

1 INTRODUCTION

This Guide is a resource to assist the planning and implementation of USAID funded projects in DCA. The purpose is to provide information on USAID language and technical terminology, give an orientation in procurement from a USAID Rules and Regulations perspective, and share knowledge on how USAID rules impact project procurement.

USAID Rules and Regulations is a collection of provisions, regulations, principles, administrative requirements, directives and listings. This Guide will point the reader's attention to the documents relevant to procurement. At its best, this Guide is an explanatory tool to navigate and understand what is required from a Procurement Officer when planning, implementing and closing procurement in a USAID funded project. This Guide does not stand instead of the USAID Rules and Regulations but will help the user address the relevant topics in a DCA context. Should discrepancies occur, the USAID Rules and Regulations as presented by USAID overrules everything and anything presented in this guide.

The application of this Guide ensures the efficient use of resources, effective management, and continued eligibility for USAID funding, while increasing our ability to deliver services to beneficiaries.

1.1 HOW TO USE THIS GUIDE

This Guide is an addendum to the DCA Procurement Manual. It is important to understand that all procurement planning, implementation and closing will take its point of departure in the DCA Procurement Manual. In addition to the DCA Procurement Manual, USAID has a range of additional requirements to consider, especially for the planning and implementation phase. These additions are presented in this Guide.

The Guide is organized with an introductory section followed by a procurement checklist in the form of questions and explanatory information. Each of the questions are divided into sections and will have a description of what it entails, what to be aware of and sometimes the section includes an example to illustrate what actions are needed. The description is as generic as possible allowing for fewer updates of this Guide.

Each question or topic in the procurement checklist concludes with a list of resources containing the actual USAID Rules and Regulation which the question derives from or relates to. Using these links will ensure that the user continues to base the procurement work on the latest available information. The structure might in some instances mean that it is necessary to read the listed resources. The Guide ends with a list of abbreviations and glossary, a complete list of resources and finally a few useful templates and annexes.

Application of the procurement checklist ensures that all relevant USAID requirements have been addressed.

1.2 APPLICABILITY

This is the 2nd edition of the Guide to USAID procurement and it is based on USAID requirements to Non-US Nongovernmental Organisations of May 2019. USAID has specific requirements to procurement activities and the DCA Procurement Manual in concert with this Guide are applicable to the implementation of USAID funded operations under Grants and Cooperative Agreements. It can be freely used by DCA implementing partners.

The Standard Provision for Non-US Nongovernmental Organisations is frequently updated, and while we do wish to keep this Guide updated with the latest information, users are encouraged to check if updates are available in the Acquisition & Assistance Policy Directives (AAPDs) or directly in the relevant provisions.

This Guide does not discuss Property Management¹ and the disposition of equipment or supplies, as this area falls under the responsibility of DCA Finance.

Resources

2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards subpart D: <https://www.govinfo.gov/content/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part200.pdf>
Standard Provisions for Non-US Nongovernmental Organisations – Mandatory Reference for ADS 303 (May 2019): <https://www.usaid.gov/ads/policy/300/303mab>

The DCA Procurement Manual (password required): <https://www.danchurchaid.org/login>

Acquisition & Assistance Policy Directives (AAPDs) and Contract Information Bulletins (CIBs): <https://www.usaid.gov/work-usaid/aapds-cibs>

1.3 WORKING WITH USAID

USAID funding framework operates with two instruments, Assistance and Acquisition. DCA and partners receive financial support under the Assistance instrument, and the awards are called either Grants or Cooperative Agreements. A popular description of the difference between the two instruments is that Assistance awards could be called “DCA’s Program” and awards under Acquisition could be called “USAID’s program”. Assistance is defined as “Financial support to accomplish a public purpose, including Grants, Cooperative Agreements and other agreements in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient”². As outlined in the below table, the goal, benefit, relationship, mechanism, documents and guidelines differ between the two instruments.

USAID Funding Framework		
	ASSISTANCE AWARD	ACQUISITION AWARD
Goal:	Assist, stimulate, support a program	Acquire, purchase specific deliverables
Benefit:	Flows down to the project beneficiaries	USAID / US Government
Relationship:	Transfer of funds to support recipient	Exchange of funds for contractor goods / services
Funding Mechanism:	Grant, Cooperative Agreement	Contract, Purchase Order
Bidding document:	Request for Application	Request for Proposal
Guidelines:	Standard Provisions for Non-US Nongovernmental Organisations	Federal Acquisition Regulations (FAR)

Awards under Assistance and Acquisitions are guided by different guidelines, please refer to the above table. Most USAID assistance is given with a Cooperative Agreement; however, Grants do exist.

Substantial involvement

The difference between a Grant and a Cooperative Agreement is the concept of Substantial involvement. It refers to the degree of USAID involvement in the implementation of the agreement and please note that the involvement is negotiable. USAID substantial involvement in awards is limited to Cooperative Agreements. USAID cannot be substantially involved in Grants, and except for the four elements of Substantial involvement, Grants and Cooperative Agreements are the same. The four elements of USAID substantial involvement are:

¹ Property Management is discussed in chapter M7 *Title to and use of Property* in Standard Provisions for Non-US Nongovernmental Organisations <https://www.usaid.gov/ads/policy/300/303mab>

² From USAID Glossary. Link available under Resources at the end of the section.

- a) Approval of recipient's implementation plans,
- b) Approval of recipient's specified key personnel,
- c) Agency and recipient collaboration and
- d) Agency authority to immediately halt a construction activity

Request for Application

A Grant or Cooperation Agreement is the result of a Request for Application (RFA) and should not be confused with the Request for Proposal, which leads to a Contract under the Acquisition instrument. The RFA can be posted and signed by either office level and is often posted by Washington DC. The posting office is also the signatory. The RFA is posted throughout the year and contains the applicable provisions. It is important that procurement staff review and understand the implications of the provisions included in the RFA for the purpose of identifying any potential challenges before the bidding process moves ahead.

Cooperative Agreement and Grants

DCA and partners receive either a Grant or a Cooperative Agreement. USAID rarely gives Grants; however, OFDA, the Office of US Foreign Disaster Assistance, gives a few. OFDA is a part of USAID and please note that OFDA operates by contractual provisions additional to the Standard Provisions under a Cooperative Agreement. The applicable provisions are evident from the RFA.

When the RFA turns into a Grant or Cooperative Agreement the best practice is to review the content to ensure that the guidelines included are relevant to the agreement and pertain to Non-US NGOs as opposed to US NGO rules, of which the latter is less flexible. Elements to ensure and review are that the reporting frequency included is quarterly and not monthly, that the list of "As Applicable" regulations are indeed applicable to the agreement, etc. Also, it is important to negotiate the Substantial involvement that USAID can incorporate into the agreement and reduce it to a relevant minimum. Once signed, it is the experience that USAID considers the agreement a legally binding document to be implemented in its entirety. This cements the importance of quality assurance and negotiations before signature.

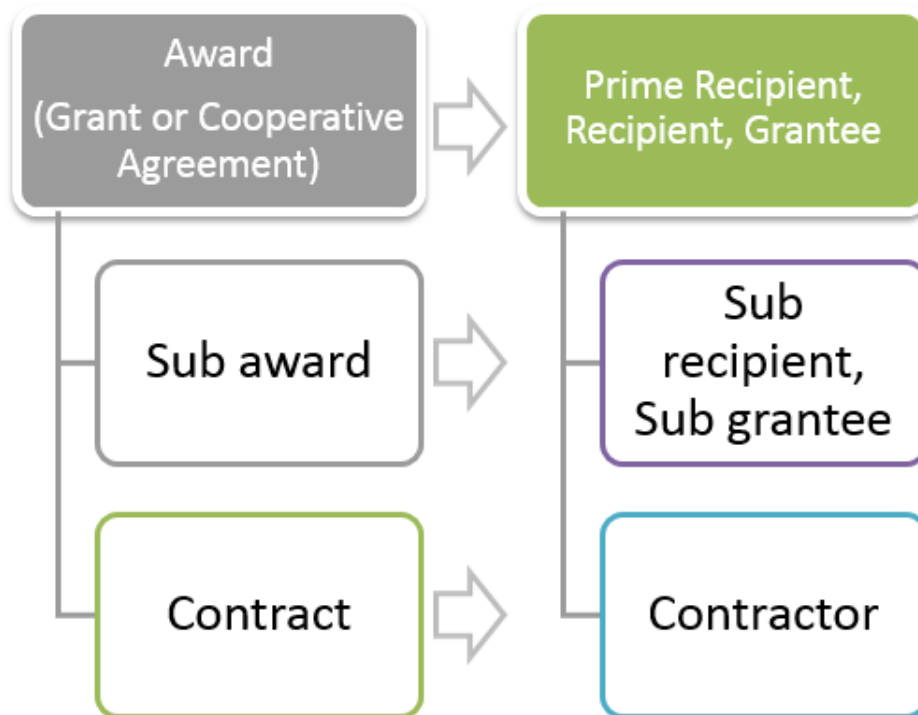
Terminology and Relationship

An NGO under assistance is called a prime recipient, recipient or grantee. This guide uses "recipient" or "NGO" to describe DCA. A sub recipient is a DCA implementing partner and the award from DCA to the Sub recipient is called a sub award. Finally, the Sub recipient or partner can give a contract to a contractor, which is the supplier or service provider in the project. A sub recipient cannot be given a Grant. The figure below illustrates the relationship.

All relations and communications are between the Recipient and USAID and there is no relationship between USAID and the Sub recipient. This means that if any prior approval or waivers from USAID are required, DCA manages the communication on behalf of partners. USAID's requirements to DCA's work with implementing partners are outlined in Required as Applicable Standard Provision, RAA7 on sub awards.

Under Grant and Cooperation Agreement the NGO sends on their agreement requirement to the Sub recipient. Consequently, unless the Sub recipient is a US based NGO, DCA is required to flow down the same provisions to the Sub recipient as DCA has. This is contractually agreed between DCA and the partner in the Cooperation Agreement and should not be confused with the Cooperation Agreement existing between USAID and DCA. Should a US NGO be a sub recipient of DCA the US NGO guidelines apply to the Sub recipient. Consequently, it is the type of organisation (US or non-US) that determines the applicable guidelines. Hence, there could be a situation where DCA would have to manage two sets of guidelines and have two difference audits, etc. For an easy overview of guidelines, please refer to Annex US4 - USAID Rules and Regulations Matrix.

As known from working with other donors, DCA is responsible for the work implemented through DCA partners. Therefore, it is important to monitor and verify implementing partners' ability to comply with the regulations, including the procurement regulations.



USAID operates on three levels with regional and field offices reporting to the headquarters in Washington. The USAID Field Mission is organized with an Acquisition and Assistance Office, where the USAID Contract and Agreement Officer (AO) handles Grants or Cooperative Agreements. The AO is responsible for negotiating and executing Grants, Cooperative Agreements and contracts. DCA, on behalf of its partner, has the contact to the AO. Cultivating a good relationship with the AO is a team effort and the Program, Finance and Procurement Officers work hand in hand to accomplish a successful implementation. The AO is the authority in agreements and has the final say.

When contacting USAID missions it is important to be as helpful as possible. Confusion can be avoided by referring to the relevant Cooperation Agreement number in all correspondence.

Resources

Section 303.3.11 Substantial Involvement in ADS chapter 303 Grants and Cooperative Agreements to non-Governmental Organisations (February 2020): <https://www.usaid.gov/ads/policy/300/303>

Glossary of ADS Terms (May 2018): <https://www.usaid.gov/who-we-are/agency-policy/glossary-ads-terms>

Annex US4 – USAID Rules and Regulations Matrix in the Guide below

RAA7 Sub awards (December 2014) and M5 Procurement Policies (June 2012) in Standard Provision for non-US Organisations: <https://www.usaid.gov/ads/policy/300/303mab>

1.4 RULES AND REGULATIONS

As outlined above, it is valuable to understand the funding framework and know the instrument and implications. General knowledge of USAID guidelines and their application is central to working with USAID, as lack thereof can have a substantial impact on the implementation and result in disallowance of cost.

USAID is the only US Government funding agency that has separate regulations for Non-US based organizations such as DCA and DCA implementing partners. As an example, the US Department of State (DOS) does not differentiate between US and Non-US organizations. For easy reference the DOS Procurement Regulations are found in 2 CFR 200, which applies to both US and Non-US recipients of DOS funds.

The rules and regulations applicable to Non-US organisations are both overlapping and different from the rules and regulations applicable to US organisations. For an easy overview of guidelines, please refer to Annex US4 - USAID Rules and Regulations Matrix in this Guide. The collection of provisions, regulations, principles, administrative requirements, directives and listings are numerous and as a non-US organisation it is key to know what is applicable and what is not. This guide will refer to rules and regulations pertaining to Non-US organisations. When perusing the internet or talking to USAID missions, etc., we might encounter rules and regulations we have not heard of before. They might even appear in our award. As a point of departure, it is always relevant to establish if the rules and regulations in question are applicable to DCA as a non-US organisation.

As an example, the cost and price analysis requirement for procurement transactions above USD 150,000 applicable to US organisations through 2 CFR 200 is not applicable to non-US organisations, as it is not included in M5 Procurement in the Mandatory Standard Provisions for Non-US Nongovernmental Organisations. Only subpart E of 2 CFR 200 – Cost principles is applicable to DCA as a Non-US organisations.

Another example is the procurement standards outlined in 2 CFR 200.317-236. These are applicable to US organisations only. DCA may use its own procurement procedures in the DCA Procurement Manual according to M5 Procurement in the Mandatory Standard Provision for Non-US Nongovernmental Organisations.

The substance of 2 CFR 200 is meant to cover all awards and should DCA encounter a situation where a DCA organisational guideline does not exist, it is possible to adopt the guidelines applicable to US organisations. An example is the use of electronic records, which is included in 2 CFR 200 but not carried over to Non-US organisations.

Resources

M5 Procurement Policies (June 2012) in Standard Provisions for non-US Organisations:

<https://www.usaid.gov/ads/policy/300/303mab>

2 CFR 200 - Cost Principles. Subpart E is applicable to Non-US organisations: <http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1.5&rgn=div6>