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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: March 26, 2021

AAPD 21-01

Applicability of FAR 4.21 to USAID personal services contracts with individuals under the AIDAR Appendices D and J

Subject Category: 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 noted in guidance below

All applicable RFPs and new awards issued after the effective date of this AAPD.

Other

Precedes change to:

AIDAR Part(s) Appendix

Code of Federal Regulations

Federal Acquisition Regulations

No change to regulations

New or Revised Provision/Clause Provided Herein: If checked, scheduled update to GLAAS:

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Senior Procurement Executive

I. PURPOSE:

The purpose of this AAPD is to inform contracting officers that the following provisions and clause must NOT be incorporated in solicitations, new and existing awards of personal services contracts with individuals issued under the AIDAR Appendices D and J:

- 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment;
- 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment;
- 52.204-26 Covered Telecommunications Equipment or Services-Representation.

II. BACKGROUND/GUIDANCE:

Effective August 13, 2020, FAR subpart 4.21 prevents federal agencies from entering “into a contract to procure or obtain, or extend or renew a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system,” unless an exception or waiver applies. “Entity” is not defined in the statute nor is it defined in the FAR rule, except to clarify that the rule covers only the “entity” that the agency “enters into a contract” with. USAID has made a determination that this statutory requirement does not apply to USAID’s personal service contracts under the AIDAR appendices D and J as the contracts are entered into with individuals and because PSCs are provided with support services, equipment, and supplies and are not allowed to subcontract out any work.

However, FAR 4.2105 requires COs to include FAR provisions 52.204-24 in all solicitations (including notices of intent or solicitations for indefinite delivery contract orders), FAR clause 52.204-25 in all solicitations and contracts, and FAR provision 52.204-26 in all solicitations, without exception. To address this gap, M/OAA Director has approved a class deviation from the FAR providing COs the authority to exclude these provisions and clause in personal services contracts under the AIDAR appendices D and J.

III. POINTS OF CONTACT:

USAID COs may direct questions regarding this AAPD to the PSC Policy Mailbox at pscpolicymailbox@usaid.gov.

TAB 1: FEDERAL ACQUISITION REGULATION (FAR) DEVIATION TEXT

Additions are **[bolded and bracketed]**, deletions are ~~struck through~~.

(Deviation #: M/OAA-DEV-FAR-21-1c

4.2105 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at [52.204-24](#), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment–

(1) In all solicitations for contracts; and

(2) Under indefinite delivery contracts, in all notices of intent to place an order, or solicitations for an order (*e.g.*, subpart [8.4](#) and [16.505](#)).

(b) The contracting officer shall insert the clause at [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations and contracts.

(c) The contracting officer shall insert the provision at [52.204-26](#), Covered Telecommunications Equipment or Services-Representation, in all solicitations.

(d) The requirements in paragraphs (a) through (c) do not apply to solicitations for contracts with, or contracts with, individuals issued in accordance with Appendices D and J of the AIDAR.