July 2007

ACVFA's Analysis and Recommendations of Trends in USAID Implementation Mechanisms

The Implementation Mechanisms Working Group of ACVFA notes two recent trends in USAID's use of implementation mechanisms: a shift toward the selection of acquisition (contracts) versus assistance mechanisms (cooperative agreements and grants); and a "bundling" of multi-sectoral program components under omnibus Requests for Proposals (RFPs) and Requests for Applications (RFAs). Following is a brief synopsis of the trends and recommendations for USAID to consider in redressing them. Two annexes are provided at the end of this paper, including specific recommendations to USAID on how the Agency can address concerns about instrument selection and bundling, and explanations of the relationship that contractors and NGOs have with USAID under acquisition and assistance mechanisms.

I. Shift toward Acquisition (Contracts and Indefinite Quantity Contracts, "IQCs") vs. Assistance (Cooperative Agreements and Grants)

To design effective development programs, USAID should determine the nature of the desired relationship between the U.S. government and the implementing organization, as well as the purpose of the award, before it selects the appropriate award instrument. This determination should not create a sense of entitlement for either the NGO or contracting communities, but rather lead to appropriate development solutions based on the most appropriate relationship among the Federal Agency, the beneficiary, and the implementing organization.

In the selection of an award instrument, USAID is governed by the Federal Grant and Cooperative Agreement Act (FGCAA) of 1978 (PL 95-224), which defines the selection in terms of both the nature of the *relationship* being created between the U.S. Government and the non-federal party, and the intended *purpose* of the award. Section 4 of the Act requires the use of "procurement contract" when the "principal purpose is to acquire by purchase, lease or barter property or services for the direct benefit or use of the U.S. Government." In contrast, Sections 5 and 6 require the use of a cooperative agreement or grant "when the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States." Subsequent guidance by the Office of Management and Budget in the Federal Register on August 17, 1978 and in 22 CFR 226 instructs Agency officials to follow the basic principles of the statute. Reference to the Act also is made in USAID's internal guidance contained in Automated Directives Systems (ADS) Chapters 303 and 304.

ADS Chapter 304 provides guidance to USAID personnel in the selection of appropriate acquisition and assistance instruments. According to Section 304.3.4.a, "there are no distinct categories of activities that are better suited for one type of instrument over the other. In fact, at the very

earliest stages of activity planning, the design can be tailored toward the use of either type of instrument." In some situations, however, the choice of funding vehicle can affect the very nature of the program and influence program results and the sustainable contribution to development in the recipient country. Indeed, for some activities, there is an inherent logic in the choice of instruments that flows from the relationship between the U.S. government and the non-federal party as well as the purpose of the award. This is even suggested in Section 304.3.4.d, "Operating Units should consider the context in which the proposed activity will be implemented, and answer questions such as 'Are there any issues that support the use of one instrument type over the other'?"

The Implementation Working Group is concerned that USAID appears to be moving more toward selecting contracts as the implementation mechanism. The Working Group finds that in some instances, USAID has failed to assess the nature of the relationship with the implementing organization and the purpose of the award when making its instrument selection decisions, and therefore has ignored the spirit, if not the letter, of the FGCAA. Instead, decisions are based, per actual experiences and anecdotal information shared with the Working Group, on preferences by Mission personnel for contracts, a desire to assert federal control over an activity, and/or the misconception that results are not attainable under assistance awards.

The issue of achieving results under assistance and acquisition mechanisms is specifically addressed in ADS 304. In section 303.3.4.c, "Achieving Results", it states that "Both acquisition and assistance instruments can be written to achieve results. With acquisition, the contract can utilize a 'performance-based' methodology. As for assistance, grants and cooperative agreements may be structured as 'results-oriented.' Remedies for failure to achieve stated results and outcomes, although different between these instrument types, are available for both acquisition and assistance instruments." However, the fact that ADS 304.3.3 places certain restrictions on the use of assistance mechanisms, while no similar restrictions are placed on acquisition mechanisms, may undermine the above statements and contribute to the false perception that assistance mechanisms are not as suited for achieving programmatic results.

With regard to federal control over an activity, ADS 304 suggests that in certain politically sensitive situations, "it may be necessary or desirable for USAID to have more day-to-day operational control or oversight of the implementation of a program. If the Operating Unit believes this level of involvement is needed, acquisition is the more appropriate choice of instrument." However, this guidance is not appropriate to all politically sensitive issues. When a program seeks to support the development of institutions operating independently of the executive branch of government, such as civil society organizations, the nature of the work can be undermined if USAID, and by extension the U.S. government, takes a direct role in project implementation through an acquisition mechanism.

Further, sensitive work with political parties, parliaments, civil society organizations, media, and, in some instances, judicial officials, often requires that both observers and beneficiaries view the provider of assistance as an independent, nongovernmental actor that has no agenda other than providing aid to beneficiaries as effectively as possible. This point was reiterated in a recent Rand Corporation report on one of the most critical issues facing American foreign assistance in, perhaps, the most politically sensitive environment—democracy promotion in the Middle East. In describing the activities of American NGOs in the region, the report noted that "their activities maintain a higher degree of credibility among recipient communities than if the pro-

grams were promoted directly by U.S. government agencies; it is accepted that their mission is assisting forces of reform, not imposing it from the outside."[1] This reflects the important degree of separation that assistance mechanisms provide from *direct* U.S. government control.

Likewise, in countries where one of the primary challenges to development is the paucity of autonomous and independent institutions from the state, the fundamental idea that government ought not to control all aspects of society can be undermined by a too-direct donor U.S. government hand in the implementation of programs. In such circumstances, the use of assistance mechanisms allows experienced, independent NGOs to provide assistance to local organizations, such as civic groups and parent-teacher associations, without direct association with the U.S. government, thereby strengthening the fundamental idea that government should not control all aspects of society.

Similar arguments hold true for many reform and institution-building activities. In building local capacity and in supporting reformers—whether in economic, political, or social arenas including health and education—the relationship of technical assistance providers needs to be seen as objective, independent, and supporting the needs of the project beneficiaries. The notion that the support provided by the implementing organization is motivated primarily by short-term U.S. foreign policy goals, as opposed to the desire to support local organizations, can compromise local acceptance of project-proposed solutions and local ownership of project activities.

Transferring skills to build capacity of local institutions and NGOs operating at the community level in the health and education arenas is best achieved by though grants with US NGOs. Such mechanisms enhance the long-term relationships that the NGOs have in the communities and build on their detailed understanding of the opportunities and barriers to community led people-to-people health and education programs. The importance of such people-to-people programs is reflected in helping NGOs address social and behavioral concerns in their communities, including such issues as HIV/AIDS awareness and drug addiction. In democracy and governance programs, direct actions by a foreign government or agency to promote changes to political structures and processes of another country is problematic in the realm of international relations. However, supporting the efforts of NGOs to transfer skills and provide other technical assistance to those working to strengthen institutions and processes, enhance citizen participation in governmental and public affairs, promote freedom of expression in the media, strengthen rule of law institutions and electoral authorities and similar efforts is now accepted. Helping democratic reformers in a country gain the skills needed to build political organizations or strengthen the ability of civil society organizations to hold government accountable and advocate for necessary democratic reforms is in the province of people-to-people interaction, rather than direct governmental assistance.

II. "Bundling" of Multi-sectoral Program Components under Omnibus RFPs and RFAs and Increased Reliance Upon IQCs

In response to USAID's efforts to limit the number of management units per Mission, a trend has resulted of bundling multiple project activities into a single contract or cooperative agreement, often with a high level of funding yet without a strong programmatic unity or focus. At the same

[1] Angel Rabasa, Cheryl Benard, Lowell H. Schwartz, and Peter Sickle. *Building Moderate Muslim Networks*. (Santa Monica: The Rand Corporation, 2007), p. 47-48.

time, the Working Group notes a growing reliance on indefinite quantity contracts (IQCs) as a means of project implementation.

A recent example of bundling is the issuance of an Annual Program Statement for "Multi-Sectoral Interventions to Advance Democratic Governance" in a small African country, which sought to unite various activities related to governance and democracy, health, education, and natural resources management into a single cooperative agreement for $23,100,000. Despite the notable intention to improve governance issues, this project contained funding restrictions and a list of suggested activities that made it apparent it was an amalgamation of separate project activities, bundled together for purposes of presentation and convenience.

While the perception is that bundling various activities into a single contract or cooperative agreement will achieve substantial benefits, such as cost savings, a reduction in the number of management units in a Mission, and more efficient program management structures, this strategy can compromise USAID's ability to achieve its intended results. In an attempt to streamline and condense its administrative processes, the Working Group contends that USAID can undermine its mission of creating effective and sustainable development programs. In fact, the "mega" programs can result in weakened synergies among implementing partners, increased risk of project failure, hindering of creativity and innovation, and underutilized expertise and talents of various organizations. In addition, highly centralized programs often fail to develop innovative approaches or creative solutions to local needs and, instead, tend to rely on static and uninspired methods.

One of the intrinsic problems associated with the bundling of multiple, unrelated activities into a single project is that it forces organizations to form unlikely and unnatural partnerships. For instance, a successful submission (application or offer) on the project described above would require collaboration between organizations with significant expertise in the health, education, natural resource management, and democracy and governance sectors, as well as commitments from a broad range of personnel and technical experts. To respond to this opportunity, an applicant would have to quickly identify, assess, and forge relationships with organizations from other sectors, often in circumstances where no previous history of cooperation exists. New and untested partnerships between organizations will likely be unstable and cumbersome, particularly as organizations adapt to each others' cultures and approach to development assistance, determine which of the various components are "priorities" and receive the most project resources, and struggle to integrate work plans and performance monitoring plans into a cohesive whole.

The bundling of project activities also places an undue burden on the organization that will serve as the prime recipient or contractor for the project. In some circumstances, the prime organization may find itself performing oversight and management of project activities for which it has limited technical expertise, hindering the organization's ability to manage the program effectively, especially if other project partners fail to perform to expectations.

Centralizing project management responsibilities under a single organization, as opposed to issuing awards to multiple organizations can also create complicated lines of communication and responsibility between project managers and local partners; create rivalries between local groups as they vie for funding, support, and attention from the prime organization; and/or result in the participation of fewer local partners because of the number and breadth of U.S. implementers necessarily included because of the diverse breadth of the program.

Bundling can also create conflicts and confusion among the various project beneficiaries who interact with project personnel on a regular basis. By uniting a large assortment of distinct project activities under the authority of a single Chief of Party, the project essentially creates real or perceived conflicts of interest in the eyes of the project's stakeholders and local beneficiaries. Often, the beneficiaries of the bundled projects have separate and potentially competing interests. A single vertically organized consortium with one Chief of Party should not service all of these competing interests simultaneously. Under these conditions, bundled projects often reduce the trust and support of local clients, leading to limited buy-in and mediocre project results.

Similarly, there appears to be an increasing reliance upon the use of IQCs. Anecdotal evidence suggests that USAID often selects these instruments in response to inadequate staffing levels, as both missions and contracting offices continue to be strained by reductions in Operational Expense budgets. While the Working Group recognizes that IQCs can help to streamline the procurement process, and that it is neither practical nor efficient for USAID to release every project for more broad competition, IQCs should not represent, by default, the normal means of project implementation. By their nature, the IQCs concentrate project implementation responsibilities in the hands of a limited group of prime contractors. Their use therefore restricts the pool of expertise, resources, and ideas that USAID can draw upon for developmental solutions, and it also discourages new organizations—including community institutions and faith-based entities—from entering the USAID marketplace.

By concentrating implementation responsibilities among a limited group of actors, IQCs also diminish the opportunity for sustained institutional capacity and knowledge preservation, and thus play a limited role in contributing to the knowledge and lessons learned that guide development practitioners. By their very nature, IQCs include no provisions for preserving lessons learned; they are primarily episodic and whatever knowledge gained by an individual holder of an IQC is not shared with others. As the use of IQCs has become more prevalent, only the largest IQC holders have been able to survive because the smaller organizations cannot sustain their activities between tasks. This has contributed to the concentration of IQC being held by a limited number of organizations, and it has provided the holders of the IQCs a financial incentive to minimize the use of second-tier subcontractors in project activities.

The ACVFA's Implementation Mechanisms Working Group wishes to thank all those who submitted feedback and thoughts. While all comments were appreciated and considered, they may not have been deemed appropriate for incorporation into the final recommendations of the working group.

Annex I: Implementation Working Group Recommendations

Recommendations on the Use of Acquisition and Assistance Mechanisms

- USAID should revisit the requirements of the Federal Grant and Cooperative Agreement Act and the applicable OMB guidance for the express purpose of reviewing and revising the sections of ADS Chapters 303 and 304 to bring them more closely in line with the intent of the statute. Further, these ADS chapters should include examples of the types of programs that are best suited under each mechanism along with a description of the rationale in accordance with the Act to guide staff in selecting the appropriate instrument.
- To assist USAID in developing new training materials on instrument selection and in promoting lessons learned, ACFVA should designate a new working group that will assemble a detailed list of relevant examples that examine practical issues in implement selection.
- USAID should provide additional training and guidance to its staff on selecting the appropriate instrument based on the nature of the relationship being created and the intended purpose of the award in an effort to deter decisions being made based on personal preferences or misconceptions.
- USAID should periodically provide the implementing community with relevant statistics about the overall use of acquisition and assistance mechanisms (including breaking down the use of assistance mechanisms by grants and cooperative agreements), including their use by country and sector, dollar value, number of awards, and percentage of awards, as well as whether the activities were publicly competed or released through indefinite quantity contracts or leader with associate awards.
- As part of the formal, concluding evaluation of projects, USAID should revisit the appropriateness of its selection of a particular instrument mechanism relevant to the intended purpose of the program and the desired relationship of the U.S. government to the program beneficiary. Examples of when the choice of instruments was appropriate and inappropriate should be shared with USAID contracting and agreement officers as examples of "lessons learned."
- As other federal agencies also have experienced problems with instrument selection, USAID should research their policies and practices concerning instrument selection and substantial involvement in order to identify "best practices" for use in formulating improved policy guidance within the ADS chapters that will enable proper federal and non-federal roles to be delineated in solicitations (RFA/RFP), in agreements, and during project implementation. In light of limited resources to conduct such a study, USAID should consider utilizing the services of an outside group of experts to conduct this study, such as the Association of PVO Financial Managers.
- USAID should recognize that assistance and acquisition mechanisms serve important and distinct purposes, and not seek to blend or modify the nature of these mechanisms. The Working Group is concerned that USAID is moving toward managing grants and cooperative agreements more like contracts. In other words, treating all implementers as contractors regardless of instrument type. Further, NGOs are concerned about USAID's introduction of new standards for development-focused budget line items and other management approaches that would exacerbate a trend toward "contract-like" management of assistance awards. Any such changes should undergo the appropriate OMB review procedures under the Paperwork Reduction Act (rather than be applied as "guidance" through Missions) and be accompanied by new resources for implementing partner capacity building.

Recommendations on the "Bundling" Trend in USAID Programming

- USAID should commission a formal qualitative and quantitative study of the bundling phenomenon. This study should examine the cost efficiencies that bundling provides as well as the impact bundling has on the quality of development programs and ultimately the affect on local partners and beneficiaries. Ideally this study should examine when the bundling of program activities is beneficial/appropriate, as well as when it damages/hinders the design and implementation of effective development programs. As part of this process, USAID should examine the potentially unintended consequences of reductions in its Operating Expenses budget on development program effectiveness. In addition, it should evaluate whether the bundling phenomenon has hampered the ability of small- to medium-size enterprises to win contracts, cooperative agreements, or grants from USAID.
- USAID/Washington should highlight and encourage the best practice of posting draft RFAs/RFPs for comment and soliciting questions and feedback from the implementing community. This process would allow non-federal entities to identify possible pitfalls in proposed approaches—such as bundling—for USAID's consideration.
- The Working Group recognizes that the bundling phenomenon is, in part, a negative consequence of reduced management capacity within USAID Missions. To ensure appropriate staffing levels and to foster a well-trained corps of Agreement and Contracting Officers, ACFVA recommends that USAID OAA be appropriately staffed at both field and HQ levels and that Operating Expense budget be increased accordingly. Having less staff available to oversee manage programs should not automatically translated into reduced management units, as this ultimately undermines the quality of USAID's development programs.

Annex II: The Relationship of Contractors and NGOs with USAID under Acquisition and Assistance Mechanisms

Under a contract, the contractor essentially works for the U.S. Government, performing a scope of work formulated by the government. The "client" is the U.S. Government, not the program beneficiary. The contractor is viewed as an extension or a direct agent of the U.S. Government, and the program is a "government-run" activity. Indeed, this relationship has been most recently exemplified by the USAID branding policy that the programs conducted under contracts must be positioned as USAID's and only be marked with the Agency's logo (graphic identity). In fact, the policy goes so far as to state that contractors and subcontractors' logos must not be used on the programs. In essence, the contractor loses any institutional affiliation with regard to delivery of service and is instead identified primarily through its association with USAID.

In contrast, a program conducted under an assistance award is "government-supported" and focuses on a "people-to-people" transfer of skills and assistance from the U.S. NGO sector to local communities, NGOs, and institutions. Assistance mechanisms often allow the U.S. Government to foster sustaining and mutually beneficial relationships between the implementing NGOs and program beneficiaries, since the NGOs can utilize their networks, connections, and resources to establish connections with program beneficiaries that extend beyond the life of finite government programs. This distinction is important, as many contractors only interact with program beneficiaries during the life of the contract and their interactions end with the completion of their specific scope of work, unlike many NGOs, whose missions are grounded in constituencies and values, and whose programs are based on long-term, people-to-people relationships. Through assistance mechanisms, NGOs, in partnerships with USAID, can leverage their expertise and volunteer networks to help local beneficiaries address specific problems and development issues. Under an assistance mechanism, the process through which these problems are addressed is almost as important as the end result, as a successful collaboration promotes local ownership of results and sustainability of best practices.

Contracts are the most appropriate mechanism for acquiring goods, materials and services related to, for example, infrastructure improvements, facility rehabilitation, commodity purchases, and development and installation of computer systems. On the other hand, when the purpose is for the recipient to carry out a public purpose of support, then an assistance instrument is the most appropriate vehicle.