



Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition and Assistance

Issued: AUGUST 26, 2004

AAPD 04-10

Standardized Model Letters for Designating the Cognizant Technical Officer (CTO) for Contracts, Grants, and Cooperative Agreements

Subject Category: Acquisition Management
Assistance
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: 93-08

Precedes change to: AIDAR Part(s) Appendix
 USAID Automated Directives System (ADS) Chapters 302, 303
 Code of Federal Regulations
 Other
 No change to regulations

Applicable to: Existing awards; Modification not 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 or N/A

New Provision/Clause Provided Herein: Yes; Scheduled update to Prodoc: December 2004
 No

(signed copy on file)

TIMOTHY T. BEANS

1. PURPOSE: The purpose of this AAPD is to implement standardized model letters for contracting officers (COs) and agreement officers (AOs) to use when designating the cognizant technical officer (CTO) for a specific award.

2. BACKGROUND: CIB 93-08, “Designation of Contracting Officers’ Technical Representatives,” issued in March 1993, provided a form letter for contracting officers to use when designating the contracting officer’s technical representative (COTR). Since then, USAID decided to use the term “cognizant technical officer” rather than COTR. Ten years have passed since the issuance of the original CIB and several policy changes have dictated the need to update the form letter. The most significant change occurred when the Office of Federal Procurement Policy (OFPP) issued Policy Letter 97-1, requiring agencies to establish education, training and experience requirements for entry and advancement in the acquisition career field, including all COTRs (see <http://www.acqnet.gov/Library/OFPP/PolicyLetters/Letters/PL97-01.html>). In addition, the Federal Acquisition Streamlining Act of 1994 (FASA) emphasized the use of a contractor’s past performance as an indicator of future performance, and tasked agencies with developing procedures for a past performance evaluation system that generally provides for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service. Various statutes passed in the 1990s (such as the Government Performance and Results Act [GPRA], the Government Management Reform Act [GMRA], and the Chief Financial Managers Act), and USAID’s ongoing conversion to new financial management systems have changed the way USAID plans and manages its programming policy and the financial management aspects of its programs. These changes have increased the focus the Agency places on the role and responsibilities of the cognizant technical officer. All of these factors need to be better reflected in the designation letter. Finally, agreement officers asked that a similar letter be prepared for grants and cooperative agreements.

M/OAA/PE (formerly M/OP/P) sent drafts of these letters to all Agency contracting staff in early CY 2002. M/OAA/PE incorporated, when appropriate, almost 100 comments from at least 29 different people, including several technical staff, into the final product. Other offices have also reviewed and commented on drafts throughout the past year, and M/OAA/PE cleared these final versions through the ADS clearance list.

3. GUIDANCE:

(a) Applicability and eligibility. COs and AOs must use the standardized model letters attached to this AAPD when designating the cognizant technical officer for a particular contract (including each task order under an indefinite quantity contract [IQC]), grant, or cooperative agreement. CTO designation letters are not required for Personal Services Contracts or for fixed price supply contracts. A separate letter is being developed for interagency agreements, including Participating Agency Service Agreements (PASAs, see

ADS 306 “Interagency Agreements”). M/OAA/PE will revise ADS 302, USAID Direct Contracting, and ADS 303, Grants and Cooperative Agreements to Non-Governmental Organizations, to include policies requiring their use.

The CTO (and alternate, see (e) below) must be either a direct-hire Federal employee or a personal services contractor (PSC). Direct-hire Federal employees include the employees of any US Government agency, and PSCs include U.S. Citizen and Foreign Service National (FSN) PSCs and Technical Advisors in AIDS & Child Survival (TAACS), a type of PSC. For additional guidance on TAACS, see Interim Updates to ADS 200 entitled “TAACS (Using Technical Advisors in AIDS & Child Survival Programs)” at <http://www.usaid.gov/policy/ads/200/200mat.pdf> and ADS 400 entitled “Appropriate Use and Funding of USAID's Non-Direct Hire Workforce” at <http://www.usaid.gov/policy/ads/400/updates/iu4-02.pdf>. Note that the limitations in both Mandatory References on what a private sector TAACS may do must be considered when determining the eligibility of a TAACS to be a CTO.

(b) CTO Certification and Training Requirements. Each letter includes a section on CTO training. The Office of Human Resources, Training and Education Team (M/HR/TET), in coordination with M/OAA, established a CTO Certification Program that includes training courses designed to provide USAID CTOs with the basic knowledge and skills they need to effectively carry out the role of an Agency CTO. M/HR plans to issue an ADS chapter on training policy that will include CTO training and certification, but until it becomes official, the language in the designation letters strongly encourages non-certified CTOs to get training but does not require certification at this time. When M/HR issues the policy, we will amend the letters to reflect the policy.

In the meantime, COs/AOs and the supervisors of CTOs must monitor the designated CTO’s conduct in performing CTO duties and cooperation in taking any appropriate training courses leading to certification (see Section IV Training in each letter). M/HR/TET has a database of Agency CTOs that includes their certification status and the courses they’ve taken. COs and AOs can access this database by requesting a password from the CTO Training Coordinator on the Training and Education Team in the Office of Human Resources (see Point of Contact on the CTO Certification Program webpage at <http://inside.usaid.gov/M/HR/lcd/ctocert.html>).

(c) Scope of designation. COs/AOs must use these letters to designate the CTO to carry out contract, grant, or cooperative agreement administration duties which would otherwise be the CO’s or the AO’s responsibility. Other Agency regulations, including ADS chapters outside the 300 series, may hold CTOs accountable for duties and responsibilities that do not flow from the CO or AO. Such responsibilities are not included in these letters. CTOs should direct any questions they have about these other responsibilities to the author office for that chapter or regulation, or to the author office’s representative in the operating unit (for example, a CTO in a Mission should direct questions about the CTO’s financial management duties in ADS 600 Series chapters to the Mission Controller).

(d) CO/AO tailoring of the letters. COs and AOs are expected to use the standardized letters essentially as written, but some of the specific guidance provided below clearly allows them to use discretion in tailoring these letters as long as they do not affect the substance of the standardized letter. For example, COs or AOs may include special instructions to account for unusual characteristics of the award. They may limit or expand the CTO’s responsibilities depending on the level of training or experience of the individual receiving the designation. They may emphasize additional oversight responsibilities if the CO/AO has concerns about the contractor or recipient. If a contract has a “grants under contract” component, the CO may specify limits to the CTO’s responsibilities for administering the grant-making part of the Statement of Work. Finally, they may edit the letter to reflect the CO/AO’s own experience, judgment and preference—again, within the scope of the standardized letters. The examples listed in this paragraph are not all-inclusive, nor are COs/AOs expected to make changes to the letter if they have no reason to do so. **The CO/AO may not, however, change Section III, Limitations, in any of the letters.**

(e) Naming an alternate CTO. In each letter, Section III, Subsection B. Redlegation, includes a space for naming the **alternate CTO**. When designating an alternate CTO, COs/AOs must insert the name of the individual in the blank space in the second paragraph of this subsection. When the requiring office nominates the primary candidate for the CTO designation, it should also indicate who should be named as the alternate. The preference is for the Strategic Objective Team (SOT) leader to be the alternate, because he/she is more likely to know what is happening under the award and can therefore step in as CTO. However, if the requiring/technical office is not structured along the lines of an SOT, or when the primary CTO is also the SOT leader, then the CTO’s immediate supervisor may need to serve as alternate. If the requiring office nominates an individual other than the SOT leader or the CTO’s immediate supervisor to be the alternate CTO, the nomination must include a justification supporting this nomination, including an explanation of the nominated alternate’s involvement in overseeing the contractor’s or recipient’s performance.

COs/AOs should also remind CTOs and their alternates that the alternate may **ONLY** perform CTO duties or responsibilities if the CTO is absent. The alternate CTO may not countermand a CTO’s decision on a matter pertaining to his or her duties as a CTO. In addition, the primary CTO is not responsible or accountable for the actions of the alternate CTO—the alternate CTO is responsible and accountable.

In rare circumstances, a CO/AO may designate multiple CTOs for a single award by issuing a separate letter to each individual CTO, **provided** that the CO/AO, the CTO candidates, and the requiring office clearly understand the separation of responsibilities; each designation letter clearly spells out the individual CTO’s authority; and the lines of responsibility and authority do not overlap. The CO/AO and the CTOs are to discuss this with the contractor/recipient at the earliest opportunity.

(f) Standards of Conduct and Conflicts of Interest. The purpose of this section is to remind CTOs that as employees they are subject to the ethical standards that apply to all federal employees by virtue of the terms of their employment. Being a CTO does not impose a higher level standard for an individual's conduct, but it may provide more occasions for improper behavior and increases the scrutiny that others may direct to an individual's behavior. For this reason, we include this reminder section although doing so is not necessary in order to hold the individual to these standards of conduct or conflict of interest requirements.

(g) Distribution. COs and AOs are responsible for providing copies of the CO/AO-signed and CTO-acknowledged designation letter to the contractor or recipient, the paying office, and the named alternate CTO. The CO/AO may provide a copy to the SO team leader or activity manager (if different than the CTO or alternate), and Mission Director or office director. Providing courtesy copies to any party other than the contractor/recipient, the alternate CTO, and the paying office is at the discretion of the CO or AO and should be discussed with the CTO. For example, if the requiring office maintains a list of CTOs in the organization, then they may request that you provide the administrator of this list with a copy of the designation letter. We encourage you to do so, but you may task the CTO with this and any other distribution within the requiring office.

(h) Do Not Name the CTO in the award. Because of the additional work involved in modifying contracts or amending grants or cooperative agreements, COs and AOs are not to actually name the CTO in the award document. If the CTO is named in the award, then the CO/AO must modify the award every time the named individual is replaced for any reason, which is typically impractical. Where ProDoc asks for the CTO, insert "CTO designated separately" and be sure to send a copy of any designation letters to the paying office for the award.

(i) NMS/Phoenix. In order to assure that the correct CTO is assigned to the award in NMS and Phoenix, COs/AOs in USAID/W must permanently and promptly assign/reassign CTO designations via the NMS A&A Support Module. COs must also be logged in to Phoenix at the time of reassignment in order for the information to transfer successfully from NMS A&A to Phoenix (see A&A Solutions Center, NMS/A&A CTO Handling, at http://inside.usaid.gov/M/OP/SolutionsCenter/nms/nms_cto.htm). If the nominated CTO candidate is not listed in the drop-down list as a possible CTO for the requesting Bureau, COs/AOs must notify the requesting office that the award cannot be finalized in NMS until the nominated individual has been added to NMS.

NMS A&A, Phoenix, and the Accrual Reporting System (ARS), must have up-to-date CTO information for the Agency to properly manage the various financial reporting requirements that all these systems support. COs and AOs **MUST** ensure that CTO designations are current and accurate in NMS A&A for their A&A awards.

(j) Availability through ProDoc. The letters will be available for use in ProDoc by September 2004. We will process any future revisions or updates to these letters in one of

two ways. If the change is not significant, we will directly revise the ProDoc letter(s) and e-mail an informal advisory to the CONet list to inform all Agency A&A staff that we revised the letter. If the change/revision is substantial and constitute a change in policy, it will be cleared through the ADS clearance process and we will amend or reissue this AAPD or the applicable ADS chapter (as appropriate).

(k) Specific Guidance for each letter. The following guidance addresses specific sections of the contract and cooperative agreement letters (there is no additional guidance for the grant letter). ProDoc will provide the letters for your use as they appear in the Attachments. However, please consider the following when preparing a letter and tailor the letter only if needed and only as authorized in the Specific Guidance below.

Attachment 1- Contract Letter

Section I Delegation

Subsection A. Technical Directions/Guidance. When the contract in question is a performance-based contract (PBC), the CO and CTO must recognize that a CTO issuing technical directions for these types of contracts may not be suitable, so include a section on Technical Directions/Guidance only if the contract has certain Contract Line Items (CLINS) that are not performance-based or you ensure that this section limits the scope of the technical directions or guidance the CTO may issue for a PBC. Although “technical guidance” may be more appropriate, the CTO must be aware that even guidance in a PBC is limited and the CTO should consult with the CO.

Subsection F. Other specific functions/authorities, as provided herein. In this section, COs may list here any other functions not covered above, such as responsibility for processing requests for country clearance; reminding the CTO that the contract includes the CO’s approval for international travel per AIDAR 752.7032, provided that the CTO provides prior written approval; etc. COs awarding basic IQCs should state here that the CTOs for the basic IQC have responsibility for monitoring the use of the IQCs to track the contract ceiling and consistency of task order statements of work with the SOW of the basic contract, etc. When adding functions or authorities in this section, the CO must coordinate with the the CTO candidate to ensure mutual understanding and agreement.

Section II Administration

Subsection A. Communications. During the vetting process in early CY 2002, a few reviewers asked that the letters not require the CTO to provide a copy of technical directions (TD) to the CO, apparently on the assumption that if the CO doesn’t have a copy of a technical direction that exceeds the CTO’s authority, then the CO can deny any knowledge of the TD and could deny a claim. However, GC advised that this may not be a supportable position and provided caselaw that indicated that the CTO can be assumed by the contractor to be the CO’s “eyes and ears” and therefore have the authority to “speak” for the CO. COs and CTOs must also be aware that even if the CTO is not required to

send a copy of these communications to the CO, the contractor may still assume that the CO has authorized the CTO's actions by virtue of having issued this delegation letter.

In order for the CO to stay abreast of the contractor's performance as well as to avoid potential claims or disputes, the CTO must provide copies of communications with the contractor to the CO within the timeframe specified in the letters. The CO therefore **MUST** read these communications and take any necessary action if the technical direction is beyond the CTO's authority or directs the contractor to do something beyond the scope of the contract. If the CO receives a copy of the communication but takes no action to countermand the CTO's direction, the contractor has reason to conclude that the CO endorses the CTO's action, which may strengthen the contractor's claim or dispute against the Agency.

Therefore, the CO must carefully assess the CTO candidate's experience and demonstrated knowledge/judgment when deciding how closely to monitor the CTO's communications with the contractor. If the CO is very confident that the CTO understands and accepts the limits of this delegation and is not likely to issue technical directions that could lead to a claim, then the CO may choose to limit the extent the CO monitors the CTO's TDs. Conversely, if the CTO candidate is very inexperienced and the CO is concerned, then a prudent CO ensures that the CTO provides copies of these communications and then carefully reviews them to verify that they are within the scope of the contract.

Attachment 3 - Cooperative Agreement Letter

Section I Responsibilities

Subsection C. Substantial Involvement. When stating the substantial involvement the Agency will have in the performance of the cooperative agreement, the AO may choose to include in this section of the CA schedule those substantial involvement approvals he or she is re delegating to the CTO (see ADS 303 for the limitations on which responsibilities may be re delegated). However, the AO must then formally amend the CA to make any changes to the CTO's authority. The AO may instead choose to list in the CTO designation letter those substantial involvement approval responsibilities he or she re delegates to the CTO. In this case, the AO must only revise the letter to make any changes to the CTO's authority. For either option, the AO may also specify any approvals that he/she retains, such as the authority to consent to sub-agreement provisions.

4. POINT OF CONTACT:

Direct general questions about the standardized letters or this AAPD to Ms. Diane Howard, M/OP/P, at 202-712-0206. Anyone (including CTOs, contractors, or recipients) with questions pertaining to a specific designation letter or contract/grant/cooperative agreement must contact the contracting officer or agreement officer who signed the letter.

Attachments:

1. Cognizant Technical Officer (CTO) Designation – Contract/Task Order Administration
2. Cognizant Technical Officer (CTO) Designation – Grant Administration
3. Cognizant Technical Officer (CTO) Designation – Cooperative Agreement Administration