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Local Competition Authority Pilot Program

A Mandatory Reference for ADS Chapter 302

Partial Revision Date: 09/12/2023

Responsible Office: M/OAA/P

File Name: 302mbe_091223

BACKGROUND:

Contracting Officers (COs) and Operating Units (OUs) are encouraged to take advantage of the pilot program “Local Competition” statutory authority to limit competition to local entities when doing so will result in cost savings, develop local capacity, or enable USAID to initiate an activity in appreciably less time than if competition were not limited, and local organizations have the technical capacity and accountability systems adequate to perform the resulting contract successfully. Use of the authority promotes Agency efforts to develop local capacity sustainably and streamlines the process for operating units when limiting competition to local firms.

Section 7077 of Public Law 112-74, the Consolidated Appropriations Act, 2012 (P.L. 112-74), as amended by Section 7028 of the Consolidated Appropriations Act, 2014 (P.L. 113-76), is titled “Local Competition Authority” and provides as follows:

“Section 7077.

(a) Local Competition - Notwithstanding any other provision of law, the USAID Administrator may, with funds made available in this and prior Acts, award contracts and other acquisition instruments in which competition is limited to local entities if doing so would result in cost savings, develop local capacity, or enable the USAID Administrator to initiate a program or activity in appreciably less time than if competition were not so limited.

Provided, That the authority provided in this section may not be used to make awards in excess of \$5,000,000 and shall not exceed more than 10% of the funds made available to USAID under the Act for assistance programs.

Provided further, That such authority shall be available to support a pilot program with such funds:

Provided further, That the USAID Administrator shall consult with the Committees on Appropriations and relevant congressional committees on the results of such pilot program.

(b) For the purposes of this section, local entity means an individual, a corporation, a nonprofit organization, or another body of persons that--

(1) is legally organized under the laws of;

(2) has as its principal place of business or operations in; and

(3) is

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(A) majority owned by individuals who are citizens or lawful permanent residents of; and

(B) managed by a governing body the majority of who are citizens or lawful permanent residents of;

a country receiving assistance from funds appropriated under title III of this Act.

(c) For purposes of this section, ‘majority owned’ and ‘managed by’ include, without limitation, beneficiary interests and the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the organization’s managers or a majority of the organization’s governing body by any means.”

GUIDANCE:

The “Local Competition” authority as initially provided under the Consolidated Appropriations Act, 2012, has been extended to include **FY2023 or prior year** funds. The Section 7077 definition of local entity was revised by the FY14 Appropriations Act (Section 7028) to require that a local entity must be both majority owned and managed by citizens or permanent residents of the country receiving the assistance (previously, it was one or the other). Accordingly, COs must use the revised version of the required provision in all solicitations and awards financed fully or in part with **FY2023 or prior year** funding. **While this authority has been extended every year in annual appropriations acts**, OUs and COs must consult with their GC/RLO before using the authority for funds made available after **2023**.

The authority under this pilot program is in addition to the existing authorities for limiting competition in FAR Part 6 and AIDAR 706. Under these authorities, OUs/COs may limit acquisition competition to local entities as long as market research indicates that at least three (3) local entities are capable of performing the work.

For locally limited competitions for awards of \$5 million or less, OUs must use the pilot authority in lieu of other authorities. The “Local Competition” authority is available for limiting competition only; COs must not use the authority to justify sole source awards.

a. Applicability:

The pilot program authority applies to USAID direct contract awards to local entities only. The authority may be used when:

- (1)** Limiting competition to local entities as defined in Section 7077 (as amended by Section 7028) would:

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- (a) Result in cost savings;
 - (b) Develop local capacity; or
 - (c) Enable the Agency to initiate a program or activity in appreciably less time than if competition were not so limited;
- (2) The resulting contract amount will not exceed \$5 million; and
 - (3) The resulting contract is funded with **FY2023** or prior year funds (or future funds, if the authority is extended and such extension is confirmed by the cognizant GC/RLO).

For the purposes of the pilot program, “local entities” include (but are not limited to) an individual, corporation, commercial organization and nonprofit organization that:

- (1) Is legally organized under the laws of;
- (2) Has as its principal place of business or operations in; **and**
- (3) Is
 - (A) majority owned by individuals who are citizens or lawful permanent residents of; and
 - (B) managed by a governing body the majority of who are citizens or lawful permanent residents of;

the country receiving assistance.

Refer to Section 7077, as amended by Section 7028 (See Background section above), for the full definition of local entities that must be used for all acquisitions limiting competition to local entities.

b. File Documentation Requirements

COs are not required to prepare, approve, or post a Justification and Approval (J&A) as discussed at **ADS 302.3.4.5** when using the “Local Competition” authority, nor is any consultation/clearance/approval required from M/OAA/Washington (including the Agency Competition Advocate).

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When using the “Local Competition” authority, COs must document the contract file appropriately that the action meets the applicability requirements for use of the authority as stated in section a. above.

COs and OUs must work together to generate appropriate supporting documentation for the specific rationale chosen from the applicability section in a.(1) above, including statements that support that specific rationale for limiting competition to local entities. For example, when using the rationale that limiting competition to local entities for a specific solicitation would “result in cost savings,” OUs must provide a general estimate of the projected savings to the Agency and the basis of the estimate.

The CO must also document that the awardee meets the definition of “local entities” as evidenced by inclusion of the appropriate mandatory “Local Competition” provision, in the resulting award.

COs must also place the market research in the file indicating that at least three (3) local entities are capable of performing the work.

c. Reporting:

Because the 7077 legislation requires consultation with the relevant Congressional committees on the results of the pilot program, it is important for COs to report the use of this local competition statutory authority accurately. A reporting field has been incorporated into GLAAS for tracking its usage on the “Additional Information” page of the award. Accordingly, when completing a contract action in GLAAS for which the award was based on the use of this local competition statutory authority, Negotiators/COs must select the Section 7077 of Public Law 112-74 field.

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