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This AAPD 14-03 “*Prohibition Against Using Federal Funds to Enter into an Acquisition or Assistance Instrument with a corporation or Organization that has a delinquent Tax Liability or a Felony Criminal Conviction*” is archived, effective February 26, 2016–

The reason that it is being archived is because its requirements were incorporated into the FAR, effective Feb. 26, 2016, via interim FAR rule 2015-011 (FAC 2005-85)



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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: August 26, 2014

AAPD 14-03

Prohibition Against Using Federal Funds to Enter into an Acquisition or Assistance Instrument with a Corporation or Organization that has a Delinquent Tax Liability or a Felony Criminal Conviction

Subject Category: Acquisition and Assistance Management
Type: POLICY

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

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

This AAPD: Is New Replaces/ Amends CIB/AAPD

Applicable to: Existing awards; Modification required

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, IQC

Other

Precedes change to:

AIDAR Part(s) Appendix

USAID Automated Directives System (ADS) Chapter

Code of Federal Regulations

Federal Acquisition Regulations

No change to regulations

New Provision/Clause Provided Herein: If checked, scheduled update to GLAAS: ASAP

/s/

Mark Walther (Acting)

Purpose:

The purpose of this AAPD is to implement Section 7073 of the Consolidated Appropriations Act, 2014 (Public Law 113-76) and issue two new Representation provisions that must be used in Requests for Proposals (RFPs) and Requests for Applications (RFAs) that receive funding under that 2014 Appropriations Act.

Required Actions

(a) RFP/RFAs

Effective immediately, Contracting and Agreement Officers must insert the applicable attached representation provision in RFPs/RFAs for activities that will be funded under the Consolidated Appropriations Act, 2014 (Public Law 113-76).

(b) If the Contracting/Agreement Officer receives an affirmative response to either of the attached representations, the Contracting/Agreement Officer must immediately consult with the M/OAA Compliance Division. Contracting and Agreement Officers are prohibited from entering into an assistance or acquisition award with any corporation that provides an affirmative response to either of the new representations, unless the M/OAA Compliance Division has determined that suspension or debarment is not necessary to protect the interests of the Government.

Discussion:

The Consolidated Appropriations Act, 2014 (Public Law 113-76) prohibits USAID and other foreign operations agencies from entering into an acquisition or assistance award, with any corporation or organization that –

- Was “convicted of a **felony criminal violation** under any Federal law within the preceding 24 months, where the awarding agency has direct knowledge of the conviction, unless a Federal agency has considered, in accordance with its procedures, that this further action is not necessary to protect the interests of the Government”; or
- Has any “**unpaid Federal tax liability** that has been assessed for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency has direct knowledge of the unpaid tax liability, unless a Federal agency has considered, in accordance with its procedures, that this further action is not necessary to protect the interests of the Government”.

The above noted statutory prohibitions apply to all funds appropriated under the Consolidated Appropriations Act of 2014, Public Law 113-76.

Although a related FAR rule is currently in process, its issuance has been delayed. A Class Deviation was recently approved by the M/OAA Director authorizing the use of the attached representation provision for acquisition. This AAPD also contains a Special Representation Provision for assistance.

Unless otherwise rescinded or amended by M/OAA, the requirements under this AAPD shall remain in effect until such time as the FAR is revised to implement E.O. 13658 and a final clause is incorporated into the FAR.

Steps have been taken to initiate the inclusion of these new provisions into GLAAS. However, until such time as GLAAS can be updated, Contracting/Agreement Officers must copy and paste the provisions from this AAPD.

4. POINT OF CONTACT:

USAID Contracting/Assistance Officers may direct their questions about this AAPD to Rosella Marshall, M/OAA/P, at (202) 567-4675 or email: romarshall@usaid.gov.

Attachment 1 – For Acquisition:

FAR clause 52.209-xx “*Representation by Corporations Regarding Delinquent Tax Liability or a Felony Criminal Conviction (Deviation OAA-DEV-14-02c) (August 2014)*”

Attachment 2 – For Assistance:

Special Provision “*Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction (August 2014)*”

Attachment 1 – Provision for Acquisition

Include the provision below in all Requests for Proposals for activities using USAID funds appropriated under the Consolidated Appropriations Act 2014 (Public Law 113-76):

FAR 52.209-XX Representation by Corporations Regarding Delinquent Tax Liability or a Felony Criminal Conviction

REPRESENTATION BY CORPORATION REGARDING A DELINQUENT TAX LIABILITY OR A FELONY CRIMINAL CONVICTION (Deviation OAA-DEV-14-02c) (August 2014)

(a) In accordance with section 7073 of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76) none of the funds made available by that Act may be used to enter into a contract with any corporation that

–

(1) “Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency has direct knowledge of the conviction, unless the agency has considered, in accordance with its procedures, that this further action is not necessary to protect the interests of the Government”; or

(2) Has any “unpaid Federal tax liability that has been assessed for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency has direct knowledge of the unpaid tax liability, unless the Federal agency has considered, in accordance with its procedures, that this further action is not necessary to protect the interests of the Government”.

For the purposes of section 7073, it is USAID’s policy that no award may be made to any corporation covered by (1) or (2) above, unless the M/OAA Compliance Division has made a determination that suspension or debarment is not necessary to protect the interests of the Government.

(b) Offeror Representation:

(1) The Offeror represents that it is [] is not [] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(2) The Offeror represents that it is [] is not [] a corporation that has any unpaid Federal tax liability that has been assessed for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(End of provision)

Attachment 2 – Provision for Assistance

Special Provision: Include the special provision below in all Requests for Applications for activities using USAID funds appropriated under the Consolidated Appropriations Act, 2014 (Public Law 113-76):

REPRESENTATION BY ORGANIZATION REGARDING A DELINQUENT TAX LIABILITY OR A FELONY CRIMINAL CONVICTION (August 2014)

(a) In accordance with section 7073 of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76) none of the funds made available by that Act may be used to enter into an assistance award with any organization that –

(1) Was “convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency has direct knowledge of the conviction, unless the agency has considered, in accordance with its procedures, that this further action is not necessary to protect the interests of the Government”; or

(2) Has any “unpaid Federal tax liability that has been assessed for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency has direct knowledge of the unpaid tax liability, unless the Federal agency has considered, in accordance with its procedures, that this further action is not necessary to protect the interests of the Government”.

For the purposes of section 7073, it is USAID’s policy that no award may be made to any organization covered by (1) or (2) above, unless the M/OAA Compliance Division has made a determination that suspension or debarment is not necessary to protect the interests of the Government.

(b) Applicant Representation:

(1) The Applicant represents that it is [] is not [] an organization that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(2) The Applicant represents that it is [] is not [] an organization that has any unpaid Federal tax liability that has been assessed for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(End of provision)