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## Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: October 16, 2007

### AAPD 05-04 Amendment 2

#### Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 – Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking

Subject Category: ACQUISITION MANAGEMENT

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: 05-04

Applicable to:

- Existing awards;  Modification required
- No later than
- As noted in guidance below
- RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC
- Other or N/A

Precedes change to:

- AIDAR Part(s) Appendix
- USAID Automated Directives System (ADS) Chapter 302 (this AAPD Amendment only)
- Code of Federal Regulations 22 CFR 226
- Other
- No change to regulations

New Provision/Clause Provided Herein

*(signed copy on file)*

Maureen A. Shauket  
Director

**1. PURPOSE:**

The purpose of this AAPD amendment is to replace the contract clause provided in AAPD 05-04 with a new contract clause that exempts contractors and subcontractors who are providing commercial items or services and where such activities do not involve any HIV/AIDS programmatic activities per se, from the policy requirement (defined in "Background" below).

Required Actions:

COs must use the contract clause in Section 3 below in any new HIV/AIDS contract or task order. When modifying an existing contract or task order that is subject to the requirements of AAPD 05-04, to add funds or when deemed necessary, COs must replace the contract clause from AAPD 05-04, Section 3.B.II, with the clause below.

**2. BACKGROUND:**

This AAPD Amendment No. 2 relates to the policy requirement expressed in 22 U.S.C. § 7631(f), which provides that organizations receiving Leadership Act funds ("Recipient organizations" or "Recipients") must have a policy explicitly opposing prostitution and sex-trafficking (the "policy requirement"). Furthermore, such contractors must pass down the policy requirement in all subcontracts.

The following contract clause provides a very limited exemption from the Leadership Act policy requirement for certain contracts and subcontracts for specific types of items and services.

The Leadership Act policy requirement remains applicable to all contractors and subcontractors who directly implement HIV/AIDS programs by providing:

(1) Supplies or services directly to the final populations receiving such supplies or services in host countries,

(2) Technical assistance and training directly to host country individuals or organizations on how supplies or services are provided to the final populations receiving such supplies and services, or

(3) The types of services listed in FAR 37.203(b)(1)-(6) that involve giving advice about substantive policies of a recipient, giving advice regarding the activities referenced in (1) and (2), or making decisions or functioning in a recipient's chain of command.

See also AAPD 05-04.

**3. GUIDANCE:**

COs must use the following contract clause instead of the clause in AAPD 05-04, Section 3.B.II:

"PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (ACQUISITION) (OCTOBER 2007)

(a) This contract is authorized under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (P.L. 108-25). This Act enunciates that the U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. The contractor shall not use any of the funds made available under this contract to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

(b)(1) Except as provided in (b)(2) and (b)(3), as a condition of being awarded USAID funds for HIV/AIDS activities under this contract or subcontract, a non-governmental organization or public international organization contractor/subcontractor must have a policy explicitly opposing prostitution and sex trafficking.

(b)(2) The following organizations are exempt from (b)(1): the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency.

(b)(3) Contractors and subcontractors are exempt from (b)(1) if the contract or subcontract is for commercial items and services as defined in FAR 2.101, such as pharmaceuticals, medical supplies, logistics support, data management, and freight forwarding.

(b)(4) Notwithstanding section (b)(3), not exempt from (b)(1) are contractors and subcontractors that implement HIV/AIDS programs under this contract or subcontract by:

- (i) providing supplies or services directly to the final populations receiving such supplies or services in host countries;
- (ii) providing technical assistance and training directly to host country individuals or entities on the provision of supplies or services to the final populations receiving such supplies and services; or
- (iii) providing the types of services listed in FAR 37.203(b)(1)-(6) that involve giving advice about substantive policies of a recipient, giving advice regarding the activities referenced in (i) and (ii), or making decisions or functioning in a recipient's chain of command (e.g., providing managerial or supervisory services approving financial transactions, personnel actions).

(c) The following definition applies for purposes of this provision:

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

(d) The contractor shall insert this clause in all subcontracts.

(e) Any violation of this clause will result in the immediate termination of this contract by USAID.

(f) This clause does not affect the applicability of FAR 52.222-50 to this contract."

**4. POINTS OF CONTACT:**

USAID COs may direct their questions about this AAPD amendment to Diane Howard, M/OAA/P, Phone: (202) 712-0603, e-mail: [dhoward@usaid.gov](mailto:dhoward@usaid.gov) or Diane Bui, GC/GH & EGAT, Phone (202) 712-0529 e-mail: [dibui@usaid.gov](mailto:dibui@usaid.gov). Contractors and prospective offerors for contracts must direct their questions to the cognizant Contracting Officer for the award.