ADS Chapter 351

Agreements with Bilateral Donors

New Edition Date: July 31, 2012
Responsible Office: GC/A&A
File Name: 351_073112

Series 300 – Acquisition and Assistance
ADS 351 – Agreements with Bilateral Donors
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This is a new chapter.

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ADS 351 – Bilateral Donor Grants

351.1 OVERVIEW

Effective Date: 07/31/2012

This chapter sets forth USAID's mandatory policies and required procedures in respect of grant agreements with Bilateral Donors, as defined in **Section 351.6**. This chapter primarily covers grants from USAID to Bilateral Donors (See **Section 351.3.3**, **Accepting Grants from Bilateral Donors,** for information regarding grants from Bilateral Donors to USAID). The term "grant" as used in this chapter is considered to include grants, contributions, donations, gifts and other types of assistance provided to or received from Bilateral Donors.

This chapter is authorized by **Section 635(b) of the Foreign Assistance Act of 1961, as amended (FAA)**, which states "the President [or USAID Administrator as designee] may make loans, advances and grants to, make and perform agreements and contracts with, or enter into other transactions with…any friendly government or government agency…in furtherance of the purposes and within the limitations of this Act."

This chapter highlights the Agency's commitment to donor coordination and collaboration, consistent with and in furtherance of the spirit of the Paris Declaration on Aid Effectiveness, the Accra Agenda for Action, the Busan Partnership Agreement, the Presidential Policy Directive on Global Development, and the Quadrennial Development and Diplomacy Review. It promotes the practice of bilateral development partners taking the lead in designing and implementing clearly defined development strategies in close harmony with one another and in aligning with the partner country government's priorities. This chapter sets forth guidance, policies, and procedures applicable in instances where delegated cooperation constitutes a sound and sensible approach for bilateral development partners to program their assistance. Agency staff should consider delegated cooperation as a robust method of project implementation.

ADS 308 covers awards to public international organizations (PIOs); **ADS 350** covers grants to host country governments; and **ADS 220** covers use of Reliable Partner Country Systems for Direct Management and Implementation of Assistance.

351.2 PRIMARY RESPONSIBILITIES

Effective Date: 07/31/2012

The following have primary responsibilities for specific policy directives and required procedures within this chapter:

a. The persons designated as **Agreement Officers** for the purpose of signing agreements with Bilateral Donors are:

(1) Assistant Administrators (AAs) for programs within their respective areas of responsibility under **ADS 103, Delegations of Authority**;

(2) **Deputy Assistant Administrators (DAAs)** and **Office Directors** in USAID/W who have been delegated this authority by **ADS 103**;

(3) **Mission Directors and Country Representatives**, to the extent that the authority has been delegated to them by AAs in **ADS 103**; and

(4) Other individuals with specific delegated authority.

b. Within their delegated authorities (see **ADS 103**), **Bureaus/Independent Offices (B/IOs) and other operating units** (collectively referred to herein as "Operating Units") are responsible for preparing, negotiating, signing, and implementing (in consultation with GC and/or the cognizant RLA) Bilateral Donor grants, in-bound or outbound, in furtherance of their strategic plans and management contracts and for approving substantive exceptions.

c. The **Bureau of Policy, Planning and Learning (PPL)** is responsible, subject to all required clearance and approval procedures, for establishing high-level Agency policy for Bilateral Donor coordination. PPL's **Office of Donor Engagement** maintains the USAID **Donor Engagement Toolkit**, an online database of partnering tools and guidance for working with Bilateral and Multilateral Donors. See **ADS 351maa, USAID Policy Guidance on the Delegated Cooperation Secretariat and Responsibility Determinations Regarding Development Partners: Requirements and Resources**.

d. The **Office of the General Counsel (GC)** and **Regional Legal Advisors (RLAs)** are responsible for providing guidance on the legal and policy effects of grant agreement provisions. GC is responsible for the specific language of mandatory and standard provisions. GC or RLAs assist Operating Units in drafting, negotiating, interpreting, and implementing grant agreements with Bilateral Donors and must review and clear all such agreements. GC or RLAs must review and clear all proposed deviations from the guidance and procedures set forth under this chapter as well as any deviations from the mandatory or standard provisions.

e. The **Office of the Chief Financial Officer (M/CFO)** and **Controllers** are responsible for processing gifts in accordance with **ADS 628** and conducting all other financial requirements applicable to transactions with Bilateral Donors under this chapter.

f. The **Delegated Cooperation Secretariat (DCS)** is responsible for conducting and maintaining responsibility determinations and other information regarding the Agency's collaborations with certain bilateral and multilateral development partners. Questions, comments, or information relevant to Bilateral Donors and responsibility determinations should be forwarded to the DCS at **dcs@usaid.gov**.

351.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

351.3.1 Grants to Bilateral Donors

Effective Date: 07/31/2012

Where an Operating Unit has determined that a grant to a Bilateral Donor is an efficient way of fulfilling an Agency objective, USAID may make a grant to a Bilateral Donor in accordance with the provisions of this **ADS Chapter 351**.

351.3.2 Planning and Project Design

Effective Date: 07/31/2012

All programs, projects, or activities that an Operating Unit wishes to implement through a grant agreement with a Bilateral Donor are subject to all of the applicable planning and approval requirements of **ADS 201**, including any pre-obligation requirements, except as any such requirements may be modified in accordance with the provisions of this **ADS Chapter 351**.

351.3.2.1 Grant Memorandum

Effective Date: 07/31/2012

Prior to USAID making a grant to a Bilateral Donor, the Operating Unit must submit a memorandum for approval to the relevant senior Mission or B/IO official with the following information:

a. A detailed description of the proposed project's or program's activities, components, funding and disbursement mechanisms, and monitoring, evaluation, and reporting procedures;

b. An explanation of the purpose(s) of the assistance and how the purpose is justified under the authorizing statute, including why working through the Bilateral Donor presents a viable and efficient method of achieving the identified purposes;

c. If the grant, or any part of the grant, will be implemented as government to government assistance through the use of partner country systems, an explanation of how the requirements of **ADS 220.3** have been satisfied or are otherwise inapplicable (e.g., ADS 220.3.2.2, Stage 3 of the PFMRAF (*Project Design, Approval, Designation of Responsibilities and Selection of the Funding Mechanism*), paragraph 2 (*Multi-Donor Approaches*), provides, in part: "PCS Teams should refrain, to the maximum extent possible, from duplicating the work of the administrative agent (the [Multi-Donor Trust Fund] trustee or its agent) of such funds by directly examining the partner country PFM systems… it is the [Multi-Donor Trust Fund] trustee's oversight, not the partner country systems themselves, which are being examined."); and

d. That there is no reason to believe that the Bilateral Donor is not responsible. See **ADS 351maa, USAID Policy Guidance on Responsibility Determinations Regarding Development Partners: Requirements and Resources**.

The information required under this **Section 351.3.2.1** in the grant memorandum may be included with, or form a part of, the required project design approval document as required under **ADS 201**.

351.3.2.2 Forms of Grants to Bilateral Donors

Effective Date: 07/31/2012

Grants to Bilateral Donors may generally take the form of any legally sufficient document cleared by GC or the cognizant RLA (e.g., see **ADS 308saa, Sample Cover Letter and Schedule for Cost-Type Grants**, **ADS 308sac, Template for Program Contributions**, etc.).

However, there are two preferred grant agreement templates:

a. An **Outward Grant Agreement (OGA)**, a template developed by USAID as an obligating document that may be used with one or more Bilateral Donors.

b. A **Delegated Cooperation Arrangement (DCAR),** a template designed by the **Nordic Plus Group,** as defined in **Section 351.6.** The DCAR template is similarly structured to an OGA, but contains more detailed provisions, and may be used as an obligating document with one or more Bilateral Donors. When proposing a grant agreement with a Nordic Plus Group country, the USAID operating unit should first consider the DCAR as a starting point for negotiations. Each template is designed to facilitate a grant to a Bilateral Donor's program, project, or activity, including multi-donor pooled funding arrangements.

Grants to Bilateral Donors will usually constitute either: (i) a cost-type grant based on reimbursement of, or advance of funds for, the costs of goods and services (whether such costs are itemized or categorized), or (ii) a general project contribution.

351.3.2.3 Application of USAID Requirements

Effective Date: 07/31/2012

a. **General Rule for Cost-Type Grants.** Barring a policy or legal determination, USAID policies and procedures (regarding both procurement and non-procurement), whether or not derived from statute, and mandatory or standard legal provisions (see **351.3.2.10**) are applicable to cost-type grants, whether such funds are extended on a cost-reimbursement basis or by advances (including, without limitation, the rule regarding interest earned on advances that must be returned to USAID). Cost-type grants must include a line-item budget.

b. **Project Contributions.** Where a significant purpose of a grant to a Bilateral Donor is accomplished upon disbursement of USAID funds in respect of a general project contribution, such funds may lose their federal character and, if so, the Agency's policies, procedures, and customary legal requirements (including, for example, the return of interest) no longer apply to such grant. Therefore, standard provisions (see **351.3.2.10.b**) and requirements are generally not required. The determination of whether the disbursement of USAID funds accomplishes a significant purpose of a grant is fact-based and situation specific. Any proposed application of the "Purpose Accomplished Upon Disbursement" principle under **ADS 351** must be cleared by GC at the Deputy General Counsel level or higher.

c. **Application of USAID Environmental Regulations.** Pursuant to **22 CFR 216**, analyses of environmental impact are required with respect to all new projects, programs, or activities authorized or approved by USAID (see **ADS 204, Environmental Procedures** and **22 CFR 216**). Any environmental conditions proposed in a Bilateral Donor grant agreement to ensure adequate environmental review of the proposed activity should reflect due regard for both the independence and sovereignty of the Bilateral Donor. Therefore, in making cost-type grants to Bilateral Donors for activities that are not exempt or categorically excluded from environmental analysis under **22 CFR 216.2**, USAID should, considering the purpose and intent of the regulatory requirements under **22 CFR 216**:

- Endeavor to rely upon the Bilateral Donor's application of its own environmental policies to such activities,
- Explain the rationale for such reliance in the relevant pre-grant memorandum or Project Appraisal Document, and
- Include appropriate language in the grant agreement.

Note also that, pursuant to **22 CFR 216.9**, the Administrator may approve, as a substitute for the Environmental Assessment (but not as a substitute for an Environmental Impact Statement) under **22 CFR 216.3**, the use of either:

(i) Bilateral or multilateral environmental studies, relevant or related to the proposed action, prepared by the United States and one or more foreign countries or by an international body or organization in which the United States is a member or participant; or

(ii) Concise reviews of the environmental issues involved including summary environmental analyses or other appropriate documents; provided, however, that specific environmental requirements under **22 CFR 216** (e.g., requirements with respect to the procurement of pesticides) must

still be complied with notwithstanding the use of an authorized Environmental Assessment substitute.

d. Source and Nationality and Restricted Commodities. A blanket waiver with respect to source and nationality requirements (**ADS 310, Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID**) exists through fiscal year 2016 to permit Bilateral Donors receiving grants from USAID to procure goods and services worldwide, except for prohibited source countries identified under **ADS 310**. The blanket waiver does not apply to restricted commodities purchased under cost-type grants, for which a separate waiver must be obtained in accordance with **ADS 312, Eligibility of Commodities**, prior to the purchase of any restricted commodities.

351.3.2.4 Competition

Effective Date: 07/31/2012

Competition is not required for grants to Bilateral Donors. When USAID receives gifts from other Bilateral Donors and intends to obligate such funds into existing or new grants or contracts, no additional justifications or approvals are required unless specifically noted in **ADS 302** or **303**.

351.3.2.5 Case-Zablocki Reporting

Effective Date: 07/31/2012

Bilateral Donor grants that obligate USAID funds in excess of $25 million are subject to the requirements of the Case-Zablocki Act (see **1 U.S.C. 112b**) as set forth in **ADS 349, International Agreements, Section 349.3.3**.

351.3.2.6 USAID In-Kind Contributions

Effective Date: 07/31/2012

USAID may provide part or all of its support in-kind (goods, commodities, or services rather than money). Operating Units planning an in-kind grant of commodities to another Bilateral Donor must consult in advance with GC or the cognizant RLA for guidance on the appropriate grant agreement format. (For a sample in-kind grant format, see the **Template for In-Kind Grant**.)

351.3.2.7 Ineligible Countries and Persons

Effective Date: 07/31/2012

In some cases, USAID is prohibited from providing assistance to or in a country, or to particular persons or entities, by the FAA, the applicable appropriations act, regulations of the Office of Foreign Assets Control of the U.S. Department of Treasury, or other applicable laws or regulations (see **ADS 313, Eligibility of Suppliers, Contractors, and Recipients, section 313.3.1**). If a proposed grant is for a project or a program that may involve providing such assistance, GC must be consulted regarding such assistance and the proposed terms of the related grant agreement.

351.3.2.8 Payment Methods

Effective Date: 07/31/2012

For cost-type grants, USAID may use periodic advances, reimbursement, and payment by letter of credit as outlined in the **Standard Provisions for Cost-Type Awards**. For project contributions, USAID may provide the lump-sum disbursements by check or funds transfer upon initial execution of the grant agreement or incrementally in accordance with annual appropriations and in accordance with applicable fiscal law. For other types of grant agreements, the method of payment should be set forth in the agreement. If the method being considered for payment substantially deviates from the procedures set forth in this ADS section and other relevant chapters, including **ADS 636**, the paying office must clear such payment method with the Chief Financial Officer or the Controller before the grant is issued.

351.3.2.9 Administrative Cost Recovery

Effective Date: 07/31/2012

Recovery of administrative costs by Bilateral Donors from USAID is discouraged. Where the recovery of such costs is necessary or otherwise unavoidable, the Operating Unit should negotiate a fair and reasonable amount for any such costs and include provisions in the grant agreement that such costs are recoverable without duplication and allocated pro rata among all other contributors to the project or program incurring such costs.

351.3.2.10 Standard Provisions for Cost-Type Grants

Effective Date: 07/31/2012

a. **Mandatory Provisions**. The OGA template contains mandatory provisions that must be included in any cost-type grant agreement with a Bilateral Donor, even if the OGA is not the chosen legal instrument. The text of such provisions is not subject to negotiation or revision. (For example, all grant agreements must include a caveat that each incremental funding contribution, up to the total estimated USAID contribution, is subject to: (i) the availability of funds to USAID under the relevant financial, legal, and regulatory provisions and procedures of USAID; and (ii) USAID's agreement to proceed).

b. **Standard Provisions**. The OGA template contains standard provisions that must be included, as applicable, in any cost-type grant agreement with a Bilateral Donor, even if the OGA is not the chosen legal instrument. The specific text of standard provisions may be negotiated, but the substance of such provisions, when applicable, must be covered. The Operating Unit and GC or the cognizant RLA will take into consideration the subject matter of the assistance, host country involved, and implementation details when addressing the standard provisions in a grant agreement with a Bilateral Donor. The final form of all provisions must be cleared by GC or the cognizant RLA.

351.3.3 Accepting Grants from Bilateral Donors

Effective Date: 07/31/2012

a. Procedures. Grants to the Agency from Bilateral Donors are subject to all gift acceptance procedures in **ADS 522**, **ADS 628**, **ADS 633**, and **ADS 628.3.2**, which requires a written determination that USAID can comply with all conditions attached to such gift in a reasonable and cost efficient manner, including, without limitation, any procedures for receipt, processing and accounting for donated funds. Grants may be accepted under the form of any legally sufficient instrument agreed to among the Agency and the donating Bilateral Donor, including, without limitation, an OGA, a DCAR, or the **Sample Gift Acceptance Letter**. However, note that, as the DCAR (see **351.3.2.2(b)**) imposes more substantive conditions on the "Lead Donor" than the Sample Gift Acceptance Letter, the Operating Unit should confirm that USAID can reasonably comply with all DCAR conditions. If USAID cannot comply with any condition(s) attached to a grant, the Operating Unit must endeavor to negotiate revisions to such condition(s) with GC or RLA assistance.

b. Competition Requirements. Competition requirements under **ADS 303** do not apply to any grant made with donated funds received by USAID from a Bilateral Donor. Competition requirements do not apply to grants administered under **ADS 303** using funds not appropriated by Congress (including, but not limited to, monies or in-kind contributions from bilateral and multilateral development partners, host country governments, foundations, and other private sector entities) (See **ADS 303.3.6.6**). However, absent a justification and approval for other than full and open competition as authorized under **ADS 302**, competition requirements apply to any USAID contract awarded using donated funds. The Administrator's approval requirement for non-competitive modifications or follow-on grants of at least $5 million does not apply to donated funds.

c. Source and Nationality Requirements. Source and nationality requirements do not apply to procurements using donated, non-appropriated funds accepted under USAID's gift authority (see **22 CFR 228.02(b)**). Such funds are automatically designated with USAID Principal Geographic Code 935. If the absence of procurement restrictions on donated funds gives rise to any issues (for example, if such funds were intended to be commingled with funds having a different USAID Principal Geographic Code), the Operating Unit must consult with GC or the cognizant RLA.

351.3.3.1 Acceptable Conditions on Inward Grants

Effective Date: 07/31/2012

The following are acceptable conditions that may be required by Bilateral Donors in connection with their grants to USAID projects:

- **Membership by the Bilateral Donor on technical evaluation committees.** For prime contracts, see **ADS 302.3.6.1**; for grants, seek guidance from a Contracting Officer (CO) in M/OAA with respect to such project.

- **Membership by the Bilateral Donor on project implementation committees.** This is acceptable as long as the project implementation committee is only advisory to the USAID project officer and USAID CO (or Agreement Officer), as applicable, so that the committee does not have authority to require USAID to take any particular actions regarding the project, contract, or grant.

- **Co-branding**. See **ADS 320.3.4.1b** for co-branding requirements.

- **Copies of key financial reports and audits**. These are normally provided by USAID, to the extent that they do not contain proprietary material of implementing organizations, source selection information for future procurements, classified information, or information protected by the Privacy Act, which must be redacted.

- **Management information**. Information demonstrating the adequacy of USAID's management, financial, and procurement systems that will govern USAID's implementation of the joint program or project. While Bilateral Donors do not often request this information, USAID officials should be prepared to provide citations to ADS Chapters, FAR/AIDAR, etc., and to respond to other similar reasonable requests to demonstrate that USAID's systems are adequate to manage funds donated by Bilateral Donors.

351.3.4 Clearances

Effective Date: 07/31/2012

GC or the cognizant RLA must clear any proposed outward or inward grant to determine applicable authority under the FAA, appropriateness of the type of grant selected, the provisions of the grant agreement, and other supporting documentation, before the Operating Unit submits such grant documentation to the relevant senior Mission or B/IO official for approval and execution.

351.4 MANDATORY REFERENCES

351.4.1 External Mandatory References

Effective Date: 07/31/2012

a. **FAA Sections 103-107; 209; 301; 491; 604; 621; 635**

b. **1 U.S.C. 112b, United States International Agreements; Transmission to Congress**

c. **22 CFR 181**

d. 22 CFR 216

e. 22 CFR 228

351.4.2 Internal Mandatory References

Effective Date: 07/31/2012

a. ADS 103, Delegations of Authority

b. ADS 201, Planning

c. ADS 206, Prohibition of Assistance to Drug Traffickers

d. ADS 308, Awards to Public International Organizations

e. ADS 308 Section 308.3.11(d), Blanket Waiver to Authorize Procurement Under Geographic Code 935 for Grants to Bilateral and Multilateral Donors

f. ADS 308mab, Standard Provisions for Cost-Type Awards **(see** Template for Outward Grant Agreement ADS 351.5a**)**

g. ADS 313, Eligibility of Suppliers and Contractors

h. ADS 349, International Agreements

i. ADS 350, Grants to Foreign Governments

j. ADS 350maa, Guidance on Funding Foreign Government Delegations to International Conferences

k. ADS 351maa, USAID Policy Guidance on Responsibility Determinations Regarding Development Partners: Requirements and Resources

l. ADS 522, Performance of Temporary Duty Travel in the U.S. and Abroad

m. ADS 628, Gifts and Donations

n. ADS 633, Financial Management Aspects of Temporary Duty Travel (TDY)

o. ADS 636, Program Funded Advances

351.5 ADDITIONAL HELP

Effective Date: 07/31/2012

a. ADS 351saa, Template for Outward Grant Agreement

b. ADS 351sab, Template for Delegated Cooperation Agreement (DCAR)

351.6 DEFINITIONS

Effective Date: 07/31/2012

Bilateral Donor
Another country that provides development assistance to a third country (or persons or organizations within a third country), usually acting through its development agency, ministry or organization, such as: DFID (U.K.), GIZ (Germany), CIDA (Canada), NORAD (Norway), SIDA (Sweden), DANIDA (Denmark), Ministry of Development Cooperation (Netherlands). **(Chapter 351)**

Delegated Cooperation
The arrangement under which two or more Donors combine their funds and or resources in order to achieve a development objective. The USAID Outward Grant Agreement is an example of Bilateral Delegated Cooperation whereby USAID grants funds to another Bilateral Donor. **(Chapter 351)**

Nordic Plus Group (NPG)
A network of Bilateral Donors including: Norway, Sweden, Finland, Denmark, the Netherlands, the United Kingdom, and Ireland. The Norwegian Ministry of Foreign Affairs acts as coordinator of the *Nordic Plus Delegated Cooperation Initiative*. The NPG Plus Group is not established as an international organization. See **www.norad.no/en**. **(Chapter 351)**

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