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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: June 12, 2008

AAPD 08-01

Voluntary Population Planning Activities – Updated Requirements and Clause

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 CIB/AAPD No: 99-06

<p>Applicable to:</p> <p><input checked="" type="checkbox"/> Existing awards; <input checked="" type="checkbox"/> Modification required</p> <p><input type="checkbox"/> No later than</p> <p><input checked="" type="checkbox"/> As directed in Required Actions and Guidance sections</p> <p><input checked="" type="checkbox"/> RFPs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC</p> <p><input type="checkbox"/> Other or N/A</p>	<p>Precedes change to:</p> <p><input checked="" type="checkbox"/> AIDAR Part(s) 771, 752 Appendix</p> <p><input type="checkbox"/> USAID Automated Directives System (ADS) Chapter</p> <p><input type="checkbox"/> Code of Federal Regulations</p> <p><input type="checkbox"/> Other</p> <p><input type="checkbox"/> No change to regulations</p>
<p><input checked="" type="checkbox"/> New Provision/Clause Provided Herein</p>	

Signature on File

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1. PURPOSE:

This AAPD provides a revised Voluntary Population Planning Activities clause (see Attachment) based on the existing statutory and policy restrictions relating to family planning.

Required Action: Contracting Officers (COs) are required to include the revised clause in all solicitations and resulting contracts. If the contracting officer anticipates that the contract will include family planning activities, the CO shall use the clause with its Alternate I.

Accordingly, the CO must include the basic clause:

- a. in all solicitations and resulting contracts
- b. when issuing any modification to any existing contracts, including modifications adding incremental funding
- c. in all Indefinite Quantity Contracts (IQCs) basic awards immediately.

The CO must also include the Alternate I:

- a. in solicitations and resulting contracts if family planning activities are anticipated
- b. in existing contracts if family planning activities are within the scope of the award.

NOTE: If the Alternate I is not inserted into the basic IQC with the basic clause, then it is not appropriate for Task Order COs to issue task orders with family planning activities, as they are most likely outside the scope of the contract.

2. BACKGROUND:

a. Contract clause 752.7016, "Voluntary Population Planning Activities" (March 1999) as issued under Contract Information Bulletin (CIB) 99-06, "Voluntary Family Planning – New Provisions to Implement the Tiaht Amendment" was based on a wide number of existing statutory and policy restrictions relating to family planning. The most recent of those statutory restrictions, the Tiaht Amendment, was established under the FY 1999 appropriations act. The Amendment originally applied only to family planning activities funded with FY1999 Development Assistance funds; however, subsequent appropriations acts have changed the funding accounts to which the Tiaht Amendment is applicable, and the Amendment now applies to family planning activities funded from any account. Appropriations acts since then have continued to include the Amendment, therefore making it applicable to family planning activities in all years since 1999. It is anticipated that all the restrictions above will continue for the foreseeable future.

As the agency moves forward with formalizing the restrictions in a new part of the AIDAR, this AAPD serves as advance notification of this change to the acquisition regulation and implements these new requirements immediately.

b. The general restrictions set forth in the revised clause are essentially the same as those set forth in CIB 99-6; however, the clause and its prescription have been modified to reflect the following changes:

- i. A portion of the restrictions relative to family planning is applicable to all foreign assistance activities. The clause now contains standard language to state those restrictions – this base clause is **mandatory** for all contracts. The remaining restrictions are applicable only to family planning activities, and these restrictions are now contained in the Alternate 1 to the clause.

Accordingly, the prescription for the new clause requires COs to include the mandatory clause in all new awards; if the CO contemplates that the contract will include family planning activities, the CO shall use the clause with its Alternate I.

ii. The clause now clarifies that the restriction on using USAID funds for lobbying activities applies to lobbying both for or against abortion; in addition, it clarifies the definition of “motivate” as it relates to family planning assistance. The Alternate 1 also updates the Tiahrt Amendment provisions in the clause to apply to funds from any account (and not just to funds from the Development Assistance Account).

3. GUIDANCE:

New awards: COs must insert the new clause **752.7101 “Voluntary Population Planning Activities (JUNE 2008)”** set forth in the Attachment in all solicitations and new contract awards. If the contract includes family planning activities, the CO must use the clause with its Alternate I.

Current awards: COs must incorporate the basic clause immediately into all Indefinite Quantity Contracts (IQC) basic awards, and when issuing any modification to all other existing contracts (including modifications adding incremental funding). NOTE: this clause must be included in modifications of all existing contracts, not just those which include family planning activities. The modification must be bilateral to ensure that the contractor agrees to be bound by the requirements of the clause and its alternate, as applicable.

For those current contracts that include family planning activities, the CO must also include the Alternate 1 to the clause (as set forth in the Attachment) and delete any previous versions of the clause, such as the obsolete clause “752.7016 Voluntary Population Planning Activities (March 1999)” or its 1986 predecessor. NOTE: If the Alternate I is not inserted into an IQC with the basic clause, then it is not appropriate to issue task orders with family planning activities, as they are most likely outside the scope of the contract.

4. POINTS OF CONTACT:

COs may direct their questions about this AAPD to Carol Ketrick, M/OAA/P. at phone (202) 712-1382, e-mail: cketrick@usaid.gov. Inquiries regarding the statutory requirements for family planning activities may be addressed to Mary A. McLaughlin, GC/EGAT & GH, phone (202) 712-0659, e-mail: mamclaughlin@usaid.gov, or to Beverly Johnston, GH/PRH, phone (202) 712-5839, e-mail: bjohnston@usaid.gov.

Contractors or prospective offerors for contracts must direct their questions to the cognizant CO for the award.

ATTACHMENTS:

ATTACHMENT - Voluntary Population Planning Activities Clause

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752.7101 Voluntary Population Planning Activities.

(a) Insert the following clause in all solicitations and contracts:

VOLUNTARY POPULATION PLANNING ACTIVITIES (JUNE 2008)

(a) *Requirements for Voluntary Sterilization Program.* None of the funds made available under this contract shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

(b) *Prohibition on Abortion-Related Activities.*

(1) No funds made available under this contract will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

(2) No funds made available under this contract will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not precluded.

(c) The contractor shall insert this provision in all subcontracts.

(End of clause)

Alternate I (JUNE 2008). If a contract with family planning activities is contemplated, add the following paragraphs (d-g) to the basic clause:

(d) *Voluntary Participation and Family Planning Methods.*

(1) The contractor agrees to take any steps necessary to ensure that funds made available under this contract will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the contractor agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

(2) Activities which provide family planning services or information to individuals, financed in whole or in part under this contract, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

(e) *Requirements for Voluntary Family Planning Projects.*

(1) A family planning project must comply with the requirements of this paragraph.

(2) A project is a discrete activity through which a governmental or nongovernmental organization or public international organization provides family planning services to people and for which funds obligated under this contract, or goods or services financed with such funds, are provided under this contract,

except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.

(3) Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.

(4) The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.

(5) No person shall be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.

(6) The project shall provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method. This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.

(7) The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.

(8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no sub-contract or grant under this contract, the organization implementing a project for which such assistance is provided shall agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.

(9) (i) The contractor shall notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs (3), (4), (5) or (7) of this paragraph; and

(ii) the contractor shall investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph (6) of this paragraph and shall notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project.

(iii) The contractor shall provide USAID such additional information about violations as USAID may request.

(f) *Additional Requirements for Voluntary Sterilization Programs.*

(1) The contractor shall ensure that any surgical sterilization procedures supported in whole or in part by funds from this contract are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be

followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent anytime prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

(2) Further, the contractor shall document the patient's informed consent by

(i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or

(ii) when a patient is unable to read adequately a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation. The receipt of this oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall speak the same language as the patient.

(3) The contractor must retain copies of informed consent forms and certification documents for each voluntary sterilization procedure for a period of three years after performance of the sterilization procedure.

(g) The contractor shall insert this Alternate I in all subcontracts involving family planning activities.

ATTACHMENT