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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: August 15, 2007

AAPD 06-06 (Revision 2)

Expedited A&A Procedures for Activities and Programs Related to USAID's Avian Influenza Pandemic Emergency Preparedness and and Response Efforts

Subject Category: Acquisition Management, Assistance
Type: Policy

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends CIB/AAPD No: 06-06(R)

<p>Applicable to:</p> <p><input checked="" type="checkbox"/> Existing awards; <input type="checkbox"/> Modification required</p> <p><input type="checkbox"/> No later than</p> <p><input checked="" type="checkbox"/> As noted in guidance below</p> <p><input checked="" type="checkbox"/> RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC</p> <p><input type="checkbox"/> Other or N/A</p>	<p>Precedes change to:</p> <p><input type="checkbox"/> AIDAR Part(s) Appendix</p> <p><input checked="" type="checkbox"/> USAID Automated Directives System (ADS) Chapters 302, 303</p> <p><input type="checkbox"/> Code of Federal Regulations</p> <p><input type="checkbox"/> Other</p> <p><input type="checkbox"/> No change to regulations</p>
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New Provision/Clause Provided Herein:

(signed copy on file)
Michael F. Walsh

I. PURPOSE:

The purpose of this AAPD is

- 1) To inform USAID contracting staff that the Administrator has approved an Action Memorandum entitled "Expedited Acquisition and Assistance Procedures for Activities and Programs Related to USAID's Avian Influenza Pandemic Emergency Preparedness and Response Efforts: **Extension of Three Waivers**," (the Action Memorandum) dated and signed on May 3, 2007 effective through May 2, 2008. Pending annual review, the authorities in the Action Memo may be extended or modified; **COs should contact their RLA or GC/A&A after May 2, 2008 to confirm any further extensions of the authorities.**
- 2) To provide implementation guidance and required actions for using the various waivers and exceptions approved by the Administrator to facilitate and expedite implementation of programs and activities for Avian Influenza Pandemic undertaken under the policy-setting and operational guidance of the Bureau for Global Health. **This revised AAPD also provides a revised template for Attachment 2, "Justification for Other than Full and Open Competition (JOFOC) Template (Revision 2)".**

II. LIST OF ATTACHMENTS

1. Action Memorandum entitled "Expedited Acquisition and Assistance Procedures for Activities and Programs Related to USAID's Avian Influenza Pandemic Emergency Preparedness and Response Efforts: **Extension of Three Waivers**," (the Action Memorandum) dated May 3, 2007.
2. Justification for Other than Full and Open Competition (JOFOC) Template (**Revision 2**).

III. BACKGROUND:

The Administrator, in a message to USAID Washington and USAID field missions on October 3, 2005, announced the immediate establishment of the Avian Influenza Preparedness and Response Task Force. He also announced the establishment of an Avian and Pandemic Influenza Management and Response Unit (AI Unit). Together, these two bodies are charged with the responsibility to design and implement essential activities designed to contain the H5N1 virus among animals and prevent its emergence as a potential human pandemic virus.

The approved recommendations and associated determinations and findings related to this AAPD are contained in the Action Memo (Attachment 1) and provide for:

1. Grants and Cooperative Agreements—Authorization for Other than Fully Competitive Procedures
2. Procurement of Goods and Services—Authorization for Other Than Full and Open Competition
3. Source, Origin, and Nationality Blanket Waiver for Goods and Services, including Vehicles and Pharmaceuticals

Note that the list of actions recommended and encouraged to be pursued in such acquisition and assistance includes making maximum use of wholesale instruments, such as grants-under-contracts, umbrella grants, leader/associate assistance instruments, indefinite quantity contracts, and other arrangements designed to provide fast-track assistance and contracting.

IV. GUIDANCE

A. Applicability:

1. The authorities approved in the attached Action Memorandum are available for use for acquisition and assistance (A&A) actions carried out by USAID in response to AI. All Agency operating units (USAID/W and field missions) approving activities for AI containment may apply its existing activity approval authorities to use the expedited procedures. (See ADS 201, Programming Policy, for activity approval documentation requirements, and ADS 103, Delegations of Authority.)

2. The operating unit must ensure that the following statement, or a statement substantially the same as the following, is incorporated into the request to the pertinent Contracting Officer (CO) or Agreement Officer (AO). The operating unit must specify which Recommendation(s) is/are being invoked.

Recommendation(s) in the "Expedited Acquisition and Assistance Procedure for Activities and Programs Related to USAID's Avian Influenza Pandemic Emergency Preparedness and Response Efforts " apply to this activity.

In order for COs and AOs to easily locate the above statement in a request, requesting officers should try to include it in the same place each time in the request. For requests in A&A NMS, the requestor in the operating unit should include this statement in the Planning Module, under the Request Description on the Initial Tab. In Modified Acquisition and Assistance Request Documents (MAARDs), the requesting office should include the statement in Block 10, "Instructions to Authorized Agent." USAID/W COs and AOs do not have authorization to use these expedited A&A procedures unless the request specifically invokes the Administrator's approvals from the Action Memorandum in Attachment 1.

B. Specific Guidance for each Recommendation:

1. Grants and Cooperative Agreements. Authorization of Less than Fully Competitive Procedures

The approval of this Recommendation constitutes the written justification required in paragraph (1)(e) of ADS E303.5.5d to use less than full and open competitive procedures under the authority of paragraph (5) of ADS 303.5.5d.

Note that this Recommendation contains two parts. The first part applies to awarding non-competitive amendments to existing awards, while the second part applies to using less than fully competitive procedures for new awards. AOs are to work closely with the requiring office to determine what should be the "practicable" number of sources to solicit, given the urgency of the particular AI activity, but the AO has the ultimate authority to decide.

Documentation: AOs are responsible for documenting in the award file all actions they have taken to implement this authority, including how they decided the extent of competition. AOs must also include in the award file a copy of the Action Memorandum, as well as any approval extensions or modifications to the Action Memo.

2. Procurement of Goods and Services. Authorization for Other than Full and Open Competition

a. General Instructions

After the operating unit specifies that this recommendation applies to the activity (see Applicability section above), the CO must work closely with the requiring office to determine the most effective level of competition. The Determination and Finding in Tab A of The Action Memorandum states that, prior to using other than full and open competitive procedures for a particular procurement, requesting offices will consider the feasibility of using full and open competition or other contracting authorities, such as contracting with the Small Business Administration under the 8(a) Program. The CO has the ultimate authority to decide what is "practicable" under the specific circumstances.

b. Documentation Requirements

The Action Memorandum relies upon AIDAR 706.302-70(b)(3)(ii) which states:

This authority may be used for: (ii) Awards for countries, regions, projects, or programs for which the Administrator of USAID makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program.

Before awarding an AI-related contract on an other than full and open competition basis, using the authority in the Action Memorandum (as opposed to using another AIDAR or FAR exception to full and open competition), the CO must generate a "Justification for Other Than Full and Open Competition" (JOFOC) memorandum for the award file that includes the information in the attached JOFOC template (Attachment B).

Before finalizing a JOFOC in accordance with these documentation requirements, contracting officers must clear their JOFOC with their Regional Legal Advisors or GC/A&A in Washington.

NOTE: Any individual, whether in a program/technical office or the contracting or agreement officer, who intends to use either the assistance or the acquisition approval under the Action Memorandum to award a grant, cooperative agreement, or contract on a sole source basis, must be sure to carefully control the information exchanged with the potential awardee to prevent the appearance of giving that potential awardee a competitive advantage, should the award be converted to a competitive action. Guidance on this matter can be found in the FAR, ADS 303, the ADS 201 mandatory reference, "Legal and Policy Considerations When Involving Partners and Customers on Strategic Objective Teams and Other Consultations" (at <http://www.usaid.gov/policy/ads/200/2016s1.pdf>), and Contract Information Bulletin (CIB) 99-17 Organizational Conflicts of Interest.

3. Source, Origin, and Nationality Waiver for Goods and Services

a. General

Approval of this Recommendation constitutes a written waiver of USAID's source, origin, and nationality requirements in 22 CFR 228 to include Geographic Code 935.

Services of local and regional contractors are included in this waiver in order to gain access to readily available equipment, materials and services in nearby countries, enabling implementation to get underway quickly. In addition, the ability to procure from Geographic Code 935 sources can enable USAID to "domesticate" certain aspects of the AI containment efforts (preparedness, surveillance, response, communication and stockpiling). By using local suppliers, contractors and subcontractors, we can ensure that the maximum benefits of our efforts will go to people of the affected countries.

Motor vehicles are included in the waiver, and approval in the A&A for AI Action Memo constitutes the "special circumstances" finding required by Section 636(i) of the Foreign Assistance Act of 1961, as amended (FAA), for vehicles procured in direct support of USAID AI containment efforts. However, procurement of motor vehicles from non-U.S. sources are to be held to a minimum and carried out only when necessitated by required specifications, a lack of spare parts, reliable, secure, and adequate service facilities, and/or an overall lack of availability of U.S.-manufactured vehicles. The Contracting Officer shall document the file in each circumstance.

Pharmaceuticals are also included in this waiver. The purchase of pharmaceuticals under this waiver will comply with Section 604(a) of the Foreign Assistance Act of 1961, ADS Section 312.5.3c(2) and in 22 CFR Part 228. A detailed discussion of the necessity for pharmaceutical waivers and the compliance with relevant directives and regulations is attached as TAB B to the Action Memorandum.

b. Documentation

COs and AOs are responsible for documenting in the award file all actions taken in determining the appropriate source/origin/nationality for a procurement.

c. Other Available Authorities and Sources

Although not separate Recommendations in the attached Action Memorandum, COs and AOs are encouraged to use other available authorities and procedures, such as

- ADS 308 for Grants to Public International Organizations,
- FAR 19.5 for set-aside contracts to small business concerns,
- FAR 19.8 for awards under the Small Business Administration's 8(a) Program,
- FAR 19.13 for awards under the Historically Underutilized Business Zone (HUBZone) Program
- FAR 19.14 for awards under the Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, and
- ADS 321 for assistance awards to Minority Serving Institutions (MSIs).

The Office of Small Business Utilization (OSDBU) is available to help identify small business and 8(a) concerns, and the MSI Coordinator in OSDBU can provide information on MSIs.

V. POINT OF CONTACT

For questions regarding documentation requirements under AI activities, please contact Carol Ketrick, M/OAA/P, Phone: (202) 712-1382, e-mail: cketrick@usaid.gov.