



Special Provisions for Acquisition

A Mandatory Reference for ADS Chapter 302

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Special Provisions for Acquisition

The following provisions are to be inserted in solicitations and contracts as prescribed in the relevant subject matter area in [ADS 302, USAID Direct Contracting](#). The provisions must be incorporated into Section H of the Uniform Contract Format (UCF) unless otherwise indicated in the prescription of the provision. Provisions must be in full text unless otherwise indicated, and must not be altered, unless a deviation in accordance with procedures in [ADS 302](#) is approved.

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1. Conscience Clause Implementation - SOLICITATION PROVISION (February 2012)

For use in any new acquisition solicitation intending to obligate FY04 or later funds available for HIV/AIDS activities, regardless of the program account. Please refer to [ADS 302.3.5.16.a](#) and AAPD 14-04, Section 2.D for additional guidance.

302.3.5.16(a)(1) CONSCIENCE CLAUSE IMPLEMENTATION (ACQUISITION) – SOLICITATION PROVISION (February 2012)

- (a) An organization, including a faith-based organization, that is otherwise eligible to receive funds under this agreement for HIV/AIDS prevention, treatment, or care—
 - (1) Shall not be required, as a condition of receiving such assistance—
 - (i) To endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS; or
 - (ii) To endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection; and
 - (2) Shall not be discriminated against in the solicitation or issuance of grants, contracts, or cooperative agreements for refusing to meet any requirement described in paragraph (a)(1) above.
- (b) An offeror who believes that this solicitation contains provisions or requirements that would require it to endorse or use an approach or participate in an activity to which it has a religious or moral objection must so notify the cognizant Contracting Officer in accordance with AIDAR 752.7006 (Notices) as soon as possible, and in any event not later than 15 calendar days before the deadline for submission of applications under this solicitation. The offeror must advise which activity(ies) it could not implement and the nature of the religious or moral objection.
- (c) In responding to the solicitation, an offeror with a religious or moral objection may compete for any funding opportunity as a prime partner, or as a leader or member of a consortium that comes together to compete for an award. Alternatively, such offeror may limit its proposal to those activities it can undertake and should indicate in its submission the activity(ies) it has excluded based on religious or moral objection. The offeror's proposal will be evaluated based on the activities for which a proposal is submitted, and will

not be evaluated favorably or unfavorably due to the absence of a proposal addressing the activity(ies) to which it objected and which it thus omitted. In addition to the notification in paragraph (b) above, the offeror must meet the submission date provided for in the solicitation.

[End of Provision]

2. Conscience Clause Implementation (February 2012)

For use in any new acquisition award or modification of an existing acquisition award (if not already incorporated into the award) obligating FY04 or later funds available for HIV/AIDS activities, regardless of the program account. In case of an Indefinite Delivery-Indefinite Quantity Contract (IDIQ), the CO must insert the clause in the basic IDIQ contract at the time of executing the IDIQ, or by a bilateral modification, if not already incorporated into the contract. Such provision shall be deemed to apply to any order placed under the IDIQ for HIV/AIDS activities. Please refer to [ADS 302.3.5.16.a](#) and AAPD 14-04, Section 2.D for additional guidance.

302.3.5.16(a)(2) CONSCIENCE CLAUSE IMPLEMENTATION (February 2012)

An organization, including a faith-based organization, that is otherwise eligible to receive funds under this agreement for HIV/AIDS prevention, treatment, or care—

- (a) Shall not be required, as a condition of receiving such assistance—
 - (1) To endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS; or
 - (2) To endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection; and
- (b) Shall not be discriminated against in the solicitation or issuance of grants, contracts, or cooperative agreements for refusing to meet any requirement described in paragraph (a) above.

[End of Provision]

3. Condoms (Acquisition) (September 2014)

For use in any new acquisition solicitation, and any new acquisition award or modification to an existing award obligating or intending to obligate FY04 or later funds available for HIV/AIDS activities, regardless of the program account. In case of an Indefinite Delivery-Indefinite Quantity Contract (IDIQ), the CO must insert the clause in the basic IDIQ contract at the time of executing the IDIQ or by a bilateral modification. Such provision shall be deemed to apply to any order placed under the IDIQ for HIV/AIDS activities. Please refer to [ADS 302.3.5.16](#) for additional guidance.

302.3.5.16(a)(3) CONDOMS (ACQUISITION) (September 2014)

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

This fact sheet may be accessed at:

<http://www.usaid.gov/sites/default/files/documents/1864/CondomSTIIssueBrief.pdf>.

The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract for HIV/AIDS activities.

[End of Provision]

4. Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking (September 2014)

For use in any new acquisition solicitation, and any new acquisition award or modification to an existing award obligating or intending to obligate FY04 or later funds available for HIV/AIDS activities, regardless of the program account. In case of an Indefinite Delivery-Indefinite Quantity Contract (IDIQ), the CO must insert the clause in the basic IDIQ contract at the time of executing the IDIQ or by a bilateral modification. Such provision shall be deemed to apply to any order placed under the IDIQ for HIV/AIDS activities. Please refer to [ADS 302.3.5.16](#) and AAPD 14-04, Section 2.E for additional guidance.

302.3.5.16(a)(4) PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (September 2014)

- (a) This contract is authorized under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Pub.L. No. 108-25), as amended. This Act enunciates that the U.S. Government is

opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. The contractor shall not use any of the funds made available under this contract to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

- (b)(1) Except as provided in (b)(2), by its signature of this contract or subcontract for HIV/AIDS activities, a non-governmental organization or public international organization awardee/subawardee agrees that it is opposed to the practices of prostitution and sex trafficking.
- (b)(2) The following organizations are exempt from (b)(1):
- (i) The Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency.
 - (ii) U.S. non-governmental organization recipients/subrecipients and contractors/subcontractors.
 - (iii) Non-U.S. contractors and subcontractors are exempt from (b)(1) if the contract or subcontract is for commercial items and services as defined in FAR 2.101, such as pharmaceuticals, medical supplies, logistics support, data management, and freight forwarding.
- (b)(3) Notwithstanding section (b)(2)(iii), not exempt from (b)(1) are non-U.S. contractors and subcontractors that implement HIV/AIDS programs under this contract or subcontract by:
- (i) Providing supplies or services directly to the final populations receiving such supplies or services in host countries;
 - (ii) Providing technical assistance and training directly to host country individuals or entities on the provision of supplies or services to the final populations receiving such supplies and services; or
 - (iii) Providing the types of services listed in FAR 37.203(b)(1)-(6) that involve giving advice about substantive policies of a recipient, giving advice regarding the activities referenced in (i) and (ii), or making decisions or functioning in a recipient's

chain of command (e.g., providing managerial or supervisory services approving financial transactions, personnel actions).

- (c) The following definitions apply for purposes of this provision:
- “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.
 - “Prostitution” means procuring or providing any commercial sex act and the “practice of prostitution” has the same meaning.
 - “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (22 U.S.C. 7102(9)).
- (d) The contractor must insert this provision in all subcontracts for HIV/AIDS activities.
- (e) Any violation of this provision will result in the immediate termination of this award by USAID.
- (f) This provision does not affect the applicability of FAR 52.222-50 to this contract.

[End of Provision]

5a. LIMITATION ON SUBCONTRACTING TO NON-LOCAL ENTITIES (May 2012)

(For use in all solicitations and resulting contracts, financed with FY 2012/2013 funds, where competition is limited to local entities. Please refer to ADS 302, section 302.3.5.17, “Awards Limited to Local Competition” for additional guidance. For solicitations and awards financed fully or in part with FY14 funds, use the revised provision in 6b below.)

302.3.5.17 Limitation on Subcontracting to Non-Local Entities (May 2012)

(a) **Applicability.** This clause applies to (i) contracts that have been awarded to those local entities under the authority of and as defined in Section 7077 of Public Law 112-74, the Consolidated Appropriations Act, 2012 (P.L. 112-74), also known as “Local Competition Authority” and (ii) contracts awarded to local entities (as defined in Section 7077 of Public Law 112-74) under the authority at AIDAR 706.302-70.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract for—

- (1) Services (except construction), at least 50 percent of the cost of contract performance incurred for personnel must be expended for employees of the prime/local entity.
- (2) Supplies (other than procurement from a non-manufacturer of such supplies), the prime/ local entity concern must perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
- (3) General construction, the prime/ local entity concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
- (4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(c) By submission of an offer and execution of a contract, the Offeror/Contractor represents that it is an individual, a corporation, a nonprofit organization, or another body of persons that—

- (1) Is legally organized under the laws of;
- (2) Has as its principal place of business or operations in; and
- (3) Either is--
 - (A) majority owned by individuals who are citizens or lawful permanent residents of; or
 - (B) managed by a governing body the majority of whom are citizens or lawful permanent residents of; a country in which this contract will be primarily performed.

(d) For purposes of this clause, “majority owned” and “managed by” include, without limitation, beneficiary interests and the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the organization's managers or a majority of the organization's governing body by any means.

(END OF PROVISION)

5b. LIMITATION ON SUBCONTRACTING TO NON-LOCAL ENTITIES (July 2014)

*(For use in all solicitations and resulting contracts, financed fully or in part with FY2014 funds, where competition is limited to local entities. The previous version of this provision in 6a. above is still applicable to awards financed with FY2012/2013 funds. This revised version of the provision must be used for all awards financed fully or in part with FY14 funds. Please refer to [ADS 302](#), sections **302.3.4.5.e** and **302.3.5.17**, “Awards Limited to Local Competition” for additional guidance.)*

302.3.5.17 Limitation on Subcontracting to Non-Local Entities (July 2014)

- (a) Applicability. This provision applies to:
- (i) Contracts that have been awarded to those local entities under the authority of and as defined in Section 7077 of Public Law 112-74, the Consolidated Appropriations Act, 2012 (P.L. 112-74), as amended by Section 7028 of Public Law 113-76, the Consolidated Appropriations Act, 2014, also known as "Local Competition Authority"; and
 - (ii) Contracts awarded to local entities (as defined in Section 7077 of Public Law 112-74) under the authority at AIDAR 706.302-70 Impairment of foreign aid programs.
- (b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract for—
- (1) Services (except construction), at least fifty (50) percent of the cost of contract performance incurred for personnel must be expended for employees of the prime/local entity.
 - (2) Supplies (other than procurement from a non-manufacturer of such supplies), the prime/ local entity concern must perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
 - (3) General construction, the prime/ local entity concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
 - (4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.
- (c) By submission of an offer and execution of a contract, the Offeror/Contractor represents that it is an individual, a corporation, a nonprofit organization, or another body of persons that:
- (1) Is legally organized under the laws of;
 - (2) Has as its principal place of business or operations in;
 - (3) Is majority owned by individuals who are citizens or lawful permanent residents of; and
 - (4) Is managed by a governing body the majority of who are citizens or lawful permanent residents of
- the country in which this contract will be primarily performed.

(d) For purposes of this clause, “majority owned” and “managed by” include, without limitation, beneficiary interests and the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the organization's managers or a majority of the organization's governing body by any means.

(END OF PROVISION)

6. USAID-FINANCED THIRD-PARTY WEB SITES (August 2013)

*(For use in all USAID-funded solicitations and contracts that require development and/or maintenance of a third-party Web site to achieve the project implementation goals. Please refer to [ADS 302](#), section **302.3.5.19**, “USAID-Financed Third-party Web Sites” and [ADS 557](#), section **557.3.4.1**, “Web Sites Financed under Acquisition Instruments” for additional guidance.)*

302.3.5.19 USAID-Financed Third-party Web Sites (August 2013)

(a) Definitions:

“Third-party web sites”

Sites hosted on environments external to USAID boundaries and not directly controlled by USAID policies and staff, except through the terms and conditions of a contract. Third-party Web sites include project sites.

(b) The contractor must adhere to the following requirements when developing, launching, and maintaining a third-party Web site funded by USAID for the purpose of meeting the project implementation goals:

- (1) Working through the COR, the contractor must notify the USAID Bureau for Legislative and Public Affairs/Public Information, Production and Online Services (LPA/PIPOS) of the Web site URL as far in advance of the site's launch as possible.
- (2) The contractor must comply with Agency branding and marking requirements comprised of the USAID logo and brandmark with the tagline “from the American people,” located on the USAID Web site at www.usaid.gov/branding, and USAID Graphics Standards manual at <http://www.usaid.gov>.
- (3) The Web site must be marked on the index page of the site and every major entry point to the Web site with a disclaimer that states:

"The information provided on this Web site is not official U.S. Government information and does not represent the views or positions of the U.S. Agency for International Development or the U.S. Government."

- (4) The Web site must provide persons with disabilities access to information that is comparable to the access available to others. As such, all site content must be compliant with the requirements of the Section 508 amendments to the Rehabilitation Act.
- (5) The contractor must identify and provide to the COR, in writing, the contact information for the information security point of contact. The contractor is responsible for updating the contact information whenever there is a change in personnel assigned to this role.
- (6) The contractor must provide adequate protection from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted on the Web sites. To minimize security risks and ensure the integrity and availability of information, the contractor must use sound: system/software management; engineering and development; and secure-coding practices consistent with USAID standards and information security best practices. Rigorous security safeguards, including but not limited to, virus protection; network intrusion detection and prevention programs; and vulnerability management systems must be implemented and critical security issues must be resolved as quickly as possible or within 30 days. Contact the USAID Chief Information Security Officer (CISO) at ISSO@usaid.gov for specific standards and guidance.
- (7) The contractor must conduct periodic vulnerability scans, mitigate all security risks identified during such scans, and report subsequent remediation actions to CISO at ISSO@usaid.gov and COR within 30 workdays from the date vulnerabilities are identified. The report must include disclosure of the tools used to conduct the scans. Alternatively, the contractor may authorize USAID CISO at ISSO@usaid.gov to conduct periodic vulnerability scans via its Web-scanning program. The sole purpose of USAID scanning will be to minimize security risks. The contractor will be responsible for taking the necessary remediation action and reporting to USAID as specified above.

(c) For general information, agency graphics, metadata, privacy policy, and 508 compliance requirements, refer to <http://www.usaid.gov>

(END OF PROVISION)

7. Submission of Datasets to the Development Data Library (DDL)

For use in all solicitations and contracts. Please refer to [ADS 302, USAID Direct Contracting, Section 302.3.5.22](#), “Submission of Datasets to the Development Data Library (DDL)” for additional guidance.

302.3.5.22 Submission of Datasets to the Development Data Library (DDL) (October 2014)

(a) Definitions. For the purpose of submissions to the DDL:

- (1) “Dataset” is an organized collection of structured data, including data contained in spreadsheets, whether presented in tabular or non-tabular form. For example, a Dataset may represent a single spreadsheet, an extensible mark-up language (XML) file, a geospatial data file, or an organized collection of these. This requirement does not apply to aggregated performance reporting data that the contractor submits directly to a USAID portfolio management system or to unstructured data, such as email messages, PDF files, PowerPoint presentations, word processing documents, photos and graphic images, audio files, collaboration software, and instant messages. Neither does the requirement apply to the contractor’s information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information. Datasets submitted to the DDL will generally be those generated with USAID resources and created in support of Intellectual Work that is uploaded to the Development Experience Clearinghouse (DEC) (see AIDAR 752.7005 “Submission Requirements for Development Experience Documents”).
- (2) “Intellectual Work” includes all works that document the implementation, monitoring, evaluation, and results of international development assistance activities developed or acquired under this award, which may include program and communications materials, evaluations and assessments, information products, research and technical reports, progress and performance reports required under this award (excluding administrative financial information), and other reports, articles and papers prepared by the contractor under the award, whether published or not. The term does not include the contractor’s information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information.

(b) Submissions to the Development Data Library (DDL)

- (1) The Contractor must submit to the Development Data Library (DDL), at www.usaid.gov/data, in a machine-readable, non-proprietary format, a copy of any Dataset created or obtained in performance of this award,

including Datasets produced by a subcontractor at any tier. The submission must include supporting documentation describing the Dataset, such as code books, data dictionaries, data gathering tools, notes on data quality, and explanations of redactions.

- (2) Unless otherwise directed by the Contracting Officer (CO) or the Contracting Officer Representative (COR), the contractor must submit the Dataset and supporting documentation within thirty (30) calendar days after the Dataset is first used to produce an Intellectual Work or is of sufficient quality to produce an Intellectual Work. Within thirty (30) calendar days after award completion, the contractor must submit to the DDL any Datasets and supporting documentation that have not previously been submitted to the DDL, along with an index of all Datasets and Intellectual Work created or obtained under the award. The contractor must also provide to the COR an itemized list of any and all DDL submissions.

The contractor is not required to submit the data to the DDL, when, in accordance with the terms and conditions of this award, Datasets containing results of federally funded scientific research are submitted to a publicly accessible research database. However, the contractor must submit a notice to the DDL by following the instructions at www.usaid.gov/data, with a copy to the COR, providing details on where and how to access the data. The direct results of federally funded scientific research must be reported no later than when the data are ready to be submitted to a peer-reviewed journal for publication, or no later than five calendar days prior to the conclusion of the award, whichever occurs earlier.

- (3) The contractor must submit the Datasets following the submission instructions and acceptable formats found at www.usaid.gov/data.
- (4) The contractor must ensure that any Dataset submitted to the DDL does not contain any proprietary or personally identifiable information, such as social security numbers, home addresses, and dates of birth. Such information must be removed prior to submission.
- (5) The contractor must not submit classified data to the DDL.

[End of Provision]

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