

Revisions to ADS 304

Clarify primary roles and responsibilities (ADS 304.2): Operating Units (OUs), the Planner, and the Contracting Officer/Agreement Officer (CO/AO) all have significant responsibilities relating to the selection of the appropriate type of instrument in accordance with relevant statutes, regulations and policies.

Provide the legal framework that informs selection of instrument decisions (ADS 304.3.1): The Foreign Assistance Act is USAID's principal authorizing legislation and provides the Agency the ability to make assistance and acquisition awards. The Federal Grant and Cooperative Agreement Act (FGCAA) prescribes criteria that the executive agencies must follow when selecting between contracts, grants and cooperative agreements.

Emphasize that the selection of instrument decision begins early in the project design and planning phase (ADS 304.2): USAID's planning policies and considerations in ADS 201 and ADS 300 reinforce the importance of selecting the appropriate instrument based on the applicable facts and circumstances at the time of selection. These policies also highlight that selection of the most appropriate instrument should result from rigorous project design.

Provide examples of appropriate uses of both acquisition and assistance instruments (ADS 304.3.3 and ADS 304.3.4): Several scenarios using a variety of project types were included as examples to assist COs/AOs and OUs in the application of ADS 304 policy considerations.

Incorporate the limitation on the use of assistance instruments for construction (ADS 304.3.4.2): USAID's current construction policy states that construction activities are rarely appropriate under assistance instruments. The limited management oversight that USAID can legally assert over recipients under assistance awards minimizes USAID's ability to ensure that the design and construction activities are carried out properly.

Clarify documentation requirements on selection of instrument determinations (ADS 304.3.6): The Planner, in consultation with the CO/AO, is responsible for drafting the selection of instrument determination recommendation memorandum. Within fifteen business days, the CO/AO should either approve the Planner's recommendation or communicate any issues that must be resolved before approval. Approval of the Planner's recommendation constitutes confirmation by the CO/AO that the recommendation supports the Planner's initial determination of the most appropriate instrument based on the application of statutory and regulatory criteria.

Emphasize that solicitation documents and post-award administration must adhere to the requirements of the selected instrument. (ADS 304.3.7): After the type of instrument has been determined, the Planner and the CO/AO must adhere to the statutory, regulatory, and policy requirements applicable to the selected type of instrument. This includes drafting the solicitation documents including the statement of work or program description, in accordance with the type of instrument selected as they each have different requirements. Additionally, post-award administration must occur in accordance with the statutes, regulations, and policies pertaining to the selected instrument.