

The image features a large, light gray watermark of the USAID seal in the background. The seal is circular and contains the text "UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT" around the perimeter. In the center of the seal is a shield with a map of the United States, and the word "USAID" is written in a large, bold, sans-serif font across the middle of the shield. There are three stars at the bottom of the seal.

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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Procurement

Issued: February 26, 2004

AAPD 04-04 (Revised)

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: Assistance, Contracts
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: 04-04

Precedes change to: AIDAR Part(s) 752 Appendix
 USAID Automated Directives System (ADS) Chapters 303
 Code of Federal Regulations _____
 Other _____
 No change to regulations

Applicable to: Existing awards; Modification required:
 Effective immediately
 No later than _____
 As noted in guidance below
 RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source...
 Other or N/A All new awards or modifications to existing awards obligating funds for HIV/AIDS activities

New Provision/Clause Provided Herein: Yes; Scheduled update to Prodoc: June 2004
 No

(Signature on file)
TIMOTHY T. BEANS

1. PURPOSE:

The purpose of the AAPD is to provide clauses to be included as new standard provisions for assistance agreements and contracts that include FY 2004 HIV/AIDS funds. These provisions: (i) permit recipients to not endorse or utilize a multisectoral approach to combating HIV/AIDS, or to not endorse, utilize or participate in a prevention method or treatment program to which the organization has a religious or moral objection; (ii) prohibit the funds provided under the agreement to be used to promote the legalization or practice of prostitution or sex trafficking; and (iii) require certain recipients to agree that they oppose prostitution and sex trafficking.

2. BACKGROUND:

The United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, Pub.L. No. 108-25 (2003) (the "AIDS Authorization") authorizes funds to be appropriated for HIV/AIDS activities for the fiscal years 2004-2008. The AIDS Authorization includes, among other things, certain restrictions on the use of HIV/AIDS funds, and requires certain recipients of those funds to have certain policies in place. It also permits an organization to receive funds even if such organization cannot endorse, utilize or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

Specifically, Section 301, entitled "Assistance to Combat HIV/AIDS," includes the following provisions:

"(d) ELIGIBILITY FOR ASSISTANCE- An organization that is otherwise eligible to receive assistance under section 104A of the Foreign Assistance Act of 1961 (as added by subsection (a)) or under any other provision of this Act (or any amendment made by this Act) to prevent, treat, or monitor HIV/AIDS shall not be required, as a condition of receiving the assistance, to endorse or utilize a multisectoral approach to combatting HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

(e) LIMITATION. – No funds made available to carry out this Act, or any amendment made by this Act, may be used 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.

(f) LIMITATION. – No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking."

In response to a question from Senator Leahy on the Senate floor regarding provision (f) above, Senator Frist stated that "a statement in the contract or grant agreement between the U.S. Government and such organization that the organization is opposed

to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women . . . would satisfy the intent of the provision.” 149 Cong. Rec. S6457 (daily ed. May 15, 2003) (statement of Sen. Frist)

The Consolidated Appropriations Act of 2004, Division D – Foreign Operations, Export Financing, and Related Programs Appropriations (“FY 04 Appropriations Act”), Title II – Bilateral Economic Assistance, United States Agency for International Development, Child Survival and Health Programs Fund includes the following provision, “That information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated by this Act shall be medically accurate and shall include the public health benefits and failure rates of such use.”

In a colloquy on the Senate floor regarding the application of section 301(d) of the AIDS Authorization (see above), Senator Frist noted as follows: “I fully agree that it is essential that information about approaches to HIV/AIDS prevention be medically accurate, including both the public health benefits and failure rates of the approach involved. That is what is intended by this provision. In fact, the provision uses the words “an organization that is otherwise eligible to receive assistance”. I believe that “otherwise eligible” should be interpreted to require explicit assurances by such organizations that when it provides information about HIV/AIDS prevention approaches it will meet this standard of accuracy.”

In addition, the FY 04 Appropriations Act amends section 301(f) of the AIDS Authorization by exempting the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative and any “United Nations agency” from that section. The Statement of Managers states that the conferees “intend that for purposes of this provision, the World Health Organization includes its six regional offices: The Americas (PAHO); South-East Asia (SEARO); Africa (AFRO); Eastern Mediterranean (EMRO); Europe (EURO); and Western Pacific (WPRO).”

OMB has approved the Agency’s information collection request under the Paperwork Reduction Act, allowing USAID to require (i) non-U.S. nongovernmental organizations, certain public international organizations and contractors or subcontractors that are foreign organizations to have a policy explicitly opposing, in their activities outside of the United States, prostitution and sex trafficking and (ii) U.S. and non-U.S. non-governmental organizations receiving FY04 HIV/AIDS funds under a grant or cooperative agreement to provide a certification that they are in compliance with the standard provisions “Condoms” and “Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking” that appear below. (OMB No.: 0412-0568)

3. GUIDANCE:

For Assistance Agreements and PIO Grants:

I. Eligibility

The following provisions must be included in each new Request for Assistance and Annual Program Statement utilizing FY04 HIV/AIDS funding. When designing a program for HIV/AIDS the SO Team must be mindful of the first clause below. The evaluation criteria should not give any special advantage to an organization that endorses or utilizes a multisectoral approach (multisectoral in the legislation refers to Abstinence, Be Faithful/Behavior Change, and Condoms).

These provisions also must be included in the Standard Provisions of any new grant or cooperative agreement to a public international organization or a U.S. or non-U.S. non-governmental organization financed with FY04 HIV/AIDS funds or modification to an existing grant or cooperative agreement that adds FY04 HIV/AIDS.

“ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (FEB. 2004)

An organization that is otherwise eligible to receive funds under this agreement to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combatting HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

CONDOMS (FEB. 2004)

Information provided about the use of condoms as part of projects or activities that are funded under this agreement shall be medically accurate and shall include the public health benefits and failure rates of such use.”

II. Limitation on the Use of Funds

a. Assistance Agreements with U.S. Non-Governmental Organizations and grants to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative and any United Nations agency

The following must be included in the Standard Provisions of any grant or cooperative agreement or subagreement funded with FY04 HIV/AIDS funds with a U.S. nongovernmental organization or to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative and any United Nations agency. The World Health Organization includes its six regional offices: The Americas (PAHO), South-East Asia (SEARO), Africa (AFRO); Eastern Mediterranean (EMRO), Europe (EURO), and Western Pacific (WPRO).

“PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (FEB. 2004)

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. None of the funds made available under this agreement may be used 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.

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).

The recipient shall insert this provision, which is a standard provision, in all subagreements under this award.

This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.”

b. Assistance Agreements with Non-U.S. Non-Governmental Organizations and Public International Organizations OTHER THAN the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or any United Nations agency

The following must be included in the Standard Provisions of any grant or cooperative agreement or subagreement funded with FY04 HIV/AIDS funds with a non-U.S. non-governmental organization or with a public international organization other than the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or any United Nations agency. For purposes of this provision, a non-U.S. non-governmental organization means an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. Restoration of The Mexico City Policy, 66 Fed. Reg. 17303 (March 28, 2001).

“PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE
LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING
(FEB. 2004)

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. None of the funds made available under this agreement may be used 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.

As a condition of entering into this agreement, the recipient agrees that it has a policy explicitly opposing, in its activities outside of the United States, prostitution and sex trafficking.

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).

The recipient shall insert this provision, which is a standard provision, in all subagreements under this award.

This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.”

III. Certification

Before a U.S. or non-U.S. non-governmental organization receives FY04 HIV/AIDS funds under a grant or cooperative agreement, such recipient must provide to the Agreements Officer a certification substantially as follows:

“[Recipient's name] certifies compliance as applicable with the standard provisions, “Condoms” and “Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking” included in the referenced agreement.”

For Contracts:

I. Eligibility

The following provisions must be included in each new solicitation and contract utilizing FY04 HIV/AIDS funding. When designing a program for HIV/AIDS the SO Team must be mindful of the first clause below. The evaluation criteria should not give any special advantage to an organization that endorses or utilizes a multisectoral approach (multisectoral in the legislation refers to Abstinence, Be Faithful/Behavior Change, and Condoms).

In addition, these provisions are to be included when any existing contract is amended to add FY04 HIV/AIDS funding.

ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (FEB. 2004)

An organization that is otherwise eligible to receive funds under this agreement to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combatting HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

CONDOMS (FEB. 2004)

Information provided about the use of condoms as part of projects or activities that are funded under this agreement shall be medically accurate and shall include the public health benefits and failure rates of such use.

II. Limitation on the Use of Funds

The following must be included in the Standard Provisions in any contract that includes FY04 HIV/AIDS funds.

PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (FEB. 2004)

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 agreement 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.

If the contractor or a subcontractor at any tier is a foreign organization, as a condition of entering into this contract or subcontract, the contractor/subcontractor must have a policy explicitly opposing, in its activities outside of the United States, prostitution and sex trafficking.

The following definitions apply 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).

Foreign organization means an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

The contractor shall insert this clause in all subcontracts.

Any violation of this clause will result in the immediate termination of this contract by USAID.”

4. POINT OF CONTACT:

Please direct any questions to Allen Eisenberg, M/OP/P, Phone: (202) 712-1467, e-mail: aeisenberg@usaid.gov.