ADS Chapter 302

USAID Direct Contracting

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ADS 302 – USAID Direct Contracting

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ADS 302 – USAID Direct Contracting

302.1 OVERVIEW
Effective Date: 04/20/2006

This chapter contains the Agency's internal guidance, policy directives, and required procedures for the procurement of goods and services through direct contracts for the purposes of implementing Agency programs and supporting Agency logistics. Throughout this chapter, the terms "acquisition" and "procurement" are used interchangeably.

The guidance in this chapter does not apply to personal services contracts (PSCs).

302.2 PRIMARY RESPONSIBILITIES
Effective Date: 04/20/2006

As described in **ADS 103.3.10.7,** the Assistant Administrator for the Bureau for Management (AA/M) has designated to the Director, Office of Acquisition and Assistance (M/OAA), the responsibilities of the **Senior Procurement Executive**, the **Chief Acquisition Officer (CAO)**, and the **Head of the Contracting Agency (HCA)**.

a. The **Senior Procurement Executive** in OAA is responsible for the following:

(1) The management direction for USAID's Acquisition & Assistance (A&A) system, as delegated and described in **ADS 103**.

(2) Approval of Procurement Executive Bulletins (PEBs) (**http://inside.usaid.gov/M/OP/policy/PEBs/2005.html**) [Note: These documents are only available on the intranet.], which issue information on general guidance, best practices, reminders, and Frequently Asked Questions (FAQs).

b. The **Chief Acquisition Officer (CAO)**, in OAA is responsible for the following:

(1) Selecting and appointing contracting officers and terminating their appointments.

(2) Exercising, in person or by delegation, authorities as stated in the Federal Acquisition Regulation (FAR) subparts 1.3 and 1.6 and USAID Acquisition Regulations (AIDAR) subparts 701.3 and 701.6.

(3) Approving Acquisition & Assistance Policy Directives **(AAPDs)**, which provide agency policy, interim implementation or advance notification of A&A regulations, procedures, and other policy information.

(4) Approving contractor salaries that exceed the USAID Contractor Salary Threshold (USAID CST) **(302.3.8.4)**

c. The **Head of the Contracting Activity (HCA)**, as defined in **AIDAR 702.170-10**, is responsible for the following:

(1) Procuring supplies and services necessary to carry out the programs and activities for which he or she is responsible, including executing contracts within the authorities specified in AIDAR subpart 701.601.

(2) Establishing procurement policies, procedures, and standards appropriate for these programs and activities, subject to the policy stated in this chapter.

d. The **Bureau for Management, Office of Acquisition & Assistance (M/OAA)**, is responsible for the following:

(1) Developing, issuing, and maintaining the Agency's acquisition regulations, procedures, and standards for issuance, in accordance with established Agency delegations and requirements.

(2) Evaluating the Agency's procurement system and providing recommendations to the Procurement Executive regarding the certification specified in 302.2 para.b(1), and for providing technical support to overseas Contracting Officers (COs).

e. The **Contract Review Board** is responsible for reviewing solicitations and award documents exceeding $10 million for acquisitions, consistent with the policy found in 302.3.1.2.

f. **Contracting Officers (COs) and Negotiators** are responsible for entering into, administering, and terminating USAID-direct contracts in accordance with the limitations of their delegated authority, policy directives, and required procedures.

g. The **Activity Manager** is responsible for drafting the request for an individual procurement, to include the Statement of Work (SOW) and appropriate evaluation plan.

h. The **Cognizant Technical Officer (CTO)**, generally in the office of the Strategic Objective Team (SOT) sponsoring the activity, is designated by the Contracting Officer and is responsible for the technical oversight and administration of the activity.

302.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES
Effective Date: 07/01/2007

302.3.1 Summary of Acquisition Policy, Regulations, and Procedures
Effective Date: 04/20/2006

302.3.1.1 Applicability of FAR, AIDAR, CIBs, AAPDs, and PEBs
Effective Date: 04/20/2006

USAID executes all direct procurement in accordance with the FAR and the AIDAR. When it is necessary to implement timely changes prior to formal amendment of agency procurement regulations and policy, the Director of the Office of Acquisition and Assistance issues **Acquisition & Assistance Policy Directives (AAPDs).** AAPDs replaced the Contract Information Bulletins (CIBs) format; however, some CIBs are still in effect. USAID requires that the same procedures specified for the agency's Automated Directives System (ADS) apply to AAPDs since they are officially considered a part of this and other Series 300 chapters. **Procurement Executive Bulletins (PEBs)** provide information regarding general guidance, best practices, reminders, and frequently asked questions (FAQs), in addition to Agency policy and regulations**.**

302.3.1.2 Contract Review Board (CRB)
Effective Date: 07/01/2007

a. The Contract Review Board is comprised of Contracting Officers (COs) and, when available, a General Counsel (GC) representative. The CRB is responsible for reviewing documentation for acquisition actions that exceed $10,000,000. This includes basic IQCs where the total estimated ceiling is expected to exceed $10,000,000 for single or multiple awards in a sector.

The CRB reviews these actions for the following reasons:

- Minimizing vulnerabilities that may lead to potential protests, disputes, claims, and litigation against the Agency;
- Providing senior level advice on contracting actions;
- Supporting the Contracting Officer; and
- Ensuring the consistency of procurement documentation.

b. Stages of Required CRB Review

For both USAID/Washington and overseas Missions, COs must submit actions to the CRB at the following stages of the procurement process:

- Pre-solicitation;
- Competitive Range Determination; and
- Pre-Award.

Contracting Officers must follow the policies and procedures for CRB submission requirements and CRB findings provided in the **Contract Review Board Guidelines**.

c. CRB Findings

CRB findings are categorized as mandatory or advisory. The CO must include in the submittal documentation all previous CRB comments, including the corrective action the CO has taken to address all (both mandatory and advisory) findings.

(1) The CO must address mandatory findings. The Cognizant CO must advise the CRB, in writing, within three business days after receipt of CRB mandatory findings of the corrective action taken for each finding, including Pre-Award findings. The Chairperson will respond within two business days to the Cognizant CO whether the corrective actions taken are acceptable to the CRB. If the CO does not receive an e-mail response from the CRB Chairperson within two business days, he/she may proceed to the next phase.

(2) The CRB provides advisory findings for serious consideration by the Contracting Officers. The Cognizant CO must annotate the file as to the disposition of advisory findings.

302.3.1.3 Deviations

Effective Date: 07/01/2007

Contracting Officers must use the procedures in **AIDAR 701.4** when deviating from the policy directives or required procedures in this ADS chapter. However, no deviation may be made to the policy directive or required procedure in 302.3.6.10, Approval of Contractor Salaries Exceeding the USAID Contractor Salary Threshold (USAID CST).

302.3.2 Expedited Acquisition and Assistance (A&A) Procedures for Specific, High-Profile Activities and Programs

Effective Date: 04/20/2006

The following sections provide Administrator-approved expedited A&A procedures for specific, high-profile activities and programs.

302.3.2.1 USAID's Avian Influenza Pandemic Emergency Preparedness and Response Efforts

Effective Date: 03/27/2007

AAPD 06-06 Expedited A&A Procedures for Activities and Programs Related to USAID's Avian Influenza Pandemic Emergency Preparedness and Response Efforts (Revised)

This section currently consists of the information in the referenced AAPD. At a later time, USAID will incorporate this AAPD into this chapter, along with any other relevant information.

*302.3.2.2 HIV/AIDS and Infectious Disease Initiatives
Effective Date: 02/07/2008

CIB 01-04, Expedited Acquisition and Assistance Procedures for the HIV/AIDS and Infectious Disease Initiatives

AAPD 07-05, USAID List of Approved HIV/AIDS Test Kits

AAPD 07-01 Procurement of Anti-Retrovirals for HIV/AIDS Programs

This section currently consists of the information in the referenced AAPDs/CIBs. At a later time, USAID will incorporate these AAPDs/CIBs into this chapter, along with any other relevant information.

302.3.2.3 Response to the Afghanistan Crisis
Effective Date: 04/20/2006

AAPD 03-06, Expedited Acquisition and Assistance Procedures for Afghanistan

This section currently consists of the information in the referenced AAPD. At a later time, USAID will incorporate this AAPD into this chapter, along with any other relevant information.

302.3.3 Contracting with a Foreign Governmental Organization
Effective Date: 04/20/2006

a. This section establishes policy directives and required procedures on contracting and subcontracting with foreign governmental organizations, which are defined as organizations that function as governing bodies, such as foreign ministries and local governments. The policy does not apply to contracts or subcontracts with foreign government-owned parastatal organizations, which function more like private sector commercial or non-profit organizations, and which are covered by the nationality restrictions in ADS Chapter 310, section 310.5.6d.

Both contracts and subcontracts with a foreign governmental organization may be necessary under some circumstances. These may occur either as USAID direct contracts with foreign governments, or as subcontracts executed by recipients of USAID contracts and assistance instruments with foreign ministries or other foreign governmental organizations.

b. Justification and Approvals (J&As)

Prior to entering into a contract or approving a subcontract with a foreign governmental organization, USAID requires a written J&A to ensure that USAID staff has thoroughly reviewed considerations. This requirement applies to contracts directly between USAID and the foreign governmental organization, subcontracts under contracts, and contracts under grants.

(1) The J&A must contain the following information:

(a) Identification of the J&A as a justification for procurement from a foreign governmental organization,

(b) A statement which concisely describes the specific need for a procurement from a foreign governmental organization,

(c) An explanation of why the foreign organization is the most appropriate source of supply, and

(d) Discussion of required deviations, waivers, etc.

(2) The contracting officer must coordinate and obtain advice from the Office of the General Counsel, Acquisition and Assistance (GC/A&A), or the Regional Legal Advisor (RLA).

(3) The approval thresholds are as follows:

(a) J&As which are $500,000 or less require approval by the Contracting Officer, and

(b) J&As which exceed $500,000 require approval by the Procurement Executive.

(4) The Contracting Officer must include copies of J&As in the contract file.

c. Guidance for review of proposed subcontract awards to foreign governments.

Contract Officers should consider the following items before contracting or subcontracting with a foreign governmental organization:

(1) Audit and accounting systems. Will the organization allow access to their books and records if USAID requires an audit provision in the contract?

(2) Reasonableness of cost/price. How can the Contracting Officer determine the price/cost reasonableness?

(3) Taxes. How will taxes be handled if they are required? Under USAID contracts FAR clauses 52.229-7 and 52.229-9 apply to contracts with foreign governments.

(4) Termination. Will the organization agree to contract termination provisions?

(5) Host country contribution. Would it be appropriate for the foreign governmental organization to provide some or all of the goods or services as part of its contribution under the Strategic Objective Agreement?

(6) Host country salary supplementation. As a general rule, USAID discourages salary supplements, except in very special circumstances and only with the proper justification.

(7) Clauses. Several mandatory clauses may not be applicable, thus requiring a deviation approved by the head of the contracting activity.

302.3.4 Acquisition Planning

Effective Date: 04/20/2006

This section provides policy directives and required procedures addressing the requirements which must be considered prior to issuance of a solicitation.

302.3.4.1 Limiting Competition – Justifications for Other than Full and Open Competition (JOFOCs)

Effective Date: 07/01/2007

a. Contracting Officers must provide a copy of all Justifications for other than Full and Open Competition (JOFOCs) for awards exceeding $250,000 (U.S.) and prepared in accordance with FAR 6.303, to the Agency Competition Advocate as defined in AIDAR 706.501.

b. This section provides two USAID Class JOFOCs, prepared and approved in accordance with FAR 6.303. Rather than preparing separate justifications, COs may use these Class JOFOCs provided they meet the Conditions for Use. The Conditions for Use are specified in Section II of the relevant Class JOFOC, which includes the certification and file documentation requirements.

(1) Overseas contracts of $250,000 or less

Class Justification for Other Than Full and Open Competition for Overseas Contracts of $250,000 or Less and for Personal Services Contracts with U.S. Citizens Contracted with Locally, with CCNs and TCNs Subject to the Local Compensation Plan

(2) Procurements of U.S. Manufactured Vehicles in overseas contracts of $250,000 or less. This justification deals only with competition; a nationality waiver may also be necessary if a U.S. manufactured vehicle is purchased from a local dealer.

Class Justification for Other than Full and Open Competition for Procurements by Missions of U.S. Manufactured Vehicles

302.3.4.2 Unsolicited Proposals

Effective Date:07/01/2007

a. The Evaluation Division of the Office of Acquisition and Assistance (M/OAA/E) is responsible for the policies and procedures concerning unsolicited proposals. Detailed guidance on submission requirements and criteria for consideration are contained in **Guidelines for Submitting Unsolicited Contract Proposals.**

b. Government personnel must not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that is available without restriction from another source. An offeror may restrict the data included in its unsolicited proposal by marking the proposal with the legend set forth in **FAR** 15.609.

302.3.4.3 Expediting Awards Made Under Section 8(a) of the Small Business Act

Effective Date: 07/01//2007

USAID and SBA have entered into a Partnership Agreement (PA) for expediting prime contract awards and purchase orders that are made under Section 8(a) of the Small Business Act. For guidelines on the current PA, see **USAID Procedures for Partnership Agreement between SBA and USAID for Expedited 8(a) Awards (ADS 302).**

302.3.4.4 Branding

Effective Date: 04/20/2006

Strategic Objective Teams must provide the contracting officer with a branding strategy, in accordance with **ADS 320.3.2.**

302.3.4.5 Organizational Conflict of Interest (OCI)

Effective Date: 04/20/2006

CIB 99-17, Organizational Conflict of Interest

This section currently consists of the information in the referenced CIB. At a later time, USAID will incorporate this CIB into this chapter, along with any other relevant information.

302.3.4.6 IQCs – Exception for Small Businesses

Effective Date: 04/20/2006

AAPD 02-05, New Authority - Exception for Small Businesses under Indefinite Quantity Contracts (IQCs)

This section currently consists of the information in the referenced AAPD. At a later time, USAID will incorporate this AAPD into this chapter, along with any other relevant information.

302.3.4.7 Logistic Support Overseas to USAID-Direct Contractors

Effective Date: 04/20/2006

The policy directives and required procedures in this section supplement other Agency regulations that govern the financing and provision in-kind of logistic support overseas to USAID-direct contractors. The policies support the following Agency objectives:

- Increase the use of contractors, in accordance with section 621 of the Foreign Assistance Act of 1961, as amended (FAA);
- Reduce the administration burden on the USAID establishment in Cooperating Countries; and
- Ensure, in accordance with section 636(h) of the FAA, that, to the maximum extent possible, local costs are met from Cooperating Country funds or United States (U.S.) Government-owned local currency, rather than from U.S. dollars.

Missions must make every effort to foster the development of country-wide standards for comparable classes of contractors. If a Mission provides logistic support, it must be at the minimum level necessary to ensure efficient, economical, and effective contractor performance.

a. **Request documents** must indicate the following:

(1) Each type of logistic support to be made available, such as transportation of personnel and personal goods and commodities; quarters; furnishings; equipment; utilities; supplies for residence and office; maintenance; and other supporting services including medical facilities.

(2) Whether each type of logistic support must be in cash or in kind, and whether it will be provided by the Cooperating Country, the Mission, or by the contractor itself.

The contracting office must ensure that the solicitation and contract reflects the information contained in the requesting document.

b. Financing of logistic support

Missions must use local currencies, in lieu of dollars, wherever feasible and in accordance with the financial management requirements in ADS 624, to defray the costs of contractor logistic support. This requirement applies regardless of whether the contractor, the Cooperating Country, or USAID arranges this support. Missions may use USAID dollars to finance logistic support overseas only when no reasonable alternative exists by which such support can be financed with local currency or provided in-kind. Local currencies must be contributed from the following sources, in descending order of preference, as listed here:

(1) The Cooperating Country's own budgetary or private resources,

(2) Cooperating Country-owned local currency that USAID or Pub. L. 480 programs generate, and

(3) U.S. Government-owned country-use local currency that USAID or Pub. L. 480 programs generate.

c. Arrangements for logistic support

Each Mission must assess the local logistic support situation and determine which of the following three methods, listed in descending order of preference, is best suited for its programs:

(1) Arrangements by the contractor itself where feasible and reasonably economical. (It is assumed that this method will apply in the case of virtually all construction contracts and in most of the larger engineering and technical assistance contracts.)

(2) Arrangements by the Cooperating Country where timely, adequate, and feasible in terms of the country's economic and administrative resources.

(3) Arrangements by the Mission alone or jointly with either or both of the other parties, in cases where the Mission Director determines that adequate and timely logistic support at reasonable cost cannot be ensured through the other options. In these cases, and when direct-hire resources are inadequate, the Mission is encouraged, wherever feasible, to contract for assistance in providing logistic support. OAA and GC provide guidance on logistic support contracts as necessary.

d. Exceptions

For each post, only the Mission Director, principal USAID officer at post, or individual serving in an "Acting" capacity has the authority to approve any exceptions to the policies in this section for that particular post. Mission staff must justify such exceptions and request approval in writing.

302.3.4.8 Grants Under Contracts (GUCs)

Effective Date: 04/20/2006

Subject to the conditions below, the Contracting Officer may enter into a contract that provides for a USAID-direct contractor to execute grants with non-governmental organizations (non-profits or for-profits).

a. The Grants Under Contracts procedure may be used only after the following clearance and approval have been obtained:

(1) Clearance from the cognizant GC or Legal Advisor and the Contracting Officer, and then

(2) The Head of the Contracting Activity (HCA) has approved its use in writing for a specific contract.

b. The grant program must meet the following conditions for approval:

(1) The total value of any individual grant to any U.S. organization must not exceed $100,000. This limitation does not apply to grant awards to non-U.S. organizations.

(2) It is not feasible to accomplish USAID objectives through normal contract and grant awards executed by USAID because either

(a) The burden of executing a number of small grant activities is particularly difficult for the responsible USAID Mission or office, or

(b) The grant program is incidental and relatively small in comparison to other technical assistance activities of the contractor.

(3) USAID must be significantly involved in establishing selection criteria and must approve the actual selection of grant recipients. USAID may be less significantly involved when grants are quite small and are incidental to the contractor's technical activities.

(4) USAID must ensure that the requirements that apply to USAID-executed grants will also apply to grants that a USAID contractor executes.

(5) USAID must retain, in the contracting arrangement, the ability to terminate the grant activities unilaterally in extraordinary circumstances.

(6) USAID does not require HCA approval when a contractor will only be managing or administering grants awarded by USAID.

(7) USAID does not authorize contractors to execute or administer cooperative agreements on USAID's behalf.

302.3.4.9 Information System Security

Effective Date: 07/01/2007

Information system security (ISS) is the protection of the integrity, availability, and confidentiality of automated information and the resources used to enter, store, process, and communicate the information. **ADS 545** details the security policies, consistent with federal regulations, mandates, and directives, that serve as the highest-level basis for information systems security within USAID.

In accordance with the **Contract Clause Guide for Unclassified Information System Security Systems and Services**, COs must ensure that appropriate ISS requirements are accurately specified, funded, and enforced for all USAID ISS acquisition, operation, and maintenance contracts under their supervision. The guide provides procedures on including ISS requirements in the acquisition of information systems and services.

This Guide applies to all contracts, regardless of the source of funding, when the contracted systems or services will be connected to, or requires the use of, a USAID general support system (GSS) in USAID/Washington (USAID/W) or at the Missions. USAID staff may also apply the Guide whenever a requestor, an acquisition or contracting authority, or the cognizant designated Information System Security Office (ISSO) believes it would be in the best interest of protecting USAID's information systems.

302.3.4.10 Implementation of Section 508 of the Rehabilitation Act of 1973

Effective Date: 07/01/2007

Section 508 of the Rehabilitation Act requires that federal electronic information technology (EIT) be accessible according to standards developed by the Access Board, an independent Federal agency devoted to accessibility for people with disabilities. These standards cover a variety of products, including computer hardware and software, Web sites, phone systems, fax machines, copiers, and similar technologies. **FAR 39.2** implements Section 508 of the Rehabilitation Act.

For any procurement actions that include qualifying EIT, COs must ensure that the requiring office provides a determination in the purchase request that the requirement is or is not qualifying Electronic and Information Technology (EIT) as defined by Section 508 of the Rehabilitation Act of 1973. Procurement actions includes but is not limited to contracts, task orders, delivery orders, and purchase orders). The determination must

be provided even if the EIT is an incidental component of a technical assistance services contract. Guidance on acquisition considerations for EIT is available at **USAID Implementation of Section 508 of the Rehabilitation Act of 1973.**

302.3.5 Solicitation Requirements and Provisions

Effective Date: 07/01/2007

When preparing solicitations, COs must adhere to the policies and corresponding solicitation clauses and provisions of this section, when applicable.

302.3.5.1 Branding

Effective Date: 04/20/2006

Reserved.

302.3.5.2 Standardization of Indefinite Quantity Contracts (IQCs)

Effective Date: 04/20/2006

AAPD 02-12, Standardizing USAID Indefinite Quantity Contracts

This section currently consists of the information in the referenced AAPD. At a later time, USAID will incorporate this AAPD into this chapter, along with any other relevant information.

302.3.5.3 IQCs – Exception for Small Businesses

Effective Date: 04/20/2006

AAPD 02-05, New Authority – Exception for Small Businesses under Indefinite Quantity Contracts (IQCs)

This section currently consists of the information in the referenced AAPD. At a later time, USAID will incorporate this AAPD into this chapter, along with any other relevant information.

302.3.5.4 Key Personnel

Effective Date: 07/01/2007

Contracts must designate as Key Personnel only the following:

- those personnel directly responsible for management of the contract, or
- those personnel whose professional/technical skills are certified by the Cognizant Technical Officer (CTO) as being essential for successful implementation of the activity.

a. Number of Key Personnel

The number of key personnel designated for any contract must not be more than five individuals or five percent of contractor employees working under the contract, whichever is greater.

b. Multiple Candidates

Contracting Officers must not require that contractors propose more than one individual for each position, since requiring contractors to submit multiple candidates for USAID's approval in key personnel positions is inappropriate. USAID is not entitled to select for the contractor, only to refuse a contractor's selection when the individual is found to be unacceptable for good and sufficient reason(s).

c. Sample solicitation provisions

(1) Availability of proposed key personnel

Where the qualifications of key personnel are a significant evaluation factor in the award of a contract, the Contracting Officer must be reasonably assured that the offeror has submitted the names of the proposed key personnel in good faith with the consent of those being proposed. To this end, the solicitation document must include language substantially as follows:

> "The contract proposed by this solicitation includes a key personnel clause, and the quality of key personnel proposed will be an evaluation factor. The offeror must include as part of its proposal a statement signed by all individuals proposed as key personnel, confirming their present intention to serve in the stated position and their present availability to serve for the term of the proposed contract."

(2) Contracting Officer consent to replace key personnel

The key personnel provision in the contract must require the prior consent of the Contracting Officer for any changes in key personnel, to ensure that replacements have at least equal qualifications. Sample language for this provision follows:

"Key Personnel

A. The key personnel that the Contractor must furnish for the performance of this contract are as follows:

Name/Position Title _____/_____
Name/Position Title _____/_____
Name/Position Title _____/_____
Name/Position Title _____/_____
Name/Position Title _____/_____

B. The personnel specified above are considered to be essential to the work being performed hereunder. Prior to replacing any of the

specified individuals, the Contractor must notify both the Contracting Officer and the USAID Cognizant Technical Officer reasonably in advance and must submit written justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No replacement will be made by the Contractor without the written consent of the Contracting Officer."

302.3.5.5 Reporting on Taxation of U.S. Foreign Assistance

Effective Date: 07/01/2007

The Department of State (DOS) has published its guidance for implementing Section 579 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of FY 2003 (FY 2003 FOAA). The Act requires certain steps to prevent countries from imposing taxes [defined as Value Added Tax (VAT) or custom duties] on U.S. foreign assistance, or if imposed, the countries must reimburse for the taxes assessed. The Act requires certain reporting to Congress.

Contracting Officers must insert the provision "Reporting on Taxation of U.S. Foreign Assistance" in all contracts that obligate fiscal year 2003 or later funds, except for the following:

- contracts funded with Operating Expense funds, Pub. L. 480 funds, or
- contracts where there will be no commodity transactions in a foreign country over the amount of $500.

This provision can be found in **Special Provisions for Acquisition**. The provision specifies that the contractor must submit reports to the CTO with copies to be submitted to the Embassy, Mission, or CFO's Cash Management and Payments Division (M/CFO/CMP). Section 302.3.8.8 provides guidance to COs on the appropriate office to be specified in the provision.

302.3.5.6 Grants Under Contracts (GUCs)

Effective Date: 04/20/2006

a. If the Head of the Contracting Activity (HCA) provides written approval per section **302.3.4.8**, the Contracting Officer may enter into a contract that provides for a USAID-direct contractor to execute grants with non-governmental organizations (non-profits or for-profits).

b. Contracting officers must

(1) Ensure that the requirements that apply to USAID-executed grants will also apply to grants that a USAID contractor signs,

(2) Retain in the contracting arrangement the ability to

(a) terminate the grant activities unilaterally in extraordinary circumstances, and

(b) require USAID significant involvement in establishing selection criteria and approval of the actual selection of grant recipients, as required by 302.3.4.8.

c. Further information on requirements for HCA approval is in **302.3.4.8.**

302.3.5.7 Government Cost Estimate in Negotiated Procurements

Effective Date: 04/20/2006

The Contracting Officer must not include the Government cost estimate in a competitive solicitation or Requests for Task Order Proposals. Solicitations for completion-form cost reimbursement contracts may state the magnitude of the requirement in terms of an estimated price range. COs must not include estimated price ranges in solicitations for a cost-reimbursement term (LOE) contract.

302.3.5.8 Defense Base Act (DBA) Insurance

Effective Date: 07/01/2007

a. DBA coverage is worker's compensation insurance, which provides that employees may collect in the event that an employee is injured while working on a contract financed by the U. S. Government and performed outside the U.S. FAR 28.305 requires DBA coverage for employees performing contracts approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87-195). COs must include both the FAR clause 52.228-3, Workers' Compensation Insurance (Defense Base Act), and the supplemental AIDAR clause 752.228-3 Worker's Compensation Insurance (Defense Base Act), unless a blanket waiver of coverage has been approved by the Department of Labor (DoL).

b. USAID awards a contract for Defense Base Act (DBA) coverage for USAID direct and host country contractors, which includes a provision for periodic adjustment of the basic rate. The contractor information and updated rates are announced through **Acquisition and Assistance Policy Directives (AAPDs)**. COs should consult the most recent AAPD for current rates and coverage.

c. For a further explanation of DBA, as well as information on blanket waivers of coverage approved by the DoL, see **Guidelines for DBA Coverage for Direct and Host Country Contracts.**

*302.3.5.9 RESERVED
Effective Date: 02/07/2008

[RESERVED SECTION]

302.3.5.10 Organizational Conflict of Interest (OCI)
Effective Date: 04/20/2006

CIB 99-17, Organizational Conflict of Interest

This section currently consists of the information in the referenced CIB. At a later time, USAID will incorporate this CIB into this chapter, along with any other relevant information.

302.3.5.11 Implementation of Section 508 of the Rehabilitation Act of 1973
Effective Date: 07/01/2007

In cases where a requiring office provides the determination that a purchase request qualifies as Electronic and Information Technology (EIT) as defined by Section 508 of the Rehabilitation Act of 1973 (see section **302.3.4.10**), COs must refer to **USAID Implementation of Section 508 of the Rehabilitation Act of 1973.** This document provides detailed guidance and required language for use in solicitations and contracts that are subject to Section 508 requirements.

302.3.5.12 Information System Security
Effective Date: 07/01/2007

Information system security (ISS) is the protection of the integrity, availability, and confidentiality of automated information and the resources used to enter, store, process, and communicate the information.

The **Contract Clause Guide for Unclassified Information System Security Systems and Services** provides guidance on including ISS requirements in the acquisition of information systems and services.

Additional information on ISS is in **302.3.4.9**.

302.3.5.13 Homeland Security Presidential Directive – 12 (HSPD-12)
Effective Date: 07/01/2007

On August 27, 2004, in response to the general threat of unauthorized access to Federal Government physical facilities and its information systems, the President issued Homeland Security Presidential (HSPD) 12.

(a) In accordance with HSPD-12, USAID must include implementation of **Federal Information Processing Standards Publication Number 201 (FIPS PUB 201)** as amended, and **OMB guidance M-05-24,** dated August 5, 2005, as amended, in

solicitations and contracts that require the contractor to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. (For more information on the requirements of HSPD-12, see **FAR Case 2005-15** and the Agency Web site for the USAID HSPD-12 Program at **http://inside.usaid.gov/M/OCIO/CISO/hspd-12.html** [Note: This document is only available on the intranet and is for internal use only.]

(b) Accordingly, COs must insert the provision "Personal Identity Verification of Contractor Personnel" found in **Special Provisions for Acquisition** in all contracts that contain the provision in FAR 52.204-9 and require the contractor (or contractor employees) to have routine physical access to USAID-controlled facilities, or have logical access to USAID's information systems.

302.3.5.14 Supporting USAID's Disability Policy in Contracts

Effective Date: 07/01/2007

AAPD 04-17 Supporting USAID's Disability Policy in Contracts, Grants, and Cooperative Agreements

USAID's Disability "Policy Paper" articulates the agency's commitment to pursue advocacy for, outreach to, and inclusion of people with physical and mental disabilities, to the maximum extent feasible, in the design and implementation of USAID programming. The "Policy Paper" provides guidance for making that commitment operational and is available at **http://www.usaid.gov/about_usaid/disability/**.

a. For information on implementation of the general disability policy, see **AAPD 04-17, Supporting USAID's Disability Policy in Contracts, Grants, and Cooperative Agreements**.

b. Standards for Accessibility for the Disabled in USAID Construction Contracts

The Agency has also developed a special provision setting forth agency objectives on accessibility standards for the disabled in USAID-financed construction.
The provision contains a requirement for the CO's approval where compliance with accessibility standards is technically infeasible or presents an undue burden. To issue this approval, the CO must first obtain a waiver. For procedures to obtain waiver of applicability of the standards for accessibility, see **302.3.6.11**. The CO must insert the clause "Standards for Accessibility for the Disabled in USAID Construction Contracts" in solicitations and resulting contracts for construction or renovation using program funds. See **Special Provisions for Acquisition** for the text of the clause.

302.3.5.15 Incorporating Gender Considerations into Evaluation Criteria

Effective Date: 04/20/2006

To ensure that competitive contract solicitations comply with the policy contained in the bullet item "Gender Analysis" in **ADS 201.3.12.6**, Contracting Officers must

a. Incorporate into the Request For Proposal (RFP) the statement outlining gender issues or confirm that the Strategic Objective Team (SOT) completed the rationale for not specifying gender issues as part of the activity approval; AND

b. Include in the RFP an appropriately weighted technical evaluation criterion addressing the gender considerations specified in the statement, if applicable.

302.3.5.16 Prohibition on USAID-Specific Experience Requirements in Evaluation Criteria

Effective Date: 07/01/2007

Agency policy prohibits the use of "prior USAID experience" of an offeror as a minimum qualification or selective factor/evaluation criteria when awarding contracts. This prohibition applies both to the evaluation of technical qualifications and experience of the offeror's as well as to key personnel, i.e., program managers, contract managers, and technical experts. Examples of appropriate language to include in solicitations to determine relevant work experience include the following:

a. Key personnel

Minimum qualification requirements:

- (insert # of years) relevant work experience
- (insert # of years) experience relevant to that in the scope of work
- (insert # of years) experience in international economic development (or other specific expertise)

b. Corporate experience

Evaluation criteria/Selective factors:

- Depth and breadth of relevant work experience
- Relevance of prior experience to that in the Statement of Work

If used, the phrase "relevant work experience" will <u>not</u> be construed as being limited to "USAID" experience; rather, it will mean significant, related skills or knowledge in the desired sector, type of program, development activity, or specific area of professional expertise as described in the solicitation.

302.3.6 Pre-Award Requirements

Effective Date: 04/20/2006

This section provides policy directives and required procedures governing the acquisition process prior to award.

302.3.6.1 Composition of Technical Evaluation Committees (TEC)

Effective Date: 04/20/2006

The selection of Technical Evaluation Committee members should be made in accordance with the following:

a. USAID staff (direct-hires, Personal Services Contractors (PSCs), and Participating Agency Services Agreement (PASA) direct-hire employees) must constitute a majority of the membership on all TECs. Evaluators from other Federal agencies and non-governmental evaluators, including Fellows, may participate, provided that they comply with any applicable requirements for, or limitations on, their participation as stated in this chapter, in **FAR Parts 3 and 15**, or in **AIDAR Part 715**.

b. Contracting Officers must take reasonable precautionary steps to avoid the possibility of conflicts of interest arising on the part of technical evaluation team members. One step is to verify with TEC members that they or their spouse or dependents have no connections, such as financial interests, with any of the offerors prior to commencing evaluations. Contracting Officers must refer any potential problems to their cognizant RLA for overseas actions, and to the Assistant General Counsel for Ethics and Administration (GC/EA) for AID/W actions.

c. As required in **AIDAR 715.305(c)**, a Non-Governmental Evaluator (NGE) or an Evaluation Assistance Contractor (EAC) participating in a technical evaluation must sign a **Certification and Agreement for the Use and Disclosure of Proposals**, which states that they will safeguard the proposals and information in them and that they perceive no actual or potential conflict of interest.

302.3.6.2 Dissemination of Cost Proposal Information to TECs in Negotiated Procurements

Effective Date: 04/20/2006

a. Contracting Officers may provide cost information from proposals to members of the TEC during the source selection process, as described in paragraph b. of this section. This constitutes the Agency procedures required in the mandatory reference FAR 15.305(a)(4).

b. The decision to provide cost information from proposals to members of the TEC rests with the Contracting Officer, who may request TEC input as part of the cost realism analysis required in FAR 15.404-1(d). While the Contracting Officer has considerable discretion as to how much, when, to whom, and even if cost information is to be provided, the following guidelines must be considered and the decision must be documented in the negotiation file:

(1) The Contracting Officer decides which portions of the cost proposals are to be shared with the TEC. While there may be circumstances in which the entire cost proposal is provided to the TEC, in many cases, only certain components of the cost proposals need to be provided; e.g., in-country

housing costs, number of trips and their duration, proposed level and distribution of effort under completion-form contracts, etc. If the cost proposals vary significantly either from the Government estimate or in comparison to each other, then the TEC may assist in analyzing the discrepancies.

(2) The preferred timing for the Contracting Officer to share cost information with the TEC is after the initial technical assessment and scoring has taken place, but early enough in the process to ensure adequate attention to discrepancies and questions during negotiations. The Contracting Officer may also share with the TEC any revisions to cost proposals resulting from negotiations, if, in the Contracting Officer's judgment, doing so aids the analysis of the revisions.

c. The Contracting Officer does not have to share cost information with all members of the TEC. After discussion with the Chairperson of the TEC, the Contracting Officer decides who, among the other members, is best able to provide relevant analysis.

302.3.6.3 Evaluation and Use of Contractor Information (CPI)

Effective Date: 03/27/2007

AAPD 06-05 (Revision 2) Evaluation and Use of Contractor Past Performance Information (CPI)

This section currently consists of the information in the referenced AAPD. At a later time, USAID will incorporate this AAPD into this chapter, along with any other relevant information.

302.3.6.4 Branding

Effective Date: 04/20/2006

Reserved

302.3.6.5 Pre-award Audits and Surveys

Effective Date: 04/20/2006

CIB 92-16, Pre-award Audits and Surveys

This section currently consists of the information in the referenced CIB. At a later time, USAID will incorporate this CIB into this chapter, along with any other relevant information.

302.3.6.6 Non-Expendable Property (NXP)
Effective Date: 04/20/2006

CIB 92-25, Non-Expendable AID-Owned Property in Contractor's Custody

This section currently consists of the information in the referenced CIB. At a later time, USAID will incorporate this into this chapter, along with any other relevant information.

302.3.6.7 Classified Contract and Contractor Security Requirements
Effective Date: 04/20/2006

CIB 98-23, Guidance Regarding Classified Contract Security and Contractor Personnel Security Requirements

AAPD 02-12, Standardizing USAID Indefinite Quantity Contracts

This section currently consists of the information in the referenced AAPDs/CIBs. At a later time, USAID will incorporate these AAPDs/CIBs into this chapter, along with any other relevant information.

302.3.6.8 Negotiation of Indirect Cost Rates
Effective Date: 04/20/2006

CIB 92-17, Indirect Cost Rates

This section currently consists of the information in the referenced CIB. At a later time, USAID will incorporate this CIB into this chapter, along with any other relevant information.

302.3.6.9 Determining Profit or Fee Objectives
Effective Date: 04/20/2006

USAID must use a structured approach as described and required in the **FAR** for determining profit or fee prenegotiation objectives. USAID COs may use another agency's structured approach as appropriate.

302.3.6.10 USAID Contractor Salary Threshold (USAID CST)
Effective Date: 07/01/2007

USAID CST policy applies to those types of contracts in which the actual salary of the individual is considered in establishing the price or the fixed labor rate for services.

a. The **USAID CST** is equivalent to the maximum rate for Federal agencies without a certified SES performance appraisal system, as published by the Office of Personnel Management at: **http://www.opm.gov/oca/**). While the amount of the CST is derived from the SES system, there is no other connection between the USAID contractor

salary policy and the Senior Executive Service system. To locate the current maximum rate on the OPM Web site, see **USAID Contractor Salary Threshold (USAID CST).**

b. Before the CO may authorize payment for any contractor salary that **exceeds** the "USAID CST" under a USAID direct contract, he or she must obtain approval in accordance with the procedures in 302.3.8.4.

c. The salaries for individuals providing personal or non-personal services to USAID contractors must be compensated at rates determined fair and reasonable in the competitive market by the CO, in accordance with applicable FAR and AIDAR cost principles. USAID technical assistance services contracts are typically for senior-level professional services and rarely require direct labor at the executive level. Costs associated with executive level salaries are typically allocated to the contract through the indirect cost pool, to which this policy does not apply. Overall compensation to individuals providing personal or non-personal professional/consultant services under such contracts are subject to the applicable cost principles in FAR 31.205-6 and FAR 31.205-33, and AIDAR subparts 731.2, 731.3, and 731.7.

d. Base for hourly rate calculation: Contract rates must be established on an hourly basis. For estimating purposes, non-personal services contract rates must be calculated based on 2080 hours/year, the number used by many private sector entities. If a contractor employs methods or calculations using other than 2080 hours/year, the CO must annotate this in the negotiation memorandum and in the contract, particularly if the methodology results in an annualized salary exceeding the USAID CST defined above.

302.3.6.11 Waiver to Standards for Accessibility for the Disabled in USAID Construction Contracts

Effective Date: 07/01/2007

In accordance with 302.3.5.14, COs will follow the procedures below to obtain a waiver.

a. New Construction.
All new construction will comply with the standards for accessibility set forth in the special provision "Standards for Accessibility for the Disabled in USAID Construction Contracts" (see **302.3.5.14**).

b. Alterations to existing structures.
The contractor must obtain advance approval from the CO that compliance with accessibility standards is technically infeasible or presents an undue burden. To issue this approval, the CO must first obtain a waiver in accordance with the procedures at **USAID Policy on Standards for Accessibility for the Disabled in USAID-Financed Construction.**

The request for a waiver must include the following:

(1) Identification of the specific requirements and procedures of the guidelines from which a waiver is sought;

(2) A detailed explanation, including appropriate information or documentation, as to why a waiver should be granted; and

(3) A statement(s) that, where feasible, persons with disabilities will be accommodated and how these accommodations will allow access to all programs and services needed.

302.3.6.12 Contract Reporting and Data Universal Numbering System (DUNS) Number

Effective Date: 07/01/2007

The DUNS Number is the unique identifier that is used to retain information on all companies, organizations, and people that have awards with the U.S. Government. All successful offerors are required to have a DUNS Number in accordance with FAR Part 4.6, Contract Reporting, regardless of whether they are required to be registered in the Central Contractor Registration database (CCR). For more information, see **Guidance for Obtaining a DUNS Number**.

302.3.6.13 Prohibition on Transactions with Designated Entities – Office of Foreign Assets Control (OFAC)

Effective Date: 07/01/2007

U.S. Executive Orders (including E.O. 13224) and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism**.** **FAR 25.701** prohibits agencies and their contractors and subcontractors from acquiring any supplies or services from individuals or organizations, if any proclamation, Executive Order, OFAC regulations, or statute administered by OFAC would prohibit such a transaction. Accordingly, Contracting Officers must check the Department of Treasury's OFAC List to ensure that the names of the selected offeror and proposed subcontractors (and individuals from those organizations who have been made known to them), are not on the list. COs must include the mandatory FAR clause 52.225-13 Restrictions on Certain Foreign Purchases in all awards, and ensure that awardees are aware of the list as part of their compliance with the requirements of that clause.

The OFAC List is available at the OFAC Web site (**http://www.treas.gov/offices/enforcement/ofac/**), and the list itself is named "SDN & Blocked Persons".

302.3.6.14 Incorporating Competitive Proposals into Contracts by Reference

Effective Date: 04/20/2006

COs must not incorporate the entire proposal from successful offerors under competitive solicitations into contracts by reference. To the extent that any portion of a proposal is of substantial importance to the contract, then the CO must expressly state

that portion in the contract or incorporate a very specific, clearly delineated citation in the contract that references just that portion of the proposal.

302.3.7 Award

Effective Date: 04/20/2006

The following sections provide required policy directives and required procedures upon award of a contract(s).

302.3.7.1 Designation of Cognizant Technical Officer

Effective Date: 07/01/2007

COs must follow the policy directives and required procedures below when designating CTOs for awards. In addition, COs must monitor the designated CTO's conduct in performing CTO duties.

a. Applicability and eligibility. COs must use the standardized model letters provided in **Model Letter and Procedures for Designating the Cognizant Technical Officer (CTO) for Contracts and Task Orders** when designating the cognizant technical officer for a particular contract (including each task order under an indefinite quantity contract [IQC]). CTO designation letters are not required for fixed price supply contracts.

The CTO (and alternate, if applicable) must be either a direct-hire Federal employee or a personal services contractor (PSC). Direct-hire Federal employees include the employees of any U.S. Government agency, and PSCs include U.S. Citizen and Foreign Service National (FSN) PSCs.

All individuals who are appointed by letter from a CO to be a CTO must meet the Agency's CTO mandatory training and certification program requirements specified below, either (1) prior to the issuance of their CTO appointment letter, or (2) within one year of issuance of the appointment letter.

The CO must promptly record the assignment or reassignment of CTO designations by the appropriate electronic acquisition system(s).

b. CTO Certification and Training Requirements. The designation letter includes a section on CTO training. The Office of Human Resources, Training and Education Team (M/HR/TET), in coordination with M/OAA, established a CTO Certification Program that includes training courses designed to provide USAID CTOs with the basic knowledge and skills they need to effectively carry out the role of an Agency CTO. Specific requirements are outlined in **USAID General Policy Notice entitled "Cognizant Technical Officer (CTO) Training and Certification Program," issued September 29, 2004 (Notice 0983),** which established the Agency's policy and required procedures for CTO certification.

M/HR/TET maintains a database of Agency CTOs that includes their certification status and the courses they have successfully completed. COs may access this database by requesting a password from the CTO Training Coordinator on the Training and Education Team in the Office of Human Resources (For Internal Use only - see Point of Contact on the CTO Certification Program Web page at **http://inside.usaid.gov/M/HR/lsd/ctocert.html**).

c. Rescinding a CTO Appointment Letter. If an employee designated as a CTO fails to satisfactorily complete certification training or perform well on the job, the CO may rescind the CTO's appointment letter. Only the CO has the authority to take this action.

COs have the authority to rescind an appointment letter at any time if the individual's performance as a CTO is unsatisfactory; for example, if the individual fails to perform these duties and responsibilities, or if the individual exceeds his/her authority as specified in the appointment letter. COs will also rescind an appointment letter if the CTO is reassigned to a new post or position.

If an employee designated as a CTO does not complete the CTO mandatory training and certification requirements within the time required, the CO may allow the CTO to continue for another six months so that the individual may have additional time to complete these requirements. However, if after another six-month period the employee still has not successfully completed the CTO training and certification requirements, then the CO must rescind the appointment letter and designate a new CTO for that award. (This is the case for each award for which the individual may have been designated CTO.)

Exceptions may be granted by the CO on a case-by-case basis where the requiring office obtains the written approval of the Director, Office of Acquisition and Assistance (M/OAA), to allow the individual to continue as a CTO.

d. CO tailoring of the designation letters. COs must use the standardized letters essentially as written, but some of the specific guidance provided in the **Model Letter and Procedures for Designating the Cognizant Technical Officer (CTO) for Contracts and Task Orders** clearly allows the discretion in tailoring these letters as long as they do not affect the substance of the standardized letter.

302.3.7.2 Congressional Award Notification System

Effective Date: 07/01/2007

The Congressional Award Notification System requires USAID Contracting Officers to notify the Bureau for Legislative and Public Affairs (LPA) after they sign certain awards to U.S. organizations only.

a. Contracting Officers must follow the notification procedures in **Congressional Award Notification** by notifying LPA AFTER signing but BEFORE releasing, or allowing to be released, an announcement of the awards listed below. This restriction

on announcing the award applies to notifying the awardee that the award has been signed, but see also Section II, Other Considerations of that same document.

b. Types of awards which require notification include the following:

(1) Contracts of any value to an organization that never before received an award from USAID. Non-personal services contracts with individuals are not included.

(2) Any award for which there was Congressional correspondence during the pre-award stage. LPA will alert the CO that such correspondence has occurred, and the CO will then flag the action as falling under these notification criteria and procedures.

(3) Any award for a particular program or geographic region that the operating unit or LPA identifies as being of particular interest at a particular time, such as Hurricane Mitch relief in Central America or the HIV/AIDS program. LPA will coordinate with the individual in the operating unit designated to serve as the LPA liaison to identify these programs, and will then alert the Strategic Objective Team (SOT) or Operating Unit, or the CO, or both, at the earliest opportunity before the award decision. The CO will then provide notification to LPA consistent with this policy.

(4) New contracts and contract modifications that establish a total estimated cost (TEC) of or increase the TEC by US$500,000 (or local currency equivalent) or more. Modifications providing only incremental funding (and involving no increase to the total estimated cost of the contract) are not included.

Included in this category are the following:

i. Contracts awarded under the Small Business Administration's 8(a) program; report the award to the performing subcontractor [the 8(a) firm] rather than to the SBA.

ii. Basic indefinite quantity contracts (IQCs) with maximum ordering limitations over this threshold.

iii. Task orders awarded under USAID multiple award indefinite quantity contracts as well as any orders under GSA Federal Supply Schedule contracts or other government-wide acquisition contracts (GWACs).

302.3.8 Post-Award Administration

Effective Date: 04/20/2006

The following sections provide required policy directives and required procedures governing the administration of a contract through final close-out procedures.

302.3.8.1 Fair Opportunity Procedures - Award of Task Orders under Multiple Award Indefinite Quantity Contracts

Effective Date: 01/08/2007

AAPD 02-12, Standardizing USAID Indefinite Quantity Contracts

This section currently consists of the information in the referenced AAPD. At a later time, USAID will incorporate this AAPD into this chapter, along with any other relevant information.

Four additional help documents are also available to provide further guidance and clarification on the task order award process in general as well as Field Support actions:

- **The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs *TEXT ONLY VERSION***

- **The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs *VERSION WITH GRAPHICS***

- **Field Support Action Process** – This document addresses task orders that accept Mission funding and lays out the processes that should be completed before Mission-specific work is authorized under such a task order.

- **Contract Types to Address Global Technical Leadership with Field Support and/or Cost-Contributions** – The purpose of this document is to determine alternative contracting mechanisms available to USAID/Washington technical officers to accept field support and/or cost-contributions from Missions or other operating units to co-fund project activities.

302.3.8.2 Issuance of Task Orders Under Indefinite Quantity Contracts – Exception to Fair Opportunity Procedures for Small Businesses

Effective Date: 04/20/2006

AAPD 02-05, New Authority - Exception for Small Businesses Under Indefinite Quantity Contracts (IQCs

This section currently consists of the information in the referenced AAPD. At a later time, USAID will incorporate this AAPD into this chapter, along with any other relevant information.

302.3.8.3 Design and Implementation IQC Task Orders (OCI)
Effective Date: 04/20/2006

CIB 99-17, Organizational Conflict of Interest

This section currently consists of the information in the referenced CIB. At a later time, USAID will incorporate this CIB into this chapter, along with any other relevant information.

302.3.8.4 Approval of Contractor Salaries Exceeding the USAID Contractor Salary Threshold (USAID CST)
Effective Date: 07/01/2007

In accordance with the policy in **302.3.6.10**, the following procedures must be followed to obtain approval of contractor salaries exceeding the USAID CST.

a. The Director, Office of Acquisition and Assistance (M/OAA) must approve any contractor salary that exceeds the "USAID Contractor Salary Threshold" or "USAID CST," before the contracting officer may authorize payment for this salary under a USAID direct contract.

b. Approval Procedures: The contracting officer must determine if the proposed salary exceeding the USAID CST is fair and reasonable in accordance with applicable FAR and AIDAR guidance. If the CO determines that the proposed rate is fair and reasonable, the following procedures must be followed to obtain the approval of the M/OAA Director for any contractor personnel salary exceeding the established threshold:

(1) The CO must prepare a Memorandum in which the proposed salary exceeding the USAID CST is evaluated as fair and reasonable in accordance with the applicable FAR guidance. The memorandum must include discussion of the following items, at a minimum:

- Comparison with the pre-solicitation independent government cost estimate (IGCE),
- Comparison of the proposed salary to the individual's salary history for similar work, and
- The specific basis upon which the proposed rate is considered fair and reasonable in accordance with the applicable FAR cost principles.

(2) The CO must forward the memorandum to the CTO for concurrence /non-concurrence. The CTO must prepare a supplemental memorandum indicating concurrence/non-concurrence, discussing relevant technical issues, such as the following:

- Technical competence of the individual compared to that required for the work,
- Scope of responsibility, and
- Any inconsistencies with independent government estimates.

(3) The CTO must forward both the CO's and the CTO's memoranda to the cognizant Assistant Administrator or Mission Director for concurrence. Upon concurrence, the CTO must return the memoranda to the CO who will then forward the memoranda to the Director, M/OAA for decision.

(4) After the M/OAA Director renders a decision, the CO must convey that decision in writing to the contractor to facilitate the contractor's compliance with the relevant cost principle in AIDAR 731.

(5) The CO must document actions required in this section in the contract file. (See AIDAR 731.205-6, 731.371(b), and 731.772). The approval must be placed in the contract file.

c. An increase in the maximum annual rate for USAID CST will not, by itself, be the basis for salary increases of contractor employees. Revisions to salaries should only be considered in light of changes to the scope of work or in accordance with other contract terms. Salary increases should not be granted without corresponding increases in the quality or quantity of services rendered.

During the administration of the contract, Contracting Officers will refer to the guidance in **302.3.6.10** for requests for approval.

302.3.8.5 Post Award Requirements Regarding Prohibition on Transactions with Designated Entities – Office of Foreign Assets Control (OFAC)

Effective Date: 07/01/2007

a. COs must check the Department of Treasury's OFAC List (see **302.3.6.13**) to ensure that the names of the contractor, subcontractors, and individuals from those organizations who have been made known to the CO, are not on the list **before:**

- **Awarding** an option or **a modification to increase** the scope of a contract,
- **Issuing** modifications for incremental funding, and
- **Consenting** to subcontract (**FAR Subpart 44.2)**.

b. COs must ensure that the contractor **is aware** of the requirements of the mandatory FAR clause 52.225-13 Restrictions on Certain Foreign Purchases in all awards; specifically, inclusion of the clause in all subcontracts.

302.3.8.6 The Role of the Contracting Officer in the Debt Collection Process (Debt Collection Improvement Act of 1996 (DCIA)

Effective Date: 07/01/2007

AAPD 03-07, Revised Instructions to Contracting/Agreement Officers on their Role in the Debt Collection Process

The Federal Claims Collection Act of 1966 and the Debt Collection Improvement Act of 1996 (DCIA) mandates that agencies comply with standard, government-wide debt collection procedures, and centralize the government-wide collection of delinquent debt.

The CO is responsible for determining the principal amount of most debts owed by contractors. For the process for recovering debt see **ADS 625,** Administrative Accounts Receivable.

This section currently consists of the information in the referenced AAPD. At a later time, USAID will incorporate this AAPD into this chapter, along with any other relevant information.

302.3.8.7 Evaluation of Contractor Performance

Effective Date: 03/27/2007

AAPD 06-05 (Revision 2), Evaluation and Use of Contractor Performance Information (CPI)

This section currently consists of the information in the referenced AAPD. At a later time, USAID will incorporate this AAPD into this chapter, along with any other relevant information.

302.3.8.8 Reporting on Taxation of U.S. Foreign Assistance

Effective Date: 07/01/2007

CTOs must monitor contractor compliance with the terms of their awards to ensure that contractors submit an annual tax report (including negative reports) to the CTO as well as a copy to the Mission Controller or CFO's Cash Management and Payments Division (M/CFO/CMP) as required below. The report is due on or before April 16th of each year.

(1) USAID Missions – For existing contracts managed in the field, unless otherwise specified, contractors will send reports directly to the CTO by April 16th of each year. CTOs are responsible, as part of their monitoring and oversight duties, for receiving the originals of tax reports from contractors and submitting the reports to the Mission Controller by April 16th of each year. If the contract specifies another addressee to which the contractor or recipient must submit the reports, the CTO must verify that the reports are submitted according to the terms of the award.

(2) USAID/Washington – For existing contracts managed in Washington, unless otherwise specified, contractors will send reports directly to the CTO with a copy to the Chief, M/CFO/CMP by April 16th of each year. If the contract specifies another addressee to which the contractor must submit the reports, the CTO must verify that the reports are submitted according to the terms of the award.

302.3.8.9 Close-out procedures
Effective Date: 04/20/2006

CIB 90-12, Guidance for AID Missions -- Closing Out Contracts, Grants and Cooperative Agreements

This section currently consists of the information in the referenced CIB. At a later time, USAID will incorporate this CIB into this chapter, along with any other relevant information.

302.3.8.10 Other Non-Mandatory Items of interest
Effective Date: 04/20/2006

[Reserved]

302.4 MANDATORY REFERENCES
Effective Date: 07/01/2006

302.4.1 External Mandatory References
Effective Date: 07/01/2007

a. **Executive Order 11223, Relating to the Performance of Functions Authorized by the Foreign Assistance Act of 1961, as amended**

b. **Executive Order 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism**

c. **Federal Acquisition Circular (FAC) 97-27 "Electronic and Information Technology Accessibility"**

d. **Federal Acquisition Regulation (FAR)**

e. **FAR Case 2005-15**

f. **Federal Information Processing Standards Publication Number 201 (FIPS PUB 201)**

g. **Foreign Assistance Act of 1961, as amended, Section 621(b)**

h. **Foreign Assistance Act of 1961, as amended, Section 636(h)**

i. The Office of Federal Procurement Policy (OFPP) Act of 1974 (Pub. L. 93-400), as amended by Pub. L. 96-83 [not available electronically]

j. OMB Guidance M-05-24, dated August 5, 2005

k The National Defense Authorization Act for FY 1997 (Public Law No. 104-201), Section 821(b)

302.4.2 Internal Mandatory References
Effective Date: 07/01/2007

a. Acquisition and Assistance Policy Directives (AAPDs)

b. ADS 103 Delegations of Authority

c. ADS 201 Planning

d. ADS 320 Marking

e. ADS 545 Information Systems Security

f. Agency for International Development Acquisition Regulation (AIDAR)

g. Class Justification for Other Than Full and Open Competition for Overseas Contracts of $250,000 or Less and for Personal Services Contracts with U.S. Citizens Contracted with Locally, with CCNs and TCNs Subject to the Local Compensation Plan

h. Class Justification for Other Than Full and Open Competition for Procurements by Missions for U.S. Manufactured Vehicles

i. Congressional Award Notification

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

k. Contract Information Bulletins (CIBs)

l. Contract Review Board Guidelines

m. Contractor Performance Reports (CPRs) for Architect and Engineer Services and CPR Amendments in General

n. Guidance on Funding Foreign Government Delegations to International Conferences

o. **Guidelines for Submitting Unsolicited Contract Proposals**

p. **Model Letter and Procedures for Designating the Cognizant Technical Officer (CTO) for Contracts and Task Orders**

q. **Procurement Executive Bulletins (PEBs) [These are only available to USAID employees.]**

r. **Special Provisions for Acquisition**

s. **Updated Guidance for Modified Acquisition & Assistance Request Document (MAARD) Usage**

t. **USAID Implementation of Section 508 of the Rehabilitation Act of 1973**

u. **USAID Procedures for Partnership Agreement between SBA and USAID for Expedited 8(a) Awards (ADS 302)**

302.5 ADDITIONAL HELP

Effective Date: 07/01/2007

a. **Contract Employee Use of Department of State Diplomatic Pouch Alternate Pouch Address for Contractor Employee Mail**

b. **Contractor Travel vs. Direct Hire Travel Policy**

c. **Issues/Trends identified by the Contract Review Board (CRB) – June 2005**
[This is only available to users of the USAID intranet. Please contact ads@usaid.gov if you need a copy.]

d. **Guidance for Award Fee Contracting**

e. **Guidebook for Managers and Cognizant Technical Officers on Acquisition and Assistance**

f. **Contract Types to Address Global Technical Leadership with Field Support and/or Cost- Contributions**

g. **The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs_*TEXT ONLY VERSION***

The Nuts and Bolts of Writing Scopes of Work and Competing and Awarding Task Orders under IQCs_*VERSION WITH GRAPHICS*

h. **Operational Security – General Information**

i. **Certification and Agreement for the Use and Disclosure of Proposals**

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

j. **Field Support Action Process**

k. **USAID Contractor Salary Threshold (USAID CST)**

l. **Guidance for Obtaining a DUNS Number**

m. **Guidelines for DBA Coverage for Direct and Host Country Contracts**

302.6 DEFINITIONS

Effective Date: 04/20/2006

Acquisition & Assistance Policy Directives (AAPDs)
Issued by the Director, Office of Acquisition & Assistance (M/OAA) to provide information of interest to contracting personnel, such as advance notification or interim implementation of changes in acquisition or assistance regulations, reminders, procedures, and general information. (Chapter 302)

Agency Competition Advocate
See Competition Advocate. (Chapter 302)

Contract Information Bulletins (CIBs)
Previously issued by the Director, Office of Acquisition & Assistance (M/OAA) to provide information of interest to contracting personnel, such as advance notification or interim implementation of changes in acquisition or assistance regulations, reminders, procedures, and general information. Replaced by Acquisition & Assistance Policy Directives (AAPDs) (Chapter 302)

Contract Review Board (CRB)
Review Board comprised of Contracting Officers and General Counsel (GC) representative responsible for reviewing documentation for acquisition actions exceeding $10,000,000 for the purpose of minimizing vulnerabilities leading to potential protests, disputes, claims, and litigation against the Agency, providing senior level advice on contracting actions and support to the Contracting Officer and consistency of procurement documentation. (Chapter 302)

contracting officer
A person representing the U.S. Government through the exercise of his/her delegated authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This authority is delegated by one of two methods: to the individual by means of a "Certificate of Appointment", SF 1402, as prescribed in FAR 1.603-3, including any limitations on the scope of authority to be exercised, or to the head of each contracting activity (as defined in AIDAR 702.170), as specified in AIDAR 701.601. (Chapters 302 and 331)

direct procurement
See Direct Acquisition (Chapter 302)

Federal Acquisition Regulation (FAR)
The primary document containing the uniform policies and procedures for all executive agencies for acquisition of supplies and services with appropriate funds. It is issued as Chapter 1 of Title 48, Code of Federal Regulations (CFR).
(Chapters 302 and 330)

Head of the Contracting Activity (HCA)
The official who has overall responsibility for managing the contracting activity. AIDAR 702.170-10 lists each HCA in USAID and the limits on the contracting authority for each are listed in AIDAR 706.601. Also see Contracting Activity. (Chapters 302, 330, and 331)

Procurement Executive Bulletin (PEBs)
Issued by the Director, Office of Acquisition & Assistance (M/OAA) to provide information of interest to contracting personnel, such as policy reminders, information regarding general guidance, best practices, reminders and frequently asked questions (FAQs). (Chapter 302)

USAID Acquisition Regulation (AIDAR)
USAID's supplement to the FAR, issued as Chapter 7 of Title 48, CFR. (Chapters 302 and 330)

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