

noncompliance and requesting that the recipient carry out its responsibilities as set forth in the Marking Plan and award. Major or repeated non-compliance with the Marking Plan will be governed by the uniform suspension and termination procedures set forth at 2 CFR 200.338 through 2 CFR 200.342, and 2 CFR 700.14.

(j)(1) *Waivers.* USAID Principal Officers, defined for purposes of this provision at §700.1, may at any time after award waive in whole or in part the USAID approved Marking Plan, including USAID marking requirements for each USAID funded program, project, activity, public communication or commodity, or in exceptional circumstances may make a waiver by region or country, if the Principal Officer determines that otherwise USAID required marking would pose compelling political, safety, or security concerns, or marking would have an adverse impact in the cooperating country. USAID recipients may request waivers of the Marking Plan in whole or in part, through the AOR. No marking is required while a waiver determination is pending. The waiver determination on safety or security grounds must be made in consultation with U.S. Government security personnel if available, and must consider the same information that applies to determinations of the safety and security of U.S. Government employees in the cooperating country, as well as any information supplied by the AOR or the recipient for whom the waiver is sought. When reviewing a request for approval of a waiver, the Principal Officer may review how program materials will be marked (if at all) if the USAID Identity is removed. Approved waivers are not limited in duration but are subject to Principal Officer review at any time due to changed circumstances. Approved waivers “flow down” to recipients of subawards unless specified otherwise. Principal Officers may also authorize the removal of USAID markings already affixed if circumstances warrant. Principal Officers’ determinations regarding waiver requests are subject to appeal to the Principal Officer’s cognizant Assistant Administrator. Recipients may appeal by submitting a written request to reconsider

the Principal Officer’s waiver determination to the cognizant Assistant Administrator.

(2) *Non-retroactivity.* Marking requirements apply to any obligation of USAID funds for new awards as of January 2, 2006. Marking requirements also will apply to new obligations under existing awards, such as incremental funding actions, as of January 2, 2006, when the total estimated cost of the existing award has been increased by USAID or the scope of effort is changed to accommodate any costs associated with marking. In the event a waiver is rescinded, the marking requirements will apply from the date forward that the waiver is rescinded. In the event a waiver is rescinded after the period of performance as defined in 2 CFR 200.77 but before closeout as defined in 2 CFR 200.16., the USAID mission or operating unit with initial responsibility to administer the marking requirements must make a cost benefit analysis as to requiring USAID marking requirements after the date of completion of the affected programs, projects, activities, public communications or commodities.

(k) The USAID Identity and other guidance will be provided at no cost or fee to recipients of USAID grants, cooperative agreements or other assistance awards or subawards. Additional costs associated with marking requirements will be met by USAID if reasonable, allowable, and allocable under 2 CFR part 200, subpart E. The standard cost reimbursement provisions of the grant, cooperative agreement, other assistance award or subaward must be followed when applying for reimbursement of additional marking costs.

(End of award term)

PART 701—PARTNER VETTING IN USAID ASSISTANCE

Sec.

701.1 Definitions.

701.2 Applicability.

701.3 Partner vetting.

APPENDIX B TO PART 701—PARTNER VETTING
PRE-AWARD REQUIREMENTS AND AWARD
TERM.

AUTHORITY: 22 U.S.C. 2251 *et seq.*; 22 U.S.C. 2151t, 22 U.S.C. 2151a, 2151b, 2151c, and 2151d; 22 U.S.C. 2395(b).

SOURCE: 80 FR 36705, June 26, 2015, unless otherwise noted.

§ 701.1 Definitions.

This section contains the definitions for terms used in this part. Other terms used in the part are defined at 2 CFR part 200. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

Key individual means the principal officer of the organization's governing body (for example, chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees); the principal officer and deputy principal officer of the organization (for example, executive director, deputy director, president, vice president); the program manager or chief of party for the USG-financed program; and any other person with significant responsibilities for administration of the USG-financed activities or resources, such as key personnel as identified in the solicitation or resulting cooperative agreement. Key personnel, whether or not they are employees of the prime recipient, must be vetted.

Key personnel means those individuals identified for approval as part of substantial involvement in a cooperative agreement whose positions are essential to the successful implementation of an award. *Vetting official* means the USAID employee identified in the application or award as having responsibility for receiving vetting information, responding to questions about information to be included on the Partner Information Form, coordinating with the USAID Office of Security (SEC), and conveying the vetting determination to each applicant, potential subrecipients and contractors subject to vetting, and the agreement officer. The vetting official is not part of the office making the award selection and has no involvement in the selection process.

§ 701.2 Applicability.

The requirements established in this part apply to non-Federal entities, non-profit organizations, for-profit entities, and foreign organizations.

§ 701.3 Partner vetting.

(a) It is USAID policy that USAID may determine that a particular award is subject to vetting in the interest of national security. In that case, USAID may require vetting of the key individuals of applicants, including key personnel, whether or not they are employees of the applicant, first tier subrecipients, contractors, and any other class of subawards and procurements as identified in the assistance solicitation and resulting award. When USAID conducts partner vetting, it will not award to any applicant who determined ineligible by the vetting process.

(b) When USAID determines an award to be subject to vetting, the agreement officer determines the appropriate stage of the award cycle to require applicants to submit the completed USAID Partner Information Form, USAID Form 500-13, to the vetting official identified in the assistance solicitation. The agreement officer must specify in the assistance solicitation the stage at which the applicants will be required to submit the USAID Partner Information Form, USAID Form 500-13. As a general matter those applicants who will be vetted will be typically the applicants that have been determined to be apparently successful.

(c) Selection of the successful applicant proceeds separately from vetting. The agreement officer makes the selection determination separately from the vetting process and without knowledge of vetting-related information other than that, based on the vetting results, the apparently successful applicant is eligible or ineligible for an award. However, no applicants will be excluded from an award until after vetting has been completed.

(d) For those awards the agency has determined are subject to vetting, the agreement officer may only award to an applicant that has been determined to be eligible after completion of the vetting process.

(e)(1) For those awards the agency has determined are subject to vetting, the recipient must submit the completed USAID Partner Information Form any time it changes:

- (i) Key individuals; or
- (ii) Subrecipients and contractors for which vetting is required.

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(2) The recipient must submit the completed Partner Information Form within 15 days of the change in either paragraph (e)(1)(i) or (ii) of this section.

(f) USAID may vet key individuals of the recipient, subrecipients and contractors periodically during program implementation using information already submitted on the Form.

(g) When the prime recipient is subject to vetting, vetting may be required for key individuals of subawards when the prime recipient requests prior approval in accordance with 2 CFR 200.308(c)(6) for the subaward, transfer, or contracting out of any work.

(h) When the prime recipient is subject to vetting, vetting may be required for key individuals of contractors of certain services. The agreement officer must identify these services in the assistance solicitation and any resulting award.

(i) When vetting of subawards is required, the agreement officer must not approve the subaward, transfer, or contracting out, or the procurement of certain classes of items until the organization subject to vetting has been determined eligible. When vetting of contractors is required, the recipient may not procure the identified services until the contractor has been determined to be eligible.

(j) The recipient may instruct prospective subrecipients or, when applicable contractors who are subject to vetting to submit the USAID Partner Information Form to the vetting official as soon as the recipient submits the USAID Partner Information Form for its key individuals.

(k) *Pre-award provision and award term.* (1) The agreement officer must insert the pre-award provision Partner Vetting Pre-Award Requirements in Appendix B of this part in all assistance solicitations USAID identifies as subject to vetting.

(2) The agreement officer must insert the award term Partner Vetting in Appendix B in all assistance solicitations and awards USAID identifies as subject to vetting.

APPENDIX B TO PART 701—PARTNER VETTING PRE-AWARD REQUIREMENTS AND AWARD TERM

Partner Vetting Pre-Award Requirements

(a) USAID has determined that any award resulting from this assistance solicitation is subject to vetting. An applicant that has not passed vetting is ineligible for award.

(b) The following are the vetting procedures for this solicitation:

(1) Prospective applicants review the attached USAID Partner Information Form, USAID Form 500-13, and submit any questions about the USAID Partner Information Form or these procedures to the agreement officer by the deadline in the solicitation.

(2) The agreement officer notifies the applicant when to submit the USAID Partner Information Form. For this solicitation, USAID will vet [insert in the provision the applicable stage of the selection process at which the Agreement Officer will notify the applicant(s) who must be vetted]. Within the timeframe set by the agreement officer in the notification, the applicant must complete and submit the USAID Partner Information Form to the vetting official. The designated vetting official is:

Vetting official: _____
Address: _____
Email: _____
(for inquiries only).

(3) The applicants must notify proposed subrecipients and contractors of this requirement when the subrecipients or contractors are subject to vetting.

NOTE: Applicants who submit using non-secure methods of transmission do so at their own risk.

(c) Selection proceeds separately from vetting. Vetting is conducted independently from any discussions the agreement officer may have with an applicant. The applicant and any proposed subrecipient or contractor subject to vetting must not provide vetting information to anyone other than the vetting official. The applicant and any proposed subrecipient or contractor subject to vetting will communicate only with the vetting official regarding their vetting submission(s) and not with any other USAID or USG personnel, including the agreement officer or the agreement officer's representatives. The agreement officer designates the vetting official as the only individual authorized to clarify the applicant's and proposed subrecipient's and contractor's vetting information.

(d)(1) The vetting official notifies the applicant that it: (i) Is eligible based on the vetting results, (ii) is ineligible based on the vetting results, or (iii) must provide additional information, and resubmit the USAID

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Partner Information Form with the additional information within the number of days the vetting official specified in the notification.

(2) The vetting official will coordinate with the agency that provided the data being used for vetting prior to notifying the applicant or releasing any information. In any determination for release of information, the classification and sensitivity of the information, the need to protect sources and methods, and the status of ongoing law enforcement and intelligence community investigations or operations will be taken into consideration.

(e) Reconsideration: (1) Within 7 calendar days after the date of the vetting official's notification, an applicant that vetting has determined to be ineligible may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the applicant's additional information merits a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(f) Revisions to vetting information: (1) Applicants who change key individuals, whether the applicant has previously been determined eligible or not, must submit a revised USAID Partner Information Form to the vetting official. This includes changes to key personnel resulting from revisions to the technical portion of the application.

(2) The vetting official will follow the vetting process of this provision for any revision of the applicant's Form.

(g) Award. At the time of award, the agreement officer will confirm with the vetting official that the apparently successful applicant is eligible after vetting. The agreement officer may award only to an apparently successful applicant that is eligible after vetting.

Partner Vetting

(a) The recipient must comply with the vetting requirements for key individuals under this award.

(b) Definitions: As used in this provision, "key individual," "key personnel," and "vetting official" have the meaning contained in 22 CFR 701.1.

(c) The Recipient must submit within 15 days a USAID Partner Information Form, USAID Form 500-13, to the vetting official identified below when the Recipient replaces key individuals with individuals who have not been previously vetted for this award. Note: USAID will not approve any key personnel who are not eligible for approval after vetting. The designated vetting official is:

Vetting official: _____

Address: _____

Email: _____

(for inquiries only).

(d)(1) The vetting official will notify the Recipient that it—

(i) Is eligible based on the vetting results,

(ii) Is ineligible based on the vetting results, or

(iii) Must provide additional information, and resubmit the USAID Partner Information Form with the additional information within the number of days the vetting official specifies.

(2) The vetting official will include information that USAID determines releasable. USAID will determine what information may be released consistent with applicable law and Executive Orders, and with the concurrence of relevant agencies.

(e) The inability to be deemed eligible as described in this award term may be determined to be a material failure to comply with the terms and conditions of the award and may subject the recipient to suspension or termination as specified in the subpart "Remedies for Noncompliance" at 2 CFR part 200.

(f) Reconsideration: (1) Within 7 calendar days after the date of the vetting official's notification, the recipient or prospective subrecipient or contractor that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the recipient's additional information merits a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(g) A notification that the Recipient has passed vetting does not constitute any other approval under this award.

Alternate I. When subrecipients will be subject to vetting, add the following paragraphs to the basic award term:

(h) When the prime recipient anticipates that it will require prior approval for a subaward in accordance with 2 CFR 200.308(c)(6) the subaward is subject to vetting. The prospective subrecipient must submit a USAID Partner Information Form, USAID Form 500-13, to the vetting official identified in paragraph (c) of this provision. The agreement officer must not approve a subaward to any organization that has not passed vetting when required.

(i) The recipient agrees to incorporate the substance of paragraphs (a) through (i) of this award term in all first tier subawards under this award.

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Alternate II. When specific classes of services are subject to vetting, add the following paragraph:

(j) Prospective contractors at any tier providing the following classes of services

must pass vetting. Recipients must not procure these services until they receive confirmation from the vetting official that the prospective contractor has passed vetting. (End of award term)

PARTS 702–779 [RESERVED]

PART 780—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

780.10 What does this part do?

780.20 Does this part apply to me?

780.30 What policies and procedures must I follow?

Subpart A—General

780.137 Who in USAID may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

780.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

780.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

780.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–H [Reserved]

Subpart I—Definitions

780.930 Debarring Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.930).

780.1010 Suspending Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.1010).

Subpart J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 76 FR 34144, June 13, 2011, unless otherwise noted.

§ 780.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the USAID policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for USAID to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189); Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (31 U.S.C. 6101 note).

§ 780.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “non-procurement transaction” at 2 CFR 180.970);

(b) Respondent in a USAID suspension or debarment action;

(c) USAID debarment or suspension official; and

(d) USAID grants officer, agreements officer, or other official authorized to enter into any type of non-procurement transaction that is a covered transaction.

§ 780.30 What policies and procedures must I follow?

The USAID policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 and any supplemental policies and procedures set forth in this part.