ADS Chapter 305

Host Country Contracts

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ADS 305 – Host Country Contracts

305.1 OVERVIEW

The objective is to obtain maximum utility from USAID-financed host country contracting when implementing bilateral assistance (other than Commodity Import Programs, contracting by intermediate credit institutions, or contracting restricted to local sources.) (USAID policy on the criteria for using host country contracting and the procedures used in determining, usually during activity design, to implement activities by host country contracting is found in Chapter 301. **(See ADS 301)**

In the event of any inconsistency between this Chapter and any Mandatory Reference material addressed in it, this Chapter shall take precedence.

305.2 PRIMARY RESPONSIBILITIES

a. The Strategic Objective team is responsible for:

(1) Ensuring that activities are designed to assign the responsibility for procurement where it will best serve the objective. When host country contracting is going to be used, an assessment of the Contracting Agency's procurement system is made. **(See ADS 301.3.2)**

b. The Mission or regional contracting officer, controller, and legal advisor are responsible for:

(1) Assessing the Contracting Agency's procurement system as part of the host country assessment team, or

(2) Reviewing the assessment and offering recommendations before the Mission Director certifies that the Contracting Agency's procurement system is acceptable; and

(3) Serving on the Mission Noncompetitive Review Board for single source procurements over $250,000. **(See ADS 301.3.2 and ADS 305.3.2.6)**

c. The Mission Engineer and Commodity Management Officer are responsible for:

(1) Participating in the host country assessment when their areas of expertise are involved. **(See ADS 301.3.2)**

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d. **The Mission controller** is responsible for:

(1) Ensuring that the Contracting Agency's accounting system and internal controls are adequate. **(See ADS 301.3.2)**

e. **The Mission or regional Contracting Officer** is responsible for **(See ADS 301.4.2):**

(1) Monitoring the selection and award process.

(2) Clearing on USAID approvals of the significant steps in the contracting process.

(3) Furnishing a USAID observer of host country source selection panels.

f. The USAID Competition Advocate is responsible for clearing the approval of single source **(See 305.3.2.6)**

g. **The Mission Director, or the Strategic Objective Team Leader** to the extent that the authority has been appropriately redelegated, is responsible for:

(1) Reviewing the recommendations of the host country assessment team and for certifying the acceptability of the Contracting Agency's procurement system if the facts support doing so. **(See ADS 301.3.2)**

(2) Approving single source negotiated procurement estimated to cost $5 million or less. **(See 305.3.2.6a)**

(3) Approving the various steps of the contracting process for procurements estimated to be in excess of $250,000. **(See 305.3.1.5)**

(4) Approving source and nationality waivers, per Regional Assistant Administrator relegation.

(5) Waiving marking requirements. **(See ADS 320.2f)**

h. **Regional Assistant Administrator:** The Regional Assistant Administrator is responsible for the following:

(1) Approving single source negotiated procurement estimated to exceed $5 million in value. **(See 305.3.2.6)**

(2) Approving source and nationality waivers. **(See ADS 103.2h)**

(3) Waiving marking requirements. **(See ADS 320.2f)**

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i. The USAID Assistant Administrator for Management (AA/M) or the Director, Office of Procurement, Bureau of Management (M/OP) is responsible for:

(1) Waiving the requirement for the "Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities and Contract Abstract" (Form AID 1450-4) and

(2) Approving contract awards and contract modifications in excess of $10 million and extensions of one year or more in the terms of contracts in excess of $10 million. **(See 305.3.7.1 paragraph k and 305.3.1.6)**

305.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

The statements contained within the .3 section of this ADS chapter are the official Agency policies and corresponding essential procedures**.**

305.3.1 USAID Approvals of Contracting Steps

As financier of host country procurement transactions, USAID reserves in its grant agreements and Implementation Letters the right of prior approval of the most critical steps in the normal contracting process in order to assure that they shall be undertaken in compliance with specific provisions of the FAA and USAID policies governing USAID-financed project procurement. It is, however, USAID policy to be as sparing in its exercise of its rights of prior approval as sound management of its interest permits. The exercise of USAID approval rights is not to be construed in any case as making USAID a party to a contract.

Sub-Essential Procedures 305.3.1.1 through 305.3.1.6 are the requirements for USAID approval of host country contracting.

305.3.1.1 Contracts in Excess of $250,000

When the total contract amount is anticipated to exceed $250,000 in value, including any local currency, written USAID approval is required for the following:

a. Notices to prospective offerors, e.g.**,** Commerce Business Daily notices;

b. Lists of prequalified offerors, if any, prior to issuance of the solicitation document;

c. Complete solicitation document, prior to issuance;

d. The contractor selection method (may be part of approval of solicitation document);

e. The selected contractor;

f. Any host Contracting Agency decision to terminate negotiations with the highest ranked offeror and to initiate negotiations with the next ranked offeror or to reject all offers;

g. The contract, prior to execution;

h. Signed contract documents, before financing; and

i. Contract administrative actions such as subcontracts, amendments, and change orders, as determined by the Mission and stipulated in an Activity Implementation Letter.

305.3.1.2 Use of Cost-Reimbursement Contracts

The use of either cost-reimbursement contracts that are not anticipated to exceed $250,000 or level of effort, cost-reimbursement contracts, regardless of dollar value, requires specific written USAID approval.

305.3.1.3 Contracts Not Funded by USAID

USAID may also require that contracts not funded by USAID but having a substantial impact on the activity be approved by USAID. The Results Package and Implementation Letters must specify the entities to be involved in contract preparation and administration, and the review and approval procedures.

305.3.1.4 Additional Approvals

USAID approvals may also be required, at the Mission's discretion for other actions taken by the Contracting Agency during the contracting process. Such additional approval requirements must be set forth in an Implementation Letter.

305.3.1.5 Approving Authority

The Mission Director, or the Strategic Objective Team Leader if so designated, is the approving authority for the approvals specified in 305.3.1.1, .2, .3, and .4 as follows:

a. Authority to approve the steps specified in sections 305.3.1.1, paragraph c, d, e, and f for contracts expected to exceed $250,000 is reserved to the Mission Director and may not be redelegated. It may be exercised by an Acting Mission Director.

b. Except as restricted above, approval authority for other approvals in section 305.3.1.1 and in sections 305.3.1.2, .3, and .4 may be redelegated by the Mission Director to the Strategic Objective Team Leader.

305.3.1.6 USAID/W Approval Requirement

In addition to the above USAID Mission approvals, the Assistant Administrator for Management (AA/M) or the Director, Office of Procurement, Bureau of Management (M/OP) in USAID/W must approve contract awards and contract modifications in excess of $10 million and extensions of one year or more in the terms of contracts in excess of $10 million. **(See ADS 103.2)** ID/Cairo has been granted an exception to this requirement for USAID/W approval. In lieu of this, the Director of the Mission Contracting Office must approve contract awards and contract modifications in excess of $10 million and extensions of one year or more in the terms of contracts in excess of $10 million.

305.3.2 Competition

Cooperating country contracts for the procurement of USAID-financed goods and services shall be awarded on the basis of competitive procedures. The type of transaction involved (i.e., procurement of technical or professional services, construction services, or goods) determines the procedures to be used in obtaining competition, such as advertising and the basis of competition (i.e., technical qualifications, price, or both).

Competition requirements for technical and professional services, construction services, and goods are set forth in this section.

305.3.2.1 Contracting for Technical and Professional Services

Technical and professional services shall be procured using competitive, technical selection among qualified prospective contractors.

a. Technical Evaluations

Such selection shall be based upon evaluation of the relative merits of technical proposals. The selection of a prospective contractor with whom to negotiate shall be based exclusively on professional qualifications for the activity. Offerors shall be instructed that price is not to be included with the submission of the technical proposals which are evaluated qualitatively, based on the needs of the specific activity. A price proposal shall be requested from the offeror submitting the highest ranked technical proposal and negotiations are conducted concerning both technical and cost proposals. If a satisfactory contract cannot be concluded, the Contracting Agency must, if approved under 305.3.1.1 paragraph f, terminate negotiations with that contractor and initiate negotiations with the next ranked offeror.

b. Exceptions

Exceptions to this procedure may be authorized only by the cognizant Regional Assistant Administrator, with the clearance of the Director of Bureau for Management, Office of Procurement (M/OP) or designee and Office of the General Counsel, Assistant General Counsel for Contract and Commodity Management (GC/CCM). The request for the exception must fully explain the procedure to be used in evaluating both the technical and price elements of the proposal.

c. Personal Services

If the services are to be performed personally by an individual, only consideration of a reasonable number of candidates shall be required.

d. Informal solicitation

If the estimated contract value does not exceed $100,000, negotiation may be undertaken without a formal, written solicitation. However, informal solicitation of several sources is required unless a waiver of competition has been approved pursuant to 305.3.2.4. A procurement action must not be broken down into two or more smaller dollar value actions in order to avoid the requirements for competitive procurement. Records must be maintained in the contract file on the informal solicitations made hereunder.

e. Follow-on Contracts for Implementation

If the Contracting Agency wishes to employ, for work related to activity implementation, a contractor who has satisfactorily performed work in connection with the identification, development, or study of an activity, competitive selection need not be used provided that:

(1) The contractor was initially selected on a competitive basis, and

(2) All competing firms were advised in the Notice in Commerce Business Daily announcing the availability of prequalification questionnaires, if any, and in the Request for Technical Proposals (RFTP) that the Contracting Agency, in the contract for the initial work, reserves the right to contract with the selected contractor for specified subsequent work.

305.3.2.2 Contracting for Construction Services

Formal competitive bidding among qualified bidders shall be the normal procedure for awarding contracts for construction services. Formal competitive bid procedures include public advertising, issuance of invitations for bids, public opening of sealed bids, evaluation of bids, and award of a contract to the lowest responsive and responsible

bidder.

Contracts for construction services may be awarded on the basis of competitive negotiation if the Contracting Agency has failed, after diligent efforts, to secure a contract through formal competitive bid procedures and further use of formal competitive bid procedures clearly would not be productive. The Mission Director must approve the use of competitive negotiation, including the procedures to be followed. **(See Country Contracting Handbook for additional information on negotiating contracts)**

305.3.2.3 Contracting for Goods

The competitive procedures required for the procurement of goods normally depends on the size of the transaction.

a. Procurements over $100,000

Formal competitive bidding shall be the normal procedure for awarding contracts for goods when the estimated cost exceeds $100,000. Formal competitive bid procedures are listed in 305.3.2.2 above.

b. Procurements Not Exceeding $100,000

"Small value" informal procurement procedures may be used when the estimated cost of the procurement does not exceed $100,000, in lieu of formal bidding procedures; however, a reasonable number of potential suppliers must be solicited for procurements expected to exceed $2,500, and the procurement must be awarded at a reasonable price. Advertising in the Commerce Business Daily is not required and requests for quotations may be oral. Informal (handwritten) records of quotations must be kept in the procurement file.

c. Procurements Not Exceeding $2,500

In procurements for goods that do not exceed $2,500, awards may be made without obtaining competitive quotations so long as:

(1) The Contracting Agency/Procurement Services Agent considers the price reasonable;

(2) Such purchases are distributed equitably between qualified suppliers; and

(3) The awarding official documents these conclusions in the Contracting Agency/Procurement Services Agent's records of the procurement.

d. Approval of Competitive Negotiation

If approved by the Mission Director, an informal competitive procedure (sometimes known as competitive negotiation) may be used for procurements in excess of $100,000. Informal competitive procedures generally include advertising the availability of the Request for Quotations (RFQ), issuance of the RFQ, receipt and evaluation of offers, negotiation when appropriate, and award of the contract to the offeror submitting the most advantageous offer. However, the procedures may be modified to adapt them to particular circumstances of the procurement, e.g**.,** waiving the advertisement of the RFQ. These procedures may be authorized when:

(1) It is impossible to develop adequate specifications for use in an Invitation for Bids;

(2) Procurement of a proprietary product is justified; and

(3) Adherence to formal competitive procedures would impair activity objectives.

e. Failure of Formal Competitive Bidding

If formal competitive bidding procedures have failed and further use of such procedures would clearly not be productive, a modified informal competitive procedure may be approved by the Mission Director. This modified procedure does not require readvertising the procurement and the RFQ normally incorporates the unsuccessful Invitation for Bids (IFB) by reference.

305.3.2.4 Waiver of Competition – Negotiation with a Single Source

The Contracting Agency must follow one of the procedures in 305.3.1.1–.3 unless a waiver is approved by USAID to negotiate with a single source. Waivers may be authorized only in one of the following situations and must be supported by a written record of the reasons for negotiation with only the single source.

a. For Any Type of Services or Goods

The following situations may justify the waiver of competition for procurement of any type of services or goods:

(1) Special design or operational requirements require services or goods available from only one source.

(2) The Contracting Agency desires to utilize a contractor previously engaged in the activity for follow-on work and the contractor clearly has special capability by virtue of previous experience in the work, but the contractor was either not selected on a competitive basis or the Contracting Agency did not advise all

competing firms that a follow-on contract might result. A waiver on these grounds shall be granted only after careful review of all pertinent facts. **(See 305.3.1.1 paragraph e, if the contract for the initial work specified that follow-on work might result.)**

(3) The Contracting Agency can demonstrate the existence of any emergency situation in which the requirement for competition would result in unacceptable delay of the activity.

(4) Adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interest of the United States.

b. For Technical or Professional Services

A waiver of competition for technical or professional services may be justified if it can be demonstrated that one institution or firm has the unique capability by reason of specialized facilities or of personnel who are recognized as predominant experts in a particular field of services that is required for the activity.

c. For Construction Services

A waiver of competition for procurement of construction services may be justified in either one of the following situations:

(1) The Contracting Agency wishes to utilize the contractor for additional work outside the scope of the original contract and the contractor is still mobilized at the site or for some other reason the contractor is so closely related to the activity that utilization of that contractor would effect a substantial saving of time or money.

(2) Only one bid has been received pursuant to an IFB and the bid is not fully responsive, but the Contracting Agency wishes to negotiate only with that bidder.

d. For Goods

A waiver of competition for procurement of goods may be justified in either one of the following situations:

(1) When proprietary procurement is justified and the necessary equipment, materials, or spare parts are available from only one source, taking into account any special requirements such as warranty coverage and the need for in-country service capability.

(2) Only one bid has been received pursuant to an IFB and the bid is not fully responsive, but the Contracting Agency wishes to negotiate only with that bidder.

305.3.2.5 Amendments to Existing Contracts

Approval of an amendment to an existing contract that increases the scope of work or level of effort (i.e., a "new procurement amendment") is also required. Negotiation with the single source to amend the contract must be justified under one of the criteria in 305.3.1.4 paragraphs a–d and approved by the official who has the authority under 305.3.1.6 for the estimated amount of the amendment.

305.3.2.6 USAID/W Approval Authority

A single source, negotiated procurement estimated to exceed $5 million in value may only be authorized by the cognizant Regional Assistant Administrator. Prior clearance by the USAID Competition Advocate is required for this authorization.

Mission approval authority is as follows:

a. A single source, negotiated procurement estimated to cost $5 million or less may be approved by the Mission Director.

b. The Mission Director may delegate this approval authority to the Deputy Mission Director only for procurements that are estimated not to exceed $250,000.

c. For procurements estimated to be in excess of $250,000, such approval must be based upon the recommendation of the Mission Noncompetitive Review Board, which is composed of at least three senior officers other than the approving officer, e.g., the Deputy Mission Director, the Mission or Regional Legal Advisor, a Contracting Officer, and a senior Project Officer not otherwise involved with the procurement under consideration.

305.3.3 Advertising

Cooperating country contracts shall be advertised extensively to promote interest in and competition for USAID-financed procurement requirements in eligible geographic source areas. In particular, advertising shall be directed toward obtaining the maximum benefits of competition from U.S. firms and giving such qualified firms an opportunity to compete for an award.

Notices of proposed procurements shall be issued in the USAID Procurement Information Bulletin and/or the Commerce Business Daily of the U.S. Department of Commerce, as set forth below. The notices shall generally concern individual proposed procurements, but for goods, when circumstances permit (i.e., when total quantity, type and size requirements are identified early in the activity life), a "blanket" or "consolidated" type notice may be published. Additionally, if it is accordance with local practice, the Contracting Agency may advertise in local, regional, or international

journals, newspapers, etc. that are disseminated in the eligible source area(s), as designated by geographic code.

305.3.3.1 Advertising for Technical and Professional Services

The notice of availability of prequalification questionnaires, or if prequalification is not used, Requests for Technical Proposals, shall be published in the Commerce Business Daily unless:

a. The services are to be performed personally by a single individual;

b. The contract value is estimated to be under $100,000; or

c. Competition has been waived.

(See Country Contracting Handbook, Ch. 1, Att 1M, on preparation and transmittal procedures for the notice)

For procurement service contracts in which the fee for the services is expected to be in excess of $25,000, notice of the proposed procurement shall be published in the USAID Procurement Information Bulletin.

305.3.3.2 Advertising for Construction Services

The notice of availability of prequalification questionnaires or, if prequalification is not used, Invitations for Bids shall be published in the Commerce Business Daily unless:

a. The contract value is under $500,000, in which case publication in the Commerce Business Daily is not required, but other advertising in local, regional, or international journals, newspapers, etc., and otherwise in accordance with local practice must be used;

b. Competitive negotiation has been authorized; or

c. Competition has been waived.

(See Country Contracting Handbook, Ch. 2, Att 2B, on preparation and transmittal procedures for the notice)

305.3.3.3 Advertising for Goods

For procurements estimated to exceed $25,000, the notice of availability of Invitations for Bids, Requests for Quotations, or if prequalification is used, prequalification questionnaires shall be published by the Office of Procurement in the USAID Procurement Information Bulletin. If the estimated value of the contract exceeds $100,000, the notice shall also be published in the Commerce Business Daily, unless:

a. The use of modified informal competitive procedure, authorized pursuant to 305.5.2.3 paragraph d, so specifies; or

b. Competition has been waived **(See E305.5.1d)**.

(See Country Contracting Handbook, Ch. 3, Att 3C, on preparation and transmittal procedures for the notice.)

305.3.3.4 Waivers of Advertisement for Invitations for Bids or Requests for Proposals

The requirement that a notice of availability of an IFB, RFTP, RFQ, or prequalification questionnaire be publicized in the Commerce Business Daily, the USAID Procurement Information Bulletin, or other media, in accordance with local practice, may be waived by the Mission Director to avoid serious delay in activity implementation, provided that efforts shall in any event be made to secure proposals, bids, or offers from a reasonable number of potential contractors or suppliers.

305.3.4 Cost Plus Percentage of Cost Prohibition

USAID shall not finance a contract in which the fee or profit (however described) increases without limitation as the cost of the contract increases (cost-plus-percentage-of-cost contract); neither shall USAID finance engineering services contracts, if the price is set as a percentage of the actual construction cost of the related facility. This policy is not subject to waiver.

305.3.5 Nationality and Source of Goods and Services, Including Delivery Services

Host country contracting is subject to nationality, source, and cargo preference policies in ADS 310, 314, and 315. **(See ADS 310, 314, and 315)**

305.3.6 Other Factors Affecting the Eligibility of Firms and Commodities

Host country contracting is subject to eligibility policies in Chapters 312 and 313. **(See ADS 312 and 313)**

305.3.7 Mandatory Contract Requirements and Clauses

The requirements and clauses listed in below shall be incorporated into each country contract, as appropriate.

The mandatory contract requirements and clauses referenced in this section must be included in every USAID-financed contract under the conditions discussed below. **(See Country Contracting Handbook for optional contract clauses and sample**

contract)

305.3.7.1 For All Types of Services and Goods

The following clauses must be included in all host country contracts except as provided for in this subsection:

a. Legal Effect of USAID Approvals and Decisions

USAID requires the reservation of certain approval rights with respect to the contract but must not incur legal liability by reason of the exercise of those rights. The following clause must be included verbatim in each contract in excess of $2500:

> "The parties hereto understand that the contract has reserved to USAID certain rights such as, but not limited to, the right to approve the terms of this contract, the Contractor, and any or all plans, reports, specifications, subcontracts, bid documents, drawings, or other documents related to this contract and the project of which it is part. The parties hereto further understand and agree that USAID, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States Government funds, and that any decision by USAID to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing this project and shall not be construed as making USAID a party to the contract. The parties hereto understand and agree that USAID may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the project with the parties jointly or separately, without thereby incurring any responsibility or liability to the parties jointly or to any of them. Any approval (or failure to disapprove) by USAID shall not bar the Government or USAID from asserting any right, or relieve the Contractor of any liability which the Contractor might otherwise have to the Government or USAID."

Though it does not itself reserve approvals; it does recognize USAID's role as the financing entity and protects USAID against exposure to liability.

b. Nationality and Source

Unless it is with an individual or no more than $2500 in value, the contract, must state the nationality and source requirements for subcontractors and goods, by listing the geographic code authorized by the agreement or a waiver. **(See 305.3.3.)**

c. Host Country Taxes

The contract must contain a clause that applies the exemption of USAID funds from identifiable taxes of the host country and its political subdivisions. **(See Country Contracting Handbook; Ch. 1, Sect 4.3.18 and 5.18; Ch. 2, Sect 4.7.2.2.g and Att 2S, Clause 79; and Ch. 3, Sect 4.1.6.9 and Att 3N, Clause 10)**

d. Worker's Compensation Insurance

Worker's compensation insurance must be provided under all services contracts and contracts involving incidental services that are financed by USAID. All contracts involving performance outside the United States must provide for such coverage as required by the Defense Base Act (42 USC 1651, et seq.) unless a waiver is obtained from the U.S. Department of Labor. This clause is discussed in detail in Mandatory Reference: Country Contracting Handbook; Ch. 1, Sect 4.3.41; Ch. 2, Sect 4.7.2.2.e and Att 2S, Clause 77; and Ch. 3, Sect 4.1.6.22 and Att 3N, Clause 22. **(See Country Contracting Handbook; Ch. 1, Sect 4.3.41; Ch. 2, Sect 4.7.2.2.e and Att 2S, Clause 77; and Ch. 3, Sect 4.1.6.22 and Att 3N, Clause 22**)

e. Equal Employment Opportunity

A contract with a U.S. firm must include a clause requiring the contractor to be in compliance with its equal employment opportunity obligations under Executive Order 11246, as amended, and regulations and orders issued thereunder. This requirement may be waived only by the USAID Administrator. **(See Country Contracting Handbook, Ch. 1, Sect 4.3.39 and 5.39; Ch. 2, Sect 4.7.2.2.j and Att 2S, Clause 82; Ch. 3, Sect 4.1.6.29 and Att 3N, Clause 29)**

f. Disposition of Personal Property in the Cooperating Country

The contractor's employees, the contractor (if the contract is with an individual), and family members thereof shall not be permitted to retain profits from the disposition of personal property that was acquired in or was imported into the Cooperating Country and was exempted from import restrictions, customs duties, or taxes by virtue of the individual's status under an USAID-financed contract. If there is provision for such exemption, the contract must contain a clause which restricts the disposition of such personal property in accordance with the rules contained in 22 CFR Part 136 to the extent that these rules are applicable to the employees of U.S. Government Contractors in the Cooperating Country. **(See 22 CFR 136 and Country Contracting Handbook; Ch. 1, Sect 4.3.28 and 5.28; and Ch. 2, Sect 4.7.2.2.i and Att 2S Clause 81)**

g. Air Travel and Transportation

U.S. Government statute requires the use of U.S. flag air carriers for all USAID grant-financed international air travel and transportation unless such service is not available. When U.S. flag air carriers are not available, any Code 935 flag air carrier may be used. The language defining "available" and "unavailable" carriers in Sample Contract Format (Section 5.23) must be used verbatim in grant-financed country contracts.

h. Metric Specifications

Country contracting must adhere to the metric policies in ADS 323. **(See ADS 323)**

i. Language

Contracts and other documents submitted to USAID shall be written in English unless USAID otherwise agrees. Notices and solicitations to be published and/or disseminated in the United States shall be prepared in English in any event. If contracts and other documents are prepared or translated into more than one language, the English edition shall prevail in the event of inconsistencies between the editions.

j. Settlement of Disputes

The contract must contain a clause that specifies impartial and effective procedures for the settlement of disputes that arise from the performance of the contract. The clause and the permissible modifications to it are discussed in Mandatory Reference: Country Contracting Handbook; Ch. 1, Sect 4.3.27 and 5.27; Ch. 2, Sect 4.7.2.2.h and Att 2R, Clause 78; Ch. 3, Sect 4.1.15 and Att 3N, Clause 15. **(See Country Contracting Handbook; Ch. 1, Sect 4.3.27 and 5.27; Ch. 2, Sect 4.7.2.2.h and Att 2S, Clause 78; Ch. 3, Sect 4.1 and Att 3N, Clause 15)**

k. Documentation for Payment

(1) For each request for payment, the contract must require the contractor to submit appropriate and complete documentation, including (for services) the "Contractor's Certificate and Agreement with the Agency for International Development/Invoice and Contract Abstract" (Form AID 1440-3)**, (See Country Contracting Handbook, Ch. 1, Att 1S and Ch. 2, Att 2S, Clause 78**) and/or (for goods) the "Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities and Contract Abstract" (Form AID 1450-4), **(see Country Contracting Handbook, Ch. 3, Att 3B**), executed in accordance with instructions thereon.

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(2) In a contract for goods, the requirement for the certificate applies only if the contract exceeds $2500.

(3) This requirement may be waived only by the Director, Office of Procurement, Bureau of Management (M/OP), with concurrence of General Counsel (GC).

l. Audit and Records

Contracts (for goods: only those in excess of $2500) must contain an audit and record-keeping clause. **(See Country Contracting Handbook, Ch. 1, Sect 4.3.18 and 5.18)**

m. Corrupt Practices

Contracts (for goods: only those in excess of $2500) must contain a contract clause on corrupt practices. **(See Country Contracting Handbook, Ch. 1, Sect 2.12.12, 4.2.1.g, 4.3.47, and 5.47; Ch. 2, Sect 2.11.12, 4.7.2.2.l, Att 2J.13, and Att 2S. Clause 84; and Ch. 3, Sect 2.13.12, 4.1.6.35, Att 3H.12(g), and Att 3N. Clause 35)**

305.3.7.2 For Professional and Technical Services

a. Participant Training

When a contract provides for participant training, i.e., the training of non-U.S. nationals outside their home countries, the contract must include a clause which incorporates into the contract, by Reference ADS 253, "Training for Development Impact", and requires the contractor to follow the provisions of that chapter and supplementary references. **(See Country Contracting Handbook, Ch. 1, Sect 4.3.44 and 5.44 and ADS 253**)

b. Other

There are other clauses, discussed in Reference: Country Contracting Handbook, Ch. 1, Sect 4.3, which are sound contracting practice but not mandatory.

305.3.7.3 For Construction Services

a. Marking

USAID requires that job sites be identified to show that the activity is financed by the United States Government. If compliance with marking requirements is impractical, the Regional Assistant Administrator or delegate may waive the requirement, after consultation with the Office of Procurement (M/OP). Mission Directors may waive the marking requirement, or authorize the removal of emblems, on a finding that the appearance of the emblems would produce adverse reactions in the host country. **(See**

Chapter 320 and Country Contracting Handbook, Ch. 2, Att 2S, Clause 78)

b. Other

There are other clauses, discussed in Mandatory Reference Country Contracting Handbook, Ch. 2, Sect 4.7, which are sound contracting practice but not required on a mandatory basis. **(See Country Contracting Handbook, Ch. 2, Sect 4.7)**

305.3.7.4 For Goods

The following clauses must be included in contracts for goods:

a. Marking

USAID requires that goods be identified to show that the United States Government finances the activity. If compliance with marking requirements is impractical, the Regional Assistant Administrator or delegate may waive the requirement, after consultation with the Office of Procurement (M/OP). Mission Directors may waive the marking requirement, or authorize the removal of emblems, on a finding that the appearance of the emblems would produce adverse reactions in the host country. **(See Chapter 320 and Country Contracting Handbook, Ch. 3, Att 3N, Clause 16**)

b. Vesting of Title and Diversion Rights

The contract must include a clause allowing USAID to take title to commodities and divert shipment, pursuant to the terms of the Activity Agreement. **(See Country Contracting Handbook Ch. 3, Att 3N, Clause 30**)

c. Other

There are other clauses, discussed in Mandatory Reference: Country Contracting Handbook, Ch. 3, Sect 4.1, which are sound contracting practice but not required on a mandatory basis. **(See Country Contracting Handbook, Ch. 3, Sect 4.1)**

305.3.8 Auditing and Contract Closeout Provisions

Requirements for audit and closeout of contracts are set forth in this section.

305.3.8.1 Cost-Reimbursable Contracts and Subcontracts Over $300,000

Provisions must be made for the proper audit of cost-reimbursable contracts and subcontracts in excess of $300,000, including the following as necessary: setting aside activity funds to cover the cost of the audit, selection of the auditing entity in accordance with the guidance in Mandatory Reference Ch. 1, 3.8, and providing for the finalization of provisional overhead rates annually.

305.3.8.2 Other Audit Requirements

Cost-reimbursable items in contracts and subcontracts that do not exceed $300,000 and contract requirements such as source of goods and use of U.S.-flag air carriers shall be audited when there is basis for questioning contractor representations. **(See Mandatory Reference Country Contracting Handbook, Ch. 1, 3.8)**

305.3.8.3 Contract Closeout

All contracts shall be closed out in an orderly fashion upon the contractor's satisfactory completion of the work. **(See Country Contracting Handbook, Ch. 1, 3.9)**

305.4 MANDATORY REFERENCES

305.4.1 External Mandatory References

a. **22 CFR 136, Personal Property Disposition at Posts Abroad**

b. **Foreign Assistance Act of 1961, as amended, Sections 102 and 601**

305.4.2 Internal Mandatory References

Effective Date: 04/25/2013

a. **Action Memorandum on Host Country Contracting Policies approved by the Administrator on February 23, 1982**

b. **ADS 103, Delegations of Authority**

c. **ADS 253, Training for Development**

d. **ADS 300, Agency Acquisition and Assistance (A&A) Planning**

e. **ADS 301, Responsibility for Procurement**

f. **ADS 305maa, Country Contracting Handbook Chapter 1, Procurement of Professional and Technical Services**

g. **ADS 305mab, Country Contracting Handbook Chapter 2, Procurement of Construction Services**

h. **ADS 305mac, Country Contracting Handbook Chapter 3, Procurement of Equipment and Materials**

i. **ADS 305mad, Country Contracting Handbook Chapter 4, Cost Principles for Country Contracts**

**An asterisk and yellow highlight indicate that the adjacent material is new for this chapter or substantively revised.*

j. **ADS 310, Source, Origin, and Nationality**

k. **ADS 312, Eligibility of Commodities**

l. **ADS 313, Eligibility of Suppliers and Contractors**

m. **ADS 314, Eligibility of Delivery Services**

n. **ADS 320, Marking**

o. **ADS 323, Metric Specifications**

p. **ADS 415, Civil Service to Foreign Service Appointment Program**

q. **Procurement Executive Guidance in State 399975, dated November 27, 1990**

305.5 ADDITIONAL HELP

There are no Additional Help documents for this chapter.

305.6 DEFINITIONS

competition advocate
An individual charged by FAR 6.5 and AIDAR 706.5 with promoting full and open competition. The Agency competition advocate is the Deputy Director in the Office of Procurement (M/OP) responsible for Policy, Evaluation and Support, or his/her designee. For Washington contracting activities it is the Deputy Director in the Office of Procurement responsible for operations. For Missions it is the Deputy Mission Director, or the Mission Director where there is not a Deputy. (Chapter 305)

contracting agency
Any entity of the host country designated by the country as responsible for negotiating contracts financed by an USAID loan or grant. This includes, but is not limited to, ministries of the national government and their sub-unit authorities (such as port or regional), units of local government at any level, and government-owned, private, or mixed corporations and similar entities. (Chapters 305 and **301**)

cooperating country (See also host country and local country)
The country receiving the USAID assistance. (Chapters 305, **322**, and **495**)

Cooperating country means the same as "host country." (Chapter **495**)

eligible countries
Those countries specified by Geographic Code in the Assistance Agreement,

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Implementation Letters, and other related documents for the supply of services and goods. (Chapter 305)

geographic code
A geographic code is a three-digit number that for administrative purposes identifies geographic entities--countries, territories, organizations, regions, and sub-regions--and program activities associated with geographic entities. In ADS 260 we use a broader definition of geographic code than that in 22 CFR 228.03 because we need to be able to code program activities associated with geographic entities. Our definition includes the principal codes, which are defined in 22 CFR 228.03, to identify the source, origin, and nationality of commodities and services financed by USAID. (Chapters 305 and **260**)

host country
The country in which the USAID mission is located, and the country for whose benefit a USAID program is being implemented. (Chapters 305, **252**, **301**, **322**, and **495**)

The country in which a USAID funded activity takes place. (Chapters 305, **200**, **201**, **202**, **203**, **252**, **253**, **301**, **322**, **495**, and **548**)

local country
The country to which assistance is being provided. (See also host country and cooperating country.) (Chapter 305)

Procurement Executive
The USAID official who is responsible for the management direction of USAID's assistance and acquisition ("A&A") system, as so delegated and more fully described in ADS 103.3.10.6. (Chapters 305, **302**, and **304**)

reasonable cost or price
A cost or price is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. (Chapter 305)

results package
A results package is a shorthand designation for items that contribute to achieving a particular result. Some Operating Units have used the term as a name for documentation used to obtain approval for a set of activities and to define AO sub-teams that concentrate on a particular new set of activities. The term is no longer “officially” used. Documentation to approve activities is called Activity Approval Documentation. (Chapters 305, **200**, **201**, **202**, **203**, **204**, and **250**)

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