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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: July 20 , 2010

AAPD 10-04

Contract Clause and Assistance Provision for Awards in Afghanistan

Subject Category: Assistance and Acquisition Management
Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends

Applicable to:

- Existing awards; Modification required
- No later than
- As directed in Required Actions and Guidance sections
- RFPs, RFAs and APSs issued on or after the effective date of this AAPD
- Other or N/A

Precedes change to:

- AIDAR Part(s) Appendix
- USAID Automated Directives System (ADS) Chapters 302 and 303
- Code of Federal Regulations
- Other
- No change to regulations

New Provision/Clause Provided Herein

/s/

Mark Walther
Acting Director

1. **PURPOSE:** This AAPD provides a contract clause and assistance provision for use in Contracts, Grants and Cooperative Agreements involving performance in Afghanistan, a designated area of combat operations.

Required Action: Contracting Officers (COs) and Agreement Officers (AOs) will insert the attached clauses and provisions in accordance with the Guidance in Section 3 for solicitations and awards, including existing awards, involving activities in Afghanistan.

2. **BACKGROUND:**

Section 861 of the National Defense Authorization Act for Fiscal Year 2008 (Act) directed the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development (USAID) to enter into a memorandum of understanding (MOU) related to contracting in Iraq and Afghanistan. The law specified a number of matters to be covered in the MOU, including the identification of each department's and agency's roles and responsibilities for matters relating to contracting in Iraq or Afghanistan, responsibility for establishing procedures for the movement and coordination of movement of contractor personnel in the two countries, and identifying a common databases to serve as the repositories of information on contracts and contractor personnel in Iraq or Afghanistan. The required MOU was signed by all three agencies in July 2008. The MOU covers contracting matters in both Iraq and Afghanistan. AAPD 09-01 provided guidance for Iraq. The guidance in this AAPD applies to Afghanistan.

In the MOU, the three agencies agreed that DOD's Synchronized Pre-Deployment and Operational Tracker (SPOT) database will be the system of record and repository for the contract and contractor personnel information required by Section 861. The MOU, as subsequently amended, specifies that SPOT will include information on contracts in Afghanistan with performance periods of more than 30 days or valued at more than \$100,000.

Amendments contained in the National Defense Authorization Act for Fiscal Year 2010 (NDAA) expanded the coverage of Section 861 to include grants and cooperative agreements.

Information with regard to Afghan nationals will be entered once under procedures to be provided separately.

3. **GUIDANCE:**

(a) Contracts

i. COs are reminded to include the clause at FAR 52.225-19 "Contractor Personnel in a Designated Operational Area of Supporting a Diplomatic or Consular Mission Outside the United States (MAR 2008)" in all contracts involving performance in Afghanistan.

ii. COs must include the provision as prescribed in Attachment A in all contract and task order solicitations and resulting awards when they involve performance in Afghanistan. COs must immediately modify any existing contracts that do not already include this clause.

(b) Assistance -- Grants and Cooperative Agreements

AOs must include the provision in Attachment B, as prescribed, in all assistance solicitations and resulting awards where the recipient will conduct program activities in Afghanistan. AOs must immediately amend all current assistance awards to incorporate this provision. The amendment must be bilateral to ensure that the recipient agrees to be bound by the requirements of the provision.

4. POINTS OF CONTACT:

COs/AOs may direct their questions about this AAPD to Michael Gushue, M/OAA/P at (202) 712-5831, e-mail: mgushue@usaid.gov, or Diane Howard, M/OAA/P, at phone (202) 712-0206, e-mail dhoward@usaid.gov.

Contractors, Recipients, or prospective offerors/applicants for awards must direct their questions to the cognizant CO/AO for the award.

ATTACHMENTS:

ATTACHMENT A – Clause when contract performance is in Afghanistan

Section H: “Use of Synchronized Predeployment and Operational Tracker (SPOT) for Contractors Supporting a Diplomatic or Consular Mission Outside the United States”

ATTACHMENT B – Assistance provision for performance of program activities in Afghanistan

Section C. Standard Provisions: “Special Provision for Performance in Afghanistan”

ATTACHMENT C – Clearance Page

ATTACHMENT A – CONTRACT CLAUSE FOR PERFORMANCE IN AFGHANISTAN

When awarding contracts (including task orders under USAID Indefinite Quantity Contracts or GSA Federal Supply Schedule contracts) with a performance period over 30 days and when the contractor will be conducting activities in Afghanistan, Contracting Officers must include the following provision in Section H of the Uniform Contract Format. COs must modify existing contracts to include this provision as soon as practicable.

Special Contract Requirements

Use of Synchronized Pre-deployment and Operational Tracker (SPOT) for Contractors Supporting a Diplomatic or Consular Mission Outside the United States (supplement to FAR 52.225-19)

In accordance with paragraph (g) *Personnel Data*, of FAR clause 52.225-19 “Contractor Personnel in a Designated Operational Area of Supporting a Diplomatic or Consular Mission Outside the United States (MAR 2008),” the Contracting Officer hereby identifies DoD’s Synchronized Pre-deployment and Operational Tracker (SPOT) as the required system to use for this contract in Afghanistan.

In accordance with Section 861 of the FY08 National Defense Authorization Act (FY08 NDAA), P.L. 110-181, USAID and the Departments of Defense (DOD) and State (DOS) have entered into a Memorandum of Understanding (MOU) under which USAID has agreed to establish a common database including information on contractors and contractor personnel performing work in Afghanistan. The MOU identifies SPOT as the common database to serve as the repository for this information. Information with regard to Afghan nationals will be entered under procedures provided separately by the Contracting Officer.

All contractor personnel must be accounted for in SPOT. Those requiring SPOT-generated Letters of Authorization (LOAs) must be entered into SPOT before being deployed to Afghanistan. If individuals requiring LOAs are already in Afghanistan at the time the contractor engages them or at the time of contract award, the contractor must immediately enter into SPOT each individual upon his or her becoming an employee or consultant under the contract. Contract performance may require the use of armed private security contractor personnel (PSCs). PSCs will be individually registered in SPOT. Personnel that do not require LOAs will still be required to be entered into SPOT for reporting purposes, either individually or using an aggregate tally methodology. Procedures for using SPOT are available at <http://www.dod.mil/bta/products/spot.html>. Further guidance may be obtained from the Contracting Officer’s Technical Representative or the Contracting Officer. It is emphasized that SPOT applies to sub-awards and that this provision must be included in all sub-awards at any tier.

(End of Provision)

ATTACHMENT B – ASSISTANCE PROVISION FOR PROGRAM ACTIVITIES IN AFGHANISTAN

Agreement Officers (AOs) must insert the following provision in all assistance solicitations and awards when the performance period will be greater than 30 days or valued at more than \$100,000 and when the recipient will be carrying out activities in Afghanistan. AOs must amend existing awards to include this provision as soon as practicable.

SPECIAL PROVISION FOR PERFORMANCE IN AFGHANISTAN (JULY 2010)

All recipient personnel deploying to Afghanistan under grants or cooperative agreements with a performance period over 30 days or valued at more than \$100,000 must be accounted for in the Department of Defense maintained Synchronized Predeployment and Operational Tracker (SPOT) system. Information about SPOT is available at <http://www.dod.mil/bta/products/spot.html> as well as from the Agreement Officer (AO) or Agreement Officer's Technical Representative (AOTR). Recipient shall register those individuals requiring SPOT-generated Letters of Authorization (LOAs) in SPOT before deploying any employees or consultants to Afghanistan. If individuals are already in Afghanistan at the time the recipient employs them, the recipient must enter each individual upon his or her becoming an employee or consultant under this award. Personnel that do not require LOAs are still required to be accounted for in SPOT for reporting purposes either individually or via an aggregate tally methodology. The recipient must maintain and keep current all employee and consultant data in SPOT. Information on how individual and/or aggregate tally registrations will be made in SPOT is available from the Agreement Officer (AO) or Agreement Officer's Technical Representative (AOTR).

Recipient performance may require the use of armed private security personnel. To the extent that such private security contractors (PSCs) are required, recipients are required to ensure they adhere to Chief of Mission (COM) policies and procedures regarding the operation, oversight, and accountability of PSCs. PSCs will be individually registered in SPOT.

Under this award, the term "PSC" includes any personnel providing protection of the personnel, facilities, or property of a recipient or subrecipient at any level, or performing any other activity for which personnel are required to carry weapons in the performance of their duties. As specific COM policies and procedures may differ in scope and applicability, recipient is advised to review post policies and procedures carefully in this regard and direct any questions to the Embassy Regional Security Office (RSO) via the Agreement Officer's Technical Representative. Any exception to these policies must be granted by the COM via the RSO. A copy of any exception must be provided to the AO and AOTR. COM policies and procedures may be obtained from the RSO via the Agreement Officer's Technical Representative. Recipient is also advised that these policies and procedures may be amended from time to time at the post in response to changing circumstances.

Recipient is advised that adherence to these policies and procedures is considered to be a material requirement of this grant/cooperative agreement. The recipient must include this provision in all sub-awards at any tier or contracts under their grant/cooperative agreement. Recipient is reminded that only the Agreement Officer has the authority to modify the Notice of Award. Recipients shall proceed with any security guidance provided by the RSO, but shall advise the Agreement Officer and the Agreement Officer's Technical Representative of the guidance received and any potential cost or schedule impact.

[END OF PROVISION]