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into ADS303**

TITLE: CIB 99-6 Voluntary Family Planning - New Provisions to Implement the Tiahrt Amendment

March 31, 1999

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

Distribution List FAC

FROM: Rodney W. Johnson, Director, M/OP
SUBJECT: Voluntary Family Planning -
New Provisions to Implement the Tiahrt Amendment

CONTRACT INFORMATION BULLETIN 99-06

The FY 1999 Appropriations Act establishes new statutory requirements for voluntary family planning projects, known as the Tiahrt Amendment. The requirements apply to FY 1999 Development assistance funds.

To implement the Tiahrt amendment, this CIB provides a new contract clause and new standard provision on "Voluntary Population Activities" incorporating the new requirements for voluntary family planning projects. You must include the new clause/provision in its entirety in all new contracts, grants and cooperative agreements that obligate FY 1999 Development Assistance funds for any aspect of voluntary population activities. In addition, this CIB provides amendment language that you must include whenever FY 1999 Development Assistance funds are obligated in an existing contract, grant or cooperative agreement.

Attachment 1 to this CIB contains the assistance provision and amendment, and Attachment 2 contains the contract clause and amendment.

The distinction between new and existing agreements is important, as the Tiahrt statutory requirements do not apply to activities entirely funded by prior year funds. Also, the Tiahrt amendment applies only to voluntary family planning projects funded from the Development Assistance Account. Voluntary family planning projects are those in which:

- clients have an opportunity to choose freely whether or not to use family planning and what method to use from among those available;
- services are made available to those who want to use them;
- information is provided to people to help inform their choice, including benefits to them and their country of using family planning and the health benefits and risks of particular methods.

The Global Bureau is issuing additional guidance on implementing the Tiahrt amendment to PHN officers.

Attachment 1

NOTE: These provisions listed under "Attachment 1" were incorporated into the Standard Provisions for U.S. and non-U.S. Non-Governmental Organizations which are listed under Internal Mandatory Reference of ADS 303. See <http://www.usaid.gov/policy/ads/300/303maa.pdf> and <http://www.usaid.gov/policy/ads/300/303mab.pdf>

ASSISTANCE

I. ASSISTANCE PROVISION FOR FY 1999 FUNDING

The following standard provision replaces the provision "Voluntary Population Planning" (June 1993) for both U.S. Nongovernmental Organizations and Non-U.S. Nongovernmental Organizations.

VOLUNTARY POPULATION ACTIVITIES (March 1999)

This provision is applicable to all awards involving any aspect of voluntary population activities

a) Voluntary Participation and Family

Planning Methods

(1) The recipient agrees to take any steps necessary to ensure that funds made available under this award will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the recipient agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program

(2) Activities which provide family planning services or information to individuals, financed in whole or in part under this award, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

b) Requirements for Voluntary Family

Planning Projects

(1) A family planning project must comply with the requirements of this paragraph.

(2) A project is a discrete activity through which a governmental or nongovernmental organization provides family planning services to people and for which Development Assistance funds, or goods or services financed with such funds, are provided under this award, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.

(3) Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators

(4) The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor or (ii) any personnel performing functions under the project

for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.

(5) No person shall be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.

(6) The project shall provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method.

This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.

(7) The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.

(8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no subaward or contract under paragraph (e) of this clause, the organization implementing a project for which such assistance is provided shall agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.

(9) (i) The recipient shall notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs (3), (4), (5) or (7) of this paragraph; (ii) the recipient shall investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph (6) of this paragraph and shall notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project. (iii) The recipient shall provide USAID such additional information about violations as USAID may request

Additional Requirements For Voluntary Sterilization Programs

(1) None of the funds made available under this award shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

(2) The recipient shall ensure that any surgical sterilization procedures supported in whole or in part by funds from this award are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent anytime prior to the operation.

An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

(3) Further, the recipient shall document the patient's informed consent by (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately, a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient and that the patient thereafter consented to the performance of the operation. The receipt of this oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall speak the same language as the patient.

(4) The recipient must retain copies of informed consent forms and certification documents for each voluntary sterilization procedure for a period of three years after performance of the sterilization procedure.

Abortion restrictions

(1) No funds made available under this award shall be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to women to coerce or motivate women to have abortions; (iii) payments to persons to perform abortions or to solicit women to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for abortion.

(2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or in performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not precluded.

(e) Requirement for Subawards

The recipient shall insert this provision in all subsequent subawards and contracts involving family planning or population activities which will be supported in whole or in part with funds under this award

(END OF STANDARD PROVISION)

II. AMENDMENT FOR FY 1999 FUNDING

When FY 1999 funds for voluntary population activities are added to an existing award, the standard provision entitled "Voluntary Population Planning" (June 1993) must be amended to incorporate the requirements of the Tiahrt amendment to be applicable to activities undertaken using FY 1999 funds . Therefore, when such funds are added to an existing award, include the following language to amend the terms and conditions of award:

"Funds made available under this amendment are subject to the following paragraph which is hereby included as the final paragraph of the Standard Provision entitled Voluntary Population Planning (June 1993):

(e) Requirements for Voluntary Family

Planning Projects

- (1) A family planning project must comply with the requirements of this paragraph.
- (2) A project is a discrete activity through which a governmental or Nongovernmental organization provides family planning services to people and for which Development Assistance funds, or goods or services financed with such funds, are provided under this award, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.
- (3) Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.
- (4) The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.
- (5) No person shall be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.
- (6) The project shall provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method.

This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts

(7) The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.

(8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no subaward or contract under paragraph (d) of this provision, the organization implementing a project for which such assistance is provided shall agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.

(9) (i) The recipient shall notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs (3), (4), (5) or (7) of this paragraph. (ii) The recipient shall investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph (6) of this paragraph and shall notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project. (iii) The recipient shall provide USAID such additional information about violations as USAID may request.

(END OF STANDARD PROVISION)

Attachment 2

ACQUISITION

I. CONTRACT CLAUSE FOR FY 1999 FUNDING

This clause replaces the clause "Family Planning and Population Assistance Activities" (AUG 1986).

752.7016 Voluntary Population Activities.

The following clause is applicable to all contracts involving any aspect of voluntary population activities.

VOLUNTARY POPULATION ACTIVITIES (March 1999)

(a) Voluntary Participation and Family Planning Methods

(1) The contractor agrees to take any steps necessary to ensure that funds made available under this agreement will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the contractor agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program

(2) Activities which provide family planning services or information to individuals, financed in whole or in part under this agreement, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

(b) Requirements for Voluntary Family

Planning Projects

(1) A family planning project must comply with the requirements of this paragraph.

(2) A project is a discrete activity through which a governmental or nongovernmental organization provides family planning services to people and for which "Development Assistance" funds, or goods or services financed with such funds, are provided under this agreement, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.

(3) Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.

(4) The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or Achieve.

(5) No person shall be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.

(6) The project shall provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method.

This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.

(7) The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.

(8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no subagreement or contract under paragraph (e) of this clause, the organization implementing a project for which such assistance is provided shall agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such Services.

(9) (i) The contractor shall notify USAID when it learns about an alleged

violation in a project of the requirements of subparagraphs (3), (4), (5) or (7) of this paragraph; (ii) the contractor shall investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph (6) of this paragraph and shall notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project. (iii) The contractor shall provide USAID such additional information about violations as USAID may request.

Additional Requirements For Voluntary Sterilization Programs

- (1) None of the funds made available under this contract shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.
- (2) The contractor shall ensure that any surgical sterilization procedures supported in whole or in part by funds from this contract are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent anytime prior to the operation.

An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

- (3) Further, the contractor shall document the patient's informed consent by (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately, a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient and that the patient thereafter consented to the performance of the operation. The receipt of this oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall speak the same language as the patient.
- (4) The contractor must retain copies of informed consent forms and certification documents for each voluntary sterilization procedure for a period of three years after performance of the sterilization procedure

Abortion restrictions

- (1) No funds made available under this contract shall be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to women to coerce or motivate women to have abortions; (iii) payments to persons to perform

abortions or to solicit women to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for abortion.

- (2) No funds made available under this contract will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or in performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not Requirement for Subagreements

The contractor shall insert this provision in all subsequent subcontracts or subagreements involving family planning or population activities which will be supported in whole or in part with funds under this contract.

(END OF CLAUSE)

II. Amendment for FY 1999 Funding

When FY 1999 funds for voluntary population activities are added to an existing award, clause 752.7016 entitled "Family Planning and Population Assistance Activities" (AUG 1986) must be amended to incorporate the requirements of the Tiahrt amendment to be applicable to activities undertaken using FY 1999 funds. Therefore, when FY 1999 funds are added to an existing award that includes the clause at 752.7016 , include the following language to amend the terms and conditions of award:

"Funds made available under this amendment are subject to the following paragraph which is hereby included as the final paragraph of the clause entitled "Family Planning and Population Assistance Activities (AUG 1986)":

- (e) Requirements for Voluntary Family

Planning Projects

- (1) A family planning project must comply with the requirements of this paragraph.
- (2) A project is a discrete activity through which a governmental or Nongovernmental organization provides family planning services to people and for which Development Assistance funds, or goods or services financed with such funds, are provided under this award, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.
- (3) Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.
- (4) The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor or (ii) any personnel performing functions under the project

