



USAID
FROM THE AMERICAN PEOPLE

RWANDA

December 1, 2021

Re: Instructions for Submitting Requests for Contracting/Agreement Officer Action

Dear Implementers:

Since I arrived in Kigali, Rwanda, to serve as the Supervisory Contracting/Agreement Officer (“CO/AO”), I found on numerous occasions that requests for CO/AO action have lacked sufficient information that would enable us to make an informed and timely decision. The process of requesting and obtaining this missing information ultimately delays USAID/Rwanda’s approval of administrative actions.

Accordingly, this letter provides uniform guidance to both contractors and recipients to facilitate USAID/Rwanda’s review, so as to minimize delays so that our contracts, cooperative agreements, and grants can focus on meaningful development as opposed to bureaucracy.

If a contractor or recipient provides the below information, then we will endeavor to prioritize a timely response within 48 hours after the Contracting Officer’s Representative or Agreement Officer’s Representative (“COR/AOR”) provides her/his technical concurrence. Please note, for those requests that will ultimately require a modification, the time frame will be longer.

Format. The contractor or recipient must submit all requests for CO/AO action in the following format:

- Microsoft Word (or PDF if it has optical character recognition capabilities) to allow for copy and paste. Do not send a request using any other format.
- Times New Roman
- 12 point font with 1" margins
- Single spaced
- Do not send zip files;
- One request per action is desired, unless the contractor or recipient can demonstrate that the proposed actions are interrelated to such a degree that USAID/Rwanda cannot approve one request without approving another request;
- Copy the following individuals from USAID: cognizant COR/AOR and A&A Specialist. If the request requires COR/AOR concurrence, then the request must expressly clarify that requirement;
- Copy the following individuals from the contractor or recipient to ensure quality control of documents sent to USAID: Chief of Party (“COP”), contractor/recipient point of contact responsible for award oversight in the field (e.g., Deputy COP for Operations), and contractor/recipient point of contact for award oversight at headquarters (e.g., Director, Contracts), among others if pertinent to their role in award implementation.

Content. The contractor's, or recipient's, request must include the following content:

- Numerical tracking. The request must have a numerical value (i.e. 001) within the subject of the request, so as to allow for easy tracking, retrieval, and referencing. All subsequent requests should build off of the preceding value;
- Basis for the Request. A clear description of how the request is supported by, and adheres to the following: ADS policy, statutory, regulatory and contractual/agreement terms that require CO/AO review, consent, or approval. Reference any other applicable regulatory provisions or award clauses that implicate the request. The request must track each regulatory or award requirement to ensure compliance. The CO/AO will not review requests unless specifically required by statute, regulation, or the terms of the subject award;
- Important to note - if the request necessitates a contract (or agreement) modification, then the request should indicate "Request for contract (or agreement) modification to [state change]".
- Technical Justification. Provide a robust discussion of how the CO/AO's approval of the request will advance the successful implementation of the award. Further, discuss what will happen if the CO/AO does not approve the request;
- Cost Justification. Importantly, if the request possesses a cost element, then the request must fully detail the associated costs—e.g., daily rates, level-of-effort ("LOE") (notwithstanding award-type, the CO/AO would like to know the number of days that the contractor or recipient will allocate to the effort), other direct costs (e.g., per diem, travel, lodging, if applicable), indirect costs, etc. Discuss the budget impact of your request in terms of trade-offs, if applicable;
- Value-For-Money. The request must explain how USAID/Rwanda will receive value for money if it approves the request through a notional cost benefit analysis. In this section, the contractor or recipient will move beyond explaining generally what it will do and, instead, focus on what USAID/Rwanda will receive in terms of outputs or impact. Additionally, the contractor or recipient will discuss risks (e.g., reputational, programmatic, etc.), if applicable;
- Signature. All requests should contain a signature from an authorized representative from the contractor or recipient firm/organization.

The below attachments will help facilitate the submission of a compelling justification for certain types of requests.

Best regards,

Justin T. DiVenanzo
Supervisory Regional Contracting and Agreement Officer
Office of Acquisition and Assistance
USAID/Rwanda and USAID/Burundi

Enclosures

Attachment 1_ Recipient Requests for AO Subaward Approvals - same if delegated to the AOR
Attachment 2_ Contractor Requests for CO Subcontract Consents
Attachment 3_ Requests for CO/AO Key Personnel Approval
Attachment 4_ Requests for CO/AO Approval to Procure Restricted Commodities
Attachment 5_ Requests for CO/AO Approval of Property Disposition

Recipient Requests for AO Subaward Approvals

1. NTE 2 page **description** of the work under the proposed subaward.
 - A. Describe what the subawardee will do (i.e., interventions),
 - B. Describe how the subawardee will do it (i.e., specific tools, methodologies)
 - C. Describe where the subawardee will do it (i.e., geographic locations)
 - D. Describe with whom the subawardee will do it (i.e., describe the LOE in terms of number and types of staff involved)

2. NTE 2 page **justification** of the proposed subaward/subawardee
 - A. Justification for the selection of the subawardee and explanation of selection process.
 - B. Confirmation that the proposed work included in the subaward falls under the terms of the existing program description (citing specific parts of the PD) and the implementation plan.
 - C. Discussion of how this proposed subaward will advance the objectives of the award and what results the proposed subaward will achieve.
 - D. Discussion of overall costs of the subaward and how the prime recipient arrived at those costs in addition to the budget already provided.

3. Per ADS 303.3.21, the recipient must provide confirmation of the **risk assessment** conducted against the proposed subawardee
 - A. Verification that the subrecipient does not have active exclusions in SAM.
 - B. Verification that the subrecipient does not appear on the Specially Designated Nationals (SDN) and Blocked Persons List maintained by the U.S. Treasury for the Office of Foreign Assets Control (i.e., OFAC List).
 - C. Verification that the subrecipient does not appear on the United Nations Security designation list.
 - D. Confirmation that this process followed the established procedures (for example: Grants Manual, prime recipient's processes, and any other established guidance provided by the AO).

Contractor Requests for CO Subcontract Consents

I. FAR § 44.202-2 Considerations

FAR § 44.202-2, “Considerations,” requires that the contracting officer review the request and the supporting data and consider the below questions. Please provide concise and accurate responses to these questions, when applicable.

1. Is the selection of the particular supplies, equipment, or services technically justified?
2. Was adequate price competition obtained or its absence properly justified?
3. Did the contractor adequately assess and dispose of subcontractors’ alternate proposals, if offered?
4. Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?
5. Has the contractor performed adequate cost or price analysis or price comparisons and obtained certified cost or pricing data and data other than certified cost or pricing data?
6. Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?
7. Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-provided equipment and real property?
8. Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?
9. Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?
10. Is the proposed subcontractor in the System for Award Management Exclusions (see Subpart 9.4)?

Please respond to the following questions:

1. Discuss the adequacy of your current purchasing system and your recent performance in purchasing services through subcontracts.
2. Confirm that no close working relationships or ownership affiliations that will preclude free competition or result in higher prices.
3. Confirm that the proposed price of the subcontract are not unreasonable. In other words, defend the contract price and constituent costs.

Please confirm the following

1. Confirm that the cost-reimbursement subcontract fee does not exceed the fee limitations of 15.404-4(c)(4)(i).
2. Confirm that the proposed subcontract does not provide for payment on a cost-plus-a-percentage-of-cost basis.
3. Confirm that the proposed subcontract does not obligate the contracting officer to deal directly with the subcontractor.
4. Confirm that the proposed subcontract does not make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government; or
5. Describe the need for a cost-reimbursement subcontract for the services provided. (Review the principles contained in FAR 16.103(c)).

FAR § 52.244-2, "Subcontracts," required that contractors provide additional information with the request for the Contracting Officer's consent to subcontract. Subsection (e)(1)(i)-(vii) required the following information from the contractor. In accordance with the below paragraph (vii), please provide the Negotiation Memorandum.

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor.
- (iv) The proposed subcontract price.
- (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
- (vii) A negotiation memorandum reflecting:
 - (A) The principal elements of the subcontract price negotiations.
 - (B) The most significant considerations controlling establishment of initial or revised prices.
 - (C) The reason cost or pricing data were or were not required.
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price.
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor, and the effect of any such defective data on the total price negotiation.
 - (F) The reasons for any significant difference between the contractor's price objective and the price negotiated.
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

Requests for Key Personnel Approval (replacement of)

1. NTE 2 page **discussion** on the situation that led to the key staff's premature departure from the project:
 - a. Identify key personnel name, title and duration involved on project.
 - b. Detail the situation that led to the individual's departure from the project.
 - c. Detail the steps taken to mitigate this action from occurring.
 - d. In the event that the award mechanism details the names of key personnel, ensure that the discussion includes reference to the need for a contract modification.
 - e. Ensure that the request for approval references the need for COR/AOR concurrence.

2. NTE 2 page **justification** of key personnel replacement:
 - a. Clearly present how the candidate meets, and exceeds, the minimum qualifications specified in the award mechanism, and provide as attachments the candidate's CV, SOW, and form 1420-17.
 - b. Summarize the recruitment process, and results (can be included as an attachment)
 - c. Discuss the budget impact this change, and replacement, will have on the project
 - d. Discuss the candidate's employment type, and if TCN ensure that applicable AIDAR references are included, additionally, in the request (i.e. AIDAR 722.170). **Note** - if the Mission Director is required to authorize specific allowances/benefits/salaries, ensure that such action is included in the justification.

Requests to Procure Restricted Commodities

Contractor/Recipient request for approval to procure restricted commodities:

AIDAR 752.225-70 - Source and nationality requirements and 22 CFR § 228.19 - Special source rules requiring United States manufacture or procurement required that contractor/recipient must obtain prior written approval of the contracting officer or comply with required procedures under an applicable waiver as provided by the contracting officer when procuring any of the following Restricted goods or services:

- (1) Agricultural commodities;
- (2) Motor vehicles;
- (3) Pharmaceuticals and contraceptive items;
- (4) Pesticides;
- (5) Fertilizer;
- (6) Used equipment; or
- (7) U.S. Government-owned excess property.

Commodities subject to source and nationality restrictions are discussed in *ADS 312.3.3, Restricted Commodities, 310.3.2 Restricted Commodities, 310.3.3 Procurements with Non-Appropriated Funds or Funds not Appropriated Under the FAA, and 310.3.4 Waivers*. Waiver criteria are set forth in *Subpart D of 22 CFR 228 cited below*.

“For any waivers authorized, the principal geographic code shall be Code 935, any area or country but excluding prohibited sources. All waivers must be in writing, and where applicable, are limited to the term established by the waiver. All waiver decisions will be made solely on the basis of the following criteria:

- (a) Waivers to permit procurement outside of Code 937 or 110 must be based on a case by case determination that (1) The provision of assistance requires commodities or services of the type that are not produced in and available for purchase in Code 937 or 110, or; (2) It is important to permit procurement from a country not specified in Code 937 or 110 to meet unforeseen circumstances, or; (3) To promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives;
- (b) Case by case waivers under paragraph (a) of this section may be made on the basis of a commodity or service type or category, rather than processing repeat, individual waivers for an identical or substantially similar commodity or service. Such waivers may be approved on a regional, country or program basis. For purposes of paragraph (a)(1) of this section, “produced in and available for purchase in” shall have the same meaning as the definition of “available for purchase” in §228.01. A waiver under paragraph (a)(1) may also be based on the fact that a commodity is not available for purchase in Code 937 or 110 in sufficient, reasonable and available quantities or sufficient and reasonable quality that is fit for the intended purpose;
- (c) A waiver to authorize procurement from outside the United States of agricultural commodities, motor vehicles, and pharmaceuticals must meet the requirements of §228.19;
- (d) Any individual transaction not exceeding \$25,000 (excluding those covered by special procurement rules in §228.19 and excluding procurements from prohibited sources) does not require a waiver and is hereby authorized.”

Delegations of authority to waive source and nationality requirements for the procurement of goods and services are set forth in ADS Chapter 103. The restrictions for each of the listed above commodities are set out in 312.3.3.1 through 312.3.3.7.

Requests for Property Disposition

Contractor/Recipient request for property disposition required to follow FAR 45 - Government Property (acquisition); AIDAR 752.245-71 -Title to and care of property, and 2 CFR §200.310 through §200.316 (assistance except the PIOs). The request should include the following information, if applicable:

- 1) Clarify disposition plans for any equipment or inventory purchased with USAID funds including information of the subs that end its activities early.
- 2) Submit a final disposition plan and inventory of all residual non-expendable property titled in the Government or the Host Country, which was acquired or furnished under the award, if any.

Final Disposition Plan must include all of the following:

- Accurately maintained equipment records that contain:
 - description of the equipment;
 - manufacturer's serial number, model number, USAID stock number, national stock number, or other identification number;
 - source of the equipment, including the award number;
 - owner of the title—your organization, USAID, or other specified entity, such as the host government;
 - acquisition date or date received;
 - percentage of USAID funds used to purchase the equipment—for example, if you used 25% funding from a non-USG source, then USAID furnished 75% of the cost;
 - location and condition of the equipment and the date the information was reported;
 - unit acquisition cost; and
 - ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensated the USAID for its share.
- Any differences between quantities determined by physical inspection and those shown in the accounting records must determine the causes of the discrepancy, i.e. loss, damage, or theft.