

Functional Series 300: Acquisition and Assistance
ADS Chapter 303 - Grants and Cooperative Agreements to Non-Governmental
Organizations

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ADS 303 – Grants and Cooperative Agreements to Non-Governmental Organizations

303.1 Authority

1. Foreign Assistance Act of 1961, as amended, (FAA) Sections 621 and 635(b).
2. Federal Grants and Cooperative Agreement Act of 1977 (PL 95-224)(31 USC 6301-8).
3. OMB Guidance, "Implementation of Federal Grant and Cooperative Agreement Act of 1977, 8/18/78."
4. USAID Regulation entitled "Administration of Assistance Awards to U.S. Non-Governmental Organizations," codified at 22 CFR 226.

303.2 Objective

To implement the U.S. Government policies and establish standards for obtaining consistency and uniformity in awarding and administering grants and cooperative agreements to institutions of higher education, hospitals, other non-profit organizations and commercial organizations.

303.3 Responsibility

- 1) Bureau for Management, Office of Procurement (M/OP)

Is responsible for developing and interpreting policy on behalf of USAID for awarding and administering grants and cooperative agreements in accordance with OMB Circular A-110, USAID implementing Regulation 26 (codified at 22 CFR 226), OMB Circulars establishing Cost Principles (A-122 and A-21) and Audit responsibilities (A-133). (See Mandatory References, [OMB Circulars A-110](#), [A-122](#), [A-121](#), and [A-133](#); and [22 CFR 226](#))

- 2) Director, Office of Procurement (M/OP)

Is responsible for acting as the Agency's coordinator for all matters which impact on Office of Management and Budget (OMB) Circulars or USAID Regulations or which may require OMB approval. The Director, M/OP, is responsible for making a final determination regarding the appropriateness of competition in accordance with E303.5.5d2.

- 3) Assistance Executive

Is responsible for making final decision for any appeals brought under 22 CFR 226.90, or the Standard Provision entitled "Disputes", as applicable to non-US organizations. (See Mandatory Reference, [22 CFR 226.90](#))

4) Strategic Objective or Results Package Team

a. Agreement Officer

Agreement Officers sign on behalf of USAID under a duly authorized warrant issued by the Director, Office of Procurement; Mission Directors receive warrant authority by virtue of position. For information regarding additional assistance authorities for Mission Directors see the Supplementary Reference section. (See Supplementary Reference Guidelines for Expanded Assistance Authority for Mission Directors) The Agreement Officer bears the legal responsibility for the award and therefore, only the Agreement Officer can take action to enter into, change or terminate the award on behalf of USAID. The Agreement Officer is responsible for ensuring that USAID exercises prudent management over assistance funds by:

1. Interpreting USAID's assistance policies and procedures and coordinating with the Strategic Objective or Results Package (SO/RP) Team, applicants and recipients to ensure consistency of interpretation;
2. Determining the appropriate type of instrument to be used, in accordance with ADS 304 (See ADS 304);
3. Guaranteeing the integrity of the competitive process by:
 - Approving the Annual Program Statement or the Request for Application prior to publication; and
 - Obtaining a written evaluation report from the competitive review panel asserting that the review and evaluation of all applications was in keeping with USAID policies and essential procedures; and
4. Making a responsibility determination regarding a potential recipient's management competence in implementing a planned activity in accordance with USAID policies and essential procedures;
5. Developing the instrument that sets out the results that the recipient plans to achieve and all understandings

between USAID and the recipient. Where applicable shall clearly delegate appropriate responsibilities to other USAID officials in the Schedule of the award;

6. Negotiating costs in the financial plan of the award in accordance with OMB and USAID standards by:

- Requiring the Cognizant Technical Officer to confirm the necessity of certain program costs, where appropriate;
- Conducting a comprehensive cost analysis by: obtaining cost breakdowns, obtaining cost data, and determining the reasonableness, allowability and allocability of costs including any costs allocated to cost-sharing; and
- Discussing the cost analysis and supporting information in a Negotiation Memorandum; and

7. Assuring that there are no restrictions in the award that go beyond the provisions of the applicable OMB Circulars, USAID Regulation 26, or applicable Standard Provisions, unless a deviation has been approved;

8. Processing necessary deviations;

9. Executing the award, and maintaining contact with the responsible SO/RP team, the designated Cognizant Technical Officer and the recipient for proper award administration. The Agreement Officer is the mandatory control point of record for all official communications and contacts with the recipient that may affect the award budget, the program description or any terms and conditions of the award;

10. Preparing and executing amendments to awards as necessary;

11. Initiating actions when disallowances, suspensions or terminations are necessary;

12. Maintaining the official Agency files for each grant or cooperative agreement in accordance with the guidelines provided on file documentation (See Supplementary Reference, [File Documentation Guidelines](#)); and

13. Carrying out all other responsibilities as further detailed in this Chapter and 22 CFR 226.

b. Activity Manager

The Activity Manager is responsible for ensuring that USAID exercises prudent management over assistance funds prior to awards by:

1. Preparing competitive announcements or writing a justification for an exception to competition in accordance with this Chapter and as directed by the Agreement Officer;
2. Managing the process of technical evaluation of applicants on behalf of the Agreement Officer, including performing a past performance review, conducting elements of the pre-award survey, and providing technical analysis of specific costs when requested by the Agreement Officer.
3. Advising the Agreement Officer as to whether the applicant's Program Description is responsive to a published USAID competitive notice or is otherwise in keeping with established USAID Strategic Objectives;
4. Recommending the expected level of cost-sharing in accordance with specific program requirement and 303.5.10 (See [303.5.10](#));
5. Processing all necessary internal USAID authorization papers to request that the Agreement Officer consider awarding a grant or cooperative agreement to a selected applicant, including Program Descriptions with clearly established goals that are realistic, measurable, and represent the highest objective that the recipient can expect to materially affect and for which it will be held accountable;
6. Assisting the Agreement Officer in determining the potential recipient's level of technical and managerial competence;
7. Performing other duties as may be requested by the Agreement Officer for ensuring prudent management over assistance funds.

c. Cognizant Technical Officer

While typically the Activity Manager may assume the responsibilities and role of the Cognizant Technical Officer (CTO), it is important to note that the CTO is the individual who is designated by the Agreement Officer to administer certain aspects of the assistance instrument. The CTO is responsible for ensuring that USAID exercises prudent management over specific assistance awards for which they are designated as CTO by:

1. Monitoring and evaluating the recipient and the recipient's performance during the award in order to facilitate the attainment of program objectives by:
 - Maintaining contact including site visits and liaison with the recipient;
 - Reviewing and analyzing all performance and financial reports as well as verifying timely delivery;
 - Assuring compliance with the terms and conditions of the award;
 - Carrying out all responsibilities as delegated by the Agreement Officer in the Schedule of the award or noted under the "Substantial Involvement" section of Cooperative Agreements; promptly notifying the Agreement Officer of any developments which could have a significant impact on the award;
 - Preparing internal documents to support amendments to the award; and
2. Evaluating the recipient's program effectiveness at the end of the program and submitting a final report to the Agreement Officer and the Activity Manager.
3. Performing other duties as may be requested or as delegated by the Agreement Officer for ensuring prudent management over assistance funds.

5) Recipient

Is responsible for implementing the program in accordance with the terms and conditions of the award and all applicable USAID regulations.

303.4 Definitions (See [ADS GLOSSARY](#))

Agreement Officer
Assistance Executive
 award
 recipient
 Requests for Applications

303.5 POLICY

The statements contained within the .5 section of this ADS chapter are the official Agency policies and corresponding essential procedures.

303.5.1 USE OF GRANTS AND COOPERATIVE AGREEMENTS

A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by the foreign Assistance Act of 1961, as amended (FAA). For further guidance regarding the differences between assistance awards and procurement contracts, see ADS 304 (See [ADS 304](#)).

E303.5.1 Use of Grants and Cooperative Agreements

The Strategic Objective or Results Package (SO/RP) team shall determine and describe in the programming and requesting documents the purpose of the transaction and the intended nature of the relationship.

303.5.2 APPLICABLE REGULATION

OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," as codified by USAID at 22 CFR 226, "Administration of Assistance Awards to U.S. Non-Governmental Organizations," sets forth requirements that USAID shall comply with in administering grants and cooperative agreements with U.S. non-governmental organizations (See Mandatory References, [OMB Circular A-110](#) and [22 CFR 226](#)). While the regulation is not directly applicable to non-U.S. organizations, as a matter of policy USAID shall apply it to non-U.S. organizations to the extent practicable as provided in this chapter.

E303.5.2 Applicable Regulation - N/A

303.5.3 DEVIATIONS

Deviations from 22 CFR 226, the policies and essential procedures of this chapter, the Standard Provisions for U.S. Nongovernmental Grantees, or the Standard Provisions for Non-U.S. Nongovernmental Grantees may be authorized only when essential to effect necessary performance under the

award, or when special circumstances make such deviations clearly in the best interests of the Government (See Mandatory References, [22 CFR 226](#); [Standard Provisions for U.S. Nongovernmental Recipients](#); and [Standard Provisions for Non-U.S. Nongovernmental Recipients](#)). The approval authorities are as follows.

- a) Deviations to grants and cooperative agreements to U.S. organizations shall be approved only by the Director, Office of Procurement. OMB must approve any class deviations to 22 CFR 226 or OMB Circular A-110 and any deviations to other OMB Circulars in addition to approval by the Director, Office of Procurement.
- b) Deviations to grants and cooperative agreements to non-U.S. organizations, issued overseas shall be approved either by the Director, Office of Procurement, or by Mission Directors.

E303.5.3 Deviations

Requests for authority to deviate from the policies in ADS 303 shall be submitted via action memorandum to the appropriate approving official (as described in 303.5.3). Requests for deviations may be initiated by either the Agreement Officer or by the SO/RP team through the Agreement Officer, in accordance with the following procedures.

E303.5.3a Requirements for Comments

Prior to submission of the action memorandum for signature, the responsible Agreement Officer shall obtain written comments from the Bureau for Management, Office of Procurement, Policy Division (M/OP/P). Comments from M/OP/P are required for deviations for both U.S. and non-U.S. organizations. The request for M/OP/P comments shall contain at a minimum all of the information required in 303.5.3b. M/OP/P shall respond within ten working days. A copy of the comments submitted by M/OP/P must be made a part of the deviation request. A copy of each authorized deviation must be furnished to M/OP/P.

Prior to submission of any deviation request involving the cost principles or the applicant's Negotiated Indirect Cost Rate Agreement, the Agreement Officer shall obtain written comments from the Bureau for Management, Office of Procurement, Procurement Support Division, Overhead/Special Costs and Closeout Branch, (M/OP/PS/OCC). M/OP/PS/OCC shall respond within ten working days.

E303.5.3b Contents of a Deviation Request

Each request for a deviation shall contain as a minimum:

- 1) Identification of the provision, policy, or procedure from which a deviation is sought;
- 2) A full description of the deviation and the circumstances in which it will be used;
- 3) A description of the intended effect of the deviation;
- 4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request;
- 5) The name of the recipient and identification of the grant or cooperative agreement affected, including the dollar value; and
- 6) Detailed reasons supporting the request, including any pertinent background information that will contribute to a fuller understanding of the deviation sought.

303.5.4 PUBLIC NOTICE AND ADVERTISING

USAID shall notify the public of its intended funding priorities for assistance programs governed by 22 CFR 226, unless an exception is authorized in accordance with 303.5.5d (See Mandatory Reference, [22 CFR 226](#)) (See [303.5.5d](#)). The SO/RP team shall publish an Annual Program Statement (APS), or the Agreement Officer or designee shall publish a Request for Applications (RFA) in order to satisfy the requirement for public notice as well as provide a mechanism for advertising competitive assistance programs. The general public is encouraged to review the “Guidelines for Submitting Unsolicited Assistance Applications” found in the Supplementary References to this Chapter. (See [Guidelines for Submitting Unsolicited Assistance Applications](#))

E303.5.4 Public Notice and Advertising

The SO/RP Team shall provide the following information for Agreement Officer approval:

- a) Selection of competitive procedure (APS or RFA);
- b) Preferred advertising mechanism; and
- c) Draft of the APS or RFA announcement.

The Agreement Officer shall also decide which office will be responsible for publishing the announcement.

Annual Program Statements and Requests for Applications shall be published on USAID's Internet site at a minimum; except that, if a program is specifically designed to be available only for local or regional (indigenous) organizations, publication in local newspapers or periodicals, Mission bulletin board, or other means to attract as large an audience as practical shall substitute for publication on the Internet. CBD (Commerce Business Daily) publication is not recommended unless the requested applicants will be mainly for-profit organizations. Additional publications or mailings are also encouraged.

303.5.4a ANNUAL PROGRAM STATEMENT

An Annual Program Statement (APS) shall be used to generate competition for new awards where USAID intends to support a variety of creative approaches by the non-governmental community to develop their own methodologies in assessing and/or implementing activities which are in keeping with strategic objectives. When issuance of an RFA is not appropriate or practical, an APS shall be used instead of relying on unsolicited proposals.

E303.5.4a Annual Program Statement

When used, an APS shall be published at least once a year, either with an open-ended response, or a closing date at least six months after issuance. See 303.5.5c concerning review and evaluation of submissions during and after the time an APS is open (See [303.5.5c](#)).

The Annual Program Statement, shall contain at a minimum:

- a) Specific statutory authority and program eligibility requirements, where applicable. A statement shall be made to the effect that the program is authorized in accordance with the Foreign Assistance Act;
- b) Activity objectives, including any areas of special interest;
- c) Brief statement on how resulting applications will be evaluated including evaluation criteria with an indication of their relative importance;

- d) Estimate of funds available if appropriate, and the number of awards anticipated;
- e) Cost sharing element, required or suggested, as applicable;
- f) How the award will be administered. For U.S. organizations, state that 22 CFR 226, OMB Circulars and the USAID Standard Provisions will be applicable; for non-U.S. organizations, state that the Standard Provisions will apply. It is preferred that complete copies of these documents are not attached to the APS, rather, note how applicants may receive copies (e.g., name or individual they may contact or the USAID homepage address on the Internet);
- g) Point of contact, including name, title, address and phone number;
- h) Statement to the effect that USAID reserves the right to fund any or none of the applications submitted;
- i) Any other relevant information; and
- j) The required or suggested format for the application. In accordance with 5 CFR 1320, the Paperwork Reduction Act, only the original and two copies of any application shall be required (See [5 CFR 1320](#)).

303.5.4b REQUEST FOR APPLICATIONS

A Request for Applications (RFA) shall be used where USAID intends to support a specific type of activity or methodology in keeping with strategic objectives.

E303.5.4b Request for Applications

Notice of issuance of an RFA shall be published at least 30 days before applications are due; longer periods are encouraged to ensure quality applications for larger activities or more detailed applications. If 30 days notice cannot be provided, the competition may proceed only with the express approval of the Agreement Officer.

The SO/RP team is encouraged to take into consideration the complexity of the information being sought and provide a sufficient time-frame to ensure quality responses.

The Request for Applications shall contain at a minimum:

- a) Specific statutory authority and program eligibility requirements, where applicable. A statement shall be made to the effect that the program is authorized in accordance with the Foreign Assistance Act;
- b) Minimum qualification requirements, where applicable;
- c) A general description of the proposed program with an indication of the range of activities that might be involved, as well as any established goals of the activity which the applicant can expect to be able to demonstrate the ability to materially affect;
- d) The criteria which shall be used to evaluate applications, including an indication of their relative importance (See [303.5.5b](#));
- e) Type of award anticipated, grant or cooperative agreement, if known, along with description of intended substantial involvement;
- f) How the award will be administered. For U.S. organizations, state that 22 CFR 226, OMB Circulars and the USAID Standard Provisions will be applicable; for non-U.S. organizations, state that the Standard Provisions will apply. It is preferred that complete copies of these documents are not attached to the RFA, rather, instead note how applicants may receive copies (e.g., name or individual they may contact or the USAID homepage address on the Internet);
- g) Estimate of funds available and number of awards anticipated;
- h) Cost sharing element, required or suggested, as applicable;
- i) Expected duration of USAID support or the period of performance;
- j) Deadline for submission of application, application format (See [303.5.6](#)), and consequences of late submission (See [303.5.5e](#));
- k) Statement that the application shall be submitted using the Form SF-424 (See [Form SF-424](#));

- l) Point of contact, including name, title, address, and phone number;
- m) Statement to the effect that USAID reserves the right to fund any or none of the applications submitted;
- n) Required certifications as established at 303.5.8 (See **303.5.8**);
- o) Required format for the application. In accordance with 5 CFR 1320, the Paperwork Reduction Act, only the original and two copies of any application may be required (See Mandatory Reference, [5 CFR 1320](#));
- p) Any other relevant information.

303.5.4c UNSOLICITED CONCEPT PAPERS AND APPLICATIONS

The ADS 303.6 Supplementary Reference entitled “Guide to USAID’s Assistance Application Process and to Submitting Unsolicited Assistance Applications” provides guidance for submitted unsolicited concept papers or applications.

E303.5.4c Unsolicited Concept Papers and Applications - N/A

303.5.5 COMPETITION

This section establishes USAID policy on the use of competitive procedures in the award of assistance instruments, i.e., grants and cooperative agreements. The Agreement Officer is the Agency official responsible for guaranteeing the integrity of the competitive process by ensuring overall fairness and consideration of all eligible applications. The Agreement Officer is also the ultimate authority for making award funding decisions on behalf of USAID in accordance with the policies and procedures of this chapter.

E303.5.5 Competition - N/A

303.5.5a REQUIREMENTS FOR COMPETITION

In accordance with the Federal Grant and Cooperative Agreement Act, USAID shall encourage competition in the award of grants and cooperative agreements in order to identify and fund the best possible projects to achieve program objectives (See Mandatory Reference, [31 U.S.C. 6301](#)).

- 1) It is USAID policy to require all grants and cooperative agreements be awarded competitively unless an exception is authorized in accordance with 303.5.5d (See [303.5.5d](#)).
- 2) Competition shall be deemed to have been met after an announcement is published in accordance with 303.5.4 and E303.5.4 (See [303.5.4](#) and [E303.5.4](#)), and recommendation for award was made after an impartial review and evaluation of all applications as provided in 303.5.5c (See [303.5.5c](#)).
- 3) If the SO/RP team leader authorizes, competition may be limited to local or regional (indigenous) organizations.
- 4) It is USAID policy to ensure maximum competition by seeking applications from all eligible and qualified entities. Establishing a two or more tiered level of competition (i.e., prequalification round) keeps within USAID policy as long as applications are reviewed in a fair manner at each level.

E303.5.5a Requirements for Competition

The Agreement Officer shall be responsible for verifying that the APS or RFA correctly identifies applicant eligibility requirements and essential program qualifications in accordance with the following standards.

- 1) **Eligibility.** Authorizing legislation and governing program requirements specify eligibility for individual grant programs. In general, and in compliance with the Foreign Assistance Act of 1961, as amended, assistance may be provided to any U.S. or non-U.S. organization, individual, non-profit, or for-profit entity. Where specific program requirements further restrict eligibility (for example, Title XII Collaborative Research Support (CRSPs) or the program for expanding Minority Serving Institutions (MSIs)), the program must be cited in the RFA, APS, or other appropriate notice. In addition, SO/RP teams are authorized to make available programs specifically and exclusively for local or regional (indigenous) organizations.
- 2) **Qualifications.** The SO/RP Team shall develop minimum qualifications for applicant consideration. If, in the opinion of the Agreement Officer, the criteria are so restrictive as to severely limit competition, the Agreement Officer may determine that the SO/RP team must process an exception to competition as provided in 303.5.5d in order to make the planned award (See [303.5.5d](#)).
- 3) **Prequalification Competition.** If the SO/RP Team, with the approval of the Agreement Officer, establishes a two or more tiered

competition system, the SO/RP Team shall review and evaluate potential applicants by requesting the submission of an executive summary and corresponding budget information. A second level of more detailed competition shall then be conducted among a selection of the best applicants to the initial competition. Additional competition levels shall take place only when the second level does not adequately identify activities to be funded. When conducting this type of competition it may be appropriate to explain in the RFA the intended process so that potential applicants may know what to expect at each phase.

303.5.5b EVALUATION CRITERIA

Criteria used to evaluate applications shall include, at a minimum, the technical merits of the applications, cost effectiveness and cost realism of the application, and past performance of the applicant.

In addition, USAID policy requires that gender issues be addressed as appropriate in all USAID-funded activities (See Mandatory Reference, USAID Policy Paper, "[Women in Development](#)," dated October 1982). If the SO/RP team decides that gender issues will not be incorporated, they must document their decision in accordance with the requirements in E303.5.5b, paragraph 4 (E303.5.5b, paragraph 4).

E303.5.5b Evaluation Criteria

- 1) The evaluation criteria in an announcement shall provide as much information as practical for potential applicants to judge whether it is in their best interest to incur costs to apply for an award. The criteria shall address the importance of the technical and/or administrative elements, but shall not be unduly restrictive.
- 2) The SO/RP team shall be responsible for developing the evaluation criteria. The Agreement Officer shall approve the criteria before publication in the APS or RFA.
- 3) All applicants are subject to past performance scrutiny. Applicants must submit a list of all contracts, grants, or cooperative agreements involving similar or related programs over the past three years prior to receiving an award. Reference information shall include the location, current telephone numbers, points of contact, award numbers if available, and a brief description of work performed. The SO/RP team shall determine whether to require this information from every applicant under the RFA or APS notice or to receive this information at a later date only from a select number of applicants who have the best chance at being selected for an award. Requiring the information at a later date may be

appropriate where a "prequalification" competition is being conducted. In any event, past performance information must be received by the SO/RP Team prior to selection, and that information made part of the written evaluation forwarded to the Agreement Officer.

4) A statement outlining gender issues or a rationale for not including such a statement must be included in the competitive RFA or APS, in accordance with ADS 201.3.6.3 (see ADS 201.3.6.3). The appropriateness of the statement or the rationale is determined by the Approving Official as part of the pre-obligation requirements.

5) Whenever gender issues are to be incorporated into the activity, the RFA or APS announcement must state the requirement. In developing specific criteria for evaluating the applicant's plan to incorporate gender issues into the overall activity, the SO/RP team shall consult, to the extent necessary, with the Bureau for Global Programs, Office of Women in Development (G/WID) for guidance on structuring the criterion to evaluate the plan's positive impacts on the socio-economic status of women, any differential impacts on men and women, and methods for measuring these impacts.

303.5.5c REVIEW AND EVALUATION

The following policies apply to the review and evaluation of assistance applications.

1) Applications shall be evaluated by at least two individuals (three or more is preferable) in accordance with criteria set forth in the APS or RFA.

2) Applications received in response to an APS shall be collected until a reasonable number can be competed and evaluated in accordance with the APS provisions. The SO/RP team may carry over for review applications it received in response to earlier APS notices. If the SO/RP team establishes a specific time frame for review of applications, e.g., quarterly reviews, and only one application has been received during that time, it may be considered to be a reasonable number. The Director of the Office of Foreign Disaster Assistance (OFDA) shall authorize selection based on one application if the Director determines it is not advisable to wait for additional applications. Such authorization shall be in writing.

3) The Cognizant Technical Officer shall coordinate as necessary with G/WID in evaluating applications against the criterion relating to gender issues.

4) Unsolicited applications shall be competed under an existing APS which the application reasonably fits, or else an exception to competition under 303.5.5d shall be required in order to make an award (See [303.5.5d](#)).

5) Any individual, whether federal employee or non-federal employee, who reviews and evaluates any application shall not have a conflict of interest. An individual shall be considered to have a conflict of interest if that person, or that person's spouse/partner or child, works for or is negotiating to work for, or has a financial interest (including being an unpaid member of a Board of Directors) in any organization which submitted an application currently under the panel's review.

6) The same individuals shall review all applications under an RFA, or all those being reviewed at one time under an APS. If this is not feasible, or if there are established procedures for review by various panels, the reason and the procedure shall be documented for the agreement files.

7) It is USAID policy that USAID staff (direct-hires, PSCs and PASA/RSSA direct-hire employees) must constitute a majority of the membership on all technical evaluation committees. While other Federal agencies and non-governmental evaluators may participate, USAID must have a majority vote when reviewing and evaluating applications.

E303.5.5c Review and Evaluation

The review and evaluation panel shall prepare a written evaluation of each application comparing it against the established criteria. Oral presentations are permissible, however, the evaluation must be in writing. The comparison may be entirely narrative. If it includes numerical ratings, at least a short narrative explanation shall be provided to explain strengths and weaknesses. The panel shall also discuss the review procedure which was followed under 303.5.5c. This written evaluation must be forwarded to the Agreement Officer and placed in the agreement file.

The Agreement Officer shall take steps to ensure that members of the evaluation committee (both USAID staff and outside evaluators) do not

have any conflicts of interest with regard to the organizations whose applications they will be reviewing.

303.5.5d EXCEPTIONS TO COMPETITION

Competition shall not be required for the following categories of assistance awards when justified in accordance with the essential procedures in E303.5.5d (See [E303.5.5d](#)):

- 1) Amendments and follow-ons. Amendments to existing awards or follow-on awards for the same activity, or to further develop an existing assistance relationship. This authority shall not be used to extend an award beyond 10 years of its original award date unless an exception is approved by the Director, Office of Procurement for U.S. organizations or the Mission Director for non-U.S. organizations.
- 2) Unsolicited applications. As stated at 303.5.5c, paragraph 4, an unsolicited application shall be reviewed and evaluated under the APS it comes closest to fitting (See [303.5.5c, para. 4](#)). However, awards may be made based on an unsolicited application without the benefit of competition where the application clearly demonstrates a unique, innovative, or proprietary capability, represents appropriate use of USAID funds to support or stimulate a public purpose, and fits within an existing strategic objective. To qualify as an unsolicited application, it must be submitted to USAID solely on the applicant's initiative without prior formal or informal solicitation from USAID.
- 3) Exclusive or Predominant Capability. Assistance awards for which one recipient is considered to have exclusive or predominant capability based on proprietary capability, specialized facilities or technical expertise, or based on an existing unique relationship with the cooperating country or beneficiaries.
- 4) Small Awards. Awards with an estimated total amount of \$50,000 or less and with a term of no more than one year. These awards may not be amended either to add funds beyond \$50,000 nor extend the date beyond one year from the original date of the award.
- 5) Critical objectives of the Foreign Assistance Program. Such other circumstances as are determined to be critical to the objectives of the foreign assistance program by the cognizant Assistant Administrator (AA) or Office Director who reports directly to the Administrator. This authority may not be re-delegated.

- 6) The Director of the Office of Procurement. Where for reasons of efficiency, the Director of the Office of Procurement may authorize limited competition among a select group of applicants.
- 7) Congressionally mandated programs. Congressional earmarks which stipulate award to one specific organization need not be competed.

E303.5.5d Exceptions to Competition

This section provides the essential procedures to authorize an exception to competition.

- 1) Noncompetitive awards must be justified in writing, to the satisfaction of the Agreement Officer, in accordance with the applicable section as follows.
 - a) Amendments and Follow-On Awards - The SO/RP Team Leader or Cognizant Technical Officer shall justify in writing why it would be more advantageous for USAID to amend an award or create a new "follow-on" award without the benefit of competition rather than open the process to competition. A justification is not required if the amendment is for strictly administrative purposes (such as incremental funding or changes which do not require budgetary revisions). Amendments which require justifications are those which, for example, extend the life of the award and simultaneously either add additional funds or change the program description.
 - b) Unsolicited Applications - The SO Team Leader or the Head of the Operating Unit shall certify that the application was not solicited by USAID; that, based on a review by an appropriate technical specialist and an Agreement Officer, the application is considered unique, innovative, or proprietary; that funding the application would represent appropriate use of USAID funds to support or stimulate a public purpose, and that it fits within a strategic objective.
 - c) Exclusive or Predominant Capability - The justification shall describe in sufficient detail the uniqueness of the supported activity and proposed recipient. The SO/RP shall also describe how other options were explored. This exception shall not be used to continue a relationship with a

recipient which received a non-competitive award based on the Small Award exception.

d) Small Awards - The justification shall explain how the proposed award fits the exception.

e) Foreign Assistance Policy - The justification shall explain the circumstances which require the exception and shall be approved by the responsible AA or Office Director who reports directly to the Administrator.

f) Director, Office of Procurement – The justification must be submitted by the Agreement Officer and shall describe in sufficient detail how other options were explored, including any other Exceptions, as well as the Prequalification Competition alternative discussed at E303.5.5a3.

g) Congressional mandate. The justification shall include a copy of the specific earmark as well as any information supporting the planned activity as requested by the Agreement Officer.

2) All justifications shall be submitted to the Agreement Officer for review and approval and shall support only one of the above exceptions. The Foreign Assistance Policy exception shall not be tied to any of the above other exceptions, shall be considered final, and not subject to the review and approval of the Agreement Officer. All other exceptions may, however, be returned by the Agreement Officer if that Officer is not satisfied with the justification. In such instances the Agreement Officer shall notify the SO/RP Team Leader or Cognizant Technical Officer in writing, explaining the reasons for rejection. The SO/RP Team Leader or Cognizant Technical Officer may appeal to the Director, Office of Procurement, who shall make a final determination.

303.5.5e LATE OR INCOMPLETE SUBMISSIONS

Applications submitted for an RFA which are late or incomplete shall be reviewed only if all such submissions are treated the same and are evaluated prior to award of any other agreements under the RFA.

E303.5.5e Late or Incomplete Submissions

The SO/RP Team shall request the consent of the Agreement Officer before reviewing late applications.

303.5.6 APPLICATION FORM AND CONTENT

(Reserved)

E303.5.6 Application Form and Content

(Reserved)

303.5.7 POST SELECTION ACTIONS

It is Agency policy that the award funding decision of the Agreement Officer is final and not subject to review. Any information regarding the award funding decision must be directed to the Agreement Officer.

E303.5.7 Post Selection Actions

Any organization that submitted an application in response to an RFA for which USAID chose to not support may request additional information regarding the review of that application, in keeping with the time limits described in this section. Responses to such inquiries shall be limited to, where appropriate, USAID's interest (or lack thereof) in supporting that organization's program as described in the application. Comparing one organization's application to another is generally neither advisable nor helpful to the applicant. Useful information is encouraged to assist the applicant in presenting the type of program in which USAID may one day have more of an interest in supporting.

303.5.7a NOTIFICATION

Although award of USAID assistance instruments is discretionary, it is USAID policy to notify any entity which submitted an application in response to an RFA as to the success of the application. This requirement does not apply to applications which were submitted against an APS, or were unsolicited, though such unsuccessful applicants shall be informed to the extent practicable.

E303.5.7a Notification

Once decisions have been made concerning which applications will not be funded, the SO/RP team shall inform the unsuccessful applicants in writing, explaining briefly why the application was not selected. This letter must be approved by the Agreement Officer.

It is essential that the SO/RP Team make no commitment, expressed, or implied, to the selected applicant. Only the Agreement Officer is authorized to make commitment on behalf of USAID.

303.5.7b REQUEST FOR ADDITIONAL INFORMATION

When notice is sent that an application will not be funded, the applicant may send a written request to the office issuing the RFA for additional information within 10 working days if there are issues that it would like to have addressed. The Cognizant Technical Officer or the Agreement Officer shall explain the basis for the decision, as appropriate, depending on whether the issues raised related to the program or accountability/business considerations. The two offices shall respond jointly when both types of issues are raised.

E303.5.7b Request for Additional Information

The cognizant office shall respond to the concerns within 30 days or inform the applicant that more time is necessary. USAID has the discretion of responding orally, in writing, or by electronic means. The Agreement Officer must approve all written communication and must be present for any discussions.

303.5.8 STATUTORY AND REGULATORY CERTIFICATIONS

The Agreement Officer must receive the following certifications and representations from both U.S. and non-U.S. organizations (except as specified in the following) prior to making an award, and as otherwise may be required, in accordance with the regulations which are listed in this section below as Mandatory References:

- a) A signed copy of the "Assurance of Compliance with Laws and Regulations Governing Nondiscrimination in Federally Assisted Programs" (See Mandatory Reference, [Assurance of Compliance with Laws and Regulations Governing Nondiscrimination in Federally Assisted Programs](#)). All U.S. organizations are required to comply with this certification; non-U.S. organizations are subject to this requirement if any part of the program supported by the USAID award will be undertaken in the United States;
- b) A signed copy of the "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transaction" (See Mandatory Reference, [22 CFR 208, Appendix A](#));

- c) A signed copy of the "Certification Regarding Debarment, Suspension and Other Responsibility Matters - Lower Tier Covered Transactions" from all prospective lower tier participants (See Mandatory Reference, [22 CFR 208, Appendix B](#));
- d) A signed copy of the "Certification Regarding Drug Free Workplace Requirements" (See Mandatory Reference, [22 CFR 208, Appendix C](#)); and
- e) A signed copy of the certification and disclosure forms for "Restrictions on Lobbying" (See Mandatory Reference, [22 CFR 227](#)).
- f) A signed copy of the "Prohibition on Assistance to Drug Traffickers" for "Covered" Countries as detailed in ADS 206. (See [ADS 206](#)).

E303.5.8 Statutory and Regulatory Certifications

If the required certifications and representations are not requested and received with the application, the Agreement Officer shall obtain them from the applicant prior to signing any award or modification for which they are required.

303.5.9 PRE-AWARD RESPONSIBILITY DETERMINATION

The recommendation or selection of an application in accordance with 303.5.5 does not in any way guarantee an award (See [303.5.5](#)). The Agreement Officer must be fully satisfied that the applicant has the capacity to adequately perform in accordance with USAID and OMB established principles.

Depending on the result of the responsibility determination, the Agreement Officer has the option to award, deny the recommendation of the SO/RP Team and not make the award, or award with "Special Award Conditions" as detailed at 22 CFR 226.14 (See Mandatory Reference, [22 CFR 226.14](#)) (See also [303.5.9b](#)). The Agreement Officer is the only official authorized to make the final determination regarding whether an award shall be made.

E303.5.9 Pre-Award Responsibility Determination

- a) Following the competitive selection or non-competitive recommendation of an application as described in E303.5.5, the application and all supporting information shall be forwarded to the Agreement Officer for negotiation and award (See [E303.5.5](#)). An award,

whether to a U.S. or Non-U.S. organization shall be made only when the Agreement Officer makes a positive determination that the applicant possesses, or has the ability to obtain, the necessary management competence in planning and carrying out assistance programs and that it will practice mutually agreed upon methods of accountability for funds and other assets provided by USAID. The Agreement Office must also verify that the applicant does not appear on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" as published by the General Services Administration (GSA). The Agreement Officer shall address the responsibility of the prospective recipient in the Negotiation Memorandum.

b) Responsibility determination for U.S. organizations with a continuing relationship with USAID or the U.S. Government. The Agreement Officer shall rely on the following information to assist in making a responsibility determination for these organizations: A-133 or similar audits which are maintained by the Bureau for Management, Office of Procurement, Procurement Support Division, Contract Audit Management Branch, (M/OP/PS/CAM); the "Certificate of Compliance" ("self certification") as detailed in the Supplementary Reference "Procurement Reform - Documentation Requirements for Non-Profit Recipients" (See Supplementary Reference, [Procurement Reform - Documentation Requirements for Non-Profit Recipients](#)). If this certification is not submitted, contact the Bureau for Management, Office of Procurement, Procurement Support Division, Overhead/Special Costs & Closeout (M/OP/PS/OCC) for further guidance; signed copy of the Statutory and Regulatory Certifications in 303.5.8; the quality of applicant's past performance on similar projects, as evaluated by the SO/RP Team in accordance with 303.5.5b; other information as may be necessary, including preaward surveys (303.5.9a) if appropriate (See [303.5.8](#), [303.5.5b](#), and [303.5.9a](#)) .

c) Responsibility determination for non-U.S. organizations with a continuing relationship with USAID. The Agreement Officer shall rely on the following information to assist in making a responsibility determination for these organizations: Audits performed in accordance with ADS 591.5.4; signed copy of the applicable Statutory and Regulatory Certifications in 303.5.8; the quality of applicant's past performance on similar projects, as evaluated by the SO/RP Team in accordance with 303.5.5b; other information as may be necessary, including preaward surveys (303.5.9a), if appropriate (See [ADS 591.5.4](#)) (See [303.5.8](#), [303.5.5b](#), and [303.5.9a](#)).

d) Responsibility determination for organizations new to USAID, or organizations with outstanding audit findings. Before making a determination, the Agreement Officer shall perform a survey in

conformance with 303.5.9a if one of the criteria applies (See [303.5.9a](#)). At a minimum, the determination shall be based on the same considerations as in paras. 2) or 3) depending on whether it is a U.S. or non-U.S. organization. Organizations which fit in this category shall submit, the following information, where appropriate:

- 1) Copies of the applicant's audited financial statements for the previous three-year period, which have been audited by a certified public accountant or other auditor satisfactory to USAID;
- 2) Projected budget, cash flow, and organization chart;
- 3) Copies of applicable policies and procedures (e.g., accounting, purchasing, property management, personnel), if desired.

303.5.9a PRE-AWARD SURVEYS

As is stated at 303.5.9, before making an award, the Agreement Officer must determine whether the recipient possesses, or has the ability to obtain, the necessary management competence in planning and carrying out assistance programs and whether it practices mutually agreed upon methods of accountability (303.5.9). To assist in making this determination, the Agreement Officer shall conduct an informal or desk survey, or shall establish a formal survey team when (See [E303.5.9b](#)):

- 1) The Agreement Officer or SO/RP team is uncertain about the prospective recipient's capacity to perform financially or technically;
- 2) The prospective recipient has never had a USAID grant, cooperative agreement or contract before;
- 3) The prospective recipient has not received a Federal award in the last five years; or
- 4) The Agreement Officer otherwise determines it to be in the best interest of the Government.

E303.5.9a Pre-award Surveys

The Agreement Officer shall address the responsibility of the prospective recipient in the Negotiation Memorandum.

While 22 CFR 226 does not cover awards to non-U.S. recipients, the Agreement Officer shall rely on the standards established in that

regulation in determining whether potential non-U.S. recipients are responsible. A determination shall be made on the potential recipient's ability, or potential ability, to comply with the following USAID and federal-wide policies:

- 1) 22 CFR 226.20 - 226.28 (Financial and Program Management) (See Mandatory Reference, [22 CFR 226.20 - 226.28](#));
- 2) 22 CFR 226.30 - 226.37 (Property Standards) (See Mandatory Reference, [22 CFR 226.30 - 226.37](#));
- 3) 22 CFR 226.40 - 226.49 (Procurement Standards) (See Mandatory Reference, [22 CFR 226.40 - 226.49](#)); and
- 4) 22 CFR 226.50 - 226.53 (Reports and Records) (See Mandatory Reference, [22 CFR 226.50 - 226.53](#)).

If in the opinion of the Agreement Officer a formal survey team is necessary to assist in assessing the responsibility of a prospective recipients, the Agreement Officer shall assemble a team with appropriate expertise. Typically, the team may consist of representatives of the SO/RP team, the Agreement Officer, the Financial Officer (M/FM or Mission or Regional Controller's Office) and if appropriate, one or more representatives of either the Bureau for Management, Office of Procurement, Procurement Support Division, Contract Audit Management Branch (M/OP/PS/CAM), or the cognizant Regional Inspector General for Audit. Where specialized assistance in overhead issues, or administrative policies is also required, M/OP/PS/OCC input may also be requested.

Whether by means of a formal selection survey, or through an informal desk survey, the Agreement Officer shall, before awarding any grant or cooperative agreement:

- 1) Review the proposed program description and financial plan for sufficiency. The SO/RP team shall advise the Agreement Officer concerning the professional and technical experience and competence of the applicant and the conformity of the applicant's program to USAID's program criteria.
- 2) Make a written determination of the applicant's responsibility to the effect that it:
 - a) Has adequate financial resources, or the ability to obtain such resources, as required during the performance of the award;

- b) Has the ability to comply with the award conditions taking into consideration all existing prospective recipient commitments, nongovernmental and governmental;
 - c) Has a satisfactory record of performance. Past relevant unsatisfactory performance is ordinarily sufficient to justify a finding of non-responsibility, unless there is clear evidence of subsequent satisfactory performance;
 - d) Has a satisfactory record of integrity and business; and
 - e) Is otherwise qualified to receive an award under applicable laws and regulations.
- 3) Where an applicant has had no prior Federal awards, or USAID is notified of deficiencies in the applicant's A-133 (or equivalent) audit, or the Agreement Officer cannot otherwise make a positive responsibility determination that the applicant's internal policies and procedures are adequate, the Agreement Officer or a representative shall conduct a detailed analysis of the applicant's systems that addresses whether:
- a) Accounting, recordkeeping, and overall financial management systems meet the applicable standards in 22 CFR 226 (See Mandatory Reference, [22 CFR 226](#));
 - b) The applicant's system of internal controls including but not limited to: segregation of duties, handling of cash, contracting procedures, personnel and travel policies would be considered "reasonable" in accordance with the applicable cost principles;
 - c) The applicant's property management system, if applicable, meets the property standards in 22 CFR 226 (See Mandatory Reference, [22 CFR 226](#));
 - d) The applicant's system of administering and monitoring subawards, if applicable, would be in compliance with OMB Circular A-133 (See Mandatory Reference, [OMB Circular A-133](#)); and
 - e) The applicant's procurement system, if procurement is significant to the award, meets the standards set forth in 22 CFR 226 (See Mandatory Reference, [22 CFR 226](#)).

The survey team shall submit its findings to the Agreement Officer for review and consideration. It is the responsibility of the Agreement Officer to make a final determination.

303.5.9b HIGH RISK RECIPIENTS

If after a comprehensive review of a potential recipient the Agreement Officer cannot make a positive responsibility determination, the Agreement Officer may choose either to deny the recommendation of the SO/RP team and not make the award, or award with "Special Award Conditions" (High Risk) as detailed at 22 CFR 226.14 (See Mandatory Reference, [22 CFR 226.14](#)). While 22 CFR 226 does not cover awards to non-U.S. organizations, as a matter of USAID policy it is appropriate to invoke the standards established in this section as applicable to non-U.S. recipients.

A deviation is not required to impose Special Award Conditions, however, the Agreement Officer may consider this option only where it appears likely that the potential recipient can correct such deficiencies in a reasonable period.

E303.5.9b High Risk Recipients

- 1) Indicators of High Risk. (See Mandatory Reference, [22 CFR 226.14](#)).
- 2) Minimizing the Risk. It is the responsibility of the USAID Agreement Officer to minimize the risk this type of organization presents to USAID as much as possible. Where the Agreement Officer chooses to award, the following additional conditions that might also be considered:
 - a) Special award conditions, such as additional financial reporting detail, or frequency;
 - b) Technical Assistance to Recipient. Where additional Federal oversight is deemed necessary, the Agreement Officer may:
 1. Require the recipient to contract for its own technical assistance;
 2. USAID may separately contract for the technical assistance and authorize the recipient to call on the contractor for specified services; and
 3. Furnish the technical assistance directly by USAID personnel.

These conditions are intended to be for a limited time period only, not for the life of award.

303.5.10 COST SHARING

USAID's policies on cost sharing are established in the USAID - U.S. PVO Partnership Paper of April 12, 1995 (See Mandatory Reference, USAID Policy Papers, A.I.D. Partnership in International Development with Private and Voluntary Organizations) and ADS 216 (See Mandatory Reference, [ADS 216](#)). It is USAID policy to apply these principles to U.S. and non-U.S., for-profit and non-profit non-governmental organizations.

It is USAID policy that the principle of cost-sharing is an important element of the USAID-recipient relationship. However, unless cost sharing has been specifically mandated in a program or statutory requirement, its application should be flexible and case-specific. There will be program activities and certain categories of awards for which cost-sharing is not appropriate, for example, USAID-designed cooperative agreements that are implemented by recipients as USAID intermediaries. (See a list of common examples discussed in the USAID-U.S.PVO Partnership Paper) (See Mandatory Reference, USAID Policy Papers, [A.I.D. Partnership in International Development with Private and Voluntary Organizations](#))

E303.5.10 Cost Sharing

The following essential procedures are essential for determining cost share requirements:

a) Level of Financial Participation

When designing and negotiating a development activity, the SO/RP team may use 25 percent as a suggested reference point, keeping in mind the need for flexibility and the diverse circumstances and conditions that may define a relationship between USAID and a recipient of funds. Financial participation rates of less, or more, may be justified as reasonable and appropriate in terms of the recipient's financial resources and fund-raising capacity, USAID's objectives and/or where justified by USAID program objectives.

b) Final Determination

The USAID officer authorizing the activity shall determine whether the recipient shall make a financial contribution, and the amount of the contribution, if any. The document signed by the officer authorizing the assistance activity shall describe the particular

circumstances, conditions or considerations that caused the officer to conclude that the indicated final contribution is appropriate and acceptable. The justification for the required cost share should be based on a review of the factors outlined in the USAID-U.S. PVO Partnership Paper and if established prior to the announcement, clearly stated in the APS or RFA announcement (See Mandatory Reference, USAID Policy Papers, [A.I.D. Partnership in International Development with Private and Voluntary Organizations](#)).

303.5.10a COST SHARE IMPLEMENTATION

The Agreement Officer shall determine if the applicant's cost share contributions (e.g. categories or items) meet the standards set in 22 CFR 226.23 for U.S. organizations, or the Standard Provision entitled "Cost Sharing" for non-U.S. organizations (See Mandatory References, [22 CFR 226.23](#); and [Standard Provisions for Non-U.S. Nongovernmental Recipients](#)).

While all cost sharing must be in conformance with 22 CFR 226.23 (for non-U.S. organizations the Standard Provision entitled "Cost Sharing"), USAID's policy is not to apply its source, origin, and nationality requirements or the restricted goods provision established in the Standard Provision entitled "USAID Eligibility Rules for Goods and Services" (See Mandatory Reference, [Standard Provisions for U.S. Nongovernmental Recipients](#)). Cost share contributions from subrecipients may be attributable to the prime award with the approval of the Agreement Officer. In accordance with 22 CFR 226.24, Program Income may be used to finance the non-Federal share of the award with the approval of the Agreement Officer.

E303.5.10a Cost Share Implementation - N/A

303.5.11 COOPERATIVE AGREEMENTS

When the terms of an assistance instrument indicate that the recipient can expect to conduct the program without substantial Agency operational involvement (participation or intervention) during implementation, as long as it is conducted in accordance with the terms of the assistance instrument, substantial involvement is not anticipated and a grant is the appropriate instrument.

When the instrument's terms and conditions indicate that the recipient must expect to conduct the program with substantial USAID operational involvement (participation or intervention) in implementation, substantial

involvement is anticipated and a Cooperative Agreement is the appropriate instrument.

E303.5.11 Cooperative Agreements

Selection of appropriate instruments shall be done in accordance with ADS 304 (See [ADS 304](#)). OMB policy on substantial involvement is that agencies "should limit their involvement in assisted activities to the minimum consistent with program requirements." The Agreement Officer must be satisfied that the extent of the proposed involvement by USAID is reasonable and necessary.

Anticipated substantial USAID involvement is a relative rather than an absolute concept. No one single factor or proposed involvement as described at 303.5.11a requires that the instrument be a cooperative agreement rather than a grant (See [303.5.11a](#)). The Agreement Officer may evaluate the type of relationship anticipated between USAID and the recipient in making this determination.

303.5.11a SUBSTANTIAL INVOLVEMENT

Cooperative Agreements must describe in detail the anticipated Agency involvement during performance of the award. Substantial involvement shall be limited to the elements listed below, unless a deviation is authorized in accordance with 303.5.3 (See [303.5.3](#)), and must be directly and specifically tied to the Program Description. The intended purpose of CTO involvement during the award is to assist the recipient in achieving the supported objectives of the agreement. The Agreement Officer may delegate the following approvals to the Cognizant Technical Officer, except for changes to the Program Description or the approved budget. Such changes, as first reviewed by the Cognizant Technical Officer, shall only be approved by the Agreement Officer.

- 1) Approval of the recipient's Implementation Plans.

Where the timeline for the planned achievement of milestones/outputs discussed in the Program Description has not been established in sufficient detail when the award is executed, approval of this plan may be provided at a later date. Approval of these Plans must be required no more often than annually; significant changes by the recipient to the approved plan will require additional approval.

- 2) Approval of specified key personnel.

Only those positions which are considered to be essential to the successful implementation of the award shall be designated as Key Personnel. It is USAID policy to limit this to a reasonable number of positions, generally no more than five positions or five percent of recipient employees working under the award, whichever is greater.

3) Agency and recipient collaboration or joint participation.

Where there are specific elements in the Program Description for which USAID's technical knowledge would benefit the recipient's successful accomplishment of stated program objectives, the joint participation of USAID and the recipient can be authorized. Where the Agreement Officer is satisfied that there is sufficient reason for Agency involvement and that involvement is specifically tailored to support identified elements in the Program Description, the following are examples of appropriate levels of substantial involvement:

- a. Collaborative involvement in selection of advisory committee members. USAID may also chose to become a member of this type of committee. Advisory committees shall concern themselves only with technical or programmatic issues and not routine administrative matters;
- b. Concur on the selection of subaward recipients and/or the substantive provisions of the subawards;
- c. Approval of the recipient's monitoring and evaluation plans;
- d. Agency monitoring to permit specified kinds of direction or redirection because of interrelationships with other projects. All such activities must be included in the Program Description and negotiated in the budget of the award.

4) Agency authority to immediately halt a construction activity. USAID has the authority to create a substantial involvement understanding in the award that states that the Agreement Officer may immediately halt a construction activity where identified specifications are not met. The specifications must be attached to the award when the award is executed. Material changes to the specifications must be treated as an amendment to the award.

E303.5.11a Substantial Involvement

The SO/RP team shall consult with the Agreement Officer and describe USAID's interests in order to ensure that the award will adequately reflect USAID's planned involvement during implementation of the award. Furthermore, each substantial involvement must be directly tied to an activity in the Program Description, to the satisfaction of the Agreement Officer. If the involvement is not directly tied to the Program Description, it will be assumed that USAID involvement requires a change to the Program Description, which must be approved by the Agreement Officer.

303.5.12 NEGOTIATION AND AWARD

It is USAID policy to award grants or cooperative agreements to support specific or discrete programs. The Agreement Officer is ultimately responsible for ensuring that: the award contains a supportable program, approved costs, including cost sharing, are in compliance with OMB and USAID policies, and that the Agency's role in administration is to measure and evaluate the recipient's progress and be substantially involved as appropriate rather than control or attempt to control the day-to-day management of the program by the recipient or any subrecipient thereof. Awards shall be signed only by individuals who have been delegated authority from the Director, Office of Procurement.

The Agreement Officer shall document the negotiation process along with other pre-award determinations in the Memorandum of Negotiation (guidelines found in the Supplementary References to this Chapter - "File Documentation Guidelines") (See Supplementary Reference, [File Documentation Guidelines](#))

The policies and essential procedures of this section governing the negotiation and award of grants or cooperative agreements also apply to amendments to those agreements.

E303.5.12a Negotiation

An award shall clearly define the activities constituting the program supported with USAID funds. The recipient shall justify in advance the proposed costs for each element of the program. The program description shall clearly state the purpose of the program, the implementation plan specifically identifying each element of the program, and the duration. If Program Income is anticipated during the award period, the understandings on how this income will be applied shall be specifically stated in the Schedule of the award. The definition of Program Income is found at 22 CFR 226.2; application suggestions are found at 22 CFR 226.24 (See [22 CFR 226.24](#)).

Each cost element shall be reviewed by the Agreement Officer for reasonableness and allowability in accordance with the applicable cost principles.

To the extent necessary, the Agreement Officer shall perform a cost analysis prior to award. A comprehensive cost analysis consists of obtaining cost breakdowns, verifying cost data, evaluating specific elements of costs and examining data to determine the necessity, reasonableness and allocability of the costs reflected in the budget and their allowability pursuant to the applicable cost principles. The purpose of the cost analysis is to assist in determining:

- a) The extent of the prospective grantee's understanding of the financial aspects of the program and the grantee's ability to perform the grant activities with the funds requested;
- b) The extent to which the applicant's plans will accomplish the program objectives with reasonable economy and efficiency; and
- c) The special conditions, if any, relating to costs that are placed in the award.

The extent of the cost analysis necessary will vary among programs and shall be determined by the Agreement Officer on the basis of the amount and type of costs involved, the nature of the program, and past experience with the applicant. M/OP/PS/CAM and M/OP/PS/OCC are available to assist the awarding official in his/her cost/price analysis of the prospective recipient's proposal. In addition to providing advisory services to assist the awarding official in addressing whether the proposal is fair and reasonable for the program proposed, an evaluation of whether the prospective recipient's proposal is consistent with its cost accounting practices, policies and procedures will also be provided. This includes ensuring the prospective recipient's indirect cost rates are consistent with the Negotiated Indirect Cost Rate Agreement.

E303.5.12b Award Elements

The Agreement Officer is responsible for assuring that all elements of a legally binding instrument are met: competent parties, proper subject matter, sufficient consideration, and consent of minds. All elements of the award, including Schedule items such as date of performance, award amount, place of performance along with the Program Description must clearly and coherently express the specific understandings of both parties. The Program Description must have clearly established goals that are realistic, measurable and represent the highest objective that the recipient can expect to materially affect and for which it will be held accountable.

The Agreement Officer is also responsible for assuring that all elements of the award comply with applicable OMB Circulars, USAID Regulation 26, USAID Standard Provisions and other USAID guidance, as appropriate. For example, while drafting the “Program Reporting” language in the Schedule of the award, check ADS Chapter 540 for detailed guidance on the submission of copies of certain reports and other supported information to the Bureau for Policy and Program Coordination, Center for Development Information & Evaluation, PPC/CDIE. While the types of financial reports are strictly limited to those detailed in 22 CFR 226, it is appropriate to request detailed programmatic information under the “Monitoring and Reporting Program Performance” section in the Schedule of the award. Also, as noted at 22 CFR 226.51(d)(1), requesting output or unit cost data may also be recommended.

303.5.13 ADMINISTRATION OF AWARDS

Award administration encompasses all dealings between USAID officials and the recipient from the time the award is made until the end of USAID support. The specific nature and extent of administration will vary from award to award in the normal exercise of Federal stewardship responsibilities. It can range from reviewing and analyzing performance reports, performing site visits to a more technically developed substantial involvement by USAID under a cooperative agreement.

Oversight of Assistance award is shared between the Cognizant Technical Officer and the Agreement Officer. While there is a clear division of responsibility the functions are closely related and cannot be performed in isolation from each other.

Awards to U.S. organizations shall be subject to 22 CFR 226 and the Standard Provisions for U.S. Nongovernmental Grantees; awards to non-U.S. organizations shall be subject to the Standard Provisions for Non-U.S. organizations. (See Mandatory References, [22 CFR 226](#); [Standard Provisions for U.S., Nongovernmental Recipients](#); [Standard Provisions for Non-U.S., Nongovernmental Recipients](#); Required as Applicable Standard Provisions for Non-U.S., Nongovernmental Grantees).

E303.5.13 Administration of Awards

Agreement Officers shall serve as the mandatory control point of record for all official communication that would constitute an amendment to the award. Agreement Officers shall receive copies of all performance and financial status reports, as appropriate. Cognizant Technical Officers shall be responsible for reviewing all performance and financial reports for

adequacy and responsiveness and shall request the Agreement Officer take necessary action where reports are not received, are determined to be inadequate, or a problem is apparent. It is essential that the Cognizant Technical Officer and Agreement Officer work as a team in order to effectively administer assistance instruments. The Cognizant Technical Officer shall maintain close contact with the Agreement Officer to keep that Officer up-to-date on recipient performance and submit copies of status reports as required by the Mission Director or Bureau Deputy Assistant Administrator (DAA) to the Agreement Officer.

The Agreement Officer shall provide for the continuing oversight of the financial management aspects of the award through reviews of reports, correspondence, site visits or other appropriate means. When deemed necessary the Agreement Officer shall request or arrange for special audits.

Post award orientation with the Recipient and Technical Officer is encouraged to clarify the roles and responsibilities of the USAID officials who will administer the award. If specific authority is being delegated to the Technical Officer, it shall be so stated in the Schedule of the Award.

Site visits are an important part of effective award management. Joint site visits by the Agreement Officer and the Technical Officer are encouraged, since they can often be more effective review of the project. A brief report highlighting the findings is recommended. A copy of each report shall be placed in the official award file.

The Cognizant Technical Officer is responsible for preparing internal USAID documentation to the satisfaction of the Agreement Officer to support amendments to the award.

The Agreement Officer shall determine that the award does not contain administrative approvals that are in conflict with the above stated regulations and policies. The Agreement Officer shall be responsible for all award suspension and termination actions.

303.5.13a MULTIPLE YEAR AWARDS

(Reserved)

E303.5.13a Multiple Year Awards

(Reserved)

303.5.14 INFORMAL COMMITMENTS

Informal commitments occur when an unauthorized USAID official acts in a manner which appears to a recipient or potential recipient acting in good faith that USAID has committed to make a specific award, change the amount of an existing award, or revise an existing award budget, program description or any of the terms and conditions of the award.

It is against USAID policy to enter into informal commitments; however, if in the opinion of the Agreement Officer a formalization of an informal commitment would best protect the foreign policy interest of the United States, the Agreement Officer may take steps to authorize the commitment. In order to maintain management oversight and controls on unauthorized commitments, authority to ratify informal commitments is reserved to the Director, Office of Procurement.

E303.5.14 Informal Commitments

Where an informal commitment has been made and the Agreement Officer is of the opinion that the commitment be ratified, the Agreement Officer must take the following steps to have the commitment ratified by the Director, Office of Procurement. The Agreement Officer must submit an action memorandum through the Bureau for Management, Office of Procurement, Evaluation Division (M/OP/E) which shall include the following information:

- a) The findings of facts essential to the situation, arranged chronologically with cross references to supporting enclosures;
- b) The nature of the informal commitment and funds citation;
- c) The disposition recommended; and
- d) A written memorandum from the individual responsible for the informal commitment detailing how the mistake occurred, training since received from the Agreement Officer on proper procedures and a statement that the occurrence will not happen again.

303.5.15 GRANTS TO NON-U.S. ORGANIZATIONS

Standard Provisions for Non-U.S. Nongovernmental Grantees are required for use in all assistance agreements with non-U.S. organizations unless a deviation is authorized in accordance with 303.5.3, or unless the simplified format for small grants to non-U.S. organizations is used (See Mandatory Reference, [Simplified Grant Format](#) and [Fixed Obligation Grant Format](#)). The Simplified Format or the Fixed Obligation Grant

Format shall be used, if the Agreement Officer chooses to do so, only when the grant meets the following conditions:

- a) USAID's share covers only a portion of the costs of the activity;
- b) The assistance instrument is a grant, not a cooperative agreement;
- c) The total of the grant does not exceed \$100,000;
- d) All costs to be charged to the grant are identified in the grant text and do not include international airfares, or indirect costs;
- e) Any goods to be purchased meet the rules governing local cost financing, and no single item having a useful life over one year and an acquisition cost of \$5,000 or more shall be purchased;
- f) The grant shall be fully funded;
- g) There are no sub-agreements; and
- h) The Grantee is required to sign the Debarment and Suspension certification and the Drug Free Workplace certification.
- i) The Recipient shall receive payment on a reimbursement basis.**

E303.5.15a Simplified Format Grants to Non-U.S. Organizations

Agreement Officers are authorized to modify the format described at 303.5.15 to include support of international travel or the purchase of equipment as long as the applicable Standard Provision for those types of costs are attached to the small grant award (See [303.5.15](#)) (See Mandatory Reference, [Standard Provisions for Non-U.S. Nongovernmental Recipients](#)).

E303.5.15b Fixed Obligation Grants to Non-U.S. Organizations

A Fixed Obligation format allows for the award of a grant for very specific program elements without a requirement for Federal monitoring of actual costs subsequently incurred. It is intended for use to support specific projects where there is a certainty about the cost, and in which the accomplishment of the purpose or milestone in the grant are readily discernible, such as conferences and supplies.

An important aspect to these grants is the structure of the payments. Grantees will be paid a set amount upon accomplishment of benchmarks. Therefore, it is essential that the Agreement Officer is satisfied that there is sufficient cost history to negotiate the payments and also to ensure that the funds requested will be the actual cost of the effort so that funds will not be remaining upon completion of the project.

The Agreement Officer must also be satisfied that this type of grant will fit within the objectives of the established USAID program, and not be used solely as an alternative way in dealing with what would be considered otherwise High Risk Grantees. A discussion by the Agreement Officer of the appropriateness of this type of grant will be expected in the Negotiation Memorandum. Grant closeout would be accomplished with CTO acceptance of the final milestone and approval of payment. The Agreement Officer may specifically authorize the use of Fixed Obligations Grants (FOGs) by a prime recipient in subgrants when the same standards for application are met.

In addition to assuring that the grant will meet the elements described at 303.5.15, the Agreement Officer must also determine the appropriateness of issuing a fixed obligation grant based on the following factors:

- 1) The ability to easily identify and quantify programmatic accomplishments or results in establishing grant milestones;**
- 2) Limited risk that there will be changes to the program; and**
- 3) Adequate cost (historical or unit pricing) available to determine and negotiate the fixed price of the grant;**

The Grant format shall include the following additional statements:

- 1) The right of USAID to terminate in whole or in part, or suspend payments, should the grantee become insolvent during performance of the award; and**
- 2) Grantees must certify in writing to the Agreement Officer at the end of the grant that the activity was completed. If the grantee cannot certify it shall be expected to make appropriate reimbursements.**

303.5.16 CONGRESSIONAL AWARD NOTIFICATION SYSTEM

Prior to any announcement to parties outside USAID, notice of the award of grants and cooperative agreements to U.S. organizations and amendments to such instruments that exceed \$1 million shall be reported

to the Bureau for Legislative and Public Affairs (LPA), for transmittal to Members of Congress--so they will have the opportunity to make the initial public announcement. The previous provision is subject to the following clarifications:

- a) Subawards are not to be reported; and
- b) Amendments which increase the obligated funding, but not the total estimated cost, are not to be reported.

E303.5.16 Congressional Award Notification System

The cognizant M/OP division chief or a Mission Director-designated liaison with LPA shall transmit award notices to LPA, by priority cable, E-mail, or facsimile (202-216-3035 or 202-216-3036). The notice shall contain the following:

- a) Caption "LPA-Award Notice";
- b) The type of instrument--whether the award is a grant, cooperative agreement or an amendment;
- c) The award number;
- d) Date and time when the issuing office intends to notify the recipient or others (this may not be less than 48 hours from the transmittal of the notice to LPA);
- e) The total estimated cost of the award, identifying separately U.S. dollars and U.S.-Owned local currency components;
- f) The period of the award;
- g) Activity number and title;
- h) Brief description of the general program purpose to which the award relates;
- i) The recipient's name and address (street, city, state, zip code).
- j) The recipient's contact name and telephone number; and
- k) Any advice regarding anticipated problems with respect to the issuing office's political, legal, administrative or other concerns.

The Agreement Officer must withhold notice of the award to the recipient, any unsuccessful competitors, or the public for 48 hours after notice is transmitted to LPA.

LPA shall report to the Administrator (A/AID) and to the regional bureaus quarterly on the nature of awards covered by these notices to LPA, follow-up actions taken by LPA in each case, and the perceived benefits to USAID of these actions.

303.5.17 OFFICIAL LANGUAGE

It is USAID policy that English shall be the official language of all award documents.

E303.5.17 Official Language

If an award or any supporting documents are also provided in a foreign language it must be stated in each version that the English language version is the only official version.

303.5.18 ENDOWMENTS

Where legislative authority permits, USAID may create endowments financed with appropriated funds. The guidance for establishing endowments may be found in USAID Policy Determination 21 of July 18, 1994 (Mandatory Reference, USAID Policy Determination 21, Endowments Financed With Appropriated Funds). Endowments are grants or cooperative agreements, the purpose of which is served by establishing the endowment agreement; therefore, the regulations and policies applicable to other grants and cooperative agreements are not applicable to the administration of the endowment once it is established.

E303.5.18 Endowments

The documented Standard Provisions for an Endowment with a U.S. Non-Governmental Recipient set forth the standard provisions that must be used in endowment agreements with U.S. organizations (See Mandatory Reference, [Standard Provisions for an Endowment with a U.S. Nongovernmental Recipients](#)). The documented Standard Provisions for an Endowment with Non-U.S. Non-Governmental Recipients" sets forth the standard provisions that must be used in endowment agreements with non-U.S. organizations (See Mandatory Reference, [Standard Provisions for an Endowment with Non-U.S. Nongovernmental Recipients](#)). Sample agreements and schedules for endowments with U.S. and non-U.S. organizations are attached as supplementary references (See Supplementary References, [Sample Awards Format and Schedule](#)).

303.5.19 DISPUTES AND APPEALS

As established in 22 CFR 226.90 and also the Standard Provision for Non-U.S. Organizations entitled “Disputes”, it is USAID policy that any dispute under or relating to an assistance award shall be decided by the Agreement Officer.

Decisions of the Agreement Officer shall be considered final unless the recipient appeals the decision to the Assistance Executive. Appeals must be in writing; hearings shall not be provided.

E303.5.19a Disputes

The Agreement Officer shall furnish the recipient with a written final decision within 60 calendar days of receiving notification from the recipient of a dispute. If a final decision cannot be reached within that time, the Agreement Officer shall notify the recipient that more time will be required to consider the dispute. A copy of the final decision shall be placed in the Award files.

E303.5.19b Appeals

Within 30 days of receiving the Agreement Officer’s final decision, the Recipient may appeal that decision to the Assistance Executive. The appeal must be in writing with a copy furnished to the Agreement Officer. If a Bill of Collection has been issued, it will be suspended pending resolution of the Appeal.

The Assistance Executive shall forward the appeal to the Office of Procurement, Evaluation Division (M/OP/E). M/OP/E shall determine what other Divisions within the Office of Procurement need to review the appeal - generally the Policy Division (M/OP/P) and/or Procurement Support Division (M/OP/PS) - and the General Counsel’s Office, Commodity and Contract Management (GC/CCM), shall be asked to review as appropriate. M/OP/E shall determine if other participants are needed to review the appeal based on the dollar value as well as complexity of the appeal.

The Assistance Executive, or M/OP/E if a decision has not yet been made, shall notify the recipient within 60 days of sending the appeal as to the outcome or progress (for example: denied, approved, or if additional time will be needed). The chair shall determine if other members are needed to review the dispute based on the dollar value as well as complexity of the appeal.

The Director, Office of Procurement shall be responsible for making recommendations to the Assistance Executive regarding how to resolve the dispute based on the review undertaken by M/OP/E.

303.6 Supplementary References

[Cross Reference Index](#)

[File Documentation Guidelines](#)

[Guidance for USAID-funded Communications Products](#)

[Guidelines for Expanded Assistance Authority for Mission Directors](#)

[Guide to USAID's Assistance Application Process and to Submitting Unsolicited Assistance Applications.](#)

[Procurement Reform Documentation Requirements for Non-Profit Recipients \(self-certification\)](#)

[Resolution of Costs Questioned in Audit Reports](#)

[Sample Fixed Obligation Grant](#)

[Sample Format for Award Letter and Schedule](#)

303.7 Mandatory References

[ADS 201](#)

[ADS 206](#)

[ADS 216](#)

[ADS 304](#)

[5 CFR 1320](#)

[22 CFR 208, Appendix A](#)

[22 CFR 208, Appendix B](#)

[22 CFR 208, Appendix C](#)

[22 CFR 226](#)

[22 CFR 227](#)

[OMB Circular A-110](#)

[OMB Circular A-122](#)

[OMB Circular A-121](#)

[OMB Circular A-133](#)

[Assurance of Compliance with Laws and Regulations Governing Nondiscrimination in Federally Assisted Programs](#)

[Guidance on Funding Foreign Government Delegations to International Conferences](#)

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[Series 300 Interim Update 02-05, Updated Guidance for Modified Acquisition & Assistance Request Document \(MAARD\) Usage](#)

[Standard Provisions for U.S., Nongovernmental Recipients](#)

[Standard Provisions for non-U.S. Nongovernmental Recipients](#)

[Simplified Grant Format](#)

[Standard Provisions for an Endowment with Non-U.S. Nongovernmental Recipients](#)

[Standard Provisions for an Endowment with a U.S. Nongovernmental Recipients](#)

[USAID Policy Determination 21, Endowments Financed With Appropriated Funds](#)

[USAID Policy Paper, Women in Development](#)

[USAID Policy Papers, A.I.D. Partnership in International Development with Private and Voluntary Organizations](#)

Standard Forms: [424](#), [424a](#), [424b](#), [269](#), [269a](#), [270](#), [271](#), [272](#), [272a](#)

Glossary Terms for 303

Agreement Officer (See Also, Contracting Officer)

A person with the authority to enter into, administer, terminate and/or closeout assistance agreements, and make related determinations and findings on behalf of USAID. An Agreement Officer can only act within the scope of a duly authorized warrant or other valid delegation of authority. The term "Agreement Officer" includes persons warranted as "Grant Officers." It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer. (Chapters 303, 304)

Assistance Executive

The Director, Office of Procurement (M/OP/OD), or his/her designee, in USAID/W, who:

- 1) Acts as the Agency's coordinator for all assistance matters (i.e., financial assistance that provides support to a non-governmental entity to accomplish a public purpose) which may require OMB approval (such as deviations to OMB Circulars, or less deviations to OMB Circular A-110),
- 2) Makes final decision for any appeals brought under 22 CFR 226.90, or the Standard Provision entitled "Disputes", as applicable to non-US organizations, and
- 3) Makes the final determination of the choice of implementation instrument when there is disagreement between the contracting activity and the strategic objective team. (Chapters 303 and 304)

award

Financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and cooperative agreements. (Chapter 303)

recipient

An organization receiving direct financial assistance (a grant or cooperative agreement) to carry out an activity or program. (Chapters 303, 304, 305, 591)

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