable whenever patentable processes or practices are financed by the award.

PATENT RIGHTS (JUNE 1993)

- a. Definitions:
- (1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
 - (2) "Subject invention" means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement.
 - (3) "Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such

conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

- (4) “Made” (when used in relation to any invention) means the conception or first actual reduction to practice of such invention.
 - (5) “Small business firm” means a small business concern which meets the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively.
 - (6) “Nonprofit organization” means a university or other institution of higher education, or an organization which is not organized for profit, as described in the laws of the country in which it was organized.
- b. Allocation of Principal Rights. The recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the recipient retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.
- c. Invention Disclosure, Election of Title, and Filing of Patent Applications by Recipient.
- (1) The recipient shall disclose each subject invention to USAID within two months after the inventor discloses it in writing to recipient personnel responsible for patent matters. The disclosure to USAID shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to USAID the recipient shall promptly notify USAID of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the recipient.
 - (2) The recipient shall elect in writing whether or not to retain title to any such invention by notifying USAID within two years of disclosure to USAID. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can

still be obtained in the United States, the period of election of title may be shortened by USAID to a date that is no more than 60 days prior to the end of the statutory period.

- (3) The recipient shall file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The recipient shall file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
 - (4) Requests for extension of the time for disclosure to USAID, election, and filing may, at the discretion of USAID, be granted.
- d. Conditions When the Government May Obtain Title. The recipient shall convey to USAID, upon written request, title to any subject invention:
- (1) If the recipient fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title, USAID may only request title within sixty days after learning of the recipient's failure to report or elect within the specified times.
 - (2) In those countries in which the recipient fails to file patent applications within the times specified in c. above; provided, however, that if the recipient has filed a patent application in a country after the times specified in c. above, but prior to its receipt of the written request of USAID the recipient shall continue to retain title in that country.
 - (3) In any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on a patent on a subject invention.
- e. Minimum Rights to Recipient:
- (1) The recipient shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the recipient fails to disclose the subject invention within the times specified in c. above. The recipient's license extends to its subsidiaries and affiliates, if any, within the corporate structure of which the recipient is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only

with the approval of USAID except when transferred to the successor of that party of the recipient's business to which the invention pertains.

- (2) The recipient's license may be revoked or modified by USAID to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the 37 CFR 404 and Agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of USAID to the extent the recipient, its licensees, or its subsidiaries or affiliates have failed to achieve practical application.
- (3) Before revocation or modification of the license, USAID will furnish the recipient written notice of its intention to revoke or modify the license, and the recipient shall be allowed thirty days (or such other time as may be authorized by USAID for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable regulations in 37 CFR 404 and Agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Recipient Action to Protect the Government's Interest:

- (1) The recipient agrees to execute or to have executed and promptly deliver to USAID all instruments necessary to (i) establish or conform the rights the Government has throughout the world in those subject inventions to which the recipient elects to retain title, and (ii) convey title to USAID when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.
- (2) The recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the grantee each subject invention made under agreement in order that the recipient can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by c.(1) above. The recipient shall instruct such employees through employee agreements, or other suitable educational programs, on the

importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

- (3) The recipient shall notify USAID of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
 - (4) The recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the agreement awarded by USAID). The Government has certain rights in this invention."
- g. **Subagreements and Contracts:** The recipient shall include this standard provision suitably modified to identify the parties, in all subagreements and contracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subrecipient or contractor shall retain all rights provided for the recipient in this standard provision, and the recipient shall not, as part of the consideration for awarding the contract or subagreement, obtain rights in the contractor's or subrecipient's subject inventions.
 - h. **Reporting Utilization of Subject Inventions:** The recipient agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as USAID may reasonably specify. The recipient also agrees to provide additional reports as may be requested by USAID in connection with any march-in proceedings undertaken by USAID in accordance with paragraph j. of this provision. As required by 35 U.S.C. 202(c)(5), USAID agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.
 - i. **Preference for United States Industry:** Notwithstanding any other provision of this clause, the recipient agrees that neither it, nor any assignee, will grant to any person the exclusive right to use or sell any subject invention in the United States, unless such person agrees that any products embodying the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by USAID upon a showing by the recipient or its assignee that reasonable, but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United

States, or that under the circumstances manufacture in the United States is not commercially feasible.

- j. **March-in Rights:** The recipient agrees that with respect to any subject invention in which it has acquired title, USAID has the right, in accordance with the procedures in 37 CFR 401.6 and any supplemental Agency regulations, to require the recipient, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the recipient, assignee, or exclusive licensee refuses such a request, USAID has the right to grant such a license itself if USAID determines that:
- (1) Such action is necessary because the recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or
 - (4) Such action is necessary because the agreement required by paragraph i. of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- k. **Special Provisions for Awards with Nonprofit Organizations:** If the recipient is a nonprofit organization, it agrees that:
- (1) Rights to a subject invention may not be assigned without the approval of USAID, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided that such assignee shall be subject to the same provisions as the recipient.
 - (2) The recipient shall share royalties collected on a subject invention with the inventor, including Federal employee coinventors, when USAID deems it appropriate when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
 - (3) The balance of any royalties or income earned by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject

inventions, shall be utilized for the support of scientific research or education.

- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and it will give preference to a small business firm when licensing a subject invention if the recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the grantee. However, the recipient agrees that the Secretary of Commerce may review the recipient's licensing program and decisions regarding small business applicants, and the recipient shall negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the recipient could take reasonable steps to more effectively implement the requirements of this subparagraph k.(4).

- I. Communications: Communications concerning this provision shall be addressed to the Agreement Officer at the address shown in this agreement.

[END OF PROVISION]

10. PUBLICATIONS AND MEDIA RELEASES (MARCH 2006)

APPLICABILITY: This provision is applicable when publications are financed under the award.

PUBLICATIONS AND MEDIA RELEASES (MARCH 2006)

- a. The recipient shall provide the Agreement Officer's Technical Representative (AOTR) one copy of all published works developed under the award with lists of other written work produced under the award. In addition, the recipient shall submit final documents in electronic format, unless no electronic version exists at the following address:

Online (preferred):

dec.usaid.gov/index.cfm?p=docsubmit.submitDoc&CFID=17392230&CFTOKEN=91583381

Mailing address:
Document Acquisitions
USAID Development Experience Clearinghouse (DEC)
8403 Colesville Road, Suite 210
Silver Spring, MD 20910-6368

Contract Information
Telephone (301) 562-0641
Fax (301) 588-7787
E-mail: docsubmit@dec.cdie.org

Electronic documents must consist of only one electronic file that comprises the complete and final equivalent of a hard copy. They may be submitted online (preferred); on 3.5" diskettes, a Zip disk, CD-R, or by e-mail. Electronic documents should be in PDF (Portable Document Format). Submission in other formats is acceptable but discouraged.

Each document submitted should contain essential bibliographic elements, such as 1) descriptive title; 2) author(s) name; 3) award number; 4) sponsoring USAID office; 5) strategic objective; and 6) date of publication.

- b. In the event award funds are used to underwrite the cost of publishing, in lieu of the publisher assuming this cost as is the normal practice, any profits or royalties up to the amount of such cost shall be credited to the award unless the schedule of the award has identified the profits or royalties as program income.
- c. Except as otherwise provided in the terms and conditions of the award, the author or the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under this award, but USAID reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

[END OF PROVISION]

11. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MAY 1986)

APPLICABILITY: This provision is applicable when work under the award is performed in the United States or when employees are recruited in the United States.

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MAY 1986)

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this award on the basis of race, color, national origin, age, handicap, or sex.

[END OF PROVISION]

12. REGULATIONS GOVERNING EMPLOYEES (JUNE 1993)

APPLICABILITY: The following applies to the recipient's employees who are not citizens of the cooperating country.

REGULATIONS GOVERNING EMPLOYEES (JUNE 1993)

- a. The recipient's employees shall maintain private status and may not rely on local U.S. Government offices or facilities for support while under this recipient.
- b. The sale of personal property or automobiles by recipient employees and their dependents in the foreign country to which they are assigned shall be subject to the same limitations and prohibitions which apply to direct-hire USAID personnel employed by the Mission, including the rules contained in 22 CFR 136, except as this may conflict with host government regulations.
- c. Other than work to be performed under this award for which an employee is assigned by the recipient, no employee of the recipient shall engage directly or indirectly, either in the individual's own name or in the name or through an agency of another person, in any business, profession, or occupation in the foreign countries to which the individual is assigned, nor shall the individual make loans or investments to or in any business, profession, or occupation in the foreign countries to which the individual is assigned.
- d. The recipient's employees, while in a foreign country, are expected to show respect for its convention, customs, and institutions, to abide by its applicable laws and regulations, and not to interfere in its internal political affairs.
- e. In the event the conduct of any recipient employee is not in accordance with the preceding paragraphs, the recipient's chief of party shall consult with the USAID Mission Director and the employee involved, and shall recommend to the recipient a course of action with regard to such employee.
- f. The parties recognize the rights of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this award of any third country national (TCN) when, in the discretion of the Ambassador, the interests of the United States so require.

- g. If it is determined, under either e. or f. above, that the services of such employee shall be terminated, the recipient shall use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

[END OF PROVISION]

13. PARTICIPANT TRAINING (OCTOBER 1998)

APPLICABILITY: *This provision is applicable when any participant training is financed under the award.*

PARTICIPANT TRAINING (OCTOBER 1998)

- a. Definitions: A participant is any non-U.S. individual being trained under this award outside of that individual's home country.
- b. Application of ADS Chapter 253: Participant training under this award shall comply with the policies established in ADS Chapter 253, Participant Training (including TrainNet requirements), except to the extent that specific exceptions to ADS 253 have been provided in this award with the concurrence of the Global Bureau's Center for Human Capacity Development (The Center) (see ADS 253). (ADS 253 may be obtained by submitting a request to the Agreement Officer.)
- c. Orientation: In addition to the mandatory requirements in ADS 253, recipients are strongly encouraged to provide, in collaboration with the Mission training officer, predeparture orientation, and orientation in Washington at the Washington International Center. The latter orientation program also provides the opportunity to arrange for home hospitality in Washington and elsewhere in the U.S. through liaison with the National Council for International Visitors (NCIV). If the Washington orientation is determined not to be feasible, home hospitality can be arranged in most U.S. cities if a request for such is directed to the Agreement Officer, who will transmit the request to NCIV through R&O/IT.

[END OF PROVISION]

14. VOLUNTARY POPULATION PLANNING ACTIVITIES – SUPPLEMENTAL REQUIREMENTS (JANUARY 2009)

APPLICABILITY: *This provision is applicable to all awards involving any aspect of voluntary population planning activities.*

**VOLUNTARY POPULATION PLANNING ACTIVITIES – SUPPLEMENTAL
REQUIREMENTS (JANUARY 2009)**

a. Voluntary Participation and Family Planning Methods:

- (1) The recipient agrees to take any steps necessary to ensure that funds made available under this award will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the recipient agrees to conduct its activities in a manner which safeguards the rights, health, and welfare of all individuals who take part in the program.
- (2) Activities which provide family planning services or information to individuals, financed, in whole or in part, under this agreement, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

b. Requirements for Voluntary Family Planning Projects

- (1) A family planning project must comply with the requirements of this paragraph.
- (2) A project is a discrete activity through which a governmental or nongovernmental organization or Public International Organization (PIO) provides family planning services to people and for which funds obligated under this award, or goods or services financed with such funds, are provided under this award, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.
- (3) Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.
- (4) The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor, or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births,

number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.

- (5) No person shall be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.
- (6) The project shall provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method. This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.
- (7) The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.
- (8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no subaward or contract under this award, the organization implementing a project for which such assistance is provided shall agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.
- (9)
 - i) The recipient shall notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs b.(3), b.(4), b.(5), or b.(7).
 - ii) The recipient shall investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph b.(6) and shall notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project.

- iii) The recipient shall provide USAID such additional information about violations as USAID may request.

c. Additional Requirements for Voluntary Sterilization Programs

- (1) None of the funds made available under this award shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.
- (2) The recipient shall ensure that any surgical sterilization procedures supported, in whole or in part, by funds from this award are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent anytime prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.
- (3) Further, the recipient shall document the patient's informed consent by (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation. The receipt of this oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall speak the same language as the patient.
- (4) The recipient must retain copies of informed consent forms and certification documents for each voluntary sterilization for a period of three years after performance of the sterilization procedure.

d. Prohibition on Abortion-Related Activities:

- (1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of

equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

- (2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not precluded.
- e. The recipient shall insert this provision in all subsequent subagreements and contracts involving family planning or population activities that will be supported, in whole or in part, from funds under this award. The term subagreement means subgrants and subcooperative agreements.

[END OF PROVISION]

15. PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT (OCTOBER 1998)

APPLICABILITY: This provision is applicable when human subjects are involved in research financed by the award.

PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT (OCTOBER 1998)

- a. Safeguarding the rights and welfare of human subjects involved in research supported by USAID is the responsibility of the organization to which support is awarded. USAID has adopted the Common Federal Policy for the Protection of Human Subjects, Part 225 of Title 22 of the Code of Federal Regulations (the "Policy"). Additional interpretation, procedures, and implementation guidance of the Policy are found in USAID General Notice entitled "Procedures for the Protection of Human Subjects in Research Supported by USAID", issued April 19, 1995, as amended. USAID's Cognizant Human Subjects Officer (CHSO) in USAID/W has oversight, guidance, and interpretation responsibility for the Policy.
- b. Recipient organizations must comply with USAID policy when humans are the subject of research, as defined in 22 CFR 225.102(d), funded by the grant and recipients MUST provide "assurance", as required by 22 CFR 225.103, that they follow and abide by the procedures in the Policy. See also Section 5 of the

April 19, 1995, USAID General Notice which sets forth activities to which the Policy is applicable. The existence of a bona fide, applicable assurance approved by the Department of Health and Human Services (HHS) such as the "multiple project assurance" (MPA) will satisfy this requirement. Alternatively, organizations can provide an acceptable written assurance to USAID as described in 22 CFR 225.103. **SUCH ASSURANCES MUST BE DETERMINED BY THE CHSO TO BE ACCEPTABLE PRIOR TO ANY APPLICABLE RESEARCH BEING INITIATED OR CONDUCTED UNDER THE AWARD.** In some limited instances outside the U.S., alternative systems for the protection of human subjects may be used provided they are deemed "at least equivalent" to those outlined in Part 225 (See 22 CFR 225.101[h]). Criteria and procedures for making this determination are described in the General Notice cited in the preceding paragraph.

- c. Since the welfare of the research subject is a matter of concern to USAID as well as to the organization, USAID staff consultants and advisory groups may independently review and inspect research and research processes and procedures involving human subjects, and based on such findings, the CHSO may prohibit research which presents unacceptable hazards or otherwise fails to comply with USAID procedures. Informed consent documents must include the stipulation that the subject's records may be subject to such review.

[END OF PROVISION]

16. INDIRECT COST RATES - PROVISIONAL (Nonprofit) (OCTOBER 1998)

APPLICABILITY: This provision is applicable to all recipients whose indirect cost rates under this award are on a provisional basis.

INDIRECT COST RATES - PROVISIONAL (Nonprofit) (OCTOBER 1998)

- a. Provisional indirect cost rates shall be established for the recipient's accounting periods during the term of this award. Pending establishment of revised provisional or final rates, allowable indirect costs shall be reimbursed at the rates, on the bases, and for the periods shown in the Schedule of this award.
- b. The recipient, not later than nine months after the close of each of its accounting periods during the term of this award, shall submit to the Agreement Officer proposed final indirect cost rates with supporting cost data. The proposed rates shall be based on the recipient's actual cost experience during that fiscal year. Negotiations of final indirect cost rates shall begin soon after receipt of the recipient's proposal.

- c. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles.
- d. The results of each negotiation shall be set forth in an indirect cost rate agreement signed by both parties. Such agreement is automatically incorporated into this award and shall specify (1) the agreed upon final rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply, and (4) the items treated as direct costs. The agreement shall not change any monetary ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.
- e. Pending establishment of final indirect cost rates for any fiscal year, the recipient shall be reimbursed either at negotiated provisional rates or at billing rates acceptable to the Agreement Officer, subject to appropriate adjustment when the final rates for the fiscal year are established. To prevent substantial overpayment or underpayment, the provisional or billing rates may be prospectively or retroactively revised by mutual agreement.
- f. Any failure by the parties to agree on any final rate(s) under this provision shall be considered a dispute within the meaning of the standard provision of the grant, entitled "Disputes".

[END OF PROVISION]

17. TITLE TO AND USE OF PROPERTY (RECIPIENT TITLE; OVER \$50,000) (OCTOBER 1998)

APPLICABILITY: This provision is applicable only when title to property is vested in the recipient and over \$50,000 in equipment is expected to be procured with USAID funds. Equipment is defined as any tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

**TITLE TO AND USE OF PROPERTY (RECIPIENT TITLE; OVER \$50,000)
(OCTOBER 1998)**

- a. Title to all property financed under this award shall vest in the recipient.
- b. The recipient agrees to use and maintain the property for the purpose of the award in accordance with the following procedures:
 - (1) The recipient shall not use equipment acquired with U.S. Government (USG) funds to provide services to non-U.S. Government outside organizations for a fee that is less than private companies charge for equivalent services.

- (2) The recipient shall use the equipment in the program for which it was acquired as long as needed, whether or not the program continues to be supported by USG funds and shall not encumber the property without approval of USAID. When no longer needed for the original program, the recipient shall use the equipment in connection with its other Federally-sponsored activities, in the following order of priority:
 - (i) Activities sponsored by USAID, then
 - (ii) Activities sponsored by other USG agencies.
- (3) During the time that equipment is used on the program for which it was acquired, the recipient shall make it available for use on other programs if such other use will not interfere with the work on the program for which the equipment was originally acquired. User charges shall be treated as program income.
- (4) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in, or sell the equipment and use the proceeds to offset the costs of the replacement equipment, subject to the approval of the Agreement Officer.
- (5) The recipient's property management standards for equipment acquired with USG funds and Federally-owned equipment shall include all of the following:
 - (i) Equipment records shall be maintained accurately and shall include the following information:
 - (A) A description of the equipment;
 - (B) Manufacturer's serial number, model number, USG stock number, national stock number, or other identification number;
 - (C) Source of the equipment, including the award number;
 - (D) Whether title vests in the recipient, the USG or other specified entity;
 - (E) Acquisition date (or date received, if the equipment was furnished by the USG) and cost;
 - (F) Information from which one can calculate the percentage of USG participation in the cost of the equipment (not applicable to equipment furnished by the USG);

- (G) Location and condition of the equipment and the date the information was reported;
 - (H) Unit acquisition cost;
 - (I) Ultimate disposition data, including date of disposal and sales price, or the method used to determine current fair market value where a recipient compensated USAID for its share.
- (ii) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
 - (iii) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated and fully documented and the recipient shall promptly notify the Agreement Officer.
 - (iv) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.
 - (v) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.
- (6) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards:
- (i) For equipment with a current per unit fair market value of \$5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to USAID for its share.
 - (ii) If the recipient has no need for USAID-financed equipment, the recipient shall request disposition instructions from the Agreement Officer.
 - (A) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the

recipient shall sell the equipment and reimburse USAID its share. The recipient shall be permitted to deduct and retain from the USAID share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

- (B) If the recipient is instructed to ship or otherwise dispose of the equipment, the recipient will be reimbursed by USAID for reasonable expenses incurred in disposition.
- c. USAID reserves the right to transfer the title to USAID or a third party. The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing by the Agreement Officer. When USAID exercises its right to take title, the equipment shall be subject to the standard provision entitled "Title to and Care of Property" (U.S. Government Title).
- d. Within 90 calendar days after the date of completion of the award, the recipient shall submit an inventory of all property with the final performance report. The final inventory shall list all equipment acquired with award funds or received from USAID.
- e. Title to supplies and other expendable equipment shall vest in the recipient upon acquisition. If there is a residual inventory of new/unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other U.S. Government-sponsored project or program, the recipient may retain the supplies but must compensate USAID for its share. The recipient shall not use supplies acquired with USAID funds to provide services to outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by U.S. Government statute as long as the U.S. Government retains an interest in the supplies.
- f. Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds, as provided to property owned by the recipient.
- g. If the purchase of real property (meaning land, land improvements, structures, and appurtenances thereto) is supported under the award, separate instructions will be provided to the recipient by the Agreement Officer.

[END OF PROVISION]

18. TITLE TO AND USE OF PROPERTY (RECIPIENT TITLE; \$50,000 and Under) (OCTOBER 1998)

APPLICABILITY: This provision is applicable only when title to property is vested in the recipient and under \$50,000 in equipment is expected to be procured with USAID funds. Equipment is defined as any tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

**TITLE TO AND USE OF PROPERTY (RECIPIENT TITLE; \$50,000 and Under)
(OCTOBER 1998)**

- a. Title to all property financed under this award shall vest in the recipient.
- b. The recipient agrees to use and maintain the property for the purpose of the award and in accordance with the procedures established in this provision.
- c. With respect to property having an acquired value of \$5,000 or more, the recipient agrees to report such items to the Agreement Officer as they are acquired and to maintain a control system which will permit their ready identification and location.
- d. Within 90 calendar days after the end of the award, the recipient will provide a list to the Agreement Officer and the Agreement Officer's Technical Representative (AOTR) of each item that has current fair market value of \$5,000 or more with a detailed proposal of what the recipient intends to do with that property. If the Agreement Officer does not respond within 120 calendar days, the recipient may proceed with the disposition of the property. However, if the recipient uses the property for purposes other than those of the award or sells or leases the property, USAID shall be reimbursed of its share of the property unless the Agreement Officer authorizes USAID's share of the income from selling or leasing the property to be used as program income. This share is based upon the percentage of USAID's contribution to the recipient's program. If USAID paid 100% of the recipient's costs, then USAID would receive 100% of the selling cost less a nominal selling fee of \$500 or 10%, whichever is less.

[END OF PROVISION]

19. TITLE TO AND CARE OF PROPERTY (U.S. GOVERNMENT TITLE) (OCTOBER 1998)

APPLICABILITY: This provision is applicable when title to property is vested in the U.S. Government.

TITLE TO AND CARE OF PROPERTY (U.S. GOVERNMENT TITLE) (OCTOBER 1998)

- a. Property, title to which vests in the Government under this award, whether furnished by the Government or acquired by the recipient, is subject to this provision and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personal property by reason of affixation to any real property.
- b. Use of Government Property: Government property shall, unless otherwise provided herein or approved by the Agreement Officer, be used only for the performance of this award.
- c. Control, Maintenance and Repair of Government Property:
 - (1) The recipient shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this award. The recipient shall take all reasonable steps to comply with all appropriate directions or instructions which the Agreement Officer may prescribe as reasonably necessary for the protection of the Government property.
 - (2) The recipient shall submit, for review by the Agreement Officer, a records system for property control and a program for orderly maintenance of Government property; however, if the property control and maintenance system has been reviewed by another U.S. Government department or agency pursuant to Section __.30 through __.36 of OMB Circular A-110, the recipient shall furnish the Agreement Officer proof of such review in lieu of another submission.
 - (3) Property Control: The property control system shall include but not be limited to the following:
 - (i) Identification of each item of Government property acquired or furnished under the award by a serially controlled identification number and by description of item. Each item must be clearly marked "Property of U.S. Government."

- (ii) The price of each item of property acquired or furnished under this award.
 - (iii) The location of each item of property acquired or furnished under this award.
 - (iv) A record of any usable components which are permanently removed from items of Government property as a result of modification or otherwise.
 - (v) A record of disposition of each item acquired or furnished under the award.
 - (vi) The official property control records shall be kept in such condition that at any stage of completion of the work under this award, the status of property acquired or furnished under this award may be readily ascertained. A report of current status of all items of property acquired or furnished under the award shall be submitted yearly, concurrently with the annual report.
- (4) Maintenance Program: The recipient's maintenance program shall be consistent with sound business practice, the terms of the award, and provide for:
- (i) Disclosure of need for and the performance of preventive maintenance,
 - (ii) Disclosure and reporting of need for capital type rehabilitation, and
 - (iii) Recording of work accomplished under the program.
 - (A) Preventative maintenance - Preventive maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.
 - (B) Records of maintenance - The recipient's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.
 - (C) A report of status of maintenance of Government property shall be submitted annually with the annual report.

d. Risk of Loss:

- (1) The recipient shall not be liable for any loss of, or damage to, the Government property, or for expenses incidental to such loss or damage except that the recipient shall be responsible for any such loss or damage (including expenses incidental thereto):
 - (i) Which results from willful misconduct or lack of good faith on the part of any of the recipient's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of all or substantially all of the recipient's business, or all or substantially all of the recipient's operation at any one plant, laboratory, or separate location in which this award is being performed;
 - (ii) Which results from a failure on the part of the recipient, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in (i) above:
 - (A) To maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by (i) above, or
 - (B) To take all reasonable steps to comply with any appropriate written directions of the Agreement Officer under c. above;
 - (iii) For which the recipient is otherwise responsible under the express terms designated in the schedule of this award;
 - (iv) Which results from a risk expressly required to be insured under some other provision of this award, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater;
 - (v) Which results from a risk which is in fact covered by insurance or for which the recipient is otherwise reimbursed, but only to the extent of such insurance or reimbursement; or
 - (vi) Provided, that, if more than one of the above exceptions shall be applicable in any case, the recipient's liability under any one exception shall not be limited by any other exception.
- (2) The recipient shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering

the risk of loss of or damage to the Government property, except to the extent that the Government may have required the recipient to carry such insurance under any other provision of this award.

- (3) Upon the happening of loss or destruction of or damage to the Government property, the recipient shall notify the Agreement Officer thereof, shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Agreement Officer a statement of:
 - (i) The lost, destroyed, or damaged Government property;
 - (ii) The time and origin of the loss, destruction, or damage;
 - (iii) All known interests in commingled property of which the Government property is a part; and
 - (iv) The insurance, if any, covering any part of or interest in such commingled property.
 - (4) The recipient shall make repairs and renovations of the damaged Government property or take such other action as the Agreement Officer directs.
 - (5) In the event the recipient is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the award, or shall otherwise reimburse the Government, as directed by the Agreement Officer. The recipient shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage, and upon the request of the Agreement Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suits and the execution of instruments or assignments in favor of the Government) in obtaining recovery.
- e. Access: The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.
- f. Final Accounting and Disposition of Government Property: Upon completion of this award, or at such earlier dates as may be fixed by the Agreement Officer, the recipient shall submit, in a form acceptable to the Agreement Officer, inventory schedules covering all items of Government property not consumed in the

performance of this award or not theretofore delivered to the Government, and shall prepare, deliver, or make such other disposition of the Government property as may be directed or authorized by the Agreement Officer.

- g. Communications: All communications issued pursuant to this provision shall be in writing.

[END OF PROVISION]

20. TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE) (OCTOBER 1998)

APPLICABILITY: This provision is applicable when an award is funded under an agreement between USAID and the host country, or when the award provides for property titled in the name of the host country or such public or private agency as the host country government may designate to be furnished to or acquired by the recipient.

TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE) (OCTOBER 1998)

- a. Except as modified by the Schedule of this award, title to all equipment, materials, and supplies, the cost of which is reimbursable to the recipient by USAID or by the cooperating country, shall at all times be in the name of the cooperating country or such public or private agency as the cooperating Government may designate, unless title to specified types or classes of equipment is reserved to USAID under provisions set forth in the Schedule of this award, but all such property shall be under the custody and control of recipient until the owner of title directs otherwise or completion of work under this award or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guarantees and warranties obtained from suppliers shall be taken in the name of the title owner.
- b. The recipient shall prepare and establish a program, for the receipt, use, maintenance, protection, custody, and care of equipment, materials, and supplies for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program. The recipient shall be guided by the requirements of 22 CFR 226.30 through 226.36.
- c. Within 90 days after completion of this award, or at such other date as may be fixed by the Agreement Officer, the recipient shall submit an inventory schedule covering all items of equipment, materials, and supplies under the recipient's custody, title to which is in the cooperating country or public or private agency designated by the cooperating country, which have not been consumed in the

performance of this award. The recipient shall also indicate what disposition has been made of such property.

[END OF PROVISION]

21. COST SHARING (MATCHING) (JULY 2002)

APPLICABILITY: This provision is applicable when the recipient is required to provide a matching share or to cost share.

COST SHARING (MATCHING) (JULY 2002)

- a. During the period of this award, the recipient agrees to spend funds from non-U.S. Government sources in an amount at least equal to the amount or percentage of the total expenditures under this award specified in the schedule of the award. The schedule of this award may also contain restrictions on the application of cost sharing (matching) funds. The schedule of the award takes precedence over the terms of this provision.
- b. Eligibility of non-U.S. Government funds applied to satisfy cost sharing (matching) requirements under this award are set forth below:
 - (1) Charges incurred by the recipient as project costs. Not all charges require cash outlays by the recipient during the project period; examples are depreciation and use charges for buildings and equipment.
 - (2) Project costs financed with cash contributed or donated to the recipient by other non-U.S. Government organizations (may include public international organizations (PIO) or foreign governments and institutions, private organizations, or individuals), and
 - (3) Project costs represented by services and real and personal property, or use thereof, donated by other non-U.S. Government agencies and institutions, and private organizations and individuals.
- c. All contributions, both cash and in-kind, shall be accepted as part of the recipient's cost sharing (matching) when such contributions meet all of the following criteria:
 - (1) Are verifiable from the recipient's records;
 - (2) Are not included as contributions for any other U.S. Government-assisted program;

- (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;
- (4) Are types of charges that would be allowable under the applicable Federal cost principles;
- (5) Are not paid by the U.S. Government (USG) under another grant or agreement (unless the grant or agreement is authorized by USG law to be used for cost sharing or matching);
- (6) Are provided for in the approved budget when required by USAID; and
- (7) Conform to other provisions of this paragraph.

The source, origin and nationality requirements and the restricted goods provision established in the standard provision entitled "USAID Eligibility Rules for Goods and Services" do not apply to cost sharing (matching) expenditures.

- d. Values for recipient in-kind contributions will be established in accordance with the applicable Federal cost principles.
- e. Specific procedures for the recipient in establishing the value of in-kind contributions from non-U.S. Government third parties are set forth below:
 - (1) Valuation of volunteer services: Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching, if the service is an integral and necessary part of an approved program.
 - (i) Rates for volunteer services: Rates for volunteers should be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient's organization, rates should be consistent with those paid for similar work in the labor market in which the recipient competes of the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.
 - (ii) Volunteers furnished by other organizations: When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs) provided these services are of the same skill for which the employee is normally paid.

- (2) Valuation of donated supplies: Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost (matching) share shall be reasonable and shall not exceed the market value of the property at the time of the donation.
- (3) Valuation of donated equipment, buildings, and land or use thereof:
- (i) The method used for charging cost sharing or matching for donated equipment, buildings, and land for which title passes to the recipient may differ according to the purpose of the award as follows:
- (A) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings, or land, the total value of the donated property may be claimed as cost sharing or matching.
- (B) If the purpose of the award is to support activities that require the use of equipment, buildings, or land; normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the USAID Agreement Officer has approved the charges.
- (ii) The value of donated property will be determined in accordance with the usual accounting policies of the recipient with the following qualifications:
- (A) Land and buildings: The value of donated land and buildings shall not exceed its fair market value, at the time of donation to the recipient as established by an independent appraiser (for example, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.
- (B) Equipment: The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.
- (C) Use of space: The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.

- (D) Loaned equipment: The value of loaned equipment shall not exceed its fair rental value.
- f. The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties. With the authorization of the Agreement Officer, the recipient may attribute cost share contributions from subrecipients to the prime award.
- (1) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its employees.
 - (2) The basis for determining the valuation for personal services, material, equipment, buildings, and land shall be documented.
- g. Individual expenditures do not have to be shared or matched provided that the total expenditures incurred during the year (or funding period) are shared or matched in accordance with the agreed upon amount or percentage set forth in the schedule of the award.
- h. If at the end of the funding period hereunder, the recipient has expended an amount of non-U.S. Government funds less than the agreed upon amount or percentage of total expenditures, the Agreement Officer may apply the difference to reduce the amount of USAID funding for the following funding period, or, if this award has expired or been terminated, may require that the recipient refund the difference to USAID.
- i. If the recipient fails to act in good faith to meet the cost sharing (matching) requirements set forth in paragraph a. above, the Agreement Officer may consider it sufficient reason to terminate this award for cause in accordance with the Standard Provision of this award entitled "Termination and Suspension".
- j. The restrictions on the use of USAID funds set forth in the standard provisions of this award are applicable to expenditures incurred with USAID funds provided under this award. Except for the requirements of this standard provision, the restrictions set forth in the standard provisions of this grant are not applicable to costs incurred by the recipient from non-U.S. Government funds. The recipient will account for the USAID funds in accordance with the standard provision of this award entitled "Accounting, Audit, and Records"; however, in the event of disallowances of expenditures from USAID award funds, the recipient may substitute expenditures made with funds provided from non-U.S. Government sources, provided they are eligible in accordance with all the standard provisions of this award.
- k. Notwithstanding paragraph b. of the standard provision of this award entitled "Refunds", the parties agree that in the event of any disallowance of

expenditures from USAID award funds provided hereunder, the recipient may substitute expenditures made with funds provided from non-Federal sources provided they are otherwise eligible in accordance with paragraph b. of this provision.

[END OF PROVISION]

22. PUBLIC NOTICES (JUNE 1993)

APPLICABILITY: *This provision is applicable when the Agreement Officer's Technical Representative (AOTR) or Strategic Objective (SO) Team determines that the award is of public interest and requests that the provision be included in the award.*

PUBLIC NOTICES (JUNE 1993)

It is USAID's policy to inform the public as fully as possible of its programs and activities. The recipient is encouraged to give public notice of the receipt of this award and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

"The U.S. Agency for International Development administers the U.S. foreign assistance program providing economic and humanitarian assistance in more than 80 countries worldwide."

The recipient may call on USAID's Office of External Affairs for advice regarding public notices. The recipient is requested to provide copies of notices or announcements to the Agreement Officer's Technical Representative (AOTR) and to USAID's Office of Legislative and Public Affairs as far in advance of release as possible.

[END OF PROVISION]

23. PROGRAM INCOME (OCTOBER 1998)

APPLICABILITY: *This provision shall be applicable when Program Income is earned under the award.*

PROGRAM INCOME (OCTOBER 1998)

- a. The recipient shall apply the standards set forth in this provision to account for program income earned under the award.
- b. Program Income earned during the project period shall be retained by the recipient and, in accordance with USAID regulations, other implementing

guidance, or the terms and conditions of the award, shall be used in one or more of the following ways:

- (1) Added to funds committed by USAID and the recipient to the project or program, and used to further eligible project or program objectives.
 - (2) Used to finance the non-U.S. Government share of the project or program.
 - (3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the U.S. Government (USG) share of costs is based.
- c. When the agreement authorizes the disposition of program income as described in paragraph b.(1) or b.(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph b.(3) of this section.
 - d. If the terms and conditions of the award do not specify how program income is to be used, paragraph b.(2) of this section shall apply automatically; program income in excess of the cost share amount may be applied in accordance with paragraph b.(1). Recipients which are commercial organizations may not apply paragraph b.(1) of this section.
 - e. Unless the terms and conditions of the award provide otherwise, recipients shall have no obligation to the USG regarding program income earned after the end of the project period.
 - f. Costs incident to the generation of program income may be deducted from gross income to determine program income; provided these costs have not been charged to the award and they comply with the applicable Cost Principles.
 - g. Unless the terms and conditions of the award provide otherwise, recipients shall have no obligation to the USG with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C.18) apply to inventions made under an experimental, developmental, or research award.

[END OF PROVISION]

24. (Reserved)

25. PROHIBITION OF ASSISTANCE TO DRUG TRAFFICKERS (JUNE 1999)

APPLICABILITY: This provision is applicable where performance of the award will take place in "Covered" Countries, as described in ADS 206.

PROHIBITION OF ASSISTANCE TO DRUG TRAFFICKERS (JUNE 1999)

- a. USAID reserves the right to terminate assistance to, or take other appropriate measures with respect to, any participant approved by USAID who is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR 140.
- b. For any loan over \$1,000 made under this agreement, the recipient shall insert a clause in the loan agreement stating that the loan is subject to immediate cancellation, acceleration, recall or refund by the recipient if the borrower or a key individual of a borrower is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR 140.
- c. Upon notice by USAID of a determination under section (1) and at USAID's option, the recipient agrees to immediately cancel, accelerate, or recall the loan, including refund in full of the outstanding balance. USAID reserves the right to have the loan refund returned to USAID.
- d. The recipient agrees not to disburse, or sign documents committing the recipient to disburse, funds to a subrecipient designated by USAID ("Designated Subrecipient") until advised by USAID that: (i) any USG review of the Designated Subrecipient and its key individuals has been completed; (ii) any related certifications have been obtained; and (iii) the assistance to the Designated Subrecipient has been approved. Designation means that the subrecipient has been unilaterally selected by USAID as the subrecipient. USAID approval of a subrecipient, selected by another party, or joint selection by USAID and another party is not designation.
- e. The recipient shall insert the following clause, or its substance, in its agreement with the Designated Subrecipient:

"The recipient reserves the right to terminate this [Agreement/Contract] or take other appropriate measures if the [Subrecipient] or a key individual of the [Subrecipient] is found to have been convicted of a narcotic offense or to have been engaged in drug trafficking as defined in 22 CFR 140."

[END OF PROVISION]

26. INVESTMENT PROMOTION (NOVEMBER 2003)

***APPLICABILITY:** The following clause is required for grants and cooperative agreements when the program includes gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, as described in ADS 225 (see 225.3.1.8)*

INVESTMENT PROMOTION (NOVEMBER 2003)

- a. Except as specifically set forth in this award or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves investment promotion in a foreign country.
- b. In the event the recipient is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the recipient must notify the Agreement Officer and provide a detailed description of the proposed activity. The recipient must not proceed with the activity until advised by USAID that it may do so.
- c. The recipient must ensure that its employees and subrecipients and contractors providing investment promotion services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all contracts and other subagreements entered into hereunder.

[END OF PROVISION]

27. REPORTING OF FOREIGN TAXES (MARCH 2006)

***APPLICABILITY:** This provision is applicable to all USAID agreements that obligate or subobligate FY 2003 or later funds except for agreements funded with Operating Expense, Pub. L. 480 funds, or trust funds, or agreements where there will be no commodity transactions in a foreign country over the amount of \$500.*

REPORTING OF FOREIGN TAXES (MARCH 2006)

- a. The recipient must annually submit a report by April 16 of the next year.
- b. Contents of Report. The report must contain:
 - (i) Contractor/recipient name.
 - (ii) Contact name with phone, fax and e-mail.
 - (iii) Agreement number(s).

- (iv) Amount of foreign taxes assessed by a foreign government [each foreign government must be listed separately] on commodity purchase transactions valued at \$500 or more financed with U.S. foreign assistance funds under this agreement during the prior U.S. fiscal year.
 - (v) Only foreign taxes assessed by the foreign government, in the country receiving U.S. assistance, is to be reported. Foreign taxes by a third party foreign government are not to be reported. For example, if an assistance program for Lesotho involves the purchase of commodities in South Africa using foreign assistance funds, any taxes imposed by South Africa would not be reported in the report for Lesotho (or South Africa).
 - (vi) Any reimbursements received by the recipient during the period in (iv) regardless of when the foreign tax was assessed and any reimbursements on the taxes reported in (iv) received through March 31.
 - (vii) Reports are required even if the recipient did not pay any taxes during the report period.
 - (viii) Cumulative reports may be provided if the recipient is implementing more than one program in a foreign country.
- c. Definitions. For purposes of this clause:
- (i) “Agreement” includes USAID direct and country contracts, grants, cooperative agreements, and interagency agreements.
 - (ii) “Commodity” means any material, article, supply, goods, or equipment.
 - (iii) “Foreign government” includes any foreign governmental entity.
 - (iv) “Foreign taxes” means value-added taxes and custom duties assessed by a foreign government on a commodity. It does not include foreign sales taxes.
- d. Where. Submit the reports to: [insert address and point of contact at the Embassy, Mission, or FM/CMP as appropriate (see b. above) [may include an “optional with a copy to”].
- e. Subagreements. The recipient must include this reporting requirement in all applicable subcontracts, subgrants, and other subagreements.
- f. For further information see www.usaid.gov/policy/ads/300/302mac.pdf.

[END OF PROVISION]

28. FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (JANUARY 2002)

APPLICABILITY: Include this provision in agreements funded from the following accounts:

- *Development Assistance, including assistance for sub-Saharan Africa,*
- *Child Survival and Disease Programs Fund, and*
- *Micro and Small Enterprise Development Program Account.*

FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (JANUARY 2002)

Funds in this agreement may not be used to finance the travel, per diem, hotel expenses, meals, conference fees or other conference costs for any member of a foreign government's delegation to an international conference sponsored by a Public International Organization (PIO), except as provided in "Guidance on Funding Foreign Government Delegations to International Conferences," or as approved by the Agreement Officer.

[END OF PROVISION]

29. ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JULY 2004)

APPLICABILITY: This provision must be included in any Request for Application (RFA) or Annual Program Statement (APS) that could lead to a grant or cooperative agreement for activities related to human trafficking funded from any year program resources.

ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JULY 2004)

The USG is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to alleviate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked. Foreign organizations, whether prime or subrecipients, that receive USG funds to fight trafficking in persons cannot promote, support, or advocate the legalization or practice of prostitution when they are engaged in overseas activities. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.

[END OF PROVISION]

30. PROHIBITION ON THE USE OF FEDERAL FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE FOR THE LEGALIZATION OR PRACTICE OF PROSTITUTION - ASSISTANCE (JULY 2004)

APPLICABILITY: This provision must be included in any grant or cooperative agreement that uses funds made available for activities related to human trafficking funded from any year program resources.

PROHIBITION ON THE USE OF FEDERAL FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE FOR THE LEGALIZATION OR PRACTICE OF PROSTITUTION - ASSISTANCE (JULY 2004)

- a. The USG is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.
 - b. [This subsection b. only applies to foreign nongovernmental organizations and PIOs receiving USG funds to carry out programs that target victims of severe forms of trafficking as either prime awardees or subawardees.]
 - (1) For programs that target victims of severe forms of trafficking, as a condition of entering into this agreement or subagreement, the recipient/subrecipient agrees that in its activities outside of the United States and its possessions it does not promote, support, or advocate the legalization or practice of prostitution. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.
 - (2) The following definitions apply for purposes of this clause:
 - Foreign nongovernmental organization – The term “foreign nongovernmental organization” means an entity that is not organized under the laws of any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- Severe forms of trafficking in persons. -- The term “severe forms of trafficking in persons” means —
- (A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

- (B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (C) The recipient shall insert this provision in all subagreements under this award.
- (D) This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination, in whole or in part, of the agreement by USAID prior to the end of its term.

[END OF PROVISION]

31. ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JUNE 2005)

APPLICABILITY: This provision must be included in any agreement financing HIV/AIDS activities.

ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JUNE 2005)

An organization that is otherwise eligible to receive funds under this agreement to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

[END OF PROVISION]

32. CONDOMS (JUNE 2005)

APPLICABILITY: This provision must be included in any agreement financing HIV/AIDS activities.

CONDOMS (JUNE 2005)

Information provided about the use of condoms as part of projects or activities that are funded under this agreement shall be medically accurate and shall include the public health benefits and failure rates of such use and shall be consistent with USAID's fact sheet entitled, "USAID: HIV/STI Prevention and Condoms".

This fact sheet may be accessed at:

www.usaid.gov/our_work/global_health/aids/TechAreas/prevention/condomfactsheet.html

[END OF PROVISION]

33. PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (JUNE 2005)

APPLICABILITY: This provision must be included in any agreement financing HIV/AIDS activities.

PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (JUNE 2005)

- a. The USG is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or postexposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.
- b. Except as noted in the second sentence of this paragraph, as a condition of entering into this agreement or any subagreement, a nongovernmental organization or public international organization recipient/subrecipient must have a policy explicitly opposing prostitution and sex trafficking. The following organizations are exempt from this paragraph: the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization (WHO); the International AIDS Vaccine Initiative; and any United Nations agency.
- c. The following definition applies for purposes of this provision:

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (22 U.S.C. 7102(9)).
- d. The recipient shall insert this provision, which is a standard provision, in all subagreements.

- e. This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.

[END OF PROVISION]

34. USAID DISABILITY POLICY - ASSISTANCE (DECEMBER 2004)

APPLICABILITY: This provision must be included in Request for Applications (RFAs), and in awards.

USAID DISABILITY POLICY - ASSISTANCE (DECEMBER 2004)

- a. The objectives of the USAID Disability Policy are (1) to enhance the attainment of United States foreign assistance program goals by promoting the participation and equalization of opportunities of individuals with disabilities in USAID policy, country and sector strategies, activity designs and implementation; (2) to increase awareness of issues of people with disabilities both within USAID programs and in host countries; (3) to engage other USG agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities; and (4) to support international advocacy for people with disabilities. The full text of the policy paper can be found at the following Web site:
pdf.usaid.gov/pdf_docs/PDABQ631.pdf
- b. USAID therefore requires that the recipient not discriminate against people with disabilities in the implementation of USAID funded programs and that it make every effort to comply with the objectives of the USAID Disability Policy in performing the program under this grant or cooperative agreement. To that end, and to the extent it can accomplish this goal within the scope of the program objectives, the recipient should demonstrate a comprehensive and consistent approach for including men, women, and children with disabilities.

[END OF PROVISION]

35. STANDARDS FOR ACCESSIBILITY FOR THE DISABLED IN USAID ASSISTANCE AWARDS INVOLVING CONSTRUCTION (SEPTEMBER 2004)

APPLICABILITY: This provision must be included in Request for Applications (RFAs), and in awards involving construction.

STANDARDS FOR ACCESSIBILITY FOR THE DISABLED IN USAID ASSISTANCE AWARDS INVOLVING CONSTRUCTION (SEPTEMBER 2004)

- a. One of the objectives of the USAID Disability Policy is to engage other USG agencies, host country counterparts, governments, implementing organizations, and other donors in fostering a climate of nondiscrimination against people with disabilities. As part of this policy, USAID has established standards for any new or renovation construction project funded by USAID to allow access by people with disabilities (PWDs). The full text of the policy paper can be found at the following Web site: pdf.usaid.gov/pdf_docs/PDABQ631.pdf.
- b. USAID requires the recipient to comply with standards of accessibility for people with disabilities in all structures, buildings, or facilities resulting from new or renovation construction or alterations of an existing structure.
- c. The recipient will comply with the host country or regional standards for accessibility in construction when such standards result in at least substantially equivalent accessibility and usability as the standard provided in the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) Accessibility Guidelines of July 2004. Where there are no host country or regional standards for universal access or where the host country or regional standards fail to meet the ADA/ABA threshold, the standard prescribed in the ADA and the ABA will be used.
- d. New Construction. All new construction will comply with the above standards for accessibility.
- e. Alterations. Changes to an existing structure that affect, or could affect, the usability of the structure will comply with the above standards for accessibility unless the recipient obtains the Agreement Officer's advance approval that compliance is technically infeasible or constitutes an undue burden or both. Compliance is technically infeasible where structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements of the standard. Compliance is an undue burden where it entails either a significant difficulty or expense or both.
- f. Exceptions. The following construction related activities are excepted from the requirements of paragraphs a. through d. above:
 - (1) Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical or electrical systems are not alterations and the above standards do not apply, unless they affect the accessibility of the building or facility; and

- (2) Emergency construction (which may entail the provision of plastic sheeting or tents, minor repair and upgrading of existing structures, rebuilding of part of existing structures, or provision of temporary structures) intended to be temporary in nature. A portion of emergency construction assistance may be provided to people with disabilities as part of the process of identifying disaster- and crisis-affected people as "most vulnerable."

[END OF PROVISION]

[END OF STANDARD PROVISIONS]

303mab_062211



USAID
FROM THE AMERICAN PEOPLE

Affirmation of Certifications

A Mandatory Reference for ADS Chapter 303

Revision Date: 06/23/2011
Responsible Office: M/OAA/P
File Name: 303mad_062311

Affirmation of Certifications

The undersigned affirms that the following certifications provided in connection with the Leader grant (enter Grant or Cooperative Agreement number) remain valid, or any updated information or new certifications are signed and attached:

"Assurance of Compliance with Laws and Regulations Governing Nondiscrimination in Federally Assisted Programs"

"Certification Regarding Lobbying."

"Prohibition of Assistance to Drug Traffickers" ([ADS 206](#))

"Certification Regarding Terrorist Financing Implementing Executive Order 13224"

"Key Individual Certification Narcotics Offenses and Drug Trafficking" (as applicable)

"Participant Certification Narcotics Offenses and Drug Trafficking" (as applicable)

***[REMOVED** Certification of Compliance with the Standard Provisions entitled "Condoms" and "Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking" (as applicable)]

By: _____ Title: _____

Typed Name: _____ Date: _____

303mad_062311



USAID
FROM THE AMERICAN PEOPLE

Certifications, Assurances, and Other Statements of the Recipient

Additional Help for ADS Chapter 303

Revision Date: 06/23/2011
Responsible Office: M/OAA/P
File Name: 303sad_062311

Certifications, Assurances, and Other Statements of the Recipient

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Certifications, Assurances, and Other Statements of the Recipient

NOTE: When these Certifications, Assurances, and Other Statements of Recipient are used for cooperative agreements, the term "Grant" means "Cooperative Agreement."

Part I – Certifications and Assurances

1. Assurance of Compliance with Laws and Regulations Governing Non-Discrimination in Federally Assisted Programs

Note: This certification applies to Non-U.S. organizations if any part of the program will be undertaken in the United States.

(a) The recipient hereby assures that no person in the United States shall, on the bases set forth below, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity receiving financial assistance from USAID, and that with respect to the Cooperative Agreement for which application is being made, it will comply with the requirements of:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. 2000-d), which prohibits discrimination on the basis of race, color or national origin, in programs and activities receiving Federal financial assistance;

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance;

(3) The Age Discrimination Act of 1975, as amended (Pub. L. 95-478), which prohibits discrimination based on age in the delivery of services and benefits supported with Federal funds;

(4) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution); and

(5) USAID regulations implementing the above nondiscrimination laws, set forth in Chapter II of Title 22 of the Code of Federal Regulations.

(b) If the recipient is an institution of higher education, the Assurances given herein extend to admission practices and to all other practices relating to the treatment of students or clients of the institution, or relating to the opportunity to participate in the provision of services or other benefits to such individuals, and shall be applicable to the entire institution unless the recipient establishes to the satisfaction of the USAID Administrator that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which financial assistance is sought, or the beneficiaries of, or participants in, such programs.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the recipient by the Agency, including installment payments after such date on account of applications for Federal financial assistance which was approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

2. Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal Cooperative Agreement, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including

subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

"The undersigned states, to the best of his or her knowledge and belief, that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

3. Prohibition on Assistance to Drug Traffickers for Covered Countries and Individuals (ADS 206)

USAID reserves the right to terminate this Agreement, to demand a refund or take other appropriate measures if the Grantee is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140. The undersigned shall review USAID ADS 206 to determine if any certifications are required for Key Individuals or Covered Participants.

If there are COVERED PARTICIPANTS: USAID reserves the right to terminate assistance to or take other appropriate measures with respect to, any participant approved by USAID who is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

4. Certification Regarding Terrorist Financing, Implementing Executive Order 13224

By signing and submitting this application, the prospective recipient provides the certification set out below:

1. The Recipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts, as that term is defined in paragraph 3.

2. The following steps may enable the Recipient to comply with its obligations under paragraph 1:

a. Before providing any material support or resources to an individual or entity, the Recipient will verify that the individual or entity does not (i) appear on the master list of [Specially Designated Nationals and Blocked Persons](#), which is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC), or (ii) is not included in any supplementary information concerning prohibited individuals or entities that may be provided by USAID to the Recipient.

b. Before providing any material support or resources to an individual or entity, the Recipient also will verify that the individual or entity has not been designated by the United Nations Security (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee") [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the Recipient should refer to the consolidated list available online at the Committee's website: <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>.

c. Before providing any material support or resources to an individual or entity, the Recipient will consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.

d. The Recipient also will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.

3. For purposes of this Certification-

a. "Material support and resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."

b. "Terrorist act" means-

(i) an act prohibited pursuant to one of the 12 United Nations Conventions and Protocols related to terrorism (see UN terrorism conventions Internet site:

<http://untreaty.un.org/English/Terrorism.asp>); or

(ii) an act of premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; or

(iii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

c. "Entity" means a partnership, association, corporation, or other organization, group or subgroup.

d. References in this Certification to the provision of material support and resources shall not be deemed to include the furnishing of USAID funds or USAID-financed commodities to the ultimate beneficiaries of USAID assistance, such as recipients of food, medical care, micro-enterprise loans, shelter, etc., unless the Recipient has reason to believe that one or more of these beneficiaries commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

e. The Recipient's obligations under paragraph 1 are not applicable to the procurement of goods and/or services by the Recipient that are acquired in the ordinary course of business through contract or purchase, e.g., utilities, rents, office supplies, gasoline, etc., unless the Recipient has reason to believe that a vendor or supplier of such goods and services commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

This Certification is an express term and condition of any agreement issued as a result of this application, and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.

5. Certification of Recipient

By signing below the recipient provides certifications and assurances for (1) the Assurance of Compliance with Laws and Regulations Governing Non-Discrimination in Federally Assisted Programs, (2) the Certification Regarding Lobbying, (3) the Prohibition on Assistance to Drug Traffickers for Covered Countries and Individuals (ADS 206) and (4) the Certification Regarding Terrorist Financing Implementing Executive Order 13224 above.

RFA/APS No. _____

Application No. _____

Date of Application _____

Name of Recipient _____

Typed Name and Title _____

Signature _____

Date _____

Part II – Key Individual Certification Narcotics Offenses and Drug Trafficking

I hereby certify that within the last ten years:

1. I have not been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States or any other country concerning narcotic or psychotropic drugs or other controlled substances.
2. I am not and have not been an illicit trafficker in any such drug or controlled substance.
3. I am not and have not been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such drug or substance.

Signature: _____

Date: _____

Name: _____

Title/Position: _____

Organization: _____

Address: _____

Date of Birth: _____

NOTICE:

1. You are required to sign this Certification under the provisions of 22 CFR Part 140, Prohibition on Assistance to Drug Traffickers. These regulations were issued by the Department of State and require that certain key individuals of organizations must sign this Certification.
2. If you make a false Certification you are subject to U.S. criminal prosecution under 18 U.S.C. 1001.

Part III – Participant Certification Narcotics Offenses and Drug Trafficking

1. I hereby certify that within the last ten years:

a. I have not been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States or any other country concerning narcotic or psychotropic drugs or other controlled substances.

b. I am not and have not been an illicit trafficker in any such drug or controlled substance.

c. I am not or have not been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such drug or substance.

2. I understand that USAID may terminate my training if it is determined that I engaged in the above conduct during the last ten years or during my USAID training.

Signature: _____

Name: _____

Date: _____

Address: _____

Date of Birth: _____

NOTICE:

1. You are required to sign this Certification under the provisions of 22 CFR Part 140, Prohibition on Assistance to Drug Traffickers. These regulations were issued by the Department of State and require that certain participants must sign this Certification.

2. If you make a false Certification you are subject to U.S. criminal prosecution under 18 U.S.C. 1001.

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

***Removed former Section IV, Certification of Compliance with the Standard Provisions Entitled “Condoms” and “Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking”**

Part IV – Survey on Ensuring Equal Opportunity for Applicants

Applicability: All RFA's must include the attached Survey on Ensuring Equal Opportunity for Applicants as an attachment to the RFA package. Applicants under unsolicited applications are also to be provided the survey. (While inclusion of the survey by Agreement Officers in RFA packages is required, the applicant's completion of the survey is voluntary, and must not be a requirement of the RFA. The absence of a completed survey in an application may not be a basis upon which the application is determined incomplete or non-responsive. Applicants who volunteer to complete and submit the survey under a competitive or non-competitive action are instructed within the text of the survey to submit it as part of the application process.)

[Survey on Ensuring Equal Opportunity for Applicants](#)

Part V – Other Statements of Recipient

1. Authorized Individuals

The recipient represents that the following persons are authorized to negotiate on its behalf with the Government and to bind the recipient in connection with this application or grant:

Name	Title	Telephone No.	Facsimile No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. Taxpayer Identification Number (TIN)

If the recipient is a U.S. organization, or a foreign organization which has income effectively connected with the conduct of activities in the U.S. or has an office or a place of business or a fiscal paying agent in the U.S., please indicate the recipient's TIN:

TIN: _____

***3. Data Universal Numbering System (DUNS) Number**

(a) In the space provided at the end of this provision, the recipient should supply the Data Universal Numbering System (DUNS) number applicable to that name and address. Recipients should take care to report the number that identifies the recipient's name and address exactly as stated in the proposal.

(b) The DUNS is a 9-digit number assigned by Dun and Bradstreet Information Services. If the recipient does not have a DUNS number, the recipient should call Dun and Bradstreet directly at 1-800-333-0505. A DUNS number will be provided immediately by telephone at no charge to the recipient. The recipient should be prepared to provide the following information:

- (1) Recipient's name.
- (2) Recipient's address.
- (3) Recipient's telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the organization was started.
- (7) Number of people employed by the recipient.
- (8) Company affiliation.

*(c) Recipients located outside the United States may e-mail Dun and Bradstreet at globalinfo@dbisma.com to obtain the location and phone number of the local Dun and Bradstreet Information Services office.

The DUNS system is distinct from the Federal Taxpayer Identification Number (TIN) system.

DUNS: _____

4. Letter of Credit (LOC) Number

If the recipient has an existing Letter of Credit (LOC) with USAID, please indicate the LOC number:

LOC: _____

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

5. Procurement Information

(a) **Applicability.** This applies to the procurement of goods and services planned by the recipient (i.e., contracts, purchase orders, etc.) from a supplier of goods or services for the direct use or benefit of the recipient in conducting the program supported by the grant, and not to assistance provided by the recipient (i.e., a subgrant or subagreement) to a subgrantee or subrecipient in support of the subgrantee's or subrecipient's program. Provision by the recipient of the requested information does not, in and of itself, constitute USAID approval.

(b) **Amount of Procurement.** Please indicate the total estimated dollar amount of goods and services which the recipient plans to purchase under the grant:

\$ _____

(c) **Nonexpendable Property.** If the recipient plans to purchase nonexpendable equipment which would require the approval of the Agreement Officer, please indicate below (using a continuation page, as necessary) the types, quantities of each, and estimated unit costs. Nonexpendable equipment for which the Agreement Officer's approval to purchase is required is any article of nonexpendable tangible personal property charged directly to the grant, having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

TYPE/DESCRIPTION (Generic)	_____
QUANTITY	_____
ESTIMATED UNIT COST	_____

(d) **Source, Origin, and Componentry of Goods.** If the recipient plans to purchase any goods/commodities which are not of U.S. source and/or U.S. origin, and/or does not contain at least 50% componentry, which are not at least 50% U.S. source and origin, please indicate below (using a continuation page, as necessary) the types and quantities of each, estimated unit costs of each, and probable source and/or origin, to include the probable source and/or origin of the components if less than 50% U.S. components will be contained in the commodity. "Source" means the country from which a commodity is shipped to the cooperating country or the cooperating country itself if the commodity is located therein at the time of purchase. However, where a commodity is shipped from a free port or bonded warehouse in the form in which received therein, "source" means the country from which the commodity was shipped to the free port or bonded warehouse. Any commodity whose source is a non-Free World country is ineligible for USAID financing. The "origin" of a commodity is the country or area in which a commodity is mined, grown, or produced. A commodity is produced when, through manufacturing, processing, or substantial and major assembling of components, a commercially recognized new

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

commodity results, which is substantially different in basic characteristics or in purpose or utility from its components. Merely packaging various items together for a particular procurement or relabeling items do not constitute production of a commodity. Any commodity whose origin is a non-Free World country is ineligible for USAID financing. "Components" are the goods, which go directly into the production of a produced commodity. Any component from a non-Free World country makes the commodity ineligible for USAID financing.

TYPE/DESCRIPTION	_____
QUANTITY	_____
ESTIMATED GOODS	_____
PROBABLE GOODS	_____
PROBABLE (Generic)	_____
UNIT COST	_____
COMPONENTS	_____
SOURCE	_____
COMPONENTS	_____
ORIGIN	_____

(e) Restricted Goods. If the recipient plans to purchase any restricted goods, please indicate below (using a continuation page, as necessary) the types and quantities of each, estimated unit costs of each, intended use, and probable source and/or origin. Restricted goods are Agricultural Commodities, Motor Vehicles, Pharmaceuticals, Pesticides, Rubber Compounding Chemicals and Plasticizers, Used Equipment, U.S. Government-Owned Excess Property, and Fertilizer.

TYPE/DESCRIPTION	_____
QUANTITY	_____
ESTIMATED	_____
PROBABLE	_____
INTENDED USE (Generic)	_____
UNIT COST	_____
SOURCE	_____
ORIGIN	_____

(f) Supplier Nationality. If the recipient plans to purchase any goods or services from suppliers of goods and services whose nationality is not in the U.S., please indicate below (using a continuation page, as necessary) the types and quantities of each good or service, estimated costs of each, probable nationality of each non-U.S. supplier of each good or service, and the rationale for purchasing from a non-U.S. supplier. Any supplier whose nationality is a non-Free World country is ineligible for USAID financing.

TYPE/DESCRIPTION	_____
------------------	-------

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

QUANTITY _____
 ESTIMATED _____
 PROBABLE SUPPLIER _____
 NATIONALITY _____
 RATIONALE (Generic) _____
 UNIT COST (Non-US Only) _____
 FOR NON-US _____

(g) Proposed Disposition. If the recipient plans to purchase any nonexpendable equipment with a unit acquisition cost of \$5,000 or more, please indicate below (using a continuation page, as necessary) the proposed disposition of each such item. Generally, the recipient may either retain the property for other uses and make compensation to USAID (computed by applying the percentage of federal participation in the cost of the original program to the current fair market value of the property), or sell the property and reimburse USAID an amount computed by applying to the sales proceeds the percentage of federal participation in the cost of the original program (except that the recipient may deduct from the federal share \$500 or 10% of the proceeds, whichever is greater, for selling and handling expenses), or donate the property to a host country institution, or otherwise dispose of the property as instructed by USAID.

TYPE/DESCRIPTION (Generic) _____
 QUANTITY _____
 ESTIMATED UNIT COST _____
 PROPOSED DISPOSITION _____

6. Past Performance References

On a continuation page, please provide past performance information requested in the RFA.

7. Type of Organization

The recipient, by checking the applicable box, represents that -

(a) If the recipient is a U.S. entity, it operates as a corporation incorporated under the laws of the State of, an individual, a partnership, a nongovernmental nonprofit organization, a state or local governmental organization, a private college or university, a public college or university, an international organization, or a joint venture; or

(b) If the recipient is a non-U.S. entity, it operates as a corporation organized under the laws of _____ (country), an

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

individual, [] a partnership, [] a nongovernmental nonprofit organization, [] a nongovernmental educational institution, [] a governmental organization, [] an international organization, or [] a joint venture.

8. Estimated Costs of Communications Products

The following are the estimate(s) of the cost of each separate communications product (i.e., any printed material [other than non-color photocopy material], photographic services, or video production services) which is anticipated under the grant. Each estimate must include all the costs associated with preparation and execution of the product. Use a continuation page as necessary.

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