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Special Contract Requirements

A Mandatory Reference for ADS Chapter 302

Partial Revision Date: 06/13/2024
Responsible Office: M/OAA/P
File Name: 302mas_061324

Special Contract Requirements

The following special contract requirements are to be inserted in solicitations and contracts as prescribed in the relevant subject matter area in [ADS 302, USAID Direct Contracting](#). The requirements must be incorporated into Section H of the Uniform Contract Format (UCF) unless otherwise indicated in the prescription. These requirements must be in full text unless otherwise indicated, and must not be altered, unless a deviation in accordance with procedures in [ADS 302](#) is approved.

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1a. LIMITATION ON SUBCONTRACTING TO NON-LOCAL ENTITIES (May 2012)

(For use in all solicitations and resulting contracts, financed with FY 2012/2013 funds, where competition is limited to local entities. Please refer to [ADS 302, section 302.3.5.17, "Awards Limited to Local Competition"](#) for additional guidance. For solicitations and awards financed fully or in part with FY14 funds, use the revised provision in 6b below.)

302.3.5.17 Limitation on Subcontracting to Non-Local Entities (May 2012)

(a) Applicability. This clause applies to (i) contracts that have been awarded to those local entities under the authority of and as defined in Section 7077 of Public Law 112-74, the Consolidated Appropriations Act, 2012 (P.L. 112-74), also known as "Local Competition Authority" and (ii) contracts awarded to local entities (as defined in Section 7077 of Public Law 112-74) under the authority at AIDAR 706.302-70.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract for—

- (1) Services (except construction), at least 50 percent of the cost of contract performance incurred for personnel must be expended for employees of the prime/local entity.
- (2) Supplies (other than procurement from a non-manufacturer of such supplies), the prime/ local entity concern must perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
- (3) General construction, the prime/ local entity concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
- (4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(c) By submission of an offer and execution of a contract, the Offeror/Contractor represents that it is 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) Either is--
 - (A) majority owned by individuals who are citizens or lawful permanent residents of; or
 - (B) managed by a governing body the majority of whom are citizens or lawful permanent residents of; a country in which this contract will be primarily performed.

(d) For purposes of this clause, "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.

(END OF PROVISION)

1b. LIMITATION ON SUBCONTRACTING TO NON-LOCAL ENTITIES (July 2014)

*(For use in all solicitations and resulting contracts, financed fully or in part with FY2014 funds, where competition is limited to local entities. The previous version of this provision in 6a. above is still applicable to awards financed with FY2012/2013 funds. This revised version of the provision must be used for all awards financed fully or in part with FY14 funds. Please refer to [ADS 302](#), sections **302.3.4.5.e** and **302.3.5.17**, "Awards Limited to Local Competition" for additional guidance.)*

302.3.5.17 Limitation on Subcontracting to Non-Local Entities (July 2014)

(a) Applicability. This provision applies to:

(i) Contracts that have been awarded to those local entities under the authority of and as defined in Section 7077 of Public Law 112-74, the Consolidated Appropriations Act, 2012 (P.L. 112-74), as amended by Section 7028 of Public Law 113-76, the Consolidated Appropriations Act, 2014, also known as "Local Competition Authority"; and

(ii) Contracts awarded to local entities (as defined in Section 7077 of Public Law 112-74) under the authority at AIDAR 706.302-70 Impairment of foreign aid programs.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract for—

(1) Services (except construction), at least fifty (50) percent of the cost of contract performance incurred for personnel must be expended for employees of the prime/local entity.

(2) Supplies (other than procurement from a non-manufacturer of such supplies), the prime/ local entity concern must perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction, the prime/ local entity concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(c) By submission of an offer and execution of a contract, the Offeror/Contractor represents that it is 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;
- (3) Is majority owned by individuals who are citizens or lawful permanent residents of; and
- (4) Is managed by a governing body the majority of who are citizens or lawful permanent residents of the country in which this contract will be primarily performed.

(d) For purposes of this clause, "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.

(END OF PROVISION)

2. Reserved

3. Reserved

4a. ORGANIZATIONAL CONFLICTS OF INTEREST: DESIGN/IMPLEMENT, DEFINITE QUANTITY (September 2018)

(For use in all solicitations and resulting contracts for design/implementation.)

302.3.5.10 Organizational Conflicts of Interest: Preclusion from Implementation Contract (September 2018)

This contract requires the Contractor to furnish important services in support of the design of _____ [*specify activity*] (the "Activity"). In accordance with the principles of FAR Subpart 9.5 and USAID policy, the Contractor will be ineligible to furnish, as a Prime or Subcontractor or otherwise, the implementation services for the activity, unless the Head of the Contracting Activity authorizes a waiver (in accordance FAR 9.503 and AIDAR 709.503) determining that preclusion of the Contractor from the implementation contract would not be in the Government's interest.

[END OF PROVISION]

4b. ORGANIZATIONAL CONFLICTS OF INTEREST: DESIGN/IMPLEMENT, INDEFINITE QUANTITY (September 2018)

(For use in all solicitations and resulting contracts covering an indefinite quantity contract involving design/implementation.)

302.3.5.10 Organizational Conflicts of Interest: Preclusion from Implementation Contract (September 2018)

Task orders under this contract may require the Contractor to furnish important services in support of the design of specific activities. In accordance with the principles of FAR Subpart 9.5 and USAID policy, the Contractor will be ineligible to furnish, as a Prime or Subcontractor or otherwise, the implementation services for any activities for which it provides substantial design services except for such services that may be furnished under this contract, unless the Head of the Contracting Activity authorizes a waiver (in accordance FAR 9.503) determining that preclusion of the Contractor from the implementation contract would not be in the Government's interest. When a task order includes a work requirement that will preclude the Contractor from furnishing implementation services, a special contract requirement stating the preclusion will be included in the task order.

[END OF PROVISION]

4c. ORGANIZATIONAL CONFLICTS OF INTEREST: DESIGN/IMPLEMENT, TASK ORDERS (September 2018)

(For use in all task orders involving design/implementation.)

Organizational Conflicts of Interest: Preclusion from Implementation Contract (September 2018)

This task order requires the Contractor to furnish important services in support of the design of _____ [specify activity] (the "Activity"). In accordance with the principles of FAR Subpart 9.5 and USAID policy, the Contractor will be ineligible to furnish, as a Prime or Subcontractor or otherwise, the implementation services for the activity, unless the Head of the Contracting Activity authorizes a waiver (in accordance FAR 9.503 and AIDAR 709.503) determining that preclusion of the Contractor from the implementation contract would not be in the Government's interest.

[END OF PROVISION]

4d. ORGANIZATIONAL CONFLICTS OF INTEREST: EVALUATION, DEFINITE QUANTITY (September 2018)

(For use in all solicitations and resulting contracts covering a definite quantity involving evaluation services.)

Organizational Conflicts of Interest: Preclusion from Furnishing Certain Services and Restriction on Use of Information (September 2018)

(a) This contract requires the Contractor to furnish services in support of the evaluation of _____ [specify activity or Contractor]. In accordance with the principles of FAR Subpart 9.5 and USAID policy, the Contractor will be ineligible to furnish, as a Prime or Subcontractor or otherwise, the implementation services under any contract or task order that results in response to findings, proposals, or recommendations in the evaluation report within 18 months of USAID accepting the report, unless the Head of the Contracting Activity authorizes a waiver (in accordance FAR 9.503) determining that preclusion of the Contractor from the implementation work would not be in the Government's interest.

(b) In addition, by accepting this contract, the Contractor agrees that it will not use or make available any information obtained about another organization under the contract in the preparation of proposals or other documents in response to any solicitation for a contract or task order.

(c) If the Contractor gains access to proprietary information of other company(ies) in performing this evaluation, the Contractor must agree with the other company(ies) to protect their information from unauthorized use or disclosure for as long as it remains proprietary, and must refrain from using the information for any purpose other than that for which it was furnished. The Contractor must provide a properly executed copy of all such agreements to the CO.

[END OF PROVISION]

4e. ORGANIZATIONAL CONFLICTS OF INTEREST: EVALUATION, INDEFINITE QUANTITY (September 2018)

(For use in all solicitations and resulting contracts covering an indefinite quantity contract involving evaluation services.)

Organizational Conflicts of Interest: Preclusion from Furnishing Certain Services and Restriction on Use of Information (September 2018)

(a) Task orders under this contract may require the Contractor to furnish important services in support of evaluation of Contractors or of specific activities. In accordance

with the principles of FAR Subpart 9.5 and USAID policy, the Contractor will be ineligible to furnish, as a Prime or Subcontractor or otherwise, implementation services under any contract or task order that results in response to findings, proposals, or recommendations in an evaluation report written by the Contractor. This preclusion will apply to any such awards made within 18 months of USAID accepting the report, unless the Head of the Contracting Activity authorizes a waiver (in accordance FAR 9.503) determining that preclusion of the Contractor from the implementation work would not be in the Government's interest.

(b) In addition, by accepting this contract, the Contractor agrees that it will not use or make available any information obtained about another organization under the contract in the preparation of proposals or other documents in response to any solicitation for a contract or task order.

(c) If the Contractor gains access to proprietary information of other company(ies) in performing this evaluation, the Contractor must agree with the other company(ies) to protect their information from unauthorized use or disclosure for as long as it remains proprietary, and must refrain from using the information for any purpose other than that for which it was furnished. The Contractor must provide a properly executed copy of all such agreements to the CO.

[END OF PROVISION]

4f. ORGANIZATIONAL CONFLICTS OF INTEREST: EVALUATION, TASK ORDERS (September 2018)

(For use in all task orders involving evaluation services.)

Organizational Conflicts of Interest: Preclusion from Furnishing Certain Services and Restriction on Use of Information (September 2018)

This task order requires the Contractor to furnish important services in support of evaluation of _____ [*specify Contractor or activity*]. In accordance with the principles of FAR Subpart 9.5 and USAID policy, the Contractor will be ineligible to furnish, as a Prime or Subcontractor or otherwise, implementation services under any contract or task order that results in response to findings, proposals, or recommendations in an evaluation report written by the Contractor. This preclusion will apply to any such awards made within 18 months of USAID accepting the report, unless the Head of the Contracting Activity authorizes a waiver (in accordance FAR 9.503) determining that preclusion of the Contractor from the implementation work would not be in the Government's interest.

[END OF PROVISION]

4g. ORGANIZATIONAL CONFLICTS OF INTEREST: AUDIT (September 2018)

(For use in all solicitations and resulting contracts involving audit services.)

Organizational Conflicts of Interest: Preclusion from Furnishing Certain Services and Restriction on Use of Information (September 2018)

This contract requires the Contractor to provide certain audit services for USAID. To guard against the possibility that the Contractor might receive an unfair competitive advantage in competing for future USAID consulting contracts through its exposure to sensitive cost and other proprietary information of USAID contracts which it will audit under this contract, by accepting this contract, the Contractor agrees that it will not use, or make available to anyone, for the purpose of preparing proposals or any other documents in response to a solicitation for a contract or task order, any proprietary, cost, or otherwise sensitive business information obtained as a result of an audit.

The Contractor must agree with the companies that it audits to protect their proprietary information from unauthorized use or disclosure for as long as it remains proprietary, and must refrain from using the information for any purpose other than that for which it was furnished. The Contractor must provide a properly executed copy of all such agreements to the CO.

[END OF PROVISION]

5. Sexual Misconduct

For use in all solicitations and resulting contracts where the contract requires the contractor (or contractor employees) to have routine physical access to USAID facilities.

Sexual Misconduct (December 2020)

(a) USAID has a zero-tolerance policy for sexual misconduct with the goal of fostering a respectful, safe, healthy and inclusive work environment. USAID maintains policies and procedures to establish a workplace free of sexual misconduct as described in agency policy at [ADS Chapter 113, Preventing and Addressing Sexual Misconduct](#).

(b) USAID has developed two methods for receiving allegations of sexual misconduct: USAID's Unified Misconduct Reporting Portal, available on LaunchPad (launchpad.usaid.gov), and Service Desk, phone, (202) 712-1234. These are also available to the Contractor or its employee(s).

(c) USAID may conduct administrative inquiries into allegations of sexual misconduct that occur within U.S. Government facilities or while the contractor employee is performing services under the contract. The Contracting Officer will provide the results of any inquiry involving a contractor employee to the contractor, subject to federal law and USAID's information disclosure policies. USAID retains the right to suspend or terminate a contractor employee's access to any systems and/or facilities for incidents of sexual misconduct.

(d) The Contractor agrees to incorporate the substance of paragraphs (a) through (d) of this requirement in all subcontracts that may require contractor employees to have routine physical access to USAID facilities.

[END OF PROVISION]

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