



Acquisition & Assistance Policy Directive

(AAPD)

From the Director, Office of Procurement Issued: March 24, 2004

AAPD 04-07

Revised Certification Regarding Terrorist Financing Implementing E.O. 13224

Subject Category: Assistance
Type: Policy/Procedure

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 X Replaces/ ___ Amends
 AAPD No: 02-19

Precedes change to: ___ AIDAR Part(s) Appendix ___
 ___ USAID Automated Directives System (ADS) Chapters ___
 ___ 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
X 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: X Yes; Scheduled update to Prodoc: June 2004
 ___ No

(Signature on file)
TIMOTHY T. BEANS

1. PURPOSE:

The purpose of this AAPD is to reissue the Certification Regarding Terrorist Financing, originally issued in AAPD 02-19, in more clear and current language, and to provide information to assist Agreement Officers in guiding applicants to complete the certification.

2. BACKGROUND:

AAPD 02-19, issued December 31, 2002, required USAID Agreement Officers to obtain a certification from both U.S. and non-U.S. non-governmental organizations, before the organization could receive an award of a grant or cooperative agreement, to the effect that the organization does not support terrorism.

Some organizations found the language of the certification unclear, and were concerned that the AAPD did not provide guidance on the recipient's liability for the actions of subrecipients or beneficiaries. In response to these concerns, USAID provides the following guidance.

3. GUIDANCE:

Before making the award of a grant or cooperative agreement to a U.S. or non-U.S. non-governmental organization, the Agreement Officer must obtain the attached certification from the organization.

The purpose of the Certification is to provide USAID with assurances that it is not entering into an assistance agreement with an organization that provides or has provided assistance to terrorists or for terrorist activity. USAID employees could be liable under 18 U.S.C. § 2339A ("Providing material support to terrorists"), § 2339B ("Providing material support to designated foreign terrorist organizations), and § 2339C ("Prohibitions against the financing of terrorism") if they knowingly provide assistance to an organization that, in turn, provides or has provided material support or resources for terrorist acts, or to foreign terrorist organizations, or in violation of United Nations conventions and protocols. The Certification is consistent with states' obligations under United Nations Security Council (UNSC) Resolution 1373 (2001).

The Certification requires the applicant to state that it has not provided, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that engages in terrorist activity. This would include, without limitation, any organization designated by the United States Government as a Foreign Terrorist Organization under § 219 of the Immigration and Nationality Act, as amended (8 U.S.C. § 1189), any individual or entity designated by the United States Government as a Specially Designated Terrorist or Specially Designated Global Terrorist, and any individual or entity designated by the United States Government in or pursuant to United States Executive Orders 12947 ("Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East

Peace Process”) and 13224 (“Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism”).

To comply with its obligations under the Certification, the applicant must verify that it has not provided, and does not and will not knowingly provide, material support or resources to any individual or entity that appears (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Treasury’s Office of Foreign Assets Control (OFAC) or (ii) on any supplementary list of prohibited individuals or entities that may be provided by USAID to the applicant. The master list can be found at the OFAC website identified in the Certification. For purposes of the master list, “SDT” indicates Specially Designated Terrorist, “SDGT” indicates Specially Designated Global Terrorist, and “FTO” indicates a Foreign Terrorist Organization.

The applicant also must verify that it has not provided, and does not knowingly provide, material support or resources to any individual or entity designated by the UNSC sanctions committee established under UNSC Resolution 1267 (1999) (the “1267 Committee”) [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the applicant organization may refer to the consolidated list available online at the Committee’s website identified in the Certification.

An applicant may be in compliance with its obligations under the Certification if it had provided material support or resources to an individual or entity that, at the time such support or resources was provided, had not been designated by the United States Government as a Foreign Terrorist Organization, or as a Specially Designated Terrorist or a Specially Designated Global Terrorist, or had not been designated by the United States Government in or pursuant to Executive Orders 12947 or 13224, or had not been designated by the 1267 Committee, and that individual or entity subsequently is so designated.

In addition to reviewing the OFAC master list and the 1267 Committee’s list referred to in the preceding paragraphs, the applicant also must take into account its own knowledge and information that is public in making the Certification. This means that the applicant is expected to consider information of a person’s terrorist ties that is either publicly available (such as, for example, terrorist ties identified in news media or in an official, published designation) or that, from the totality of the facts and circumstances surrounding the person’s interactions with the recipient organization or related to the person’s reputation in the community, the applicant should be aware of a person’s terrorist ties.

The Certification also requires the recipient organization to implement reasonable monitoring and oversight procedures to safeguard against USAID assistance from being used, either directly or indirectly, to provide material support or resources to individuals or entities that engage in terrorist activity.

If the recipient organization learns that any individual or organization that it provides material resources or support to, or with which it engages in transactions or dealings in property or interests in property, has been designated by the United States Government as a Foreign Terrorist Organization, or as a Specially Designated Terrorist or a Specially Designated Global Terrorist, or has been designated by the United States Government in or pursuant to Executive Orders 12947 or 13224, or has been designated by the 1267 Committee, or otherwise engages in terrorist acts, the recipient organization must immediately notify USAID and must immediately cease such support or transactions or dealings.

The definition in the Certification for the term “material support and resources” is the same as the definition for that term used in 18 U.S.C. § 2339A(b). For purposes of the definition of the term “terrorist act” contained in clause (i) of section 3.b. of the Certification, the United Nations Conventions and Protocols referred to can be found at <http://untreaty.un.org/English/Terrorism.asp>. The definition contained in clause (ii) of section 3.b. of the Certification is taken from 22 U.S.C. § 2656f(d)(2), i.e., the second definition used in Foreign Terrorist Organization designations. The definition contained in clause (iii) of section 3.b. of the Certification is taken from the Convention on the Suppression of the Financing of Terrorism, art. 2(b), and can be found on the UN terrorism conventions website referred to above.

If USAID determines that a recipient organization has violated any term or condition of the Certification, USAID may immediately and unilaterally terminate the assistance agreement with the recipient organization.

4. POINT OF CONTACT:

Please direct any questions to Raquel Powell, M/OP/P, Phone: (202) 712-0778, e-mail: rpowell@usaid.gov or Gary Winter, GC, Phone: (202)712-1548, e-mail: gwinter@usaid.gov.

Certification

By signing and submitting this application, the prospective recipient provides the certification set out below:

1. The Recipient has not provided, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts.

2. Specifically, in order to comply with its obligations under paragraph 1, the Recipient will take the following steps:

a. Before providing any material support or resources to an individual or entity, the Recipient will verify that the individual or entity does not appear (i) on the master list of Specially Designated Nationals and Blocked Persons, which list is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) and is available online at OFAC's website : <http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>, or (ii) on any supplementary list of prohibited individuals or entities that may be provided by USAID to the Recipient.

The Recipient also will verify that the individual or entity has not been designated by the United Nations Security (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee") [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the Recipient should refer to the consolidated list available online at the Committee's website: <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>.

b. Before providing any material support or resources to an individual or entity, the Recipient will consider all information about that individual or entity of which it is aware or that is available to the public.

c. The Recipient will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.

3. For purposes of this Certification-

a. "Material support and resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives,

personnel, transportation, and other physical assets, except medicine or religious materials.

b. "Terrorist act" means-

(i) an act prohibited pursuant to one of the 12 United Nations Conventions and Protocols related to terrorism (see UN terrorism conventions Internet site: <http://untreaty.un.org/English/Terrorism.asp>); or

(ii) an act of premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; or

(iii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

c. "Entity" means a partnership, association, corporation, or other organization, group or subgroup.

This Certification is an express term and condition of any agreement issued as a result of this application, and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.