



# Amplifying Guidance for Selecting the Appropriate Acquisition and Assistance (A&A) Instrument

## An Additional Help for ADS Chapter 304

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**Overall Amplifying Guidance for  
Automated Directives System (ADS) Chapter 304  
*Selecting the Appropriate Acquisition and Assistance (A&A) Instrument***

**I. Purpose**

The purpose of the amplifying guidance is to assist staff of the U.S. Agency for International Development (USAID) in applying the legal, policy, and procedural requirements of ADS Chapter 304.

**II. Emphasis of Amplifying Guidance**

This guidance emphasizes the importance of the “principal purpose” criteria of the Federal Grant and Cooperative Agreement Act (FGCAA), the documentation requirements for the determination of the selection of instrument (SOI), and the need for consistency between solicitation documents and the SOI determination. Illustrative answers to Frequently Asked Questions (FAQs) address inquiries Contracting Officers/Agreement Officers (COs/AOs) and planners might have regarding the application of the policy, procedure, and guidance found in ADS 304.

Two of the purposes of the FGCAA are to promote a better understanding of Federal Government expenditures and to eliminate unnecessary administrative requirements by characterizing the relationship between the Federal Government and contractors, states, local governments, and other recipients in acquiring property and services, and in providing government assistance. The Act provides Federal Departments and Agencies with criteria to consider when making decisions on what type of award to choose, including the intended nature of the relationship between the Agency and awardee, and whether the principal purpose of the award is to benefit the Federal Government or to transfer a thing of value to carry out a public purpose of support or stimulation authorized by law.

**A. Application of the “Principal Purpose” Criteria of the FGCAA**

In accordance with FGCAA, and as prescribed in ADS 304.3.1, USAID uses the “principal purpose” criteria to determine when to use acquisition (contracts) or assistance (grants and cooperative agreements) instruments to characterize the nature of the relationship between USAID and the awardee, and the corresponding responsibilities associated with each respective legal instrument.

**B. Documentation Requirements for the SOI Memorandum**

The practical application of FGCAA “principal purpose” criteria starts when a planner drafts a memorandum to explain his or her SOI recommendation memorandum and submits it to the CO/AO. The CO/AO reviews the Planner’s recommendation memorandum, and any supporting documents, and makes the final determination on the SOI. The final determination is based on

the recommendation memorandum and any other relevant information that supports the application of the principal purpose.

An SOI memorandum that recommends the use of a contract should confirm the principal purpose of USAID stated in terms consistent with the criteria specified in [Section 6303 of the FGCAA](#) (*Using Procurement Contracts*). The memorandum should summarize the Agency's needs and requirements for supplies and services for the activity that USAID desires to acquire, by purchase, through the creation of a buyer-seller legal relationship under a contract solicited and awarded in accordance with the Federal Acquisitions Regulation (FAR). The Professional Development and Training (PDT) mandatory template, provided by the Office of Acquisition and Assistance (OAA) within the Bureau of Management (M), provides additional guidance for drafting an SOI memorandum that recommends the use of an acquisition instrument in accordance with the FGCAA's criteria.

An SOI memorandum that recommends the use of a grant should confirm the principal purpose of USAID stated in terms consistent with the criteria specified in [Section 6304 of the FGCAA](#) (*Using Grant Agreements*).

An SOI memorandum that recommends the use of a cooperative agreement should confirm the principal purpose of USAID, stated in terms consistent with the criteria specified in [Section 6305 of the FGCAA](#) (*Using Cooperative Agreements*). The Office of Management and Budget's Implementing Guidance for the FGCAA ([43 Federal Register 36860-36865](#)) provides additional information regarding descriptions of substantial involvement.

In general, an SOI memorandum that recommends the use of an assistance instrument should confirm that the principal purpose of the Agency is to create a grantor-grantee legal relationship (as distinguished from a buyer-seller legal relationship) through a grant or cooperative agreement under which the Agency transfers to the recipient a thing of value (typically Federal financial assistance) to carry out a public purpose of support or stimulation authorized by law. The M/OAA/PDT mandatory template for an SOI memorandum that recommends the use of an assistance instrument in accordance with the FGCAA's criteria provides additional guidance.

### **C. Drafting Solicitations and Announcements Consistent with the Selected Instrument Determination**

To maintain clarity and distinguish between USAID's use of acquisition or assistance, ADS 304.3.7 emphasizes the importance of consistency between the selection of the instrument and the corresponding solicitation, announcement, and award documents. Once CO/AO has determined the appropriate acquisition or assistance instrument in accordance with the FGCAA's criteria and documented the choice, the corresponding acquisition solicitation documentation (Request for Proposal [RFP], Scope of Work [SOW], Performance Work Statement [PWS], Statement of Objective [SOO]) or assistance announcement documentation (Notice of Funding Opportunity [NOFO] or, Program Description [PD]) must follow the appropriate forms and

guidance, use appropriate terminology, and adhere to statutes and regulations consistent with the type of instrument.

## FREQUENTLY ASKED QUESTIONS (FAQs)

**QUESTION 1:** *How do you achieve consistency between the approved SOI memorandum and acquisition solicitations?*

**ANSWER:** The acquisition solicitation documentation should mirror the approved SOI memorandum in two respects:

1. In Section B, confirm that the principal purpose of the contract is to acquire (by purchase, lease, or barter) from the contractor the supplies and services described in Section C for the direct benefit or use of the Agency; and
2. Use the SOI memorandum description of the supplies and services USAID will acquire, and the Agency's related needs and requirements as a starting point for preparing content to include in Section C under a subheading focusing on the topic: *Description of Supplies and Services to be Acquired from Contractor – Agency Needs and Requirements*. Review FAR Parts 15.204-1 (Uniform Contract Format) and 15.204-2 (Part I – The Schedule, Section B (Supplies or Services and prices/costs) and Section C (Description/Specifications/Statement of Work).

Describe in Section C the supplies and services the Agency will acquire and the Agency's related needs and requirements. For acquisition of services (including technical-assistance [TA] services and capacity-development services), describe the performance required of the contractor. Merely describing the background and development purposes of the activity for the purposes of the ADS 200 series is insufficient for the purposes of preparing contract documentation required by the FGCAA and FAR. Review FAR Parts 11 (*Describing Agency Needs*) and 15.203 (*Requests for Proposals*).

FAR Part 11.101 gives the order of precedence for requirement documents and lists performance-oriented documents (*e.g.*, a PWS or SOO) ahead of detailed, design-oriented documents. The use of performance specifications is “preferred to encourage offerors to propose innovative solutions.” By definition, an SOO provides overall performance objectives; and gives maximum flexibility to each offeror to propose an innovative solution. Acquisition solicitations describe the Agency's needs, and enable offerors to propose innovative solutions. FAR Part 15.602 also states, “It is the policy of the Government to encourage the submission of new and innovative ideas in response to Broad Agency Announcements (BAAs), Small Business Innovation Research topics, Small Business Technology Transfer Research Topics, Program Research and Development Announcements, or any other Government-initiated solicitation or program.”

***QUESTION 2: How do you achieve consistency between the approved SOI memorandum and assistance solicitations?***

**ANSWER:** When first preparing the PD, the Planner may use the [Standardized Program Structure and Definitions \(SPSD\)](#) to describe the funding priorities of the Operating Unit (OU) or the programmatic or focus areas in which the OU intends to provide Federal financial assistance to the recipient to carry out a public purpose of support or stimulation authorized by law. The use of standard Program Areas and Program Elements, and standard definitions for each Program Area and Program Element, facilitates the efficient and effective preparation of a focused PD that communicates to potential applicants what they need to know about the Agency’s focus areas and funding priorities. Review the SPSD example provided in the mandatory M/OAA/PDT SOI memorandum template.

When preparing an SOI memorandum and the announcement, understand and apply the SOI criteria specified in the FGCAA for the use of grants (Section 6304) or cooperative agreements (Section 6305), as appropriate. Ensure that both the approved SOI memorandum and announcement documentation expressly state and reflect the application of the “principal purpose” criteria of the FGCAA.

The NOFO/PD, and the SOI memorandum, should expressly state the principal purpose, by using FGCAA terminology drawn from Section 6304 or Section 6305, depending on whether a grant or cooperative agreement is the recommended legal instrument. Use the “principal purpose” text in the approved SOI memorandum to prepare similar text to include in the NOFO cover letter, and in the NOFO itself.

The text of the NOFO/PD should convince the reader of two key findings:

1. The principal purpose of the recommended assistance instrument (grant or cooperative agreement) and the grantor-grantee relationship it creates is to transfer a thing of value to the recipient (*i.e.*, Federal financial assistance as defined in 2 CFR 200.1) to carry out in the designated Program Area a public purpose of support or stimulation authorized by the Foreign Assistance Act (FAA) of 1961, as amended, and other applicable authorities as provided in annual Appropriations legislation; and
2. The principal purpose of the recommended assistance instrument and the grantor-grantee relationship it creates is not to acquire, by purchase, lease, or barter, property or services for the direct benefit or use of USAID, or to provide technical direction from the U.S. Government to interpret the technical requirements. As described in ADS 304.3.4.1, the determining factor for the use of assistance is that “[t]he awardee is the primary beneficiary of the assistance although there may be downstream beneficiaries as well.” In more definitive terms, an assistance

instrument is more appropriate if its principal purpose is “to assist the awardee rather than to obtain a service from them.”

To accomplish this outcome, use text from the approved SOI memorandum as a starting point for preparing content for the PD.

As ADS 303 requires, when issuing a NOFO, either an RFA or an Annual Program Statement (APS), follow the established format in Appendix I to Part 200 – *Full Text of Notice of Funding Opportunity*. The PD must, among other requirements, contain the full PD for the funding opportunity; communicate to potential applicants the areas in which USAID might provide; and describe the OU’s funding priorities, or the programmatic or focus areas in which the OU intends to provide assistance.

A NOFO/PD must not perform the functions of, or read like, an acquisition “requirements” document. Instead, it should do the following:

- Request applications from potential recipients in which they describe a results-oriented set of interventions that they propose to perform in support of the achievement of measurable results in the Program Area; and
- Focus the NOFO/PD on providing support in the form of Federal financial assistance to the recipient who, as a development actor in the Program Area, merits Federal financial assistance by reason of its mission, programs, or activities to support the achievement of development objectives in the designated Program Area for which funding is available.

Assistance is about the U.S. Government’s transfer of Federal financial assistance to benefit a recipient under a grant or cooperative agreement pursuant to which the grantee carries out its own set of interventions, as set out in the award, in support of the achievement of results in the program area for which Federal funding is available.

Since the FAR does not govern assistance actions, avoid FAR concepts and terminology in an assistance SOI memorandum or announcement (NOFO/PD), such as “solicitation,” “procure,” “proposal(s),” “requirement(s),” “statement of work,” “scope of work,” “tasks,” “interventions,” “best value,” “tradeoff,” “competitive range,” “discussions,” “source selection,” “technical direction,” “final proposal revisions,” “offer(s),” or “offeror.” Further, a NOFO/PD must not be constructed as a SOW, and should avoid the use of overly prescriptive language in the nature of detailed specifications. However, the resultant assistance award may incorporate some level of prescription as appropriate, especially if it was included as part of the applicant's submission that described its results-oriented set of interventions.

***QUESTION 3: When must the Planner and the CO/AO identify the appropriate A&A instrument?***

**ANSWER:** ADS 304 states, “The Planner and the CO/AO must identify the appropriate A&A instrument as early as possible in the planning phase, as each type is subject to a different set of statutory and regulatory requirements.”

Ideally, when an OU is undertaking the project authorization process, such as the approval of the Project Appraisal Document (PAD), the planner and CO/AO should be involved in that process, and in the selection of instrument(s) for the project. While not necessarily finalized at the same time as the PAD, the selection of instrument should be under discussion. The planner should draft the SOI recommendation memorandum in closest proximity to the approval of the PAD, and the CO/AO should review the recommendation within thirty (30) days. When the OU is ready to identify an individual activity on the A&A Plan, the CO/AO should approve the SOI recommendation memorandum at the same time so it can also be placed on the USAID Business Forecast. In some situations, when a final decision on the SOI remains unmade, “to-be-determined” can be indicated on the Business Forecast. For the Business Forecast to be most effective, the CO/AO should make the SOI determination at the earliest stages in planning, and no later than several months before an OU plans to issue a solicitation or announcement.

***QUESTION 4: Must an approved SOI memorandum be in the file before the instrument type is designated in the Business Forecast?***

**ANSWER:** While having an approved SOI memorandum in the file prior to the Business Forecast is ideal, it is not always feasible or required. ADS 304 does not contain an express requirement that the CO/AO designate final SOI determination in an approved memorandum before the instrument type is designated in the Business Forecast. ADS 304.3.6 provides that, “[t]he Planner should complete and submit the supporting documentation to the CO/AO for review and approval within 30 days after submitting the recommendation on the type of instrument, or listing the action on the Agency A&A Plan, whichever occurs first.”

Ideally, when an approved memorandum is not available prior to identifying an instrument type on the Business Forecast, a CO/AO should receive confirmation of the following from the planner: 1) the A&A instrument; 2) the “principal purpose” stated in terms of applicable FGCAA criteria for the instrument type identified; 3) the OU’s reasonable certainty that the SOI determination is unlikely to change during the course of the design of the project; and, 4) that the planner will draft the solicitation documentation (RFP/SOW/PWS/SOO) or announcement documentation (NOFO/PD) in a manner consistent with the type of instrument identified.



***QUESTION 5: Is an SOI memorandum required for every new award of a contract, grant, or cooperative agreement?***

**ANSWER:** Yes. When a CO/AO makes an SOI determination for a new award, the file must include a supporting memorandum prepared by the Planner and approved by the CO/AO.

This requirement applies to new definitive contracts, new IDIQ contracts, new grants, and new cooperative agreements.

***QUESTION 6: May an SOI determination be documented in a Memorandum of Negotiations or an Assistance Award Memorandum, rather than in a separate SOI memorandum?***

**ANSWER:** No. A separate SOI memorandum is required. Both a Memorandum of Negotiations and an Assistance Award Memorandum contain sections that summarize the “Rationale for Choice of Instrument,” but these summaries must be based on the actual SOI memorandum.

Additionally, ADS 304.3.6 expressly requires that the Planner must include the final, approved version of the memorandum in his or her project design file, and “the CO/AO must include a copy in the A&A file in the Agency Secure Image and Storage Tracking System (ASIST).”

All documentation for current awards must be uploaded into ASIST on the following schedule:

February 15, 2015: All awards above \$5 million;

April 15, 2014: All awards above \$1 million; and

June 30, 2019: All awards below \$1 million.

***QUESTION 7: Does the FAR specifically address when to use a contract, grant, or cooperative agreement?***

**ANSWER:** Unlike the FGCAA, the FAR does not provide general criteria for selecting between acquisition and assistance. However, Part 35 of the FAR covers BAAs, which can lead to either acquisition or assistance instruments, depending on the Government’s needs, as stated in FAR 35.003.

***QUESTION 8: Does USAID’s basic legislation authorize the use of both acquisition and assistance instruments?***

**ANSWER:** Yes. See ADS 304.3.1, *Applicable Legal Framework*, which summarizes USAID’s principal authorizing legislation, Section 635 of the FAA of 1961, as amended.

***QUESTION 9: May an assistance instrument ever be used for construction activities?***

**Answer:** Yes, but only under limited circumstances. See ADS 304.3.4.2, *Limitation on the Use of Assistance Instruments for Construction*, and ADS 303maw, *USAID Implementation of Construction Activities Mandatory Reference* for ADS 303.

***QUESTION 10: Are “substantial involvement” and “operational control” relevant factors to consider when documenting the selection of instrument?***

**ANSWER:** No. ADS 304.3.5 f. states:

“Substantial involvement is not a relevant factor to consider in choosing between acquisition and assistance. After selecting between an acquisition and assistance instrument, substantial involvement becomes a relevant factor in selecting between a grant and a cooperative agreement.”

An SOI memorandum supportive of the selection and use of a cooperative agreement should confine its discussion to the FGCAA’s criteria only, and never cite the need for substantial involvement as a factor to justify the use of a cooperative agreement rather than a contract. The relevance of “substantial involvement” only arises after the AO has made a proper determination to select and use an assistance instrument based on sound application of the “principal purpose” criteria stated in the FGCAA.

As provided in 2 CFR 200.1, a cooperative agreement is different from a grant in that “it provides for substantial involvement between the Federal awarding Agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award. ADS 303 indicates that the AO must “evaluate the type of overall relationship expected between USAID and the recipient.” ADS 303 further highlights that, “Office of Management and Budget policy on substantial involvement proscribes that Agencies should limit their involvement in assisted activities to the minimum consistent with program requirements.”

Neither the FAR nor the FGCAA defines or uses the term “operational control.” As provided in ADS 304.3.5, the Agency must not base the selection of the type of instrument on any consideration of operational control, or on any of the other non-determinative factors listed in that section of the chapter. ADS 304.3.5 f. confirms that the desire on the part of the Agency to control the details of post-award implementation is *not* an acceptable instrument selection criterion. ADS 304.3.5 f. states that a desire for operational control could be an indication that the Agency has a requirement for goods or services to accomplish its own purposes, which would require the Agency to provide “technical direction” to interpret the technical requirements.

While the FAR does not define “technical direction” explicitly, nor does the FGCAA use the term, it refers to an interpretation of the technical requirements of the contract, and may include directives to the contractor to approve work plans, approaches, solutions, designs, or

refinements; provide additional details for, or otherwise complete, the general description of work; or to shift emphasis among work areas or tasks—if all are within the scope and cost/price of the contract. While technical direction is an explicit responsibility of the CO’s Representative for a contract (see ADS 302.3.4.16(d)), technical direction is not part of the administration of assistance awards because, under assistance, USAID is financially supporting the recipient’s own mission, program, and activities, in a Program Area for which Federal funding is available. According to ADS 303.3.18: “The Agency's role in administration is limited to measuring and evaluating the recipient's progress and any appropriate substantial involvement. The Agency and its representatives must not control or try to control the recipient’s or any sub-recipient’s day-to-day management of the program.”

***QUESTION 11: Are there other examples of activities that could be appropriate for A&A not listed in ADS 304?***

***ANSWER:*** Yes. The few examples listed in ADS 304 for A&A are for illustrative purposes only, and are not intended to be indications that one or the other type of instrument is exclusive to a program or sector. USAID uses both A&A instruments in a majority of its programs/sectors, including humanitarian assistance, democracy, health, food security, and economic growth. The illustrative examples in ADS 304 are not intended to define, or limit, the broad array of possible examples of the appropriate use of A&A instruments for USAID’s development purposes.

***QUESTION 12: What is the appropriate instrument if goods or services are provided to a party other than USAID?***

***ANSWER:*** The appropriate instrument (contract, grant, or cooperative agreement) depends on the principal purpose of the Agency. If the principal purpose of the Agency is to acquire, by purchase, goods or services to provide to a party other than USAID, then an acquisition instrument is appropriate. As indicated in ADS 304.3.5, “All USAID’s acquisition or assistance awards ultimately intend to benefit a public purpose.” Whether a project or activity furthers a public purpose by serving the needs of ultimate beneficiaries in the host country should not be a factor in selecting the type of instrument. If the principal purpose of the Agency is to acquire, by purchase, supplies or services that the Agency requires for an activity, an acquisition instrument may purchase and provide supplies or services that benefit third parties in the host country. Nothing in the FGCAA or ADS 304 precludes the use of a procurement contract for such purposes, regardless of the nature of the supplies or services required by the Agency for an activity.

These three illustrative examples are not intended to define, or limit, the broad scope of supplies or services that USAID may acquire by purchase through the solicitation and award of contracts

in accordance with the FAR. A discussion on the applicability of assistance instruments follows in Question 13 below.

Illustrative Example A: USAID may acquire by contract health commodities (rapid test kits to detect the human immunodeficiency virus [HIV]) needed by the Agency for distribution to destinations and stakeholders designated by the Agency for use in host-country programs.

Illustrative Example B: USAID may acquire by contract HIV/Acquired Immune Deficiency Syndrome (AIDS) TA Services, including for counseling and testing, laboratory infrastructure, health system-strengthening, strategic information, and capacity-development for delivery to destinations and stakeholders in host countries designated by the Agency.

Illustrative Example C: To carry out its Food for Peace mission, USAID may use a contract to purchase ready-to-use therapeutic food (RUTF) and ready-to-use supplementary food (RUSF) for storage and delivery to designated locations and beneficiaries in host countries through organizations such as the United Nations Children's Fund (RUTF) and the World Food Programme (RUSF). RUTFs and RUSFs are high-energy, fortified foods used for the treatment of severe acute malnutrition and moderate acute malnutrition in a wide variation of climatic zones (*e.g.*, Ethiopia, the Democratic Republic of Congo, Somalia, Madagascar, South Sudan, Mozambique, Chad, Nigeria, Pakistan). USAID may also use a contract to provide TA to develop a local organization's capacity to produce and supply RUTF.

***QUESTION 13: What is the appropriate instrument for providing TA?***

***ANSWER:*** The appropriate instrument (contract, grant, or cooperative agreement) depends on the principal purpose of the Agency. The term “technical assistance” has different meanings or interpretations in different contexts. Congress intended to allow Federal Departments and Agencies flexibility to select the acquisition or assistance instrument that best suits each transaction. Under appropriate circumstances, USAID may provide or fund TA under an acquisition or an assistance instrument. What type of instrument to use in any particular situation will depend on the Agency's principal purpose.

An acquisition instrument is the appropriate instrument to use when the principal purpose of the Agency is to acquire, by purchase, specific TA services the Agency needs and requires for its activity. The contract will require the contractor to provide specified TA services to designated host-country destinations and beneficiaries, as required by the terms and conditions of the contract.

Assistance recipients frequently provide TA to host-country beneficiaries in furtherance of the recipient's own mission, programs, and activities. USAID has the authority and discretion to

decide whether and when to fund or stimulate the provision of TA to host-country beneficiaries by recipients. Instead of purchasing, from a contractor, specific TA services that USAID requires, and over which USAID may exercise technical direction, the Agency may transfer Federal financial assistance to a recipient under a grant or cooperative agreement that the recipient uses to provide its own TA services in a program area for which USAID has funding.

# **PROJECT DESIGN IN RELATION TO ACQUISITION AND ASSISTANCE (A&A) INSTRUMENTS IN PROGRAMS IN THE AREAS OF DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE (DRG)**

## **Amplifying Guidance for DRG Programs**

### **Introduction**

The success of the U.S. Government (USG) efforts to support democratic development depends on multiple factors, some of which are not development-related, and broad outcomes that are at times difficult to track and attribute. As a result, the choice of instrument can be particularly challenging, given the complex operating environment for DRG programs and non-linear democratic trajectories. This guidance intends to reinforce the discipline of development practitioners in considering key questions and issues in the design phase of a project or activity to inform the choice of instrument in the DRG sector.

### **Guidance for DRG Programs**

When planning DRG related programs, the design phase represents the most appropriate and best opportunity for the Agency to incorporate the context, challenges, and opportunities for achieving development impact. The project design phase is when staff should consider the principal purpose of the A&A instrument and the intended relationship between the USG and an awardee. These elements vary by country and sector, and considering them can provide insights into the desired relationship.

This document spells out USAID's policy, the rationale for producing amplifying guidance, and identifies sample scenarios in the areas of electoral assistance, local governance, civil society, parliamentary-strengthening, and rule of law programs. The Agency revised its policies concerning project planning and the selection of instrument in 2016 to enhance understanding and more effectively link planning considerations with selection of instrument and implementation. While the revised Automated Directives System (ADS) policies are for all development sectors, the Center of Excellence on Democracy, Human Rights, and Governance (DRG Center) provides the following sector specific amplifying guidance, consistent with the revised ADS Chapter 304 and ADS 200 series. It allows for greater alignment of the execution of DRG programs with Federal law and regulations, while also providing greater clarity on the legal and regulatory frameworks that affect DRG programming.

### **USAID Policy**

As stated in ADS 304, USAID has no overall Agency goals or targets for the use of acquisition versus assistance instruments. The USAID Operating Unit (OU) and Contracting Officer or Agreement Officer (CO/AO) must choose an instrument based upon the applicable facts and circumstances at the time of the selection of the instrument, consistent with applicable laws,

regulation, and policy. This guidance reflects the Agency’s intent not to set overall goals or targets for the use of acquisition or assistance instruments, or to set aside or reserve any sector or sub-sector for the exclusive or predominant use of acquisition or assistance instruments.

To determine the appropriate instrument, the project design team must objectively assess the *principal* purpose of the instrument, and the relationship between the USG and the awardee. In simple terms, *choosing between acquisition and assistance depends on whether the USG is buying services for its benefit, or supplies from the awardee (acquisition); or supporting the ability of an awardee to carry out an activity (assistance) for a public purpose.* Since USAID’s A&A awards often serve beneficiaries and support particular results or impacts, the existence of ultimate beneficiaries in the host country is not helpful in choosing between A&A instruments.

### **Why Amplifying Guidance for the DRG Sector?**

This amplifying guidance and ADS Chapter 304 are intended to ensure that USAID staff conduct analysis and discussion of the appropriate instrument early in the planning for an activity or project and that the ultimate decision should remain in the field, as close to the point of implementation as possible. These considerations are particularly important in dealing with a country’s internal political processes.

Given the sensitivities of DRG programming and concerns regarding external influence, particularly in civil society, political competition, and consensus building processes, Congress has expressed interest in DRG programming related to the choice of instrument.<sup>1</sup>

Project and activity design teams must carefully consider the context under which The Agency will award resources and its relationship with the awardee—as a provider of services for the benefit of USAID, or supplies, or to support the awardee’s activities for a public purpose. Variances in country context preclude the use of a standardized checklist or other, more-prescriptive guidelines. By following a deliberate design process, project design teams are more likely to select the most appropriate instrument to achieve the goals of a particular project. The project design team is responsible for considering these issues as a matter of standard practice. Early involvement of the CO/AO will help to inform his or her determination of the appropriate selection of instrument. The cognizant CO/AO makes the final determination of the selection of instrument.

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<sup>1</sup> For example, Section 7032 of the Fiscal Year 2016 Omnibus Act states, “USAID shall continue to implement civil society and political competition and consensus building programs abroad with funds appropriated by this Act in a manner that recognizes the unique benefits of grants and cooperative agreements in implementing such programs: Provided that nothing in this paragraph shall be construed to affect the ability of any entity, including U.S. small businesses, from competing for proposals for USAID funded civil society and political competition and consensus building programs.”

The DRG Center is a resource for field staff throughout the planning and design process. While some planning and design activities can present a clear choice between acquisition or assistance, other scenarios in the DRG sector are not immediately clear, and require in the design phase the consideration of key questions and issues related to the principal purpose of the program, and the desired relationship with an awardee. Below are a few examples of activities that establish particular relationships between the USG and the awardee, which thereby determine the appropriate instrument.

Activities in which USAID is the direct recipient or beneficiary of the action, or activities that require a high degree of oversight by the Agency, must be acquisition, as they are, by definition, clearly for the benefit of the Agency. When the purpose of the relationship is “...to benefit the recipient through the transfer of a thing of value...by reason of its mission, programs, or activities” then assistance is required.

Field staff should use this amplifying guidance as a resource and consult closely with resources available at post, including Mission Program Offices, Resident Legal Officers, and COs/AOs. When in doubt, always seek more specific support and additional input from your cognizant CO/AO with whom the final determination on the selection of instrument rests.

### **Illustrative Examples of DRG A&A Scenarios**

The examples below are intended to highlight some key aspects related to the selection of instrument but are not intended to be determinative of every aspect that could influence a final determination. The central feature of the acquisition examples is that the primary focus of the Operating Unit is on the need to acquire specified services or supplies required for the activity. In contrast, the central feature of the assistance examples is transferring Federal financial assistance to the awardee to support its mission, activities, and interventions in a designated DRG program area that advance the purpose of the project.

In certain cases, the OU might have no difficulty in distinguishing and selecting between A&A. In instances in which the overriding, principal purpose and program authority can justify a choice of either acquisition or assistance, the OU should exercise discretion in choosing which relationship to establish in each particular case.

### ***Elections – Assistance Example***

As part of a long-term strategy in a country with a mixed history of free and fair elections, USAID’s principal purpose is to support an organization’s ability to increase the fairness and integrity of electoral processes through a variety of activities, including voter education, election monitoring, and support to the Central Election Commission, and for political party development; the activity could also include procurement by the awardee of equipment or software to improve transparency.



***Elections – Acquisition Example***

As part of a plan to phase out of DRG assistance in a country that has held several rounds of competitive elections widely assessed as credible, USAID’s principal purpose is to fulfill a pledge to the host government to procure modernized equipment and software for the Central Election Commission. This could include the acquisition of certain TA services to provide to the Electoral Commission to ensure the effective use of the new hardware and software.

***Opinion Polls – Assistance Example***

USAID’s principal purpose is to support an organization’s ability to enhance public-opinion polling for the principal purpose of promoting the use of opinion data by political parties, civil society, and governments to improve responsiveness to citizens’ needs and priorities. The data provided could also be useful to the USG and other donors, but the principal purpose of the activity is not to acquire these data for the direct benefit of, or use by, the USG.

***Opinion Polls – Acquisition Example***

USAID’s principal purpose is to acquire services for the conduct of public-opinion polls to obtain data for the primary purpose of informing USG strategic planning or programmatic designs.

***Civil Society – Assistance Example***

USAID’s principal purpose is to support an entity’s ability to strengthen the skills and capacity of local organizations to organize and advocate on issues of priority to the community. USAID provides funds to a recipient to improve the legal enabling environment for civil society through the strengthening of civil society and government capacity, research, *etc.*

***Civil Society – Assistance Example***

USAID's principal purpose is to support the independent media, the free flow of information, and the freedom of expression and plurality of news sources through strengthening the increasing professionalism standards of local media-sector actors and institutions; improving the legal and regulatory environment for the freedom of expression; assisting media organizations to improve their business models to allow for editorial independence; and strengthening media-support organizations.

***Civil Society – Acquisition Example***

USAID requires specific services to administer grants on behalf of USAID to local organizations. The activity also outsources production of a related, USAID issued civil society research publication.

***Civil Society – Acquisition Example***

USAID’s principal purpose is to acquire and direct Agency-specified services to build the capacity of local entities that have participated in USG programs for them to become eligible for direct USAID assistance. USAID requires the successful offeror to provide the required services to designated parties, and to collaborate closely with, and take technical direction from, USAID offices and programs that engage local partners.

***Parliamentary Strengthening – Assistance Example***

USAID’s principal purpose is to provide financial support to an organization for the delivery of its activities and interventions aimed at enhancing the development of a Parliament or Congress as a multiparty, representative institution. This financial support includes funding for interventions of the recipient that improve legislative functions through a variety of activities related to the organization, the functions of party factions, Committee work, outreach to constituents, legislative oversight, and other activities to increase the capacity of elected members of the legislature and legislative staff to perform their duties and functions.

***Parliamentary Strengthening – Assistance Example***

USAID’s principal purpose is to provide financial support to an organization for specified assistance and training to increase the capacity of a legislature and legislative staff to perform their duties and functions. This could include study tours and exchanges to expose members and staff to comparative legislative practices, and the provision of equipment, information technologies, and infrastructure support to modernize legislative processes and facilities.

***Parliamentary Strengthening – Acquisition Example***

USAID’s principal purpose is to procure equipment and materials for the institution or for members and staff, and provide technical assistance and training on how to deploy that equipment and materials.

***Local Governance – Assistance Example***

USAID’s principal purpose is to provide financial support to a recipient that enhances its ability to work with civil society organizations, including professional associations, non-governmental organizations, *etc.* to increase citizens’ participation in local decision making regarding budgeting, public spending, and service delivery. The award could include funds to develop/scale up technologies/tools to enhance social accountability, and limited funds for infrastructure projects, as identified by the recipient, and by civil society.

***Local Governance – Acquisition Example***

USAID’s principal purpose is to acquire and direct Agency specified services to build the capacity of local and national government institutions to promote decentralized governance. This includes the development of systems to improve public administration, and to track public

spending. It also includes the acquisition and provision of specified training for local government officials on governance issues such as budgeting, service delivery, responsiveness, transparency, and accountability. In a post-conflict country with high physical-security concerns, USAID requires the services of a construction firm to build, or rebuild, infrastructure according to certain specifications to support host-country needs.

***Rule of Law –Assistance Example***

USAID’s principal purpose is to provide financial support to selected groups, bar associations, legal aid, and other associations that have a role in reinforcing the knowledge, skills, independence and accountability of judicial actors, or a role in monitoring the judicial system or judicial processes. This financial assistance could include support to law schools/organizations that train judges/lawyers and offer legal aid to underserved groups.

***Rule of Law – Acquisition Example***

USAID’s principal purpose is to acquire and direct Agency specified services to build the capacity of judicial institutions, including criminal and civil courts, including efforts to modernize the management of court cases and case-tracking systems through the use of information and communication technologies. The acquisition could include services and equipment that advance the establishment and operation of specialized (*e.g.*, anti-corruption) courts.

## **FREQUENTLY ASKED QUESTIONS**

***QUESTION 1: What if what I am trying to accomplish has characteristics from two different instruments?***

**ANSWER:** If you find yourself trying to design an activity and need to incorporate characteristics from both A&A instruments, chances are that the activities are inappropriately combined. You should implement activities with different purposes under the appropriate instruments, as outlined in ADS Chapter 304. For example, engaging a firm to upgrade a legislative building, and transferring financial assistance to an awardee to provide TA to legislative committees or caucuses should be separate. Bundling two activities, one whose principal purpose focuses on the acquisition of services required by the Agency for its activity, and the other whose principal purpose focuses on providing financial assistance to the awardee for programmatic purposes, could contradict the Agency's policies on the selection of the appropriate instrument, as outlined in ADS Chapter 304. It is important to separate out the types of activities depending on whether USAID is buying something (services or supplies) from the awardee (acquisition), or whether USAID's principal purpose is to support the awardee's mission, objective, or interventions in a designated program area (assistance).

***QUESTION 2: Some scenarios can go either way in terms of the type of instrument. Is there anything else that I should consider in these types of gray areas?***

**ANSWER:** Since each situation is unique, we strongly suggest consulting with the Program, Acquisition and Assistance, and Legal Offices within your Mission. The DRG Center can also assist Missions to identify and access information, and connect them with other consultative resources available in Washington.

***QUESTION 3: Sometimes the operational environment works against meeting required guidelines: We are a very busy Mission and just do not have the necessary available resources. How do you propose we approach following the guidance given our operational context?***

**ANSWER:** Missions must follow the Agency's policy and applicable laws and regulations as spelled out in ADS Chapter 304. A Mission might need to alter its design schedule or approach to be consistent with the Agency's policy and applicable laws and regulations. Separately, the DRG Center provides surge support for designing projects and can assist Missions with program planning, either in-person or through virtual consultations.

***QUESTION 4: I am in the process of designing a longer term, post-election democracy promotion activity after implementing a more narrow elections assistance activity largely focused on support to the host government’s electoral management body through a contract mechanism. Can I expand the current contract to broaden its scope to include new services?***

**ANSWER:** ADS Chapter 304.3.5.f states that the desire on the part of the Agency to control the details of post-award implementation is not an acceptable criterion for selecting an instrument. You cannot simply expand the current contract to broaden its scope to include new services. You must consider each planned activity on its own merits, and pursue implementation through an appropriate A&A mechanism based on the principal purpose of the instrument, and the expected relationship desired between the USG and the implementing organization.

While this guidance focuses on the planning-and-design phase of developing DRG programs, it is equally important to ensure the proper management of A&A awards. Additional guidance and training will be forthcoming on ADS Chapter 304, including future reference documents such as the Amplifying Guidance and revised SOI Templates.

***QUESTION 5: Related to the previous design scenario of post-election activities, what if I want to have significant involvement or control over the project? Does that affect which instrument I select?***

**ANSWER:** ADS 304.3.5.f states that “substantial involvement” is not a relevant factor to consider in choosing between contracts, grants, and cooperative agreements. Planners should consider each planned activity on its own merits, and pursue implementation through an appropriate A&A mechanism based on the principal purpose of the instrument and the expected relationship desired between the USG and the implementing organization.