



USAID
FROM THE AMERICAN PEOPLE

Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: December 13, 2005

AAPD 05-11

Marking Under Assistance Instruments

Subject Category: 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:

<p>Applicable to:</p> <p><input checked="" type="checkbox"/> Existing awards; <input checked="" 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) Chapter 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: If checked, scheduled update to Prodoc: TBD

/s/
Michael F. Walsh

PURPOSE: The purpose of this AAPD is to implement the requirements of 22 C.F.R. 226.91, entitled "Marking," and to provide new standard provisions for inclusion regarding branding and marking in Requests For Applications (RFAs) and assistance awards to U.S non-governmental organizations and non-U.S. non-governmental organizations.

BACKGROUND: USAID's framework legislation, the Foreign Assistance Act of 1961, as amended, section 641, requires that all programs under the Foreign Assistance Act, including assistance awards, be identified appropriately overseas as "American Aid." USAID has required its contractors to mark U.S. Government-funded foreign assistance, but the requirement has been applied to recipients of grants and cooperative agreements only to a limited extent.

A report, entitled "Changing Minds, Winning Peace: a New Strategic Direction for U.S. Public Diplomacy in the Arab World," and delivered to the Appropriations Committee of the U.S. House of Representatives, was issued on October 1, 2003 by the Advisory Group on Public Diplomacy in the Arab and Muslim World. The report commended and encouraged USAID to continue to "become more forthright about branding its activities, so recipients know that they are receiving contributions from the American people."

To raise the awareness of the beneficiaries of U.S. assistance that the billions of dollars of foreign aid expended every year are provided by the American people through USAID, the Agency has undertaken a branding campaign to ensure that the American people are credited for the foreign assistance they finance.

As part of the branding campaign, the Agency is revising the marking requirements for grants and cooperative agreements. A final rule, "Administration of Assistance Awards to U.S. Non-governmental Organizations (NGOs); Marking Requirements" amending 22 C.F.R. 226, was published in the Federal Register on August 18, 2005 and becomes effective on January 2, 2006. This final rule brings USAID regulations into full alignment with and implements the statutory requirement of section 641 of the Foreign Assistance Act of 1961, as amended.

GUIDANCE:

I. Applicability:

USAID must include the standard provisions Branding Strategy - Assistance (Attachment 1), Marking Plan - Assistance (Attachment 2) and Marking Under USAID-Funded Assistance Instruments (Attachment 3) in each new Request for Applications to U.S. nongovernmental organizations or non-U.S. nongovernmental organizations and any resulting award, or in each new Annual Program Statement and any resulting award.

USAID must include the standard provision "Marking Under USAID-Funded Assistance Instruments" (Attachment 3) in any current grant, cooperative agreement or other assistance instrument to a U.S. nongovernmental organization or non-U.S. nongovernmental organization:

(1) When, after January 2, 2006, obligating funds to the grant, cooperative agreement or other assistance instrument, whether the obligation is incremental funding within the existing Total Estimated Amount or the obligation is increasing the Total Estimated Amount;

(2) When, after January 2, 2006, amending the grant, cooperative agreement or other assistance instrument to reflect significant changes in the program description, budget, or scope of the instrument.

II. Pre-award Review and Approval of the Branding Strategy:

22 C.F.R. 226.91(f) requires that, after the evaluation of the applications, the USAID Agreement Officer will request the Apparently Successful Applicant to submit a Branding Strategy that describes how the program, project, or activity is named and positioned; how it is promoted and communicated to beneficiaries and cooperating country citizens; and identifies all donors and explains how they will be acknowledged. USAID will not competitively evaluate the proposed Branding Strategy. The Agreement Officer will review the proposed Branding Strategy for adequacy to ensure that it:

- contains the required information on naming and positioning the USAID-funded program, project, or activity,

- promotes and communicates to cooperating country beneficiaries and citizens that the USAID-funded program, project, or activity is "from the American People".

- is consistent with the stated objectives of the award; the Apparently Successful Applicant's cost data submissions; the Apparently Successful Applicant's project, activity, or program performance plan; and the regulatory requirements set out in 22 C.F.R. 226.91.

During the review of the Apparently Successful Applicant's Branding Strategy, the Agreement Officer will coordinate as necessary with the Activity Manager, the Technical Evaluation Panel and the communications specialist. Following completion of the review, the Agreement Officer will negotiate any required changes to the Branding Strategy with the Apparently Successful Applicant, approve the Branding Strategy, and include the Branding Strategy as part of the assistance award.

When requesting a Branding Strategy, the Agreement Officer will establish a reasonable time frame for submittal, review, and negotiation. If the Apparently Successful Applicant fails to submit or negotiate an acceptable Branding Strategy within the time specified by the Agreement Officer, that Applicant becomes ineligible for award.

If USAID is considering awarding more than one assistance award, the Agreement Officer must request, review and approve a Branding Strategy for each Apparently Successful Applicant.

III. Pre-award Review and Approval of the Marking Plan:

22 C.F.R. 226.91(f) also requires that, after evaluation of the applications, the USAID Agreement Officer will request the Apparently Successful Applicant to submit a Marking Plan that will detail the public communications, commodities, and program materials intended to visibly bear the USAID Identity. USAID must not evaluate the Marking Plan competitively. The Agreement Officer will review the proposed Marking Plan for adequacy, coordinating as necessary with the Activity Manager, Technical Evaluation Panel and the communications specialist. Following completion of the review, the Agreement Office will negotiate any required changes to the Marking Plan with the Apparently Successful Applicant, approve the Marking Plan, and include the Marking Plan as part of the assistance award. The Agreement Officer will ensure that any estimated costs associated with branding and marking are included in the Total Estimated Amount of the grant or cooperative agreement or other assistance award.

When requesting a Marking Plan, the Agreement Officer will establish a reasonable time frame for submittal, review, and negotiation. If the Apparently Successful Applicant fails to submit or negotiate an acceptable Marking Plan within the time specified by the Agreement Officer, that Applicant becomes ineligible for award.

The Marking Plan may include requests for approval of a Presumptive Exception or Exceptions identified at 22 C.F.R. 226 (h). Presumptive Exceptions exempt a general marking requirement for a *particular* USAID-funded public communication, commodity, or program material or other deliverable, or a *category* of USAID-funded public

communications, commodities, and program materials, or other deliverables that would otherwise be required to visibly bear the USAID Identity.

The Agreement Officer will negotiate and accept or reject the Apparently Successful Applicant's request for a Presumptive Exception as part of the overall negotiation of the Marking Plan and include any Presumptive Exceptions granted in the final negotiated Marking Plan. A list of the Presumptive Exceptions is found in the Provision "Marking Plan - Assistance," Attachment 2 of this AAPD.

During the review and approval of Presumptive Exceptions, the Agreement Officer should coordinate and consult with the Activity Manager, communication specialist, and other personnel as needed (including, if necessary, the Principal Officer). The Agreement Officer may request advice and recommendations from these personnel if necessary.

The Agreement Officer's approval of the marking plan will include a list of the approved Presumptive Exceptions and the public communications, commodities, and program materials, or other deliverables exempted.

If USAID is considering awarding more than one assistance award, the Agreement Officer will request, review, and approve a Marking Plan for each Apparently Successful Applicant.

IV. Post-Award Responsibilities and Actions.

(1) Monitoring. Cognizant Technical Officers are responsible for monitoring marking requirements on the basis of the approved Marking Plan.

(2) Noncompliance. Where the recipient fails to comply with the Marking Plan, the Agreement Officer will initiate corrective action. Corrective actions include informing the recipient of instances of noncompliance and requesting that the recipient carry out its responsibilities as set forth in the Marking Plan and award. If the recipient repeatedly fails to comply with the Marking Plan or if the recipient's non-compliance is considered major or egregious, corrective action may include invoking the suspension and termination procedures set forth at 22 C.F.R. 226.61 and 226.62.

(3) Waivers. USAID Principal Officers (as defined at 22 C.F.R. 226.2 and in the provision "Marking Under USAID-Funded Assistance Instruments" below), may at any time after award waive, in whole or in part, the USAID approved Marking Plan, including USAID marking requirements for each USAID funded program, project, activity, public communication or commodity. In exceptional circumstances the USAID Principal Officer may make a waiver by region or country, if the Principal Officer determines that USAID required marking would pose compelling political, safety, or security concerns, or marking would have an adverse impact in the cooperating country or region.

When reviewing a request for approval of a waiver, the Principal Officer may review how program materials will be marked (if at all) if the USAID Identity is removed, and may review any use of the recipient's own identity/logo or that of a third party to ensure that the justification for the waiver does not apply equally to use of the recipient's own or a third party's logo. Principal Officers may authorize the removal of USAID markings already affixed, if circumstances warrant. Principal Officers may specify that approved waivers do not "flow down" to recipients of subawards, if circumstances warrant.

The recipient may request a waiver of the Marking Plan, in whole or part, at any time during the grant period. The recipient will address the request for waiver through the Cognizant Technical Officer. The Cognizant Technical Officer is responsible for receiving, vetting, and processing a waiver request of the Marking Plan. No marking is required while a waiver determination is pending.

A waiver determination on safety or security grounds will be made in consultation with U.S. Government security personnel, if available. This waiver determination will reflect a consideration of the same information that applies to determinations of the safety and security of U.S. Government employees in the cooperating country, and any information supplied by the Cognizant Technical Officer or the recipient for whom USAID seeks the waiver.

Approved waivers are not limited in duration, but are subject to Principal Officer review at any time, due to changed circumstances.

Principal Officers' determinations regarding waiver requests are subject to appeal to the Principal Officer's cognizant Assistant Administrator. Recipients may appeal by submitting a written request to the cognizant Assistant Administrator to reconsider the Principal Officer's waiver determination.

(4) Existing Awards. The requirements of 22 C.F.R. 226.91 and this AAPD do not apply to any materials, events, or commodities produced prior to January 2, 2006. The requirements of 22 C.F.R. 226.91 and this AAPD do not apply to program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) where the construction and implementation of these are complete prior to January 2, 2006 and the period of the grant does not extend past January 2, 2006.

The Agreement Officer will include the provision Marking Under USAID-Funded Assistance Instruments (Attachment 3) in the amendment to any current grant, cooperative agreement or other assistance instrument to a U.S. nongovernmental organization or non-U.S. nongovernmental organization when, after January 2, 2006, *obligating* funds to the grant, cooperative agreement or other assistance instrument, whether the obligation is incremental funding within the existing Total Estimated Amount or the obligation is increasing the Total Estimated Amount; or *amending* the grant, cooperative agreement or other assistance instrument to reflect significant changes in the program description, budget, or scope of the instrument.

The Agreement Officer will specify a number of days after the effective date of the provision for the recipient to propose a plan for marking program deliverables with the USAID Identity (this is a fill-in in the provision).

After receipt of the recipient's proposed plan the Agreement Officer will review the plan for reasonableness and adequacy in consultation with the CTO, technical experts and other personnel as needed. The Agreement Officer will negotiate the plan as necessary and set a time period for the recipient in which the plan must be negotiated and approved. The Agreement Officer will amend the grant or cooperative agreement to incorporate the approved plan.

POINT OF CONTACT: Direct questions concerning this AAPD to Michael Gushue, (202) 712-5831, mgushue@usaid.gov. Direct questions concerning the Agency's Branding Campaign to Joanne Giordano (202) 712-4333 or refer to <http://www.usaid.gov/branding>.

ATTACHMENT 1:

BRANDING STRATEGY - ASSISTANCE (December 2005)

(a) **Definitions**

Branding Strategy means a strategy that is submitted at the specific request of a USAID Agreement Officer by an Apparently Successful Applicant after evaluation of an application for USAID funding, describing how the program, project, or activity is named and positioned, and how it is promoted and communicated to beneficiaries and host country citizens. It identifies all donors and explains how they will be acknowledged.

Apparently Successful Applicant(s) means the applicant(s) for USAID funding recommended for an award after evaluation, but who has not yet been awarded a grant, cooperative agreement or other assistance award by the Agreement Officer. The Agreement Officer will request that the Apparently Successful Applicants submit a Branding Strategy and Marking Plan. Apparently Successful Applicant status confers no right and constitutes no USAID commitment to an award.

USAID Identity (Identity) means the official marking for the Agency, comprised of the USAID logo and new brandmark, which clearly communicates that our assistance is from the American people. The USAID Identity is available on the USAID website and is provided without royalty, license, or other fee to recipients of USAID-funded grants or cooperative agreements or other assistance awards or subawards.

(b) **Submission.** The Apparently Successful Applicant, upon request of the Agreement Officer, will submit and negotiate a Branding Strategy. The Branding Strategy will be included in and made a part of the resulting grant or cooperative agreement. The Branding Strategy will be negotiated within the time that the Agreement Officer specifies. Failure to submit and negotiate a Branding Strategy will make the applicant ineligible for award of a grant or cooperative agreement. The Apparently Successful Applicant must include all estimated costs associated with branding and marking USAID programs, such as plaques, stickers, banners, press events and materials, and the like.

(c) **Submission Requirements**

At a minimum, the Apparently Successful Applicant's Branding Strategy will address the following:

(1) Positioning

What is the intended name of this program, project, or activity?

Guidelines: USAID prefers to have the USAID Identity included as part of the program or project name, such as a "title sponsor," if possible and appropriate. It is acceptable to "co-brand" the title with USAID's and the Apparently Successful Applicant's identities. For example: "The USAID and [Apparently Successful Applicant] Health Center."

If it would be inappropriate or is not possible to "brand" the project this way, such as when rehabilitating a structure that already exists or if there are multiple donors, please explain and indicate how you intend to showcase USAID's involvement in publicizing the program or project. *For example: School #123, rehabilitated by USAID and [Apparently Successful Applicant]/ [other donors].* Note: the Agency prefers "made possible by (or with) the generous support of the American People" next to the USAID Identity in acknowledging our contribution, instead of the phrase "funded by." USAID prefers local language translations.

Will a program logo be developed and used consistently to identify this program? If yes, please attach a copy of the proposed program logo.

Note: USAID prefers to fund projects that do NOT have a separate logo or identity that competes with the USAID Identity.

(2) Program Communications and Publicity

Who are the primary and secondary audiences for this project or program?

Guidelines: Please include direct beneficiaries and any special target segments or influencers. *For Example: Primary audience: schoolgirls age 8-12, Secondary audience: teachers and parents-specifically mothers.*

What communications or program materials will be used to explain or market the program to beneficiaries?

Guidelines: These include training materials, posters, pamphlets, Public Service Announcements, billboards, websites, and so forth.

What is the main program message(s)?

Guidelines: *For example: "Be tested for HIV-AIDS" or "Have your child inoculated."* Please indicate if you also plan to incorporate USAID's primary message - this aid is "from the American people" - into the narrative of program materials. This is optional; however, marking with the USAID Identity is required.

Will the recipient announce and promote publicly this program or project to host country citizens? If yes, what press and promotional activities are planned?

Guidelines: These may include media releases, press conferences, public events, and so forth. Note: incorporating the message, "USAID from the American People", and the USAID Identity is required.

Please provide any additional ideas about how to increase awareness that the American people support this project or program.

Guidelines: One of our goals is to ensure that both beneficiaries and host-country citizens know that the aid the Agency is providing is "from the American people." Please provide any initial ideas on how to further this goal.

(3) Acknowledgements

Will there be any direct involvement from a host-country government ministry? If yes, please indicate which one or ones. Will the recipient acknowledge the ministry as an additional co-sponsor?

Note: it is perfectly acceptable and often encouraged for USAID to "co-brand" programs with government ministries.

Please indicate if there are any other groups whose logo or identity the recipient will use on program materials and related communications.

Guidelines: Please indicate if they are also a donor or why they will be visibly acknowledged, and if they will receive the same prominence as USAID.

(d) **Award Criteria.** The Agreement Officer will review the Branding Strategy for adequacy, ensuring that it contains the required information on naming and positioning the USAID-funded program, project, or activity, and promoting and communicating it to cooperating country beneficiaries and citizens. The Agreement Officer also will evaluate this information to ensure that it is consistent with the stated objectives of the award; with the Apparently Successful Applicant's cost data submissions; with the Apparently Successful Applicant's project, activity, or program performance plan; and with the regulatory

requirements set out in 22 CFR 226.91. The Agreement Officer may obtain advice and recommendations from technical experts while performing the evaluation.

ATTACHMENT 2:

MARKING PLAN - ASSISTANCE (December 2005)

(a) **Definitions**

Marking Plan means a plan that the Apparently Successful Applicant submits at the specific request of a USAID Agreement Officer after evaluation of an application for USAID funding, detailing the public communications, commodities, and program materials and other items that will visibly bear the USAID Identity. Recipients may request approval of Presumptive Exceptions to marking requirements in the Marking Plan.

Apparently Successful Applicant(s) means the applicant(s) for USAID funding recommended for an award after evaluation, but who has not yet been awarded a grant, cooperative agreement or other assistance award by the Agreement Officer. The Agreement Officer will request that Apparently Successful Applicants submit a Branding Strategy and Marking Plan. Apparently Successful Applicant status confers no right and constitutes no USAID commitment to an award, which the Agreement Officer must still obligate.

USAID Identity (Identity) means the official marking for the Agency, comprised of the USAID logo and new brandmark, which clearly communicates that our assistance is from the American people. The USAID Identity is available on the USAID website and USAID provides it without royalty, license, or other fee to recipients of USAID-funded grants, cooperative agreements, or other assistance awards or subawards.

A **Presumptive Exception** exempts the applicant from the general marking requirements for a *particular* USAID-funded public communication, commodity, program material or other deliverable, or a *category* of USAID-funded public communications, commodities, program materials or other deliverables that would otherwise be required to visibly bear the USAID Identity. The Presumptive Exceptions are:

Presumptive Exception (i). USAID marking requirements may not apply if they would compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials, such as election monitoring or ballots, and voter information literature; political party support or public policy advocacy or reform; independent media, such as television and radio broadcasts, newspaper articles and editorials; and public service announcements or public opinion polls and surveys (22 C.F.R. 226.91(h)(1)).

Presumptive Exception (ii). USAID marking requirements may not apply if they would diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent (22 C.F.R. 226.91(h)(2)).

Presumptive Exception (iii). USAID marking requirements may not apply if they would undercut host-country government "ownership" of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as "by" or "from" a cooperating country ministry or government official (22 C.F.R. 226.91(h)(3)).

Presumptive Exception (iv). USAID marking requirements may not apply if they would impair the functionality of an item, such as sterilized equipment or spare parts (22 C.F.R. 226.91(h)(4)).

Presumptive Exception (v). USAID marking requirements may not apply if they would incur substantial costs or be impractical, such as items too small or otherwise unsuited for individual marking, such as food in bulk (22 C.F.R. 226.91(h)(5)).

Presumptive Exception (vi). USAID marking requirements may not apply if they would offend local cultural or social norms, or be considered inappropriate on such items as condoms, toilets, bed pans, or similar commodities (22 C.F.R. 226.91(h)(6)).

Presumptive Exception (vii). USAID marking requirements may not apply if they would conflict with international law (22 C.F.R. 226.91(h)(7)).

(b) **Submission.** The Apparently Successful Applicant, upon the request of the Agreement Officer, will submit and negotiate a Marking Plan that addresses the details of the public communications, commodities, program materials that will visibly bear the USAID Identity. The marking plan will be customized for the particular program, project, or activity under the resultant grant or cooperative agreement. The plan will be included in and made a part of the resulting grant or cooperative agreement. USAID and the Apparently Successful Applicant will negotiate the Marking Plan within the time specified by the Agreement Officer. Failure to submit and negotiate a Marking Plan will make the applicant ineligible for award of a grant or cooperative agreement. The applicant must include an estimate of all costs associated with branding and marking USAID programs, such as plaques, labels, banners, press events, promotional materials, and so forth in the budget portion of its application. These costs are subject to revision and negotiation with the Agreement Officer upon submission of the Marking Plan and will be incorporated into the Total Estimated Amount of the grant, cooperative agreement or other assistance instrument.

(c) **Submission Requirements.** The Marking Plan will include the following:

(1) A description of the public communications, commodities, and program materials that the recipient will produce as a part of the grant or cooperative agreement and which will visibly bear the USAID Identity. These include:

(i) program, project, or activity sites funded by USAID, including visible infrastructure projects or other programs, projects, or activities that are physical in nature;

(ii) technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID;

(iii) events financed by USAID, such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences, and other public activities; and

(iv) all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies and other materials funded by USAID, and their export packaging.

(2) A table specifying:

(i) the program deliverables that the recipient will mark with the USAID Identity,

(ii) the type of marking and what materials the applicant will be used to mark the program deliverables with the USAID Identity, and

(iii) when in the performance period the applicant will mark the program deliverables, and where the applicant will place the marking.

(3) A table specifying:

(i) what program deliverables will not be marked with the USAID Identity, and

(ii) the rationale for not marking these program deliverables.

(d) Presumptive Exceptions.

(1) The Apparently Successful Applicant may request a Presumptive Exception as part of the overall Marking Plan submission. To request a Presumptive Exception, the Apparently Successful Applicant must identify which Presumptive Exception applies, and state why, in light of the Apparently Successful Applicant's technical proposal and in the context of the program description or program statement in the USAID Request For Application or Annual Program Statement, marking requirements should not be required.

(2) Specific guidelines for addressing each Presumptive Exception are:

(i) For Presumptive Exception (i), identify the USAID Strategic Objective, Interim Result, or program goal furthered by an appearance of neutrality, or state why the program, project, activity, commodity, or communication is 'intrinsically neutral.' Identify, by category or deliverable item, examples of program materials funded under the award for which you are seeking an exception.

(ii) For Presumptive Exception (ii), state what data, studies, or other deliverables will be produced under the USAID funded award, and explain why the data, studies, or deliverables must be seen as credible.

(iii) For Presumptive Exception (iii), identify the item or media product produced under the USAID funded award, and explain why each item or product, or category of item and product, is better positioned as an item or product produced by the cooperating country government.

(iv) For Presumptive Exception (iv), identify the item or commodity to be marked, or categories of items or commodities, and explain how marking would impair the item's or commodity's functionality.

(v) For Presumptive Exception (v), explain why marking would not be cost-beneficial or practical.

(vi) For Presumptive Exception (vi), identify the relevant cultural or social norm, and explain why marking would violate that norm or otherwise be inappropriate.

(vii) For Presumptive Exception (vii), identify the applicable international law violated by marking.

(3) The Agreement Officer will review the request for adequacy and reasonableness. In consultation with the Cognizant Technical Officer and other agency personnel as necessary, the Agreement Officer will approve or disapprove the requested Presumptive Exception. Approved exceptions will be made part of the approved Marking Plan, and will apply for the term of the award, unless provided otherwise.

(e) Award Criteria: The Agreement Officer will review the Marking Plan for adequacy and reasonableness, ensuring that it contains sufficient detail and information concerning public communications, commodities, and program materials that will visibly bear the USAID Identity. The Agreement Officer will evaluate the plan to ensure that it is consistent with the stated objectives of the award; with the applicant's cost data submissions; with the applicant's actual project, activity, or program performance plan; and with the regulatory requirements of 22 C.F.R. 226.91. The Agreement Officer will approve or disapprove any requested Presumptive Exceptions (see paragraph (d)) on the basis of adequacy and reasonableness. The Agreement Officer may obtain advice and recommendations from technical experts while performing the evaluation.

ATTACHMENT 3:

MARKING UNDER USAID-FUNDED ASSISTANCE INSTRUMENTS (December 2005)

(a) Definitions

Commodities mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and non-deliverable items for recipient's internal use, in administration of the USAID funded grant, cooperative agreement, or other agreement or subagreement.

Principal Officer means the most senior officer in a USAID Operating Unit in the field, e.g., USAID Mission Director or USAID Representative. For global programs managed from Washington but executed across many countries, such as disaster relief and assistance to internally displaced persons, humanitarian emergencies or immediate post conflict and political crisis response, the cognizant Principal Officer may be an Office Director, for example, the Directors of USAID/W/Office of Foreign Disaster Assistance and Office of Transition Initiatives. For non-presence countries, the cognizant Principal Officer is the Senior USAID officer in a regional USAID Operating Unit responsible for the non-presence country, or in the absence of such a responsible operating unit, the Principal U.S Diplomatic Officer in the non-presence country exercising delegated authority from USAID.

Programs mean an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the responsibilities assigned to it.

Projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

Public communications are documents and messages intended for distribution to audiences external to the recipient's organization. They include, but are not limited to, correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID funded programs, projects or activities, including signage and plaques; Web sites/Internet activities; and events such as training courses, conferences, seminars, press conferences and so forth.

Subrecipient means any person or government (including cooperating country government) department, agency, establishment, or for profit or nonprofit organization that receives a USAID subaward, as defined in 22 C.F.R. 226.2.

Technical Assistance means the provision of funds, goods, services, or other foreign assistance, such as loan guarantees or food for work, to developing countries and other USAID recipients, and through such recipients to subrecipients, in direct support of a development objective - as opposed to the internal management of the foreign assistance program.

USAID Identity (Identity) means the official marking for the United States Agency for International Development (USAID), comprised of the USAID logo or seal and new landmark, with the tagline that clearly communicates that our assistance is "from the American people." The USAID Identity is available on the USAID website at www.usaid.gov/branding and USAID provides it without royalty, license, or other fee to recipients of USAID-funded grants, or cooperative agreements, or other assistance awards

(b) Marking of Program Deliverables

(1) All recipients must mark appropriately all overseas programs, projects, activities, public communications, and commodities partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward with the USAID Identity, of a size and prominence equivalent to or greater than the recipient's, other donor's, or any other third party's identity or logo.

(2) The Recipient will mark all program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) with the USAID Identity. The Recipient should erect temporary signs or plaques early in the construction or implementation phase. When construction or implementation is complete, the Recipient must install a permanent, durable sign, plaque or other marking.

(3) The Recipient will mark technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID with the USAID Identity.

(4) The Recipient will appropriately mark events financed by USAID, such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials, such as signs and banners, with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, the recipient is encouraged otherwise to acknowledge USAID and the American people's support.

(5) The Recipient will mark all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies, and other materials funded by USAID, and their export packaging with the USAID Identity.

(6) The Agreement Officer may require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant, and as appropriate depending on the audience, program goals, and materials produced.

(7) The Agreement Officer may require marking with the USAID Identity in the event that the recipient does not choose to mark with its own identity or logo.

(8) The Agreement Officer may require a pre-production review of USAID-funded public communications and program materials for compliance with the approved Marking Plan.

(9) Subrecipients. To ensure that the marking requirements "flow down" to subrecipients of subawards, recipients of USAID funded grants and cooperative agreements or other assistance awards will include the USAID-approved marking provision in any USAID funded subaward, as follows:

"As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity."

(10) Any 'public communications', as defined in 22 C.F.R. 226.2, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

"This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States

Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government."

(11) The recipient will provide the Cognizant Technical Officer (CTO) or other USAID personnel designated in the grant or cooperative agreement with two copies of all program and communications materials produced under the award. In addition, the recipient will submit one electronic or one hard copy of all final documents to USAID's Development Experience Clearinghouse.

(c) Implementation of marking requirements.

(1) When the grant or cooperative agreement contains an approved Marking Plan, the recipient will implement the requirements of this provision following the approved Marking Plan.

(2) When the grant or cooperative agreement does not contain an approved Marking Plan, the recipient will propose and submit a plan for implementing the requirements of this provision within [Agreement Officer fill-in] days after the effective date of this provision. The plan will include:

(i) A description of the program deliverables specified in paragraph (b) of this provision that the recipient will produce as a part of the grant or cooperative agreement and which will visibly bear the USAID Identity.

(ii) the type of marking and what materials the applicant uses to mark the program deliverables with the USAID Identity,

(iii) when in the performance period the applicant will mark the program deliverables, and where the applicant will place the marking,

(3) The recipient may request program deliverables not be marked with the USAID Identity by identifying the program deliverables and providing a rationale for not marking these program deliverables. Program deliverables may be exempted from USAID marking requirements when:

(i) USAID marking requirements would compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials;

(ii) USAID marking requirements would diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent;

(iii) USAID marking requirements would undercut host-country government "ownership" of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as "by" or "from" a cooperating country ministry or government official;

(iv) USAID marking requirements would impair the functionality of an item;

(v) USAID marking requirements would incur substantial costs or be impractical;

(vi) USAID marking requirements would offend local cultural or social norms, or be considered inappropriate;

(vii) USAID marking requirements would conflict with international law.

(4) The proposed plan for implementing the requirements of this provision, including any proposed exemptions, will be negotiated within the time specified by

the Agreement Officer after receipt of the proposed plan. Failure to negotiate an approved plan with the time specified by the Agreement Officer may be considered as noncompliance with the requirements is provision.

(d) Waivers.

(1) The recipient may request a waiver of the Marking Plan or of the marking requirements of this provision, in whole or in part, for each program, project, activity, public communication or commodity, or, in exceptional circumstances, for a region or country, when USAID required marking would pose compelling political, safety, or security concerns, or when marking would have an adverse impact in the cooperating country. The recipient will submit the request through the Cognizant Technical Officer. The Principal Officer is responsible for approvals or disapprovals of waiver requests.

(2) The request will describe the compelling political, safety, security concerns, or adverse impact that require a waiver, detail the circumstances and rationale for the waiver, detail the specific requirements to be waived, the specific portion of the Marking Plan to be waived, or specific marking to be waived, and include a description of how program materials will be marked (if at all) if the USAID Identity is removed. The request should also provide a rationale for any use of recipient's own identity/logo or that of a third party on materials that will be subject to the waiver.

(3) Approved waivers are not limited in duration but are subject to Principal Officer review at any time, due to changed circumstances.

(4) Approved waivers "flow down" to recipients of subawards unless specified otherwise. The waiver may also include the removal of USAID markings already affixed, if circumstances warrant.

(5) Determinations regarding waiver requests are subject to appeal to the Principal Officer's cognizant Assistant Administrator. The recipient may appeal by submitting a written request to reconsider the Principal Officer's waiver determination to the cognizant Assistant Administrator.

(e) Non-retroactivity. The requirements of this provision do not apply to any materials, events, or commodities produced prior to January 2, 2006. The requirements of this provision do not apply to program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) where the construction and implementation of these are complete prior to January 2, 2006 and the period of the grant does not extend past January 2, 2006.