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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Procurement

Issued: April 2, 2002

AAPD 02-05

New Authority - Exception for Small Businesses Under Indefinite Quantity Contracts (IQCs)

Subject Category: Acquisition Management

Type: New Policy and Procedures

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are **EFFECTIVE AS OF THE ISSUED DATE** unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends
CIB/AAPD No: _____

Precedes change to: AIDAR Part(s) _____ Appendix _____
 USAID Automated Directives System (ADS) Chapter 302
 Code of Federal Regulations _____
 Other _____
 No change to regulations

Applicable to: Existing awards; Modification required:
 Effective immediately
 No later than _____
 As noted in guidance below
 RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source...
 Other **SEE GUIDANCE BELOW**

New Provision/Clause Provided Herein: Yes; Scheduled update to Prodoc: **SEE GUIDANCE BELOW**
 No

(signed copy on file)

MARK S. WARD

**AAPD 02-05 - New Authority - Exception for Small Businesses
under Indefinite Quantity Contracts (IQCs)**

PURPOSE: The purpose of this AAPD is

1) To inform USAID contracting staff that our FY 2002 Appropriations Act contains new authority that will allow us to award task orders to small and small disadvantaged businesses without providing a fair opportunity to all contractors under a multiple award IQC. The new authority applies to multiple-award IQC's that are initially funded with FY 2002 money.

2) To provide language to include in solicitations and contracts for multiple-award IQCs to carry out the intent of this new authority. This AAPD also provides some initial guidance to contracting officer (COs) and their clients in the Agency's requiring offices (Activity Managers, Strategic Objective Teams, etc.) on how to best take advantage of this authority.

BACKGROUND: Section 534 entitled "Special Authorities" of Public Law 107-115 Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, contains the following paragraph:

(f) SMALL BUSINESS – In entering into multiple award indefinite-quantity contracts with funds appropriated by this Act, the United States Agency for International Development may provide an exception to the fair opportunity process for placing task orders under such contracts when the order is placed with any category of small or small disadvantaged business.

This new authority directly addresses the requirement in FAR 16.5 that the contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$2,500 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in FAR 16.505(b)(2). The exceptions to the fair opportunity process listed in that referenced subparagraph are quoted almost verbatim from the Federal Acquisition Streamlining Act of 1994, P.L. 103-355. Since the FAR's "fair opportunity" process, including the exceptions to it, are all directly derived from statute, we may not deviate from these FAR requirements without statutory authority to do so. Section 534(f) constitutes this statutory authority.

GUIDANCE:

Solicitation/contract language: When issuing Requests for Proposal (RFPs) for multiple-award IQCs that will obligate FY 2002 funds in the initial award, USAID contracting officers must include the following paragraph at the beginning of the "Fair Opportunity Process" paragraph in Section F of the Uniform Contract Format:

EXCEPTION: P.L. 107-115, Section 534(f), entitled "Small Business," provides USAID with an additional exception to the fair opportunity process in FAR 16.505. Under this exception USAID may directly place task orders with any category of small or small disadvantaged business that received one of the IQCs awarded from the solicitation from which this contract was awarded.

The only way USAID can take full advantage of this new authority is if we make basic IQC awards to qualified small and small disadvantaged businesses. Encourage your client offices to consider setting aside one or more of the prime contract awards in new multiple-award IQCs for qualified small business concerns. If the overall Statement of Work is too broad for small businesses to compete effectively for the entire range of services or goods, then consider separating out segments of the work that may be more suitable for small businesses to perform. Small and small disadvantaged businesses will be more competitive for these smaller awards, and to the extent they receive awards, we can then use the new special authority.

In all cases, you must ensure that you, your client office, and OSDDBU coordinate early in the activity planning stage to determine the best procurement strategy.

Awarding Task Orders: For the life of an IQC award that includes the "Exception" language in the previous section of this AAPD, USAID will have the option to direct a Task Order to any small or small disadvantaged business who holds a prime IQC award, even if the funding for the Task Order uses other than FY 2002 funds. We strongly encourage contracting officers, in consultation with technical officers, to take advantage of this authority whenever practicable.

You may use this exception in lieu of either following the competitive "fair opportunity" process to issue a Task Order or using one of the exceptions to the "fair opportunity" process in FAR 16.505, if applicable. A contracting officer has many factors to consider when choosing among these options. Although not strictly applicable when deciding to set-aside a task order for small business, the concepts and principles for making a prime contract SB set-aside, set out in FAR 19.502-2, are reasonable starting points for a CO. How successful has the requiring Office or Mission been to date in meeting small business goals? Which FAR "fair opportunity" exception(s), if any, apply? What other task order opportunities--possibly tied to the task order in question--may arise, for both small and large businesses, during the basic contracts' ordering period? As the contracting officer for the task order, you must use good judgment to ensure that the placement decision is in the Agency's best interests.

Do not use this authority when placing an order under any multiple-award IQC NOT initially awarded using FY 2002 funds, even if the task order uses FY 2002 funds.

File documentation: FAR 16.505(b)(4) requires the contracting officer to document in the contract file the rationale for placement and price of each order. This file documentation requirement extends to include the decision to use this new authority, since it is an inherent part of the "rationale for placement".

Reporting: We are adding a new reporting function to ProDoc in order to track the use of this authority. We will provide instructions for this change as soon as they are available.

On a final note, a recent Agency Notice announced this new authority to the entire Agency. It reiterated that USAID must improve its use of small and small disadvantaged businesses, and that the best way to do so is to structure competitions for new IQC awards to first maximize the potential for award to small and small disadvantaged businesses. Then, after such IQCs are awarded, we urge you to use this new authority as appropriate when issuing Task Orders.

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