



USAID
FROM THE AMERICAN PEOPLE

USE OF HOST COUNTRY CONTRACTING IN CONSTRUCTION PROJECTS: AN ECCM TRAINING DOCUMENT



November 2017

This publication was produced for the United States Agency for International Development (USAID) Task Order # AID-OAA-TO-12-00048, under the Global Architecture and Engineering (A&E) Indefinite Quantity Contract (IQC) No. EDH-I-00-08-00027

**Use of Host Country
Contracting in Construction
Projects: An ECCM Training
Document**

FOREWORD

Core Engineering and Construction Contracting Management (ECCM) training program resources have been made available as helpful resource documents for planning, preparing solicitations, and implementing and managing construction projects.

ECCM TRAINING COURSES

The ECCM 201 course was initiated through a task order awarded under the Bureau for Economic Growth, Education, and Environment's (E3's) Architectural and Engineering (A&E) Global IQC and transferred to M/OAA/PDT to complete course development and management. Subsequent to the task order transfer ECCM 211 - Local Systems (LS) was created. ECCM curricula were produced based on adult learning principles and are available for all USAID staff. The program is designed primarily to improve USAID's Acquisition Workforce (AWF)¹ contractual knowledge about and access to A&E and construction services, best practices, lessons learned, and reference materials when undertaking construction projects in the development context. The ECCM training program will assist the USAID AWF to achieve the ultimate objective of a successful construction project - completion according to specifications, within budget, while meeting industry quality standards, notwithstanding all construction challenges. Missions may desire, as appropriate, request technical engineering support services from the E3, Office of Energy and Infrastructure Programs (E&I) or USAID regional missions.

ECCM curricula are intended to emphasize U.S. Government rules and regulations, and USAID operational guidance and policies when implementing construction projects in partner countries. ECCM curricula combine lecture-style presentations with interactive discussions and group activities to provide participants immediate operational skills and knowledge. Course materials include presentation slides, group exercises and discussions, checklists, and many short videos and supporting reference and resource materials.

M/OAA/PDT and E3 sponsored training classes for over 300 USAID AWF members primarily through the two courses -- ECCM 201 and ECCM 211 - LS. All interested USAID staff are strongly encouraged to enroll in ECCM courses through USAID University. Below are brief descriptions of the ECCM 201 and ECCM 211-LS and a list of additional "Supplementary Training Resource Documents":

ECCM 201

The overall goal of ECCM 201 is to provide the USAID AWF with basic operational skills and competencies related to procurement and management of construction projects. This course covers many ECCM contracting subject matter areas including alternative procurement instruments and financing options, the construction program life cycle and its phases, and sequencing relationships including planning, design, procurement, construction, oversight, post construction, operation and maintenance (O&M), and sustainability.

¹ Acquisition Workforce is defined as Contracting/Assistance Specialists, Contracting/Assistance Officer Representatives, Purchasing Series staff, Executive Officers Foreign National Procurement Staff and Personal Services Contractors employed as procurement staff.

ECCM 211- LS

The ECCM 211- LS course curriculum was designed as a follow-on course to ECCM 201. The overall goal is to provide USAID AWF with additional and higher-level knowledge, skills, and competencies for complex construction project situations, choice of implementation instruments and financing options when using direct contract, assistance, host country contracting (HCC), and government-to-government (G2G) instruments. ECCM 211-LS makes extensive use of example documents as learning guides to provide the USAID AWF “real-time” exposure to common procurement, implementation, and management issues.

ECCM SUPPLEMENTARY TRAINING DOCUMENTS

Supplementary training documents were drafted by former senior USAID engineers and funded by M/OAA for the ECCM training program and include updated USAID guidelines and procedures. These training documents have been tailored to support the AWF’s understanding of selected ECCM processes. We anticipate that USAID’s AWF and other staff will find these documents useful and are welcome to read and download them as needed from the M/OAA/PDT web page. The ECCM supplementary training documents completed to date include:

1. Reference for Construction Management and Contracting Processes: An ECCM Training Document prepared by Fred Zobrist, 2017
2. Construction Management, Contracting, and Oversight Principles: An ECCM Training Document prepared by Moenes Youannis, 2017
3. Construction Tendering And Contracting Guidelines: An ECCM Training Document prepared by Michael Gould, 2017
4. A Basic Reference for Architectural and Engineering (A-E) Contracting: An ECCM Training Document prepared by Michael Gould, 2017
5. Use of Government to Government (G2G) Fixed Amount Reimbursement (FAR) in Construction Projects: An ECCM Training Document prepared by Moenes Youannis, 2017
6. Use of Host Country Contracting in Construction Projects: An ECCM Training Document prepared by Moenes, 2017

With my compliments,

Jean Horton
Chief, Professional Development and Training Division
Agency Career Manager
M/OAA/ACTS/PDT
U.S. Agency for International Development

TABLE OF CONTENTS

ACRONYMS	III
EXECUTIVE SUMMARY	1
1. INTRODUCTION	2
1.1 Objectives	2
1.2 USAID Infrastructure Programs	2
2. USAID INFRASTRUCTURE CONTRACTING OVERVIEW	6
3. USAID INFRASTRUCTURE CONTRACTING MECHANISMS	8
3.1 USAID Direct Contracting for Engineering and Construction Services	8
3.2 Distinction Between Direct and Host Country Contracting	9
3.3 Host Country Contracting for Engineering and Construction Services	9
3.4 Host Country Contracting Bilateral and Implementation Relationships	9
3.5 Host Country Engineering and Construction Contracting	10
3.6 Direct Contract for A-E Services and Host Country Contract for Construction Services	10
3.7 Host Country Contract for A-E and Construction Services	12
3.8 Government to Government (G2G), Fixed Amount Reimbursement (FARA / FAR II)	12
4. ASSESSMENT OF THE HOST COUNTRY CONTRACTING AND PROCUREMENT SYSTEMS	14
4.1 USAID Policy	14
4.2 Results of the Assessment	14
4.3 Certification Requirement	14
5. HOST COUNTRY CONTRACTING FOR CONSTRUCTION SERVICES	15
5.1 USAID/Host Government Bilateral Relationship	15
5.2 Parties to a Host Country Construction Contract	16
5.2.1 Statement of Work (SOW) Under a Host Country	16
5.3 Role of the Employer Under HC Construction Projects	18
5.4 Role of the Construction Contractor	19
5.5 Role of the Design and Construction Management Contractor	19

5.6	USAID Role in Host Country Construction Contracting.....	20
5.7	USAID Approvals of Contracting Steps.....	20
5.8	Procedures for Awarding Host Country Construction Contracts	21
5.9	The Distinction Between Traditional Hcc Contracts and G2G FARA.....	21
5.10	Planning for the Use of Host Country Contracts.....	22
5.11	Host Country Contracting Challenges.....	22
5.12	USAID Support to HCIU Under HC Construction Contracting.....	22
5.13	HCC Reporting Requirements.....	23
5.14	USAID Management of Host Country Construction Projects	23
6.	LESSONS LEARNED AND BEST PRACTICES.....	24
	APPENDIX I: REFERENCES AND USEFUL INFORMATION.....	26
	APPENDIX II: GENERAL COMPARISON BETWEEN FAR-BASED AND FIDIC-BASED CONSTRUCTION CONTRACTS' USE AND FEATURES IN USAID FUNDED PROGRAMS	27
	ACKNOWLEDGEMENT.....	31

ACRONYMS

A-E	Architecture and Engineering, also referred to as “The Engineer”
ADS	Automated Directives System
CO	Contracting Officer
COTR	Contracting Officer’s Technical Representative
CPM	Critical Path Method
D&CMC	Design and Construction Management Contractor—(used alternately with Architecture and Engineering (A-E))
D&CM	Design and Construction Management
FAR	Federal Acquisition Regulations
FARA	Fixed Amount Reimbursement Agreement
FAR IL	Fixed Amount Reimbursement Implementation Letter
G2G	Government to Government
HC	Host Country
HCC	Host Country Contracting
HCIU	Host Country Implementation Unit
HG	Host Government
IFB	Invitation for Bids
IL	Implementation letter
O&M	Operation and Maintenance
SOW	Statement of Work
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

As part of its development programs in many countries, USAID has invested billions of dollars to support infrastructure projects. To respond to specific countries' needs, USAID-funded construction projects in many sectors. Some of these projects were “stand-alone” infrastructure programs, others were construction components under health, education, and other programs.

This **supplementary training document** provides engineering and non-engineering development professional with a one-stop reference for using USAID-financed HCC approaches in construction activities.

Construction services are complex, include technical specifications that vary from one project to another, and involve a number of parties and stakeholders. The capacity of the Host Country Implementation Unit (HCIU), contractors, and even USAID missions to undertake construction activities has varied from one project to another. As a result, USAID's selection of the contracting mechanism has always been a subject of discussion. USAID Direct contracts, USAID Host Country contracts (HCC), and Government to Government (G2G) Fixed Amount Reimbursement Agreements (FARA) were among the most commonly used contracting mechanisms for construction.

Under HCC for construction, USAID finances goods and services being provided under a contract between the HCIU and the construction contractor. While USAID is not a

party to this contractual relationship, USAID must ensure that both parties to the contract are qualified, possess the required technical, management, and financial capabilities, as well as the systems that are essential for the successful completion of the construction project, and that the procurement process complies with applicable U.S. Government regulations.

Under FARA, USAID reimburses the Host Country (HC) for construction costs upon the physical completion of an activity, a sub-activity, or a quantifiable element within an activity. Reimbursement is based on outputs rather than inputs or costs and the amount of reimbursement is generally fixed in advance.

This supplementary training document provides definitions, contracting and implementation guidelines, a discussion of USAID experience in construction projects, a discussion of the challenges and constraints faced and those to be expected, and finally a discussion of the important lessons learned and recommendations for follow-on activities.

The USAID Automated Directive Systems (ADS) and its Supplementary References in effect at the time of drafting this document represent the primary source of guidance for the use of HCC in construction. Relevant ADS language and clauses are quoted, or summarized throughout the document.

Throughout the supplementary training document, the term FARA will be used to refer to Fixed Amount Reimbursement method of finance to avoid any confusion between this method of finance and the Federal Acquisition Regulations (FAR).

I. INTRODUCTION

I.1 OBJECTIVES

The primary objective of this supplementary training document is to provide USAID engineering and non-engineering development professionals with a one-stop reference for the use of USAID-financed Host Country Contracting (HCC) approaches and to describe USAID's role and responsibilities in the implementation of USAID-financed HCC.

This supplementary training document provides a detailed discussion of USAID regulations and implementation guidelines for using HCC for the procurement of construction services. It includes definitions, USAID construction contracting and implementation guidelines, the challenges and constraints faced over decades of using HCC, and those to be expected. Finally, it provides a discussion of key lessons learned over many years of experience in the design, procurement, and management of USAID funded infrastructure programs and recommended best practices.

This supplementary training document incorporates the lessons learned during USAID/Egypt's 30 years of experience in implementing one of USAID's major, most challenging, successful, and diverse infrastructure programs using a combination of HCCs, Direct contracts, and FARAs.

It is important to note that while USAID direct contracting and G2G FARAs are not the subject of this supplementary training document, it provides a brief overview of the use of each and discusses the primary differences between direct contracting, HCC, and FARA.

It is equally important to note that USAID ADS policy and guidance regarding the "Use and Strengthening of Reliable Partner Country Systems for Implementation of Direct Assistance" (ADS 220) are not discussed in this supplementary training document. They are policies and procedures to be followed when designing, negotiating, and implementing direct funding agreements to partner governments that is Government to Government (G2G) assistance. G2G is not the subject of this supplementary training document and is addressed in details in a separate supplementary training document.

I.2 USAID INFRASTRUCTURE PROGRAMS

In its efforts to achieve the United States Government (USG) development objectives, USAID has provided billions of dollars to finance infrastructure projects in many countries. These programs included:

- a) Developing national and regional infrastructure master plans
- b) Conducting environmental and engineering studies
- c) Developing engineering designs
- d) Implementing construction activities including construction oversight and management services
- e) Operation and maintenance support for completed facilities

With such sizeable investments, USAID funds have successfully supported a wide range of construction projects, which were either:

- ✓ Stand-alone infrastructure projects such as water treatment plants, wastewater treatment plants, roads, bridges, and power plants; or
- ✓ Components of projects in other sectors including: health, education, local development, agriculture, economic growth, and democracy and governance. Although these were not categorized as primarily infrastructure projects, they included construction components such as hospitals, health clinics, schools, local public buildings, community service centers, roads, refrigeration and cold storage structures, potable water and irrigation systems, etc.

Projects funded by USAID varied in terms of size and complexity from major state-of-the-art power plants, water treatment plants, and wastewater treatment plants costing hundreds of millions of dollars, to simple one-classroom schools, earth and gravel roads or water stand posts in rural areas, each serving few communities.



Similarly USAID funded construction varied in geographic spread, and purpose. While some of these projects were designed to improve the quality of service, others were carried out to respond to emergency situations, natural disasters, or crisis situations in post conflict areas.

USAID infrastructure programs have also varied in the project delivery method including:

Design-bid-build (DBB). This is the traditional delivery method where design and construction are sequential and contracted separately with two contracts and two contractors (FAR 36.102, Definitions.)

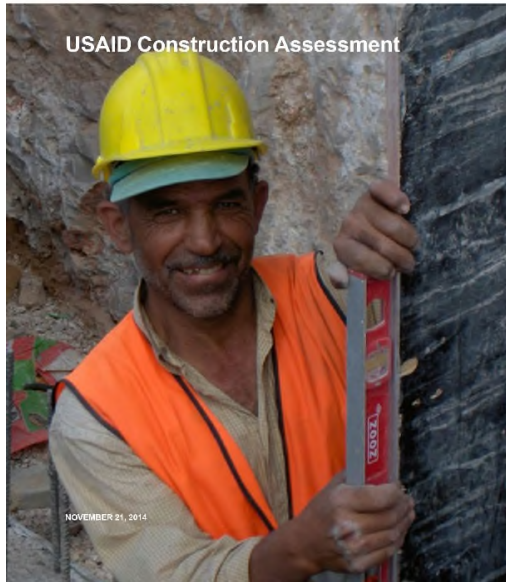
Design-Build (DB). In this method design and construction are combined into a single contract with award to one contractor (FAR 36.102, Definitions.)

Program Management (PM). A project delivery method to implement infrastructure programs efficiently with respect to time and cost when there is little definition up front on what specific facilities are to be planned, engineered, and constructed. Under this project delivery method, the PM firm provides planning, engineering, and construction management services on a cost-reimbursable plus fixed fee (CPFF) basis, working closely with USAID. The PM firm performs studies to define the needed infrastructure. Upon USAID’s approval of the specific infrastructure, the PM firm then procures the services of subcontractors to provide technical, engineering, and construction services.

Missions were faced with the need to make many important decisions when planning and implementing infrastructure programs, including the selection of the contracting instrument or method of financing to be used in carrying out construction activities. The *USAID Construction Assessment Report* of 2014, mentions that:

“In 2013, USAID conducted a survey of construction awards for the purpose of deepening our understanding of the scope, location, and parameters of the portfolio. The survey identified 758 prime awards (including 3,304 sub-awards) that included construction and were active during the two-year assessment period. Together, these awards represented an estimated value of \$5.6 billion”.

The Assessment Report estimates that these awards were carried out through the use of a number of award mechanisms including: direct contracts, cooperative agreements (CA) and grants, public international organizations (PIO), G2G, HCC, and FARA.



Throughout the USAID funded infrastructure projects' life cycle – from conceptualization to

operation and maintenance (Exhibit I) – USAID worked closely with the HC, the recipient and ultimate owner and operator of the facilities funded by USAID. The capabilities of the HC counterparts tasked with implementing the projects varied from country to country and in many cases between different geographic locations within the same country. Similarly, the technical and financial qualifications and capabilities of the contractors and engineering firms designing and carrying out the actual construction were different.

In the day-to-day implementation and contractual matters, USAID worked closely with the Host Country Implementation Unit (HCIU), the Host Government unit authorized by the recipient host country government (Borrower or Grantee). Roles, responsibilities, and obligations of each party were generally described in the Bilateral Agreements between USAID and the Host Government and subsequent Implementation Letters (IL).

While in a few projects these HCIUs were well established and capable government authorities with thousands of employees and relatively sophisticated systems, in many projects, they

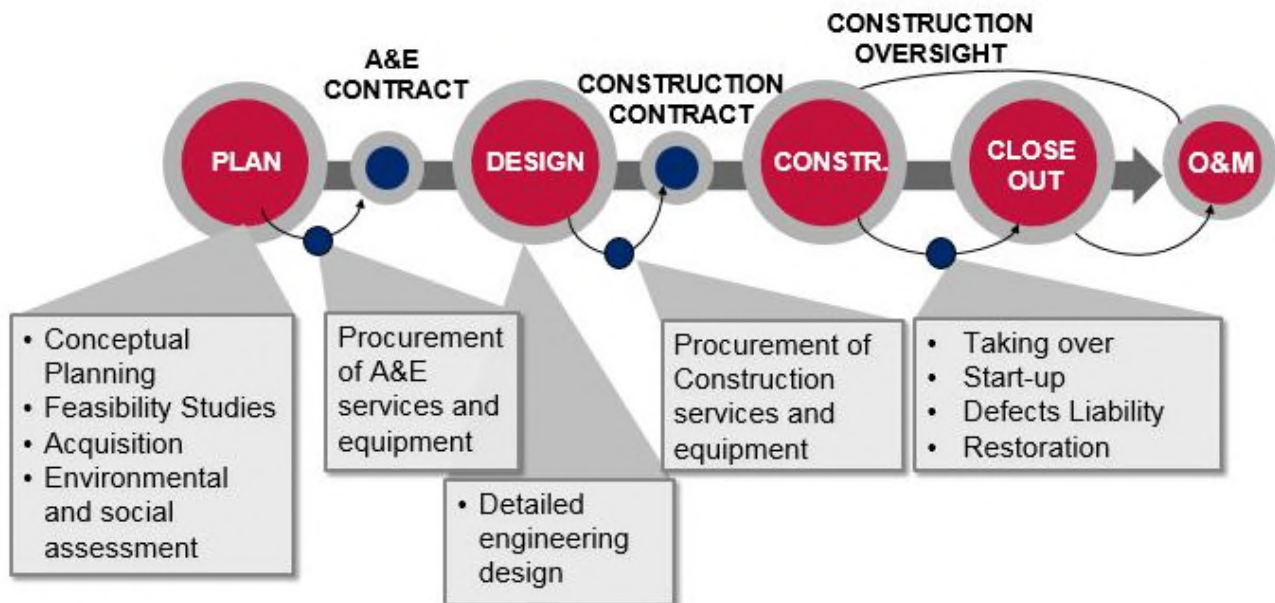


Exhibit I: Simplified Typical Construction Program Phases and Contractual Arrangements

were simple local government units operating in small urban or rural areas with limited resources and few qualified personnel. It is important to point out that a small number of these government units had adequate management, procurement, or financial management systems and expertise to undertake infrastructure programs. In most cases, these units needed significant assistance and hand-holding throughout the design, procurement, and construction phases of USAID-funded infrastructure programs.

Therefore, design, procurement, construction, and construction supervision services of these projects were either carried out by major U.S. engineering and construction contractors or by local engineering and construction contractors. Local contractors' capabilities varied greatly from one country to the other and within the same country.

Similarly USAID missions with infrastructure portfolios were different in terms of their capabilities and ability to handle infrastructure design and implementation responsibilities for a number of reasons. Some USAID missions did not have the engineering or contracting staff or experience required for the design, procurement, and implementation of infrastructure programs.

One of the key findings of the *USAID Construction Assessment Report* of 2014 is that

“Management approaches, particularly in levels of oversight, professional experience, and managing change, were found to be variable across the portfolio. This reflects not only the decentralized nature of the USAID system but also the shortage of USAID engineering expertise. Balancing risk, good development, and humanitarian outcomes will be the challenge”

It is important to note that some of the USAID infrastructure programs included a combination of the aforementioned mechanisms. For example in some infrastructure programs USAID used direct contracting for the procurement of engineering design and construction management services, and funded HCC for the procurement of construction services.

To address many of the issues and controversies surrounding the selection of the most suitable contracting mechanism for the procurement of engineering and construction services, USAID issued “USAID Implementation of Construction Activities,” A Mandatory Reference for ADS Chapters 303 (303maw) to *“state the Administrator-approved policy limiting the use of assistance awards to implement construction activities.”*



2. USAID INFRASTRUCTURE CONTRACTING OVERVIEW

For over three decades of providing funding to support infrastructure projects, USAID selection of the infrastructure contracting mechanism has always been a subject of discussion. Contracting mechanisms varied from mission to mission and from office to office within the same mission. USAID selection of the contracting mechanism was based on several crucial factors, including: the size and complexity of the project to be implemented; the contracting, engineering, and management capabilities of the HCIU; and the technical and engineering capabilities of mission staff charged with the design and implementation of the infrastructure program.

Most USAID-funded large complex infrastructure programs have been commonly carried out by U.S. construction contractors, either in the form of one prime U.S. contractor with U.S. and local subcontractors, or a joint venture of U.S. contractors with U.S. and local subcontractors. USAID-funded simple and small-scale construction projects have been generally carried out by local qualified construction contractors and subcontractors. Based on the selected contracting mechanism and the type of contract used, USAID funding has been provided either in U.S. dollars or local currency. In some cases contracts were jointly funded by USAID and the host country.

Regardless of the contracting mechanism used, **USAID infrastructure programs' success** has been a result of having experienced and qualified engineering staff, legal and contracting officers with experience and knowledge of infrastructure programs, and qualified engineering firms for developing engineering designs, providing support for procuring construction services, and providing oversight and construction management services.

While in large infrastructure programs the design, procurement support, and oversight services were provided mostly by U.S. engineering firms or consortia with local engineering subcontractors, the same services were generally provided by local qualified engineering consultants in smaller and less complex infrastructure projects. USAID played a leading role in introducing the concept of utilizing the services of an Architecture and Engineering (A-E) firm when carrying out construction programs. The A-E firm, the “Engineer” under FIDIC based contracts, provided USAID and the host country with professional expert services in a variety of technical and administrative fields during the project design, procurement, construction, and operation and maintenance.

USAID’s role in contracting for engineering services varied based on the contracting

mechanism used. USAID role can be described as:

Extensive: developing the Statement of Work (SOW), selecting the A-E firm, awarding the contract, and supervising the performance in the case of direct awards.

Limited: only providing guidelines for developing the SOW for engineering services, establishing the selection criteria, and developing cost estimates in the case of HCC.

Very limited: only financing engineering cost as part of an overall G2G agreement.

3. USAID INFRASTRUCTURE CONTRACTING MECHANISMS

This section provides a brief overview of three contracting mechanisms that USAID generally has used in implementing the construction programs.

3.1 USAID DIRECT CONTRACTING FOR ENGINEERING AND CONSTRUCTION SERVICES

In direct contracting (Exhibit II), USAID is a direct party, a signatory, and in a mutually binding legal relationship obligating the seller ("contractor") to furnish supplies or services

and the buyer ("USAID") to pay for them. ADS 302 prescribes the Agency's policy directives, required procedures, and internal guidance for the procurement of goods and services through direct contracts for the purposes of implementing Agency's programs and supporting Agency's logistics.

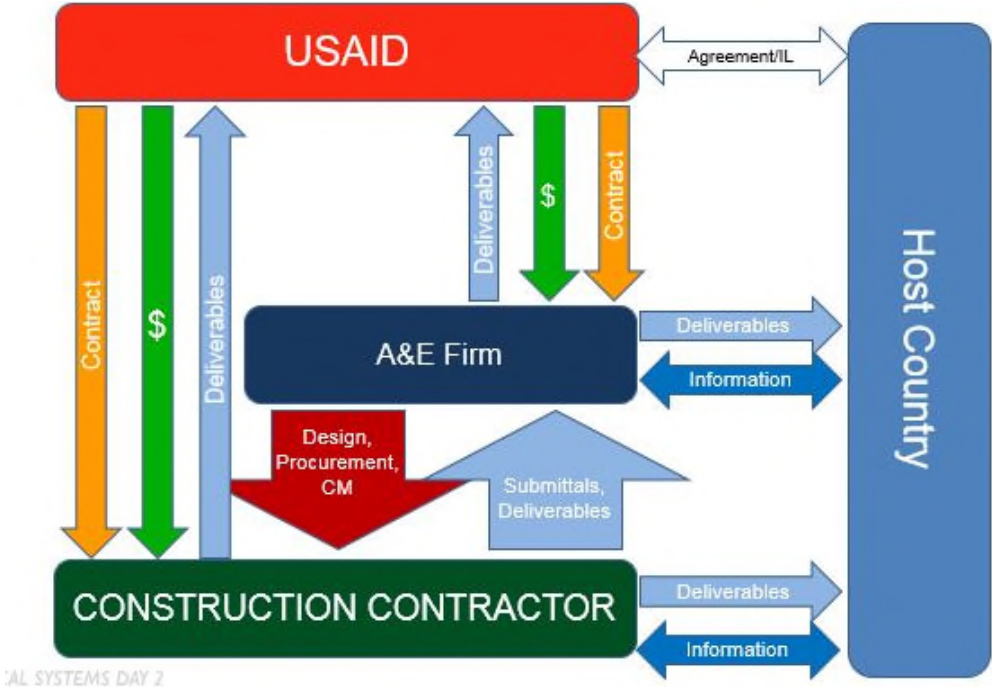


Exhibit II: USAID Direct A-E and Construction Contracts

SELECTING A CONTRACTING MECHANISM (CONTRACTING APPROACH)

A number of factors have a major effect on any particular USAID mission decision to use host country contracting. These include:

- host country preference
- type of activity, its design and objectives
- type of goods or services to be delivered
- time constraints
- HCC agency procurement, technical, financial, management, and contract administration capabilities
- estimated costs and cash flow requirements
- availability and adequacy of the host country systems and procedures
- availability and experience of USAID procurement, legal, and program staff

In direct contracting, USAID has a clear direct contractual relationship with the contractor. USAID receives the goods or services and pays for them. USAID is directly involved in the procurement process and implementation.

Under this type of contracting, USAID generally contracts with the A-E firm to prepare the designs and required studies (environmental, feasibility, demographic, geotechnical, etc.), manage the procurement process, and provide construction management services. USAID contracts directly with a construction contractor.

3.2 DISTINCTION BETWEEN DIRECT AND HOST COUNTRY CONTRACTING

Under USAID direct contracts, USAID is the contracting party. USAID direct contracts follow the Federal Acquisition Regulations (FAR) and AID Acquisition Regulations. Direct Contracts provide USAID with more control and approval authority. When USAID

decides to use HCC procedures it acts as a financier and not a contracting party, reserving certain rights of approval, activity monitoring rights, and auditing rights.

3.3 HOST COUNTRY CONTRACTING FOR ENGINEERING AND CONSTRUCTION SERVICES

HCC is a mechanism of program implementation in which USAID finances, but is not a party to, contractual arrangements between the Host Country and the supplier of goods and/or services (Glossary of ADS Terms).

3.4 HOST COUNTRY CONTRACTING BILATERAL AND IMPLEMENTATION RELATIONSHIPS

The bilateral and implementation relationships governing USAID-funded HCC construction projects can be best explained by dividing them into the following four separate levels, as illustrated in Exhibit III.

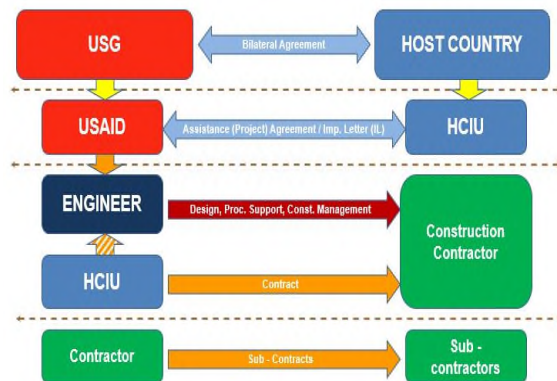


Exhibit III: HCC Construction Contracting Relationships

1. The first level or tier is the bilateral relationship between the U.S. Government and the Host Country Government that is usually established through a Bilateral Agreement that describes the general terms of the relationship between the two countries

in relation to USAID's development program.

2. The second level is the implementation relationship or working relationship between USAID, representing the development arm of the U.S. Government, and the HCIU receiving USAID support, on behalf of the Host Country Government, and tasked with the implementation of the project. This is usually established through an Assistance Agreement or an Implementation Letter (IL.)
3. The third level is the relationship between the HCIU, the prime construction contractor carrying the construction activities, and the A-E firm responsible for the design, procurement, and construction management of the project. These relationships are generally established through contract agreements that are in most cases subject to the review and approval by USAID.
4. The fourth level includes the relationship between the prime contractor and its subcontractors and suppliers of goods and services. These relationships are mostly established through subcontract agreements between the prime contractor and the subcontractors. USAID and the HCIU have very little involvement, if any, in such relationships.

3.5 HOST COUNTRY ENGINEERING AND CONSTRUCTION CONTRACTING

In HCC for construction services, USAID finances the goods and services being provided under a contractual relationship between the HCIU and the construction contractor (Exhibit III).

Although USAID is not a party to this contractual relationship, USAID is interested in seeing this activity completed successfully in order to protect its investment and achieve its development objectives. USAID must ensure that both parties to the contract are qualified; possess the required technical, management, and financial systems that are essential for the successful completion of the construction project; and that the procurement process and implementation steps are in accordance with applicable U.S. Government regulations.

In order to illustrate the relationships between the parties under a HCC, the model used successfully by several USAID missions in implementing large and small size infrastructure programs as well as another less attractive alternative are discussed below:

3.6 DIRECT CONTRACT FOR A-E SERVICES AND HOST COUNTRY CONTRACT FOR CONSTRUCTION SERVICES

Under this model, USAID on behalf of the HCIU enters into a direct contract with the A-E firm (Exhibit IV). The HCIU contracts with the construction contractor. This model is a combination of direct and HCC. This model has been successfully used by several USAID missions. The model addresses some of the issues and concerns that developed when both the A-E firm and construction contractor were under the HCIU. This resulted in inability of the A-E firms to maintain impartiality or receive timely payments for services rendered.

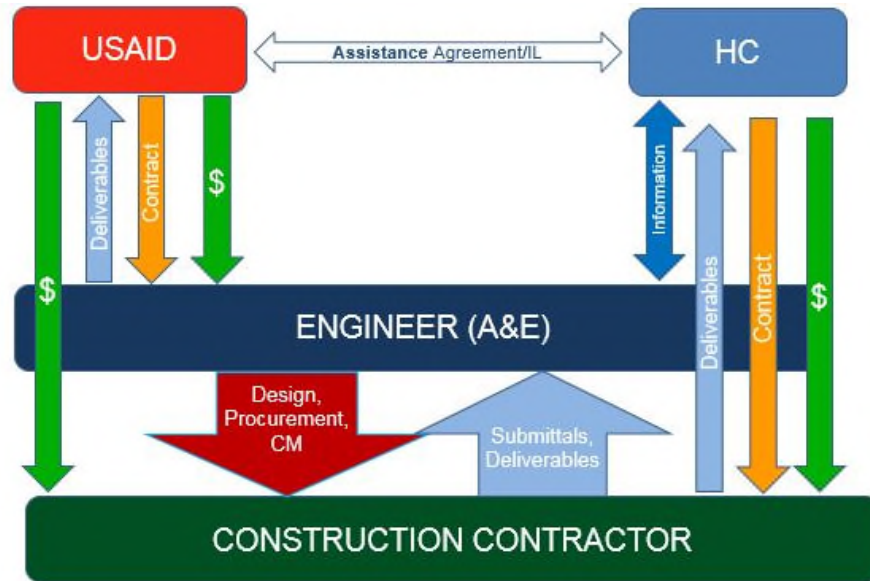


Exhibit IV: USAID Direct A-E Contract and HC Construction Contract

The following are the steps taken under HCC by engineering and construction services:

1. USAID, on behalf of the HCIU, enters into a Direct Contract agreement with the A-E firm to carry out design, engineering, and construction management services. This arrangement has to be clearly stated in the Assistance Agreement or subsequent Implementation Letters.
2. The A-E firm provides support to the HCIU throughout the following tasks: developing construction tender documents, prequalifying construction contractors, evaluating tenders, and awarding contracts
3. The HCIU awards a Host Country construction contract to the lowest responsive and responsible bidder (ADS 305).
4. The A-E firm provides all contract administration and construction management services and submits contract submittals and deliverables related to the direct contract to USAID.
5. The construction contractor undertakes construction services and submits deliverables and submittals to the A-E firm for review and approval. The A-E firm reviews the submittals and deliverables and either approves or rejects the submittals. The A-E firm keeps USAID and the HCIU informed of the status of submittals and requests approval when required by the contract
6. The construction contractor submits progress payment requests to the A-E firm for review and approval
7. Once a progress payment request has been approved by the A-E firm, the HCIU reviews and approves the progress payment request and pays its portion to the construction contractor. USAID pays its portion of the cost to the construction contractor
8. The A-E firm inspects the work on a continuous basis and issues the certificate of final completion and acceptance of the work
9. The A-E firm works closely with the contractor and the HCIU to ensure

successful take over and operation and maintenance of the facilities completed

10. The A-E firm ensures settlement of all outstanding obligations and assists the HCIU in the evaluation of outstanding claims

3.7 HOST COUNTRY CONTRACT FOR A-E AND CONSTRUCTION SERVICES

Under this option (Exhibit V):

- ✓ The HCIU contracts with the A-E firm
- ✓ The A-E firm provides procurement support to the HCIU to: develop designs, specifications, and construction solicitation documents; prequalify construction contractors; evaluate bids; and award of construction contract
- ✓ The HCIU awards the construction contract to the lowest responsive & responsible bidder
- ✓ The construction contractor undertakes construction services
- ✓ The A-E provides all contract administration and CM Services

Some of the implementation issues that resulted from using this model included in inability of

the A-E firms to maintain impartiality or receive timely payments for services rendered.

3.8 GOVERNMENT TO GOVERNMENT (G2G), FIXED AMOUNT REIMBURSEMENT (FARA / FAR IL)

G2G Assistance applies when USAID disburses funds directly to a partner government entity, including all instances in which USAID finances a bilateral foreign assistance recipient country to implement a project or project activity, including non-project assistance, using the partner government's own financial management, procurement or other systems. G2G follows ADS 220. Exhibits VI and VII below illustrate the relationship between parties under a FARA.

Under this model (Exhibit VI), the Partner Government Implementing Entity/ HCIU enters into contractual arrangements with the

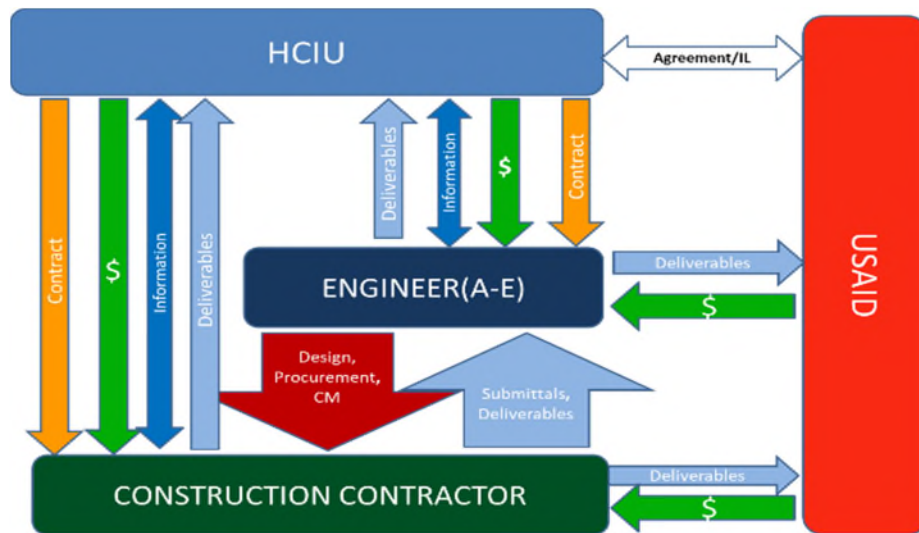
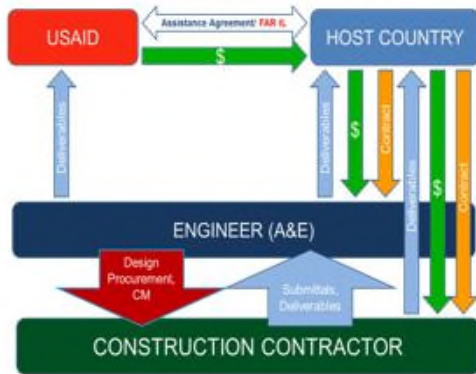
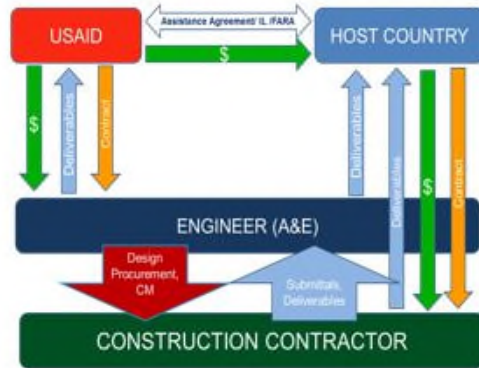


Exhibit V: HCC for A-E and Construction

G2G FARA: HCIU Contracts with A&E & Construction Contractor



G2G FARA: USAID Direct A&E Contract & HCIU Construction Contract



Exhibits VI and VII: Fixed Amount Reimbursement Agreements

A-E firm and the construction contractor. USAID reimburses the implementing Entity upon the physical completion of the activity, a sub-activity, or a quantifiable element of an activity (stages of the work). The amount of reimbursement is generally fixed in advance. An alternative to this model has been used where USAID enters into a direct contract with the A-E on behalf of the HCIU (Exhibit VII).

The payment directly by USAID to a partner government contractor or grant recipient for project assistance requires the use of ADS 305 procedures (ADS220.3.4.3.a (6) (d)):

- ✓ Estimated costs and cash flow requirements
- ✓ Availability and adequacy of the host country systems and procedures

4. ASSESSMENT OF THE HOST COUNTRY CONTRACTING AND PROCUREMENT SYSTEMS

4.1 USAID POLICY

USAID ADS requires that when the Agency considers using a HCC for any procurement (including engineering and construction services) anticipated to exceed \$250,000 in value (including local currency), USAID must first assess the contracting agency's procurement system and then obtain the Mission Director's written certification of its capability.

Mission staff with the qualifications necessary to assess all aspects of the contracting agency's capabilities may participate in conducting the assessment, provide advice, or review the results of the assessment. This may include the controller, contracting officer, legal advisor, technical officers, and mission engineer.

USAID may decide to engage an independent contractor for conducting or participating in the assessment. In this case, USAID has to review and approve the contractor's determination and recommendations. The Mission Director has the ultimate authority for certifying the acceptability of the Contracting Agency's procurement system if the facts support the determination.

4.2 RESULTS OF THE ASSESSMENT

If the assessment results is a recommendation that HCC is practical, then the Mission Director shall make a positive determination that the HCC agency has or will obtain the capability to undertake the procurement. If the assessment indicates that use of HCC would be impractical or inappropriate and the Mission Director cannot make such a determination, then USAID may decide to use direct contracting or use another U.S. Government Agency.

4.3 CERTIFICATION REQUIREMENT

The Mission Director must certify, in writing, that the Contracting Agency has the capability to undertake the specific procurement action. If the assessment discloses weaknesses that are not significant enough to impede the working relationship between the Mission and the Contracting Agency, then the Mission may proceed with approving HCC for the specific activity in question and the Mission Director's certification must be modified to identify the particular weaknesses and the Mission's plans to address them.

5. HOST COUNTRY CONTRACTING FOR CONSTRUCTION SERVICES

5.1 USAID/HOST GOVERNMENT BILATERAL RELATIONSHIP

USAID programs in host countries are generally established based on a bilateral agreement that provides a description of the projects to be funded by USAID, specifies the level of funding, and sets the terms for carrying out the projects.

Engineering and construction programs are often included as components or activities under a larger project. In some cases it might be difficult or not practical to clearly identify the construction activities, their description, or cost estimates until the required studies or masterplans have been completed. In these situations, USAID may define the construction activities based on expected outputs in terms of final product or capacities or based on estimated number of beneficiaries.

Is host country contracting the right choice for USAID infrastructure programs?

Infrastructure programs have their own unique technical terminology, regulations and procedures, contract and pricing structure, large number of parties and stakeholders, and challenges. Construction is a complex undertaking. Procurement of construction services is different from procurement of other simpler types of services, technical

assistance, goods, or equipment. In construction projects, the nature of the work is generally more complex, with technical specifications that vary according to the function of the facility being constructed. They involve more parties and stakeholders, including: host country local organization (owner or employer); project direct beneficiaries; A-E design consultant; construction management consultant (A-E/Engineer/CMC); Construction Contractor (CC); subcontractors and suppliers of equipment; banks and financial institutions; donor agencies (USAID); local and regional government organizations; utilities; environment agencies; and local industries and businesses. Each of these organizations and groups has its own perspectives and expectations. This might be extremely problematic given the different cultural and language barriers in USAID programs.

Note: In HCC, the HCIU is the contracting authority for the contract with the construction contractor, and as such, is responsible and has the liability for all the consequences of any inaction or non-compliance with any of the contract provisions by the Host Government.

Other important and influencing factors that add operational complexities to construction programs include the need to protect and care for the environment, land tenure issues, right

of way permitting, and safety of workers and the community during construction.

It is quite normal during any construction project that all parties are faced with unforeseen site conditions, or the need to modify the technical specifications to respond to any unpredicted circumstances or new developments. This requires parties to make quick and technically defensible decisions that may result in minor or major changes to the contract cost or time for completion.

Disputes may arise over some of these changes or variations to the contract conditions and in some cases may result in interruptions to the construction schedule or the anticipated completion date. A clear definition of the roles of parties involved and the ability as well as willingness of the HCIU to assume its responsibilities as the employer and the ultimate recipient of the facilities being constructed is essential for avoiding claims and for settlement of disputes.

Greater responsibility and liability for the HCIU under a HCC therefore decreases USAID liability resulting from circumstances outside its control. This arrangement makes HCC an attractive and practical option for some USAID construction programs.

USAID policy and guidelines for using HCC for the procurement of construction services is included in ADS 305, Host Country Contracts.

5.2 PARTIES TO A HOST COUNTRY CONSTRUCTION CONTRACT

The two legal parties to any Host Country Construction Contract are the HCIU, the technical unit responsible for the procurement of the construction services – and in most cases, the operation of the facility once completed – and the prime construction contractor (Contractor). USAID is not a party to any contractual relationship between the HCIU and the construction contractor.

The HCIU, generally referred to as “the Employer” or the “the Owner” in the construction contract document, may be a government entity or a public company. The contractor, depending on USAID authorized geographic code for the project and nationality requirements, may be a US, local, or third country contractor. The prime contractor may have a number of US, local, or third country subcontractors. The Contractor may also be a joint venture of two or more contractors with a number of US, local, and third country subcontractors.

5.2.1 STATEMENT OF WORK (SOW) UNDER A HOST COUNTRY CONSTRUCTION CONTRACT

Similar to any construction contract, the scope of construction services under a Host Country Construction Contract includes technical and specialized work that results in complicated relationships with other contractors, suppliers, local authorities, etc. The SOW may cover a wide variety of disciplines, including: engineering design, environmental, geophysical, structural, electrical, mechanical, cost estimating, geotechnical surveillance, scheduling, legal, etc. The construction contract typically specifies the required work, quantities, general specifications and requirements, general conditions of contract, conditions of particular application, financial requirements, liability of parties, safety measures to be undertaken by the contractor, environmental mitigation measures, etc.

Value Engineering, which is required under FAR based A-E and construction contracts, is an excellent approach for encouraging the construction contractor to propose options for reducing costs or improving quality through Value Engineering Change Proposals (VECP)

The contract may be amended during construction through change orders or variation orders to respond to varied work conditions or site-specific differing conditions or requirements. Rather than amending the contract every time there is a need to address justified changes, it is recommended to include a “Provisional Sum” line item in the contract budget to address these situations.

The Provisional Sum is usually a fixed amount that is included in the contract and can be used for payment of any costs resulting from approved variation orders.

The construction contract usually specifies the approach for settling disputes or claims and for litigation. Some construction contracts include additional provisions such Alternate Dispute Resolution which helps the parties reach agreement on disputes without having to go through lengthy and costly litigation.

USAID has used the FIDIC- based conditions of contract in its Host Country Construction programs (*See the section below*). These conditions specify the role of the parties to the construction contract and the A-E, and lays out all the conditions related to the performance of the work under the construction contract. Conditions of particular applications are usually added to specify special requirements and to include USAID requirements and mandatory contract clauses.

FIDIC Conditions of Contract for Work of Civil Engineering Construction, Part I, General Conditions and Part II, Conditions of Particular Application are included as attachments 2R and 2S respectively to USAID

Country Contracting Handbook Chapter 2, Procurement of Construction Service, an



Internal Mandatory Reference (now provided as guidance) to ADS 305.

Mandatory Reference: 305
 File Name: 305mab_013003_cd30
 Revision: 01/30/2003
 Effective: 11/13/2002

Country Contracting Handbook
Chapter 2: Procurement of Construction Services

DISCLAIMER
 Many of the mandatory and supplementary references to the chapters in the ADS 300 Series contain references to the Handbooks which no longer exist. If the policies remain, they are in an ADS 300 chapter. Information which has not been included in an ADS 300 chapter is guidance only. The references will be revised to refer to ADS chapters or other guidance as applicable.

5.2.2 WHAT IS FIDIC?

FIDIC is an abbreviation for Fédération Internationale des Ingénieurs Conseils, an international professional organization that promotes and advocates the global consulting engineering industry: <http://fidic.org>. FIDIC vision is to enable the development of a sustainable world as the recognized global voice for the consulting engineering industry. FIDIC works closely with consulting engineering firms and the construction industry to improve the business climate and enable its members to contribute to making the world a better place to live in, with “Quality, Integrity and Sustainability” as its core principles.

FIDIC published a large number of publications covering the most important and needed resources for the construction industry including:

- ✓ FIDIC's selection of contracts and agreements
- ✓ Business practices information for consulting engineers on risk management, project sustainability management, environment, quality management, integrity management, dispute resolution techniques, insurance, capacity building, transfer of technology, law, and other business issues
- ✓ Guides for quality based selection, procurement and tendering procedures, consultant selection, quality of construction and other documents about the use of consulting engineers



FIDIC based contracts are used extensively in the construction industry in most countries. A simplified FIDIC based contract in local language will be most useful for developing programs. FIDIC-based contracts are used by other donors. Contractors and partner government agencies are familiar with FIDIC-based contracts. FIDIC is best known for its range of Standard Conditions of Contract for Construction. FIDIC publishes the Multilateral Development Banks (MDB) Harmonized Edition of the Construction Contract that is used by MDBs including the World Bank. FIDIC documents have been translated into several languages. Its contract documents are user friendly and are “living documents” that are updated regularly. FIDIC has capacity building programs and makes available to its

members a number of courses, modules and best practice guidelines and documents. FIDIC suite of standard conditions for construction contracts include:

- ✓ Construction for building and engineering works designed by the employer (Red Book)
- ✓ Multilateral Development Bank harmonized (Pink Book)
- ✓ Design-Build and Turnkey (Orange Book)
- ✓ Mechanical and electrical (Yellow Book)
- ✓ EPC/turnkey (Silver Book)
- ✓ Design, build and operate (Gold Book)
- ✓ Short form (Green Book)

5.3 ROLE OF THE EMPLOYER UNDER HC CONSTRUCTION PROJECTS

The Employer (Owner) is the ultimate recipient of the facilities being constructed under the construction project. The Employer identifies the problem and the needs. Once this is done, the Employer has to engage the right expertise and resources for drafting a problem statement and conceptualizing an adequate response, developing preliminary designs, identifying alternatives, estimating required resources and time frame, developing designs and specifications, and procuring engineering and construction services. Although, in some cases, part or all of the foregoing might be carried out using the Employer’s own staff and technical offices, it is reasonable to expect that in most cases, the employer typically would not have the required engineering expertise. An example would be construction of medical facilities. In this example, the Employer’s staff is mostly medical and administrative professionals, with no engineering knowledge for procuring construction services or operating and maintaining the facility. A similar example is the design and construction of a school, where the

technical expertise of the Employer's staff is in education.

On the other hand, when constructing a road for a roads department, the Employer's engineering expertise might not be an issue. However, one can argue that even in this case, the role of the Employer should be limited to developing the scope of work and monitoring the performance of an A-E firm that can bring multiple skills to the task and provide the Employer with the required technical, administrative, and contractual expertise for the procurement of construction services.

5.4 ROLE OF THE CONSTRUCTION CONTRACTOR

The construction contractor is responsible for carrying out the construction in accordance with the standards, specifications, and contract conditions, on time, and within the contract budget. To achieve this goal, the contractor is expected to provide all required resources, including: qualified subcontractors and suppliers, construction equipment, and a highly qualified team to cover all required expertise. The contractor is expected to furnish all required bonds and warranties, ensure safety of his team and other stakeholders on the job, and indemnify USAID, the Employer, and the A-E firm from any liability resulting from performing the scope of the construction contract.

5.5 ROLE OF THE DESIGN AND CONSTRUCTION MANAGEMENT CONTRACTOR

During the design phase of the project, the A-E firm is responsible for undertaking a number of tasks, including: developing the project's preliminary and final designs, conducting the required environmental studies, developing feasibility studies, developing preliminary cost

estimates and alternatives, and preparing a preliminary schedule for the project.

In preparing for the construction phase of the project, the A-E firm is responsible for a number of complex and interrelated tasks. These tasks include: overall planning and management of the construction services procurement process; developing the prequalification questionnaire and the list of prequalified construction contractors; developing bid and contract documents and specifications; developing the initial and final cost estimate; arranging for the pre-bid conference; responding to requests for clarification; issuing the Invitation for Bids (IFB) addenda; receipt and evaluation of bids; and recommending award.

During construction, the A-E firm is responsible for a wide variety of tasks that are crucial for ensuring successful completion of the project. These tasks include:

- ✓ Construction monitoring and inspection and keeping daily logs
- ✓ Measurement and acceptance of the work
- ✓ Issuing non-compliance reports when needed
- ✓ Review and approval of as-built drawings
- ✓ Monitoring project schedule, budget, and cash flow
- ✓ Issuing variation orders (according to the authority delegated by the Employer)
- ✓ Certifying progress and final payments (unit price, lump sum, fixed)
- ✓ Conducting final inspection, reviewing O&M manuals and plans, recommending spare parts; and other similar required services

5.6 USAID ROLE IN HOST COUNTRY CONSTRUCTION CONTRACTING

When defining USAID role in Host Country Construction Contracts it is extremely important that USAID should assist the Contracting Agency in understanding USAID requirements and regulations. USAID may explain the Agency's procedures to the local contractors. This will help in ensuring compliance with USAID regulations and in safeguarding USAID interests and rights. USAID uses ILs to convey, and to document, USAID requirements and expectations to the other key players and for obtaining commitments for major implementation steps.

Important to Note: USAID is not a party to the Host Country Construction Contract. USAID acts as the financier and its mandate is to achieve the U.S. Government development objectives.

USAID provides guidance to the HCIU regarding the application of USAID regulations throughout the project implementation including preparing and publicizing prequalification questionnaires and requests for proposals or bid documents; developing independent cost estimates; development of the selection criteria; receipt and evaluation of bids; and contract award. USAID monitors all implementation steps of the project from conceptualization through completion. It participates in periodic review meetings with the HCIU and the contractors to review progress; participate in periodic visits to the site of the project (normally with representatives of the HCIU and the A-E firm); review and approve progress payments; assist the HCIU and/or the contractor in resolving implementation issues; and conduct project evaluations.

In sum, USAID undertakes all actions required to ensure the proper and prudent use of the U.S. Government funds.

5.7 USAID APPROVALS OF CONTRACTING STEPS

USAID reserves the right of prior approval of the most critical contracting steps to ensure compliance with specific provisions of its policies governing USAID financed HCC. USAID approvals are not to be construed as making USAID a party to the HCC.

USAID reserves the right of prior approval of the most critical steps of the contracting process for any Host Country procurement in excess of \$250,000. Following are some of the steps that require USAID approval:

- ✓ Notices to prospective offerors
- ✓ Lists of prequalified offerors prior to issuance of the solicitation document
- ✓ Complete solicitation document, prior to issuance
- ✓ The contractor selection method that may be part of approval of solicitation document
- ✓ The selected contractor
- ✓ Host Contracting Agency decision to terminate negotiations with the highest ranked offeror and to initiate negotiations with the next ranked offeror or to reject all offers
- ✓ The contract, prior to execution
- ✓ Signed contract documents, before financing
- ✓ Contract administrative actions such as subcontracts, amendments, and change orders, as determined by the Mission and stipulated in an Implementation Letter

USAID may require that contracts not funded by USAID but having a substantial impact on the activity be approved by USAID, and may require additional approvals for other actions taken by the Contracting Agency during the contracting process. Such additional approval requirements must be set forth in an

Implementation Letter. USAID mandatory contract requirements and clauses must be included in every USAID-financed HCC.

5.8 PROCEDURES FOR AWARDING HOST COUNTRY CONSTRUCTION CONTRACTS

USAID encourages competition and requires the use of formal competitive bidding among qualified bidders when awarding contracts for construction services. Formal competitive bid procedures include public advertising, issuance of invitations for bids, public opening of sealed bids, evaluation of bids, and award of a contract to the lowest cost but responsive and responsible bidder.

If the Contracting Agency fails to secure a contract through formal competitive bid procedures and the use of formal competitive bid procedures clearly appear to be non-productive, USAID may then approve the use of competitive negotiation.

5.9 THE DISTINCTION BETWEEN TRADITIONAL HCC CONTRACTS AND G2G FARA

5.9.1 HCC

HCC is suitable for simple projects, as well as for large complex infrastructure projects, and follows ADS 305.

Under a traditional HCC, USAID provides all or a portion of the funding to cover the signed contract between the HCIU and the contractor. USAID pays invoices that reflect progress of the work. USAID may pay directly to the contractor, or in some cases reimburses the HCIU for invoices paid to the contractor. USAID has significant approval rights for the selection of the contractor and contract administration actions. Although the total contract amount may change to account for differing site conditions or any unforeseen

circumstances, USAID commitment is limited to the amount stated in the Implementation Letter. USAID may increase the Agency's commitment if necessary.

In a HCC, USAID has monitoring responsibilities and relies on the A-E firm for construction management services and on-site daily supervision of the work.

5.9.2 G2G FARA

G2G, FARA is a recommended approach for simple, low cost, short duration projects. G2G, FARA follows ADS 220.

Under G2G FARA method of funding, USAID agrees to finance an activity without involving any form of contractual relationship with the contractors. The amount of reimbursement is generally fixed in advance based on cost estimates and specifications that have been reviewed and approved by USAID. Reimbursement is made to the HCIU when an activity, a sub-activity, or a quantifiable element within an activity is physically completed according to the approved specifications. The emphasis is on reimbursement based on outputs rather than inputs or costs. The reimbursement amount is fixed in advance, but may be more or less than the actual contract amount. USAID is not obliged to pay for any contractual cost overruns or variation orders. USAID is not a party to the construction contract and does not approve the selected contractor, the contract, or any of its administrative actions. USAID has monitoring responsibility to ensure that the final product complies with USAID requirements and meets the specifications. USAID may acquire the services of a U.S. or local A-E firm to provide construction management and on-site daily supervision of the work. USAID liability and the risk involved are much less than that in a HCC.

A brief general comparison between direct contracting (FAR Based), and HCC and FARA

(FIDIC based) in USAID funded construction programs is included in Appendix II of this supplementary training document.

5.10 PLANNING FOR THE USE OF HOST COUNTRY CONTRACTS

When considering the use of HCC in USAID funded construction programs, USAID should address some important questions including:

- ✓ Has USAID assessed the Host Country procurement and contracting capabilities? Does the result of the assessment indicate that HCIU have the capability to undertake the specific actions? If the assessment has revealed some weaknesses, are these weaknesses not significant, and does the Mission have a plan to address them?
- ✓ Do prospective construction contractors, subcontractors, and suppliers possess the technical and financial capability to undertake the construction activity?
- ✓ Are prospective A-E firms qualified to perform the required engineering tasks?
- ✓ What is the risk involved and how can it be mitigated?
- ✓ Is sustainability an issue?
- ✓ Does the USAID mission have qualified staff to manage the design, procurement, and implementation of the project?
- ✓ Does the host country legal system have the capacity for settlement of disputes that may arise at any stage of the contract?

5.11 HOST COUNTRY CONTRACTING CHALLENGES

When using HCC in construction, USAID faces a number of challenges including:

- ✓ HCIU may lack the required technical, financial, management, and administrative capabilities
- ✓ Contractors may not have the required capabilities (technical, experience, resources, familiarity with type of contract)
- ✓ Cultural issues and language barriers
- ✓ Local contracting environment and transparency issues
- ✓ Unclear contract document, clauses, and specifications, and roles and responsibilities
- ✓ Inefficient legal systems
- ✓ Delays in responding to correspondence and variation orders requests
- ✓ Site access and right of way issues
- ✓ Required permits by multiple government authorities
- ✓ Host Country taxes and levies
- ✓ Sustainability issues (O&M costs, preventive maintenance, cost recovery)

5.12 USAID SUPPORT TO HCIU UNDER HC CONSTRUCTION CONTRACTING

USAID has important development goals. A Host Country Construction Contract is not only a mechanism to procure construction services; it is also a tool for development. In designing Host Country procurement, USAID should consider how to develop the capabilities of the HCIU and provide it with the required assistance to implement HCC in a way satisfactory to USAID. As an example, USAID may fund the A-E contract to provide design and construction management services throughout the construction program. This helps ensure a successful project and can also serve as an effective on-the-job training opportunity for HCIU officials. USAID may

fund an institutional development technical assistance contract to provide a more structured approach to enhancing the capabilities of the HCIU officials for the short and long term.

5.13 HCC REPORTING REQUIREMENTS

Under a Host Country Construction Contract, the contractor submits a number of reports to the A-E firm. These reports cover a wide variety of areas including: technical, financial, staffing, management, scheduling, etc. The A-E firm submits to USAID monthly and quarterly reports covering all aspects of the project. These reports cover all aspects of the project, including: progress and anticipated activities; major problem areas and recommendations; contractor staffing; contractor's compliance with contract requirements; mobilization plan; schedule/critical activities using the Critical Path Method (CPM); financial summary; cash flow; cost to complete; outstanding and anticipated claims; etc.

5.14 USAID MANAGEMENT OF HOST COUNTRY CONSTRUCTION PROJECTS

USAID Missions planning to finance construction projects should have technically qualified staff to manage the design, procurement, and monitoring of engineering and construction activities including engineers and in addition staff experienced in contracting, finance, and legal issues.

It is equally important to realize that while some USAID missions have little or no experience in the design, procurement, and implementation of construction projects using HCC, there are some missions with long experience and qualified engineering staff, who have successfully completed large and small infrastructure programs using HCC. This provides an excellent opportunity for cooperation between missions to develop the capacity of missions when needed.

6. LESSONS LEARNED AND BEST PRACTICES

Years of experience with HCC under USAID infrastructure portfolio have taught a number of valuable lessons and a host of best practices that could be considered in applying successfully the HCC mechanism. Although a detailed discussion about lessons learned and best practices requires a much deeper space than this supplementary training document can provide the following are a few but important considerations.

- ✓ Planning for the entire project is essential. This saves a lot of time during procurement and implementation
- ✓ Plan for sustainability from the very early stages of the project design
- ✓ Teamwork is crucial. Success and failure affect the entire team
- ✓ The Employer is the ultimate recipient of the facilities being constructed under any construction project and should be involved in every step of the project design and implementation. HC buy-in is an important factor of success
- ✓ Use a simple design and select the most adequate appropriate design for the locality
- ✓ Work closely with the HCIU and the A-E firm to identify issues as early as possible
- ✓ Analyze potential risks and develop a risk mitigation plan
- ✓ Understand and respect other cultures in developing countries. Understand HC rules and regulations. Dealing with a different culture needs more effort
- ✓ Clearly define the role of each party
- ✓ Clear and well-defined scope and specifications reflect your expectations. You get what you specify in the contract
- ✓ Ensure competition and transparency of the procurement process
- ✓ Prequalifying contractors minimizes the number of bids and minimizes risk
- ✓ Clearly define criteria for evaluation and selection to avoid delay and protests
- ✓ Discuss areas of controversy as early as possible. Chances of resolving disagreements are higher at the beginning of the contract execution
- ✓ Clearly state and well document USAID requirements
- ✓ Do not repeat contract clauses in different parts of the contract to avoid contradiction. Clear contract clauses represent the basis for successful implementation
- ✓ Use Value Engineering, Partnering, and Alternate Dispute Resolution as effective tools for resolving disagreements
- ✓ Adhere to schedule and timely action by all parties. Continuously review the Project Schedule and identify critical activities

- ✓ Use a qualified A-E firm. The A-E firm plays a major and crucial role in the success of any project. A qualified A-E firm ensures a better product. It is the USAID representative on the job. Delegating adequate authority to the A-E firm enables it to perform the job properly
- ✓ Site visits are essential for better understanding implementation issues

Provide for joint site visits that will enable USAID and HCIU to witness progress and issues together

- ✓ Allocate adequate and realistic time for obtaining permits and securing right of way
- ✓ Work with your partners to explain USAID rules and regulations

APPENDIX I: REFERENCES AND USEFUL INFORMATION

ADS 305, Host Country Contracts

ADS 201, Program Cycle Operational Policy

ADS 204, Environmental Procedures

ADS 205, Integrating Gender Equality and Female Empowerment in USAID's Program Cycle

ADS 220, Use of Reliable Partner Country Systems for Direct Management and Implementation of Assistance

ADS 221, USAID's Procedures for Implementing International Agreements for Tied and United Aid

ADS 300, Agency Acquisition and Assistance (A&A) Planning

ADS 301, Responsibility for Procurement

ADS 302, USAID Direct Contracting

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

ADS 304, Selecting the Appropriate Acquisition and Assistance (A&A) Instrument

FAR 36, Construction and Architect-Engineer Contracts

FAR 48, Value Engineering

USAID Construction Assessment Report (2014)

<http://fidic.org>

APPENDIX II: GENERAL COMPARISON BETWEEN FAR-BASED AND FIDIC-BASED CONSTRUCTION CONTRACTS' USE AND FEATURES IN USAID FUNDED PROGRAMS

Contracting Authority	FAR-Based Construction Contracts	FIDIC-Based Construction Contracts	
		Host Country Contracts (HCC)	(US) Government to (Partner) Government (G2G)
Contract Owner	United States Government	Host Country Implementation Unit (HCIU)	Partner Government Implementation Entity (PGIE)
Appropriate Use	Used in USAID Direct Contracting, ADS 302 and FAR	Used in Host Country Contracting (HCC), ADS 305	Used generally in Government to Government (G2G) Fixed Amount or Cost Reimbursement, ADS 220
Statutes and Regulations and Systems Used	Follow the Federal acquisition Regulations (FAR) and USAID Acquisition Regulations (AIDAR) – 48 CFR Chapter 7, A mandatory Reference for ADS 302	<p>The Host Country Implementing Unit uses its administrative and procurement systems in accordance with USAID Host Country Contracting Guidelines (ADS 305)</p> <p>Follows FIDIC Standard Conditions of Contract for Construction Projects.</p> <ul style="list-style-type: none"> Based on the <i>FIDIC Conditions of Contract for Work of Civil Engineering Construction</i>, Part 1 General Conditions, a guidance provided as attachment 2R to USAID Country Contracting Handbook Chapter 2, procurement of Construction Service, an Internal Mandatory Reference to ADS305, and Part II, Conditions of 	The PGIE uses its own systems (Financial, procurement, contracting, etc.) and may use FIDIC Standard Conditions of Contract or the PGIE's own contract documents, which may be based on FIDIC or similar in most aspects in countries where USAID has implemented construction programs using Host Country Contracts.

Contracting Authority	FAR-Based Construction Contracts	FIDIC-Based Construction Contracts	
		Host Country Contracts (HCC)	(US) Government to (Partner) Government (G2G)
		Particular Application, Attachment 2S under the same.	
Contract Owner's Title	USAID	Employer (Host Government)	Employer (Partner Government)
Issued By	USAID Procurement Office	Host Country Implementing Unit	Partner Government Implementing Entity
USAID Technical Representative	Contracting Officer Representative (COR)	USAID Activity Manager	USAID Activity Manager
Engineer or Construction Contract Manager	A-E Firm under authority of the Contracting Officer	Engineer	Engineer or Consultant Engineer
Contractual Vehicle used for requesting, documenting, and authorizing construction changes	Change Order	Variation Order (Variations)	Variation Order (Variations)
Privity and Relationship when the Government issues the Construction Contract	USAID and the Construction Contractor are the two parties to the construction contract (USAID may award a direct contract to an A&E firm to provide general supervision for compliance with the terms of the agreement between USAID and the host country)	The Host Country Government Implementing Unit and the Construction Contractor are the two parties to the construction contract	The PGIE and the Construction Contractor are the two parties to the Construction Contract
USAID Financial Role in each of the processes	USAID makes payments directly to the contractor based on contract payment provisions	USAID acts as a Financer and pays the contractor directly based on progress of the work and a request from the Host Country to make a specified payment supported by a certification from the Engineer	USAID usually reimburses the PGIE a fixed amount upon completion and acceptance by USAID of completed projects or milestones based on either estimates (Fixed Amount Reimbursement-Implementation Letter); OR

Contracting Authority	FAR-Based Construction Contracts	FIDIC-Based Construction Contracts	
		Host Country Contracts (HCC)	(US) Government to (Partner) Government (G2G)
			for actual cost (Cost Reimbursement) for activities or meeting milestones
Who conducts design and construction oversight?	A&E is the firm conducting design and construction oversight management and its roles are governed by FAR 36 requirements	The term used for the firm conducting design and construction oversight management is “Engineer”. Often has much larger responsibilities representing the Employer (Owner) than what is permitted under the FAR	The term used for the firm conducting design and construction oversight management is “Engineer” when FIDIC or FIDIC based contracting is used. The “Engineer” often has much larger responsibilities representing the Employer (Owner) than what is permitted under the FAR.
Who signs the contract and manages changes	USAID Contracting Officer (CO) authorizes and signs the contract document and any subsequent Change Orders	The Host Country Implementation Unit signs the FIDIC- based construction contract and has the responsibility for processing any subsequent “Variation Order” The Host Country Implementation Unit may delegate authority to the “Engineer” to issue some VOs	The PGIE signs the (often FIDIC based) construction contract and has the responsibility for processing any subsequent “Variation Order” The PGIE may delegate authority to the “Engineer” to issue some VOs
USAID’s Authority to review and approve administrative actions	USAID Contracting Officer has the authority to review and approve all contract administrative actions	When the total contract amount is anticipated to exceed \$250,000 in value, USAID approval is required for the following: <ol style="list-style-type: none"> 1. Notices to prospective offerors, e.g., Commerce Business Daily notices; 2. Lists of prequalified offerors, if any, prior to issuance of the solicitation document; 3. Complete solicitation document, prior to issuance; 4. The contractor selection method (may be part of approval of solicitation document); 5. The selected contractor; 6. Any host Contracting Agency decision to terminate negotiations with the highest ranked offeror and to initiate negotiations with the next 	USAID does not interfere in the contractual relationships between the PGIE and any of its contractors, and does not review or approve Variation Orders, or any Contract Administrative actions

Contracting Authority	FAR-Based Construction Contracts	FIDIC-Based Construction Contracts	
		Host Country Contracts (HCC)	(US) Government to (Partner) Government (G2G)
		<p>ranked offeror or to reject all offers;</p> <p>7. The contract, prior to execution;</p> <p>8. Signed contract documents, before financing; and</p> <p>9. Contract administrative actions such as subcontracts, amendments, and change orders, as determined by the Mission and stipulated in an Activity Implementation Letter. (ADS 305.3.1 USAID Approvals of Contracting Steps)</p>	

ACKNOWLEDGEMENT

An earlier abbreviated version of this document was originally drafted by Moenes Youannis in 2012 under a USAID contract with International Resources Group. The document was updated, expanded on, and redrafted in 2017 by Moenes Youannis. It also addresses comments and questions received during the delivery of ECCM courses over a 4 period.

Mr. Youannis has more than 30 years of extensive management experience in the conceptualization, design, negotiations, planning, implementation, and monitoring of infrastructure programs. He served for 27 years as USAID Authorized Representative and Team Leader for programs totaling more than \$400 million in Egypt, where his responsibilities included: grant agreements, and fixed amount reimbursement agreements (FARA); liaising with other donors; and selecting and supervising US and Egyptian construction contractors and engineering teams for implementing infrastructure programs using G2G, HCC, and USAID direct contracting mechanisms. He is currently Vice President for Operations for ME&A, Inc. in Washington.

U.S. Agency for International Development

1300 Pennsylvania Avenue, NW

Washington, DC 20523

Tel: (202) 712-0000

Fax: (202) 216-3524

www.usaid.gov