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2 CFR Ch. VII (1-1-25 Edition)

require marking by the subrecipient with the USAID Identity.

(c) Subject to § 700.16(b), (i), and (k), the recipient or subrecipient must mark program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management), with the USAID Identity. The recipient or subrecipient should erect temporary signs or plaques early in the construction or implementation phase. When construction or implementation is complete, the recipient or subrecipient must install a permanent, durable sign, plaque or other marking.

(d) Subject to § 700.16(b), (i), and (k), the recipient or subrecipient must mark technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, websites/internet activities and other promotional, informational, media, or communications products funded by USAID with the USAID Identity.

(1) Any "public communications" as defined in § 700.1, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.

(2) The recipient must provide the Agreement Officer's Representative (AOR) or other USAID personnel designated in the grant or cooperative agreement with at least two copies of all program and communications materials produced under the award. In addition, the recipient must submit one electronic and/or one hard copy of all final documents to USAID's Development Experience Clearinghouse.

(e) Subject to § 700.16(b), (i), and (k), the recipient or subrecipient must mark events financed by USAID such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public ac-

tivities, with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials such as signs and banners with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, recipients should otherwise acknowledge USAID and the American people's support.

(f) Subject to § 700.16(b), (i), and (k), the recipient or subrecipient must mark all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies and other materials funded by USAID, and their export packaging, with the USAID Identity.

(g) After merit review of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Branding Strategy, defined in § 700.1. The proposed Branding Strategy will not be evaluated competitively. The Agreement Officer will review the proposed Branding Strategy for adequacy, and will negotiate, approve and include the Branding Strategy in the award. The Agreement Officer will specify the timeline for submission in the Notice of Funding Opportunity. If the Notice of Funding Opportunity indicates that the apparently successful applicant may submit a Branding Strategy after the award is made, the Agreement Officer must include a special award condition to indicate the required submission date. If the Agreement Officer requires submission before award, failure to submit or negotiate a Branding Strategy within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award.

(h) After merit review of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Marking Plan, defined in § 700.1. The Marking Plan may include requests for approval of Presumptive Exceptions, paragraph (i) of this section. The apparently successful applicant must include all estimated costs associated with branding and marking USAID programs, such as plaques, labels, banners, press events,

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promotional materials, and the like, in the total cost estimate of the grant or cooperative agreement or other assistance award. These costs are subject to revision and negotiation with the Agreement Officer upon submission of the Marking Plan. The Marking Plan will not be evaluated competitively. The Agreement Officer will review the proposed Marking Plan for adequacy, and will negotiate, approve and include the Marking Plan in the award. The Agreement Officer will specify the timeline for submission in the Notice of Funding Opportunity. If the Notice of Funding Opportunity indicates that the apparently successful applicant may submit a Marking Plan after the award is made, the Agreement Officer must include a special award condition to indicate the required submission date. If the Agreement Officer requires submission before award, failure to submit or negotiate a Marking Plan within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award. Agreement Officers have the discretion to suspend the implementation requirements of the Marking Plan if circumstances warrant. Recipients of a USAID funded grant or cooperative agreement or other assistance award or subaward should retain copies of any specific marking instructions or waivers in their project, program or activity files.

(i) Presumptive exceptions:

(1) The above marking requirements in § 700.16(b) through (f) may not apply if marking would:

(i) Compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials, such as election monitoring or ballots, and voter information literature; political party support or public policy advocacy or reform; independent media, such as television and radio broadcasts, newspaper articles and editorials; public service announcements or public opinion polls and surveys.

(ii) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent.

(iii) Undercut host-country government "ownership" of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as "by" or "from" a cooperating country ministry or government official.

(iv) Impair the functionality of an item, such as sterilized equipment or spare parts.

(v) Incur substantial costs or be impractical, such as items too small or other otherwise unsuited for individual marking, such as food in bulk.

(vi) Offend local cultural or social norms, or be considered inappropriate on such items as condoms, toilets, bed pans, or similar commodities.

(vii) Conflict with international law.

(2) The Agreement Officer must approve these exceptions. Apparently successful applicants may request approval of one or more of the presumptive exceptions, depending on the circumstances, in their Marking Plan. The Agreement Officer will review requests for presumptive exceptions for adequacy, along with the rest of the Marking Plan. When reviewing a request for approval of a presumptive exception, the Agreement Officer may review how program materials will be marked (if at all) if the USAID identity is removed. Exceptions approved will apply to subrecipients unless otherwise provided by USAID.

(j) In cases where the recipient does not comply with the Marking Plan, the Agreement Officer will initiate corrective action. Such action may involve informing the recipient of a USAID grant or cooperative agreement or other assistance award or subaward of instances of noncompliance and requesting that the recipient carry out its responsibilities as set forth in the Marking Plan and award. Major or repeated noncompliance with the Marking Plan will be governed by the uniform suspension and termination procedures set forth at 2 CFR 200.340 through 2 CFR 200.343, and 2 CFR 700.14.

(k)(1) *Waivers.* USAID Principal Officers 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 Principal Officer must make the waiver determination on safety or security grounds 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 but before closeout as defined in 2 CFR 200.1, 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 end date of the affected programs, projects, activities, public communications or commodities.

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

PART 701—PARTNER VETTING IN USAID ASSISTANCE

Sec.

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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

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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.

(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.