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ADS Chapter 304

Selecting the Appropriate Acquisition and Assistance (A&A) Implementation Instrument

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**Functional Series 300 – Acquisition & Assistance
ADS 304 – Selecting the Appropriate Acquisition and Assistance (A&A)
Implementation Instrument**

**This chapter has been reformatted in its entirety and edited.*

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

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

304.1 OVERVIEW

Effective Date: 08/20/2000

There is a wide range of implementing instruments available; however, for the most part, USAID implements activities via acquisition or assistance instruments. This chapter assumes that your decision has already been narrowed down to a choice between either acquisition or assistance. It does not address factors to be considered when choosing from the larger pool of available implementing instruments. [Operating Units](#) should consult the [Contracting Officer](#) and/or Legal Advisor for advice and guidance for using implementing instruments other than acquisition and assistance.

This chapter provides guidance on selecting the proper [implementation instrument](#) for USAID-direct awards issued to accomplish Agency program requirements. It is intended to help you understand and select the proper instrument, whether a [contract](#), [grant](#), or [cooperative agreement](#), and establish appropriate relationships with non-Federal parties. Non-Federal parties includes quasi-public and private non-profit organizations such as research institutes and educational associations, public and private institutions of higher education, public and private hospitals, and commercial organizations. Not included are grants to foreign governments or public international organizations, which are covered separately in ADS Chapters 350 and 308, respectively.

304.2 PRIMARY RESPONSIBILITIES

Effective Date: 08/20/2000

a. The Director, Office of Acquisition and Assistance (OAA) and Agency Senior [Procurement Executive](#) are responsible for

- Issuing Agency policy for both acquisition and assistance types of implementation instruments; and
- Making the final determination of choice of instrument when there is a disagreement between the contracting activity and the operating unit.

b. The Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/POL) is responsible for developing and interpreting Agency policy for both acquisition and assistance types of implementation instruments.

c. Operating Units (OUs) and [Strategic Objective Teams \(SO Teams\)](#): The Operating Unit is responsible for determining the purpose of the transaction and the intended nature of the relationship.

d. Contracting Officers/[Agreement Officers](#) (COs/AOs) in USAID/W and the overseas Missions are responsible for

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- Approving the SO Team's recommendation of the proper implementation instrument, and
- Soliciting offers and making award to the non-Federal party.

304.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 08/20/2000

304.3.1 Criteria to Consider When Choosing the Appropriate Instrument

Effective Date: 08/20/2000

Use the following criteria when considering the type of instrument for a prospective USAID-direct award:

a. Acquisition

- **CONTRACT.** A contract or order against a contract must be used
 - when the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of USAID or another federal Government entity. (For more on contracts, see [ADS 302](#).)
 - when the use of a type of procurement contract is appropriate in a specific instance. Ex: Where circumstances of extreme political or economic instability exist, a contract may be the more appropriate instrument, since more technical control could become necessary to respond to rapid fluctuations in that environment.

b. Assistance

- **GRANT.** A grant must be used when
 - The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation, which is authorized by Federal statute;
 - The recipient will have substantial freedom to pursue its stated program; and
 - Substantial involvement is not anticipated between USAID and the recipient during the performance of the proposed program.

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- **COOPERATIVE AGREEMENT.** A Cooperative Agreement must be used when
 - The principal purpose of the relationship is the transfer of money, property, services or anything of value to the recipient in order to accomplish a public purpose of support or stimulation which is authorized by Federal statute; and
 - Substantial involvement is anticipated between USAID and the recipient during the performance of the proposed program. Substantial involvement is defined as participation or intervention by the USAID SO Team and is normally limited to the elements described in ADS 303.

(For more information, see [ADS 303](#) for information about grants to non-governmental organizations.)

304.3.2 Choosing between Acquisition & Assistance Instruments to Implement Activities

Effective Date: 08/20/2000

USAID has no preference for acquisition instruments over assistance instruments (or vice versa). Either type of instrument may be structured as results-oriented. Experience has largely shown that a Strategic Objective is best achieved by a mix of instruments – each instrument type and the distinct relationship involved offers different strong points.

The appropriate instrument must be determined in accordance with the guidance in this chapter. However, based on the nature of each instrument and each organization type, grants and cooperative agreements are the preferred method of cooperation with Private Voluntary Organizations(PVOs)/Non-Governmental Organizations(NGOs); contracts are the preferred method with for-profits.

304.3.3 Restrictions on the Use of an Assistance Instrument

Effective Date: 08/20/2000

You may not use assistance instruments (grants and cooperative agreements)

- a. For the performance of activities or programs over which USAID intends to exercise a substantial amount of operational control. Operational control is defined as performing day-to-day oversight of the implementation of the program and exercise of technical direction.
- b. To obtain goods/services for the Government.
- c. To obtain goods/services or carry out program activities which the U.S. Government has obligated itself to provide under an international agreement.

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Use of a contractual instrument guarantees that USAID will meet its obligation; an assistance relationship does not.

304.3.4. Other Factors that May Influence the Decision-Making Process

Effective Date: 08/20/2000

Choosing an instrument type is not an exact science – there is no one factor that determines whether an acquisition or assistance award is the more appropriate instrument for an activity. Rather, the OU chooses an instrument by careful and thorough analysis of the criteria provided above in 304.3.1. OUs may also consider the factors in this section during the decision-making process:

a. Nature of the Activity

There are no distinct categories of activities that are better suited for one type of instrument over the other. In fact, at the very earliest stages of activity planning, the design can be tailored toward the use of either type of instrument. The role USAID desires to play in the activity implementation, however, is a key consideration in selecting the instrument type.

With acquisition, USAID states what goods/services it wants to buy, then monitors and evaluates the Contractor's performance in providing these goods/services. USAID decides the requirements and standards, and typically provides significant technical direction/guidance during contract implementation. By contrast, with assistance, USAID has more limited involvement in the day-to-day operational control of the activity. The program is the Grantee's/Recipient's, with USAID ensuring (prior to award) that the proposed program supports an agency Strategic Objective.

Example: Where a politically sensitive situation exists, it may be necessary or desirable for USAID to have more day to day operational control and oversight of the implementation of a program. If the OU believes that this level of involvement is needed, acquisition is the more appropriate choice of instrument.

b. Type of Implementing Organization

There are no restrictions with respect to what type of organization (e.g., private voluntary organization (PVO), profit-making firms or non-profit organizations) may receive an acquisition or assistance award. Typically, for-profit firms propose for acquisition awards while non-profit organizations and universities propose for assistance awards.

Assistance is the preferred method of cooperation between USAID and the PVO/NGO community. When contracts are solicited by USAID, the FAR/AIDAR procedures are used, and PVOs and NGOs seeking such contracts follow those regulations. While the type of organization may have some influence from a general programmatic perspective, it must not take precedence over the specific

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criteria provided in 304.3.2. USAID anticipates that most of USAID's engagement with PVOs and other non-profit organizations will be through assistance, but when the correct instrument is a contract, then acquisition rules apply, even if the implementing organization is a non-profit organization.

Significant focus on the implementing organization type is a flawed approach in determining the appropriate instrument type. In the Planning Phase (where choice of instrument is made), it is the activity that is identified - not the organization. Consideration of the types of organizations that are leaders in a sector and likely to submit proposals for a given solicitation may be one factor in choosing an instrument; however, there is no practical way to select an instrument based purely on organization type during the Planning Phase.

The type of implementing organization may come into the decision making process as follows: If there is a convergence of views among the SO Team (including host country and other non-USAID representatives) that the preponderance of knowledge and/or expertise in a given activity is with organizations who usually receive grants, then the OU would use this information as part of the overall consideration. Likewise, the same consideration would be given if the expertise were with an organization that generally receives contracts.

c. Achieving Results

Both acquisition and assistance instruments can be written to achieve results. With acquisition, the contract can utilize a "performance-based" methodology. As for assistance, grants and cooperative agreements may be structured as "results-oriented." Remedies for failure to achieve stated results and outcomes, although different between these instrument types, are available for both acquisition and assistance instruments.

d. Sector and Stakeholder Considerations

In general, acquisition and assistance are equally appropriate instrument types for any sector (e.g., Democracy, Health, Population, Environment, Education, Energy, etc.). However, OUs should consider the context in which the proposed activity will be implemented, and answer questions such as "Are there any issues that support the use of one instrument type over the other?"

Example: Where political will does not exist within the host government to reform institutions or policies, use of assistance initially may be a more effective/efficient means to start building support for reform, since assistance provides a more "hands-off" relationship.

e. Effect on USAID Resources

The type of instrument that the OU selects has direct implications for USAID resources. In general, acquisition instruments are more labor intensive than assistance instruments, requiring more substantial direct USAID support. When the OU is determining an instrument type, it should consider what resources are available for administration of that instrument.

f. Lessons Learned

When a proposed activity is a "follow-on" to a current activity, OUs should carefully evaluate the effectiveness of the instrument type of the existing award. Even if the current instrument is working well, the OUs should consider adjustments to the requirements that may be necessary in the follow-on activity. These new requirements may result in the selection of a different instrument.

Example: Where an increased level of Agency projects occurs in a particular sector or region, monitoring of activities may become necessary to permit specified kinds of direction or redirection because of interrelationships with those other projects. Use of a cooperative agreement versus a grant is more appropriate.

304.3.5 Final determination on the type of instrument to be issued

Effective Date: 08/20/2000

When the Contracting Officer and the OU cannot agree on the type of instrument to be used in implementing a particular USAID program requirement, the Director, Office of A&A will make the final determination. The Contracting Officer will coordinate the request for Director determination.

304.4 MANDATORY REFERENCES

Effective Date: 08/20/2000

304.4.1 External Mandatory References

Effective Date: 08/20/2000

- a. Foreign Assistance Act of 1961, as amended, [Sections 621](#) and [635\(B\)](#)
- b. Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224) ([31 U.S.C. 6301-8](#))
- c. OMB Guidance, "Implementation of Federal Grant and Cooperative Agreement Act of 1977, 8/18/78" [not available electronically]

304.4.2 Internal Mandatory References

Effective Date: 08/20/2000

- a. [ADS 302, USAID Direct Contracting](#)
- b. [ADS 303, Grants and Cooperative Agreements to Non-Governmental Organizations](#)
- c. [ADS 308, Grants and Cooperative Agreements with Public International Organizations](#)
- d. [ADS 350, Grants to Foreign Governments](#)

304.5 ADDITIONAL HELP**304.6 DEFINITIONS**

Effective Date: 08/20/2000

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

Agreement Officer (See also, Contracting Officer)

A person with the authority to enter into, administer, terminate and/or closeout assistance agreements, and make related determinations and findings on behalf of USAID. An Agreement Officer can only act within the scope of a duly authorized warrant or other valid delegation of authority. The term "Agreement Officer" includes persons warranted as "Grant Officers." It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer. (Chapters [303](#), [304](#))

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](#), [306](#), [331](#))

contract

A mutually binding legal instrument in which the principal purpose is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal government, or in the case of a host country contract, the host government agency that is a principal, signatory party to the instrument. (Chapters [302](#), [304](#), [305](#), [621](#))

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Contracting Officer (See also, Agreement 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](#), [304](#), [331](#), [535](#))

cooperative agreement

A legal instrument used where the principal purpose is the transfer of money, property, services or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute and where substantial involvement by USAID is anticipated. (Chapter [304](#))

grant

A legal instrument used where the principal purpose is the transfer of money, property, services or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute and where substantial involvement by USAID is not anticipated. (Chapters [304](#), [591](#), [595](#))

implementation instrument

A binding relationship established between USAID and an outside party or parties to carry out USAID programs, by authorizing the use of USAID funds and/or nonfinancial resources for (1) the acquisition of services or commodities or (2) assistance that provides support or stimulation to accomplish a public purpose. Examples of such instruments include contracts, grants, and cooperating agreements. (Chapter [304](#))

operating units USAID field Missions, regional entities, and USAID/Washington Offices that expend funds to support Agency program objectives. This definition particularly includes operating units performing the functions of formulating policy, strategic and budgetary planning, achieving results, procurement, personnel management, financial management, and statutory requirements. (Chapters [200-204](#), [260](#), [623](#))

Procurement Executive The USAID official who is responsible for the management direction of USAID's assistance and acquisition ("A&A") system, as so delegated and more fully described in ADS 103.5.10f. (Chapters [302](#), [304](#)), and

Strategic Objective (SO) Team A group of people with complementary skills who are empowered to achieve a specific USAID development objective for which they are willing to be held accountable. The primary responsibility of SO Teams is to make decisions and implement activities related to accomplishing the objective. Another essential function is to ensure open communication and collaboration across organizational boundaries at all phases of the development process. SO Teams may decide to organize sub-teams if they wish to manage complex SOs more efficiently. SO

Teams are composed of USAID employees and those partners and customers considered to be essential for achieving the SO. (Chapters [200-203](#), [204](#))

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