



Limits on Custom-Developed Software

A Mandatory Reference for ADS Chapter 547

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USAID is committed to improving the way the agency buys, builds, and delivers software solutions to better support cost efficiency, mission effectiveness, and the customer experience.

a. Applicability.

In compliance with [OMB M-16-21](#), all Bureaus, Independent Offices, and Missions (B/IO/Ms) must consult with, and receive approval from, M/CIO before procuring any custom-developed software for a USAID IT Investment for Agency use.

The guidance applies to all USAID IT Investments, including:

- Direct purchases of IT by USAID, which are used directly by USAID, and
- Direct purchases by USAID contractors where such IT is used directly by USAID.

Software is considered 'used by an agency' if it is used by USAID directly or if used by a contractor under a contract with the USAID that requires the use of the software to a significant extent in the performance of a service or the furnishing of a product.

This guidance does not apply to:

- Software that is acquired by a contractor incidental to contract performance.
- Software, acquired by a contractor or recipient, that is used in furtherance of a project, so long as the software is not being used directly by USAID, or will not be connected to a USAID IT system.

b. Process to Select Software.

The B/IO/M acquisition planner must do market research consistent with FAR Part 10 and must determine whether an existing federal, commercial, or custom-developed software solution can meet its requirement.

The acquisition planner must conduct the analysis outlined below. Only when exhausting solutions on each step, can the B/IO/M consider a software solution in the next step. This analysis is intended to leverage existing solutions and suitable commercial solutions, while mitigating duplicative spending on custom-developed software solutions.

1. Consider Existing USAID Solutions: M/CIO has a list of ready to use software applications ([M/CIO approved Software List](#)) that have been

reviewed for installation on USAID's network, and software services that have been reviewed and approved for use. If a B/IO/M wants to use one of the approved installed applications or software services, it must procure the necessary number of licenses but does not require further M/CIO approval of the purchase. Upon procurement, the B/IO/M must provide the M/CIO [IT Asset Management Group](#) with the following information: Terms of Service, number of licenses, activation Codes, period of performance, and purchase order number to be maintained in the Agency Software Inventory as required by [OMB M-16-12](#).

2. Consider Other Existing Federal Solutions: B/IO/Ms must conduct a strategic analysis consistent with FAR Part 10 to determine whether there is an existing Federal software solution available that meets the business needs of the B/IO/Ms.
3. Consider Existing Commercial Solutions: B/IO/Ms must determine whether there is a commercial solution available or that can be modified to meet their operational requirements.
4. Custom-Developed Solutions:-If the alternatives analysis concludes that neither a Federal solution nor commercial solution exists to meet the B/IO/M's business needs, the B/IO/M may consider procuring custom-developed software code in whole or in conjunction with existing code.

c. Process to Seek M/CIO Approval for a Custom-Developed Solution.

1. The B/IO/M must request-M/CIO approval of a custom-developed USAID IT Investments in software as early in the process as possible, but no later than prior to issuing a solicitation that identifies a specific software solution. Where a solicitation does not identify a specific software solution (e.g., a performance based solicitation), but a proposal includes a USAID IT Investment in custom-developed software solutions, the B/IO/M must obtain approval prior to signing an award with such proposer.
2. The B/IO/M must send the request to: ITAuthorization@usaid.gov.
3. The B/IO/M must allow no fewer than 30 business days for M/CIO review and approval.
4. The request to M/CIO must document the B/IO/M's analysis under b. above.

d. Special Award Requirements for Custom-Developed Software

If the B/IO/M has determined that there is no existing software solution and that the Agency must acquire custom software, and M/CIO has approved the request, the acquisition planner, in coordination with the Contracting Officer, must:

1. Ensure that the Agency has appropriate data rights to the custom developed code by including the standard intellectual property clauses [\[52.227-14\]](#) and/or other custom clauses where required. Contracting Officers must consult with the cognizant Regional Legal Officer or General Counsel to ensure inclusion of appropriate clauses.
2. Include the source code and other appropriate documentation as a deliverable under the award, specifying format, and ensure that a copy is sent to M/CIO upon application release.
3. Include a requirement in the award that the software must be developed as Open Source Software (OSS), unless M/CIO determines that an open source license would have a detrimental impact on Agency Operations.

The Contracting Officer must not solicit for or enter into an award including a requirement for custom developed software for Agency use without confirming that the required approvals have been received and that the solicitation and award address the requirements above. M/CIO is responsible for maintaining a code inventory that lists all new custom-developed code and making that inventory available to other Federal Agencies, unless an exception is approved.

Definitions

USAID IT investments

IT initiatives or projects funded at Missions or USAID/W, regardless of funding source, that are owned, licensed, or leased by USAID and operated by USAID or by contractors for Agency operations.

Custom-Developed Code: For the purposes of this policy, custom-developed code is code that is first produced in the performance of a Federal contract or is otherwise fully funded by the Federal Government. Custom-developed code also includes code developed by agency employees as part of their official duties. For the purposes of this policy, custom-developed code may include, but is not limited to, code written for software projects, modules, plugins, scripts, middleware, and APIs; it does not, however, include code that is truly exploratory or disposable in nature, such as that written by a developer experimenting with a new language or library.

Open Source Software (OSS): Software that can be accessed, used, modified, and shared by anyone. OSS is often distributed under licenses that comply with the definition of “Open Source” provided by the Open Source Initiative (<https://opensource.org/osd>) and/or that meet the definition of “Free Software” provided

by the Free Software Foundation (<https://www.gnu.org/philosophy/free-sw.html>).

Proprietary Software: Software with intellectual property rights that are retained exclusively by a rights holder (e.g., an individual or a company).

Software: Is the set of user programs running on a system that are designed to be updated often.

Source Code: Computer commands written in a computer programming language that is meant to be read by people. Generally, source code is a higher level representation of computer commands as they are written by people and, therefore, must be assembled or compiled before a computer can execute the code as a program.

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