

# ADS 301 - Responsibility for Procurement

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## Major Functional Series 300: Acquisition and Assistance ADS Chapter 301 - Responsibility for Procurement

### 301.1 Authority

1. Sections 601 and 635 of the Foreign Assistance Act of 1961, as amended.
2. Action Memorandum on [Host Country Contracting](#) Policies approved by the Administrator on February 23, 1982.
3. Procurement Executive Guidance in State 399975, dated November 27, 1990.

### 301.2 Objective

The objective is to assign procurement responsibility for bilateral assistance activities in a manner which best fits the particular circumstances and will result in the most effective implementation of USAID-financed activities.

### 301.3 Responsibility

1. The Strategic Objective team: The Strategic Objective team is responsible for ensuring that activities are designed to assign the responsibility for procurement where it will best serve the objective. When [host country](#) contracting is going to be used, the Strategic Objective team has the primary responsibility to see that the required assessment of the [Contracting Agency's](#) procurement system is made.
2. Mission- or regionally-based Contracting Officer, Controller, and Legal Advisor: The Mission- or regionally-based contracting officer, controller, and legal advisor are responsible for assessing the Contracting Agency's procurement system as part of the host country assessment team, or for reviewing the assessment and offering recommendations before the Mission Director certifies that the Contracting Agency's procurement system is acceptable.
3. Mission Engineer and Commodity Management Officer: When their areas of expertise are involved, the Mission Engineer and Commodity Management Officer are responsible for participating in the host country assessment.
4. Mission Controller: The Mission controller is responsible for ensuring that the Contracting Agency's accounting system and internal controls are adequate.

5. Mission Director: The Mission Director is responsible for reviewing the recommendations of the host country assessment team and for certifying the acceptability of the Contracting Agency's procurement system if the facts support doing so.

#### **301.4 Definitions (See [ADS GLOSSARY](#))**

CONTRACTING AGENCY  
DIRECT CONTRACTING  
HOST COUNTRY  
HOST COUNTRY CONTRACTING

#### **301.5 POLICY**

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

#### **301.5.1 SELECTION OF RESPONSIBLE CONTRACTING ENTITY**

The responsibility for procurement of USAID-financed goods and services required to implement bilateral activities may be assigned among a wide range of entities. The host country implementing agency itself or other host country agencies (such as central contracting agencies) may be involved. Either USAID/W or the Mission may assume procurement responsibility, or USAID or the host country may arrange for intermediaries (such as other U.S. government agencies, private firms, nonprofit organizations, or educational institutions) to procure needed goods or services.

#### **E301.5.1 Selection of Responsible Contracting Entity**

The Strategic Objective Team shall assign responsibility for procurement to a qualified organization. The team must consider the following points when deciding who shall assume procurement responsibility:

- a) General factors
  1. No general USAID preference between USAID-direct and host country contracts;
  2. Host country preference;
  3. Activity design and objectives, including the type of goods or services required and any timing constraints;

4. Procurement capability of the proposed contracting agency, including capability for contractor selection, contract administration, and contract audit;
5. Relative costs;
6. Systems and procedures for effective contract support, including payment and other administrative and logistic support availability;
7. Availability and experience of USAID procurement, legal and program staff to advise and assist the host government or to undertake USAID-[direct contracting](#); and
8. Effects on establishment of desired institutional or professional relationships.

b) Special circumstances, such as whether:

1. A U.S. university is a contracting party. Use of a USAID-direct contract may often prove to be more appropriate and effective for carrying out an activity when a U.S. university will be involved;
2. Collaborative assistance selection procedures will be used. Either a USAID-direct or a host country contract, or a combination thereof, may be used—depending on the circumstances that pertain to the respective roles of the parties and the nature of the long-term collaborative relationships that are desired;
3. A potential exists for a disadvantaged enterprise contract using any other statutory or regulatory authority, such as Section 8(a) of the Small Business Act, under which the U.S. Small Business Administration (SBA) subcontracts the award to such a business concern.
4. Other U.S. Government Agencies will be involved. The host country (through USAID) may designate another U.S. Government Agency to provide, or contract for, services or commodities when specialized expertise is required; and
5. The contract is for construction services. Use of a host country contract is usually more appropriate for the procurement of construction services.

### **301.5.1a      DISTINCTION BETWEEN USAID-DIRECT CONTRACTS AND HOST COUNTRY CONTRACTS**

Mission Directors and staff must bear clearly in mind the distinction between USAID-direct and host country contracts. USAID-direct contracts follow the Federal Acquisition Regulation (and AID Acquisition Regulation) and maximize USAID control over the activity in question. When USAID decides to use host country contracting procedures, on the other hand, it acts as a financier and not a contracting party, reserving certain rights of approval and activity monitoring.

### **E301.5.1a      Distinction between USAID-Direct Contracts and Host Country Contracts - N/A**

### **301.5.2      PROCUREMENT SYSTEM ASSESSMENT**

a)      When the Strategic Objective or Results Package Team is considering assigning a contract anticipated to exceed \$250,000 to an agency of the host country, they must first establish a team to assess the agency's procurement system and then obtain the Mission Director's certification of its capability. The assessment team shall consist of individuals on the Mission's staff with qualifications necessary to assess all aspects of the Contracting Agency's capabilities: the Controller, Contracting Officer, and Legal Advisor shall be either members of the team or shall review the assessment and offer recommendations to supplement the assessment before the assessment reaches the Mission Director. Other Mission or Regional personnel, such as the Mission Engineer and Commodity Management Officer, may participate or provide advice to the extent that their areas of expertise are pertinent to the assessment. Institutional contractors may also be used to conduct the assessment.

b)      If the assessment results in a recommendation that host country contracting is practical, then the Mission Director shall make a positive determination that the host country Contracting Agency has or will obtain the capability to undertake the procurement. If the assessment indicates that use of host country contracting would be impractical or inappropriate and the Mission Director cannot make such a determination, then contracting by USAID itself or procurement by another U.S. Government Agency must be used.

### **E301.5.2      Procurement System Assessment**

The assessment of the Contracting Agency's procurement system and the Mission Director's determination shall be carried out in accordance with this chapter. The Project Officer's Guidebook -- Host Country

Contracting (See Supplementary Reference, [Project Officer's Guidebook - Host Country Contracting](#)) provides guidance.

#### **E301.5.2a Using a Contractor to Conduct an Assessment**

1) If a contractor is being considered for conducting or participating in the assessment, the Strategic Objectives Team must first determine that the Contracting Agency will give access to its records to the selected contractor before a contract is awarded. The Contracting Agency may object to assessment by certain contractors for valid reasons, but a refusal to permit any assessment must preclude its participation in USAID's host country contracting process.

2) Prior to awarding the assessment contract, the USAID contracting officer shall notify the selected contractor that in order to avoid any perception that a favorable assessment would enhance the reputation of the Contractor with the host country contracting agency and thus improve its position with respect to obtaining work under the specific activity to be contracted for under host country contracting, **THE CONTRACTOR SHALL BE INELIGIBLE TO FURNISH, AS A PRIME OR SUBCONTRACTOR OR OTHERWISE, UNDER ANY HCC CONTRACT USING USAID FUNDS AND AWARDED BY THE PROCUREMENT AGENCY, ANY SERVICES PERTAINING TO THE SPECIFIC ACTIVITY FOR WHICH THE ASSESSMENT WAS CONDUCTED**, unless the Mission Director shall have granted a waiver, based on the Mission Director's determination that such preclusion of the contractor would not be in the best interests of achieving the strategic objective. The Regional Legal Advisor and the Contracting Officer shall provide comments prior to the Mission Director making such a determination.

This preclusion shall not apply to future contracts to be awarded through host country contracting procedures under activities which were not yet in the design stage when the contractor performed the assessment.

#### **E301.5.2b Certification Requirement**

1) Before the Contracting Agency is assigned a procurement action in excess of \$250,000 in USAID's host country contracting process, the Mission Director must certify, in writing, that the Contracting Agency has the capability to undertake the specific procurement action. The certification shall read:

Based upon an assessment, carried out by \_\_\_\_\_ and summarized in a report, dated \_\_\_\_\_, of the capability and integrity of (the name of the Contracting Agency) to carry out the procurement actions financed by USAID from solicitation to audit

and closeout, in accordance with applicable USAID standards and procedures (set forth in ADS Chapter 301), and based upon the recommendations of the cognizant strategic objective team, Contracting Officer, Legal Advisor, and Controller, I have determined that (the name of the Contracting Agency) is capable of undertaking procurement of (name of commodity or service). This determination must be reviewed at any appropriate time that staff, organization, legal, or other changes suggest that a current assessment would be appropriate and will in any event be repeated, or updated by limited reviews, within three years of the above assessment.

Signed by Mission Director (date)\_\_\_\_\_

- 2) If the capability assessment discloses significant weaknesses in the Contracting Agency's capability, but not so significant that the Mission cannot work with the Contracting Agency to overcome them and the Mission intends to proceed with approving host country contracting for the specific activity in question, then the Mission Director's certification must be modified to identify the particular weaknesses in capability identified, the Mission's plans to resolve the problems, and in view of the foregoing, the Mission Director's determination that host country contracting is the appropriate contracting method.
- 3) The assessment of the Contracting Agency's procurement capability and the certification by the Mission Director must be kept as part of the official activity files.

**301.5.3 NO WAIVER PROVISION**

USAID shall not waive the policies contained in this chapter. The selection of the responsible contracting entity shall be made by the USAID official approving the activity and shall be reflected in the Agency's corporate database.

**E301.5.3 No Waiver Provision - N/A**

**301.6 Supplementary Reference**

[Project Officer's Guidebook - Host Country Contracting, Appendix B "Assessment of Host Country Procurement Capabilities"](#)

**301.7 Mandatory Reference - N/A**

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