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

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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.

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.

- 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 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,
- 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

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.

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

(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 synopsize 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.

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.

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;

(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.

(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**.

(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.

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.

(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.

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 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 the their conclusions about an applicant's past performance.

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

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

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 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

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

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.

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
- 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.

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.

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 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.

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: 11/08/2010

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

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

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
5. A signed copy of 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** (**AAPD 05-04**) when applicable.

*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,

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

- Deny the recommendation of the Activity Manager and not create the award, or
- 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**).

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-A ward 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
- **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**.
- 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.
- 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.

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**

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.

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

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. 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.

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 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

- 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**.

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

Effective Date: 02/20/2009

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

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 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.]).**

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

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 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.

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,
- 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.

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:

- 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.

303.3.19 Controllin g 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-aw ards

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 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**.

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

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, 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

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

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.

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.

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.

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

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.

(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

(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 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 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;
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 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 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
- 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:

- 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: 06/01/2006

*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**

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**

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

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: 06/01/2006

a. AAPD 04-14, Implementation of E.O. 13224 - Certification Regarding Terrorist Financing

b. ADS 103, Delegations of Authority

c. ADS 201, Planning

d. ADS 204, Environmental Procedures

e. ADS 206, Prohibition of Assistance to Drug Traffickers

f. ADS 216, USAID-Higher Education Community Partnership

g. ADS 260, Geographic Codes

h. ADS 304, Choice of Implementation Instrument

i. ADS 312, Eligibility of Commodities

j. ADS 458, Training and Career/Professional Development

k. ADS 540, USAID Development Experience Information and Reference Services

l. ADS 591, Financial Audits of USAID Contractors, Grantees, and Host Government Entities

m. ADS 625, Administrative Accounts Receivable

n. Affirmation of Certifications

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

o. Agreement Officer's Technical Representatives Appointment Procedures

p. A.I.D. Partnership in International Development with Private and Voluntary Organizations (Policy Paper)

q. Contract Clause Guide for Unclassified Information System Security Systems and Services

*r. Fixed Obligation Grant (FOG) Entity Eligibility Checklist

s. Guidance on Funding Foreign Government Delegations to International Conferences

t. Guide to USAID's Assistance Application Process and to Submitting Unsolicited Assistance Applications (only available on the USAID intranet.]

u. Guidelines for Delegation of Assistance Authority

v. Guidelines for Expanded Assistance Authority for Mission Directors

w. PEB 2005-06, File Standardization Pilot (only available on the USAID intranet)

x. Policy Determination 21, Endowments Financed With Appropriated Funds

y. Procurement and Assistance Procedures for the HIV/AIDS and Infectious Disease Initiatives (Policy Notice only available on the USAID intranet)

z. Simplified Grant Format

aa. Standard Provisions for an Endowment with Non-U.S., Nongovernmental Recipient

ab. Standard Provisions for an Endowment with U.S., Nongovernmental Recipient

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

ad. Standard Provisions for U.S., Nongovernmental Recipients

ae. Updated Guidance for Modified Acquisition and Assistance Request Document (MAARD) Usage

af. USAID Guidance on Congressional Award Notification System

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

ag. 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

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.]

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

*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

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

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

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)

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)

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