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Procedures for Designating the Cognizant Technical Officer (CTO) for Contracts and Task Orders

A Mandatory Reference for ADS Chapter 302

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GUIDANCE

(1) **Scope of Designation.** Contracting officers (COs) must use these letters to designate the Cognizant Technical Officer (CTO) to carry out contract, or task order administration duties which would otherwise be the CO's responsibility. Other Agency regulations, including ADS chapters outside the 300 series, may hold CTOs accountable for duties and responsibilities that do not flow from the CO. Such responsibilities are not included in these letters. CTOs should direct any questions they have about these other responsibilities to the author office for that chapter or regulation, or to the author office's representative in the operating unit (for example, a CTO in a Mission should direct questions about the CTO's financial management duties in ADS 600 Series chapters to the Mission Controller).

(2) **CO Tailoring of the Letters.** COs must use the standardized letters essentially as written; however, some of the specific guidance provided below clearly allows COs to use discretion in tailoring these letters as long as they do not affect the substance of the standardized letter. For example, COs may include special instructions to account for unusual characteristics of the award. They may limit or expand the CTO's responsibilities depending on the level of training or experience of the individual receiving the designation. They may emphasize additional oversight responsibilities if the CO has concerns about the contractor. If a contract has a "grants under contract" component, the CO may specify limits to the CTO's responsibilities for administering the grant-making part of the Statement of Work (SOW). Finally, they may edit the letter to reflect the CO's own experience, judgment and preference—again, within the scope of the standardized letters. The examples listed in this paragraph are not all-inclusive, nor are COs expected to make changes to the letter if they have no reason to do so. **The CO must not, however, change Section III, Limitations, in any of the letters.**

(3) **Naming an Alternate CTO.** Section III, of the letter, Subsection B. Redlegation, includes a space for naming the **alternate CTO**. When designating an alternate CTO, COs must insert the name of the individual in the blank space in the second paragraph of this subsection. When the requiring office nominates the primary candidate for the CTO designation, it should also indicate who should be named as the alternate. The preference is for the Strategic Objective Team (SOT) leader to be the alternate, because he/she is more likely to know what is happening under the award and can therefore step in as CTO. However, if the requiring/technical office is not structured along the lines of an SOT, or when the primary CTO is also the SOT leader, then the CTO's immediate supervisor may need to serve as alternate. If the requiring office nominates an individual other than the SOT leader or the CTO's immediate supervisor to be the alternate CTO, the nomination must include a justification supporting this nomination, including an explanation of the nominated alternate's involvement in overseeing the contractor's or recipient's performance.

COs must also remind CTOs and their alternates that the alternate may ONLY perform CTO duties or responsibilities if the CTO is absent. The alternate CTO may not countermand a CTO's decision on a matter pertaining to his or her duties as a CTO. In

addition, the primary CTO is not responsible or accountable for the actions of the alternate CTO—the alternate CTO is responsible and accountable.

In rare circumstances, a CO may designate multiple CTOs for a single award by issuing a separate letter to each individual CTO, **provided** that:

- the CO, the CTO candidates, and the requiring office clearly understand the separation of responsibilities;
- each designation letter clearly spells out the individual CTO's authority; and
- the lines of responsibility and authority do not overlap.

The CO and the CTOs must discuss this with the contractor at the earliest opportunity.

(4) Standards of Conduct and Conflicts of Interest. The purpose of this section is to remind CTOs that, as USAID employees, they are subject to the ethical standards that apply to all federal employees by virtue of the terms of their employment. Being a CTO does not impose a higher level standard for an individual's conduct, but it may provide more occasions for improper behavior and increases the scrutiny that others may direct to an individual's behavior. For this reason, we include this reminder section although doing so is not necessary in order to hold the individual to these standards of conduct or conflict of interest requirements.

(5) Distribution. COs must provide copies of the CO-signed and CTO-acknowledged designation letter to the contractor, the paying office, and the named alternate CTO. The CO may provide a copy to the SO team leader or activity manager (if different than the CTO or alternate), and Mission Director or office director. Providing courtesy copies to any party other than the contractor, the alternate CTO, and the paying office is at the discretion of the CO and should be discussed with the CTO. For example, if the requiring office maintains a list of CTOs in the organization, then they may request that you provide the administrator of this list with a copy of the designation letter. We encourage you to do so, but you may task the CTO with this and any other distribution within the requiring office.

(6) Do Not Name the CTO in the Award. Because of the additional work involved in modifying contracts, COs are not to actually name the CTO in the award document. If the CTO is named in the award, then the CO must modify the award every time the named individual is replaced for any reason, which is typically impractical.

(7) NMS/Phoenix. In order to ensure that the correct CTO is assigned to the award in NMS and Phoenix, COs in USAID/W must permanently and promptly assign/reassign CTO designations via the NMS A&A Support Module. COs must also be logged in to Phoenix at the time of reassignment in order for the information to transfer successfully from NMS A&A to Phoenix (see A&A Solutions Center, NMS/A&A CTO Handling, at http://inside.usaid.gov/M/OP/SolutionsCenter/nms/nms_cto.htm). If the nominated

CTO candidate is not listed in the drop-down list as a possible CTO for the requesting Bureau, COs must notify the requesting office that the award cannot be finalized in NMS until the nominated individual has been added to NMS.

NMS A&A, Phoenix, and the Accrual Reporting System (ARS), must have up-to-date CTO information for the Agency to properly manage the various financial reporting requirements that all these systems support. COs MUST ensure that CTO designations are current and accurate in NMS A&A for their A&A awards.

(8) Specific Guidance. The following guidance addresses specific sections of the designation letter. Please consider the following when preparing a letter and tailor the letter only if needed and only as authorized in the specific guidance below.

Section I Delegation

Subsection A. Technical Directions/Guidance. When the contract in question is a performance-based contract (PBC), the CO and CTO must recognize that a CTO issuing technical directions for these types of contracts may not be suitable, so include a section on Technical Directions/Guidance only if the contract has certain Contract Line Items (CLINS) that are not performance-based or you ensure that this section limits the scope of the technical directions or guidance the CTO may issue for a PBC. Although “technical guidance” may be more appropriate, the CTO must be aware that even guidance in a PBC is limited and the CTO should consult with the CO.

Subsection F. Other specific functions/authorities, as provided herein. In this section, COs may list here any other functions not covered above, such as responsibility for processing requests for country clearance; reminding the CTO that the contract includes the CO’s approval for international travel per AIDAR 752.7032, provided that the CTO provides prior written approval; etc. COs awarding basic IQCs should state here that the CTOs for the basic IQC have responsibility for monitoring the use of the IQCs to track the contract ceiling and consistency of task order statements of work with the SOW of the basic contract, etc. When adding functions or authorities in this section, the CO must coordinate with the CTO candidate to ensure mutual understanding and agreement.

Section II Administration

Subsection A. Communications. During the vetting process in early CY 2002, a few reviewers asked that the letters not require the CTO to provide a copy of technical directions (TD) to the CO, apparently on the assumption that if the CO doesn’t have a copy of a technical direction that exceeds the CTO’s authority, then the CO can deny any knowledge of the TD and could deny a claim. However, GC advised that this may not be a supportable position and provided case law that indicated that the CTO can be assumed by the contractor to be the CO’s “eyes and ears” and therefore have the authority to “speak” for the CO. COs and CTOs must also be aware that even if the CTO is not required to send a copy of these communications to the CO, the contractor

may still assume that the CO has authorized the CTO's actions by virtue of having issued this delegation letter.

In order for the CO to stay abreast of the contractor's performance as well as to avoid potential claims or disputes, the CTO must provide copies of communications with the contractor to the CO within the timeframe specified in the letters. The CO therefore MUST read these communications and take any necessary action if the technical direction is beyond the CTO's authority or directs the contractor to do something beyond the scope of the contract. If the CO receives a copy of the communication but takes no action to countermand the CTO's direction, the contractor has reason to conclude that the CO endorses the CTO's action, which may strengthen the contractor's claim or dispute against the Agency.

Therefore, the CO must carefully assess the CTO candidate's experience and demonstrated knowledge/judgment when deciding how closely to monitor the CTO's communications with the contractor. If the CO is very confident that the CTO understands and accepts the limits of this delegation and is not likely to issue technical directions (TDs) that could lead to a claim, then the CO may choose to limit the extent the CO monitors the CTO's TDs. Conversely, if the CTO candidate is very inexperienced and the CO is concerned, then a prudent CO ensures that the CTO provides copies of these communications and then carefully reviews them to verify that they are within the scope of the contract.

**Cognizant Technical Officer (CTO) Designation –
Contract/Task Order Administration**

TO: (Individual Nominated by the Requiring Office)

FROM: _____, Contracting Officer

SUBJECT: Contract Administration Authorities

DATE: _____

REF: Contract/Task Order Number _____ with

As the contracting officer (CO) for the subject contract, the Federal Acquisition Regulation (FAR, 48 CFR Chapter 1) holds me responsible for ensuring compliance with the terms of the contract and for safeguarding the interests of the United States in its contractual relationships. To assist in fulfilling these responsibilities, I must designate a cognizant technical officer (CTO). This individual will be in a unique position to monitor how well the contractor is progressing towards achieving the contract's purpose and will be responsible for providing technical liaison between the contractor and the contracting officer, which is critical to ensuring good contract performance.

You have been nominated to be the cognizant technical officer (CTO) for administration of the referenced contract. I accept this nomination and hereby designate you to be the CTO. As CTO, your first responsibility is to read the entire contract and thoroughly acquaint yourself with the requirements it places on the contractor, the CO, and the CTO. You should also periodically review the contract to maintain your familiarity with its terms and conditions.

Your additional CTO responsibilities are to

- Monitor the contractor's performance and verify that it conforms to the technical requirements and quality standards agreed to in the terms and conditions of the contract. Accordingly, your approval of implementation plans, work plans, or monitoring or evaluation plans must be consistent with the terms and conditions of the contract. You must document any material deficiencies in the contractor's performance and bring them to the immediate attention of the CO (me or my successor).

- Participate in the periodic evaluation of the contractor's performance and preparation of the Contractor Performance Report (CPR), with particular attention to addressing
 - a. The quality of the products and/or services,
 - b. The effectiveness of cost control efforts,
 - c. Timeliness of performance,
 - d. Business relations,
 - e. End-user satisfaction, and
 - f. Compliance with the small business subcontracting plan.

The CPR must be prepared in accordance with the performance evaluation requirements in USAID Acquisition Regulation (AIDAR, 48 CFR Chapter 7) subpart 742.15 ("Contractor Performance Information") and the Automated Directives System (ADS) Chapter 302 ("USAID Direct Contracting"), in the section entitled "Evaluation of Contractor Performance."

- Recommend in writing (with justification for the proposed action) to the CO any changes needed in the scope of the contract, including any changes to technical provisions of the contract that affect the timing of the deliverables/services or the overall cost-price of the contract (see 1.A below).

Properly discharging your duties and responsibilities as a CTO minimizes your risk of facing disciplinary action. The areas in which you must be particularly cautious involve contracting authority and financial management, when your improper actions could indicate gross negligence.

- In Contracting, this involves exceeding your authority as a CTO and taking actions that are beyond your authority as delegated in this letter. If you have any questions in this area, contact the CO for advice BEFORE you take any action.
- In Financial Management, your risk increases when you act in a manner that is other than what would be expected of a reasonable individual. At a minimum, a reasonable individual would be expected to –
- take positive action to obtain information necessary to carry out their responsibilities;

- make logical decisions from the information they have available (even if it isn't totally complete); and
- document and provide justification for the action. (The documentation need not be formal or extensive, but it should be easily understood by an auditor or other third party individual reviewing it.)

I. DELEGATION

I hereby delegate to you, as CTO, the following authorities that are otherwise the responsibility of the CO:

A. Technical Directions/Guidance. You may issue technical directions or guidance in accordance with the terms of the contract. "Technical guidance" under a performance-based contract may be very limited; if this is a performance-based contract, consult the CO for guidance. "Technical directions" are interpretations of the technical requirements of the contract and you must give them to the contractor, in writing, when questions or discrepancies arise. They may be directives to the contractor that

- Approve workplans, approaches, solutions, designs, or refinements;
- Fill in details or otherwise complete the general description of work or documentation items;
- Shift emphasis among work areas or tasks; or
- Otherwise furnish instruction of a similar nature to the contractor.

Technical directions shall not include any instruction that affects the cost/price or duration of the contract, or that interferes with the contractor's rights to perform the terms and conditions of the contract. In any and all cases, technical directions must be within the scope of the Statement of Work and comply with the requirements for Technical Directions/Relationship with USAID in Section G of the contract.

B. Receipt and Inspection. You may receive and inspect completed services or supplies upon delivery, and verify that they meet the acceptance standards, including time of delivery, specified in the contract. If the contractor's services or supplies do not meet the acceptance standards in the contract, you are responsible for directing the contractor in writing to take appropriate action to correct the deficiencies. Should the contractor fail to correct deficiencies, you must advise the CO so he/she can take appropriate action.

- C. Security. You must coordinate with the Office of Security (or its designee) to obtain necessary security clearances and appropriate identification for the contractor and designated personnel if the contract is classified in accordance with Automated Directives System (ADS) Chapter 567 and FAR 4.4. If this contract is unclassified but requires contractor employees to have building passes to enter either the USAID Headquarters or a Mission or Embassy overseas, you are responsible for coordinating with your Bureau or Office Administrative Management Officer, Mission Executive Officer, or other individual responsible for requesting passes (see ADS 567). You are also responsible for notifying the Office of Security whenever any contractor personnel no longer need a building pass.
- D. Government-furnished Property. You are responsible for ensuring that Government-furnished property is available to the contractor in a timely manner, if this property is required by the terms of the contract. You are also responsible for monitoring the contractor's management of and annual reporting on this property and any property acquired by the contractor for use in the contract and titled to either USAID or a cooperating country. Finally, you are responsible for verifying the return or disposition of Government-furnished property.
- E. Financial Management. Although the responsibility for making payments and accounting for funds and balances rests in the Office of Financial Management (M/FM) or overseas Controller, you must administer financial management responsibilities by
- Reviewing the contractor's request for payments (usually the contractor's vouchers or invoices) and providing or denying your administrative approval, in accordance with the stipulations of the contract administration plan and the procedures in ADS Chapter 630, Payables Management. This chapter states that your administrative approval constitutes the written evidence that the goods and/or services specified on the invoice were received and conform to the requirements or performance milestones in the contract--effectively the acceptance of these goods and/or services.
 - Recommending disallowance of costs to the CO, in accordance with ADS Chapter 630.
 - Ensuring that all funding actions comply with the Agency's forward funding guidelines (ADS Chapter 602 Forward Funding of Program Funds and ADS Chapter 603 Forward Funding, Non-Program Funds).
 - Monitoring the financial status of the contract on a regular basis to ensure that the level of funding is the minimum necessary.
 - Developing an estimate of accrued expenditures on a quarterly basis in accordance with ADS Chapter 631, Accrued Expenditures, and instructions from CFO or the Mission Controller.

- Initiating a request to the CO to deobligate funds at any point that funding in the contract is considered excessive (see ADS Chapter 621 Obligations and Internal Mandatory Reference “Deobligation Guidebook”).
- Reviewing any unliquidated obligation balance in the contract, and working with the CO to deobligate excess funds before beginning to close-out actions (see ADS Chapter 621 Obligations and the Internal Mandatory Reference “Deobligation Guidebook”).

F. Other specific functions/authorities, as provided herein:

(insert additional responsibilities as appropriate, or delete this subsection if unnecessary)

II. ADMINISTRATION

- A. Communications. Please provide the CO with a copy of the following written communications, in either electronic or paper copy format, within two (2) working days after you transmit it to the contractor:
- Technical directions/guidance per #I.A. above,
 - All formal communications between you and the contractor that relate to the contractor’s alleged failure to comply with delivery terms or acceptance standards or both, per #I.B. above, and
 - Any other written communication of a similar nature that may have an impact on the contractor’s rights or responsibilities for performing under this contract.
- B. CTO Files. As the CTO, you have an important responsibility for establishing and maintaining adequate CTO files. These files are your primary tools for carrying out your duties and responsibilities as the CTO for this contract and must document actions you take as CTO. Inadequate files will impede your or your successor CTO’s ability to manage the contract and therefore may jeopardize the program for which it was awarded. These files will also help successor CTOs to understand your actions as CTO and the reasons behind such actions, as well as to have adequate documentation for audit purposes.

You are responsible for ensuring that the files contain the following, at a minimum:

- A copy of this CTO designation letter;
- A copy of the contract and all of its modifications;
- A copy of all correspondence between the CTO and the contractor, including property reports;
- Names of technical and administrative personnel assisting the CTO;

- A copy of records of CTO inspections and receiving/acceptance documents, invoices, and other administrative paperwork and correspondence;
- A copy of other performance records as specified in the contract;
- Documents justifying and supporting Accrual estimates (see ADS 631 Accruals, section 631.3.1 and Additional Help—Accrual Documentation);
- A copy of financial documentation to support their activities in the financial management area such as the invoice and Administrative Approval Form and Checklist (ADS 630.3.3. and Internal Mandatory Reference—Administrative Approval Form and Checklist) for all invoices; and
- Budget pipeline analysis documentation.

III. LIMITATIONS

A. Scope of Authority/Avoiding Unauthorized Commitments. Your authority does not include directing the contractor, either in writing or verbally, to make changes to the contract statement of work, the terms and conditions of the contract, or the total estimated cost or price of the contract. Only a CO has the authority to take such actions, which include but are not limited to making changes that affect

- The delivery schedule or period of performance,
- The quantity or quality of the work,
- The terms and conditions of the contract,
- The monetary (dollar or foreign currency) limit of the contract or the authorization of work beyond the monetary limit,
- The qualifications of key personnel, or
- The composition of the contract team members, if the contract places specific limits on either qualifications or the mix of specialists.

If you take actions that only the CO has the authority to take, you may be making an unauthorized commitment (AIDAR 750.71), which can lead to serious contractual disputes and legal action that unnecessarily tie up Agency personnel and resources. In the worst case, such unauthorized actions may result in disciplinary action, particularly if the action is determined to be a violation of the Anti-Deficiency Act, 31 U.S. C. Sections 1341-1351, which also provides for criminal penalties. Actions you take or directions you give must be within the authorities provided in this designation.

- B. Redelegation. You may not redelegate the authorities provided in this memorandum to approve/disapprove vouchers, provide written interpretations of technical requirements, or to certify acceptance of goods or services, to any other person. As you carry out your CTO duties, you may ask others to assist you, but such assistance has limits. For example, you may ask others to conduct fact-finding, provide you with analyses or interpretations of technical requirements, or make recommendations to you regarding actions you may take as CTO. However, anyone assisting you must not take any action that directly affects the contractor's rights or ability to perform under the terms of the contract, including (but not limited to) providing interpretations of technical requirements to the contractor. The ultimate responsibility for any actions taken, by you or others assisting you, remains with you.

Exception: In your absence, and only in your absence, (See *GUIDANCE, paragraph (3) above*) "*Naming an alternate CTO*", _____ is hereby authorized to act on your behalf. If this individual is not available to carry out your CTO responsibilities during your absence, notify the CO as soon as possible and recommend a substitute who can be designated as CTO for the duration of your absence. To ensure minimal disruptions, please notify the contractor and the CO as soon as possible when you will be unavailable to discharge your CTO responsibilities for a period of more than two weeks.

- C. Duration of CTO Designation. This designation is effective for the life of the contract or order referenced on the first page of this designation letter, unless the CO rescinds it in writing or you resign this position. If you cannot fulfill your responsibilities as CTO for any reason (e.g., transfer to another post), please notify the CO as soon as possible in order to ensure the timely designation of a successor.

IV. TRAINING

USAID has a CTO Certification Program with formal classroom courses. USAID General Policy Notice entitled "Cognizant Technical Officer (CTO) Training and Certification Program," issued September 29, 2004 (Notice 0983), established the Agency's policy and required procedures for CTO certification. Be advised of the time limits for acquiring CTO competencies (Section 10 of the Notice) and rescission of the CTO Appointment Letter (section 12), both of which have been incorporated in ADS 302. The General Policy Notice is accessible on the Notices page of the USAID intranet, and the Training and Education Team of M/HR has an internal website that lists courses, schedules, registration information, and other important certification information, at <http://inside.usaid.gov/M/HR/lsd/ctocert.html/>.

V. STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

As an employee of the Federal Government, you must respect and adhere to the principles of ethical conduct set forth in Title 5 of the Code of Federal Regulations, Part 2635—Standards of Ethical Conduct for Employees of the Executive. (see 22 CFR 2635 at <http://www.gpoaccess.gov/cfr/index.html>.) As a CTO, you are responsible for protecting the U.S. Government's interests, while supporting its reputation for fair and equal dealings with all partners, including contractors. Therefore, if you have any direct or indirect financial interests in violation of 18 U.S.C. 208 and/or 5 CFR 2635.401 and 5 CFR 2635.501 that may place you in a position where there is a conflict between your private interests and the public interest of the United States, you must immediately inform your supervisor, the CO, and the Assistant General Counsel for Ethics Administration (GC/EA, see <http://inside.usaid.gov/A/GC/EA/> for more information) of this conflict so that appropriate action may be taken. As CTO, you must avoid the appearance of such conflict in order to preserve public confidence in the U.S. Government employee's conduct of business. Furthermore, you agree to be aware of the post-employment restrictions on former USG employees, including Personal Service Contractors, found in 18 U.S.C. 207 and 41 U.S.C. 423, to detect possible violations.

ACKNOWLEDGEMENT

Your signature below confirms that you

- (1) Accept this appointment, and
- (2) Agree to comply with all duties, responsibilities, and limitations outlined in this letter, particularly those pertaining to conflicts of interest, by agreeing to conduct business dealings to avoid conflicts of interest and in a completely impartial manner.

After signing below, either return this original memorandum (and retain a copy) or return a copy (and retain the original) to me within ___ days. I will send a copy to the contractor as well as to the others indicated below.

CONTRACTING OFFICER

DATE

I HEREBY ACCEPT THIS APPOINTMENT AND ACKNOWLEDGE MY DUTIES AND RESPONSIBILITIES AS CTO:

COGNIZANT TECHNICAL OFFICER

DATE

cc: _____, Alternate CTO
_____, Paying office or Mission Controller
Contractor

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