Subpart G—USAID-Specific Requirements

226.1001 Eligibility rules for goods and services. [Reserved]
226.1002 Local cost financing. [Reserved]
226.1003 Air transportation. [Reserved]
226.1004 Ocean shipment of goods. [Reserved]

APPENDIX A TO PART 226—CONTRACT PROVISIONS

AUTHORITY: 22 U.S.C. 2381(a) and 2401.
SOURCE: 60 FR 3744, Jan. 19, 1995, unless otherwise noted.

Subpart A—General

§ 226.1 Purpose and applicability.

Except as otherwise authorized by statute, this part establishes uniform administrative requirements for grants and cooperative agreements awarded by USAID to U.S. institutions of higher education, hospitals, and other non-profit organizations, and to U.S. commercial organizations; and to subawards thereunder. USAID shall not impose additional or inconsistent requirements, except as provided in Sections 226.4, and 226.14, or unless specifically required by Federal statute or executive order. Non-profit and commercial organizations that implement Federal programs for the States are also subject to State requirements. This part shall be administered in compliance with the standards set forth in part 205, Participation by Religious Organizations in USAID Programs, of this chapter.


§ 226.2 Definitions.

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

1. Goods and other tangible property received;
2. Services performed by employees, contractors, subrecipients, and other payees; and,
3. Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of:

1. Earnings during a given period from services performed by the recipient, and goods and other tangible property delivered to purchasers, and
2. Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Activity means a set of actions through which inputs—such as commodities, technical assistance, training, or resource transfers—are mobilized to produce specific outputs, such as vaccinations given, schools built, microenterprise loans issued, or policies changed. Activities are undertaken to achieve objectives that have been formally approved and notified to Congress.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Agreement Officer means a person with the authority to enter into, administer, terminate and/or closeout assistance agreements subject to this part, and make related determinations and findings on behalf of USAID. An Agreement Officer can only act within the scope of a duly authorized warrant or other valid delegation of authority. The term “Agreement Officer” includes persons warranted as “Grant Officers.” It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer.

Apparent successful applicant(s) means the applicant(s) for USAID funding recommended for an award after technical evaluation, but who has not yet been awarded a grant, cooperative agreement or other assistance award by the
Agreement Officer. Apparent Successful Applicants will be requested by the Agreement Officer to submit a Branding Strategy and Marking Plan. Apparent Successful Applicant status confers no right and constitutes no USAID commitment to an award, which still must be obligated by the Agreement Officer.

_Award_ means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include 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. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

_Branding strategy_ means a strategy the Apparent Successful Applicant submits at the specific request of a USAID Agreement Officer after technical evaluation of an application for USAID funding, describing how the program, project, or activity is named and positioned, as well as how it is promoted and communicated to beneficiaries and cooperating country citizens. It identifies all donors and explains how they will be acknowledged. A Branding Strategy is required even if a Presumptive Exception is approved in the Marking Plan.

_Cash contributions_ means the recipient’s cash outlay, including the outlay of money contributed to the recipient by third parties.

_Closeout_ means the process by which the Agreement Officer determines that all applicable administrative actions and all required work of the award have been completed by the recipient and USAID.

_Commodities_ mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and non-deliverable items for recipient’s internal use in administration of the USAID funded grant, cooperative agreement, or other agreement or sub-agreement.

_Contract_ means a procurement contract under an award or subaward, and a procurement subcontract under a recipient’s or subrecipient’s contract.

_Cost sharing or matching_ means that portion of project or program costs not borne by the Federal Government.

_Date of completion_ means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which USAID sponsorship ends.

_Disallowed costs_ means those charges to an award that the USAID Agreement Officer determines to be unallowable, in accordance with the applicable Federal costs principles or other terms and conditions contained in the award.

_Equipment_ means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

_Excess property_ means property under the control of USAID that, as determined by the head of the Agency, is no longer required for its needs or the discharge of its responsibilities.

_Exempt property_ means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

_Federal awarding agency_ means the Federal agency that provides an award to the recipient.

_Federal funds authorized_ means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may
include any authorized carryover of un-
obligated funds from prior funding pe-
riods when permitted by agency regula-
tions or agency implementing instruc-
tions.

Federal share of real property, equip-
ment, or supplies means that percent-
age of the property’s acquisition costs
and any improvement expenditures
paid with Federal funds.

Funding period means the period of
time when Federal funding is available
for obligation by the recipient.

Intangible property and debt instru-
ments means, but is not limited to,
trademarks, copyrights, patents and
patent applications and such property
as loans, notes and other debt instru-
ments, lease agreements, stock and
other instruments of property owner-
ship, whether considered tangible or in-
tangible.

Marking plan means a plan that the
Apparent Successful Applicant submits
at the specific request of a USAID
Agreement Officer after technical eval-
uation of an application for USAID
funding, detailing the public communica-
tions, commodities, and program
materials and other items that will
visibly bear the USAID Identity. Re-
cipients may request approval of Pre-
sumptive Exceptions to marking re-
quirements in the Marking Plan.

Obligations means the amounts of or-
ders placed, contracts and grants
awarded, services received and similar
transactions during a given period that
require payment by the recipient dur-
ing the same or a future period.

Outlays or expenditures means charges
made to the project or program. They
may be reported on a cash or accrual
basis. For reports prepared on a cash
basis, outlays are the sum of cash dis-
bursements for direct charges for goods
and services, the amount of indirect ex-
 pense charged, the value of third party
in-kind contributions applies and the
amount of cash advances and payments
made to subrecipients. For reports pre-
pared on an accrual basis, outlays are
the sum of cash disbursements for di-
rect charges for goods and services, the
amount of indirect expense incurred,
the value of in-kind contributions ap-
plied, and the net increase (or de-
crease) in the amounts owed by the re-
cipient for goods and other property re-
ceived, for services performed by em-
ployees, contractors, subrecipients and
other payees and other amounts be-
coming owed under programs for which
no current services or performance are
required.

Personal property means property of
any kind except real property. It may
be tangible, having physical existence,
or intangible, having no physical exist-
ence, such as copyrights, patents, or
securities.

Principal officers means the most sen-
ior officer in a USAID Operating Unit
in the field, e.g., USAID Mission Direc-
tor or USAID Representative. For glob-
al programs managed from Washington
but executed across many countries
such as disaster relief and assistance to
internally displaced persons, humani-
tarian emergencies or immediate post
conflict and political crisis response,
the cognizant Principal Officer may be
an Office Director, for example, the Di-
rectors of USAID/W/Office of Foreign
Disaster Assistance and Office of Tran-
sition Initiatives. For non-presence
countries, the cognizant Principal Offi-
cer is the Senior USAID officer in a re-
gional USAID Operating Unit respon-
sible for the non-presence country, or
in the absence of such a responsible op-
erating unit, the Principle U.S Diplo-
matic Officer in the non-presence coun-
try exercising delegated authority
from USAID.

Prior approval means written ap-
proval by an authorized official evi-
dencing prior consent.

Program income means gross income
earned by the recipient that is directly
generated by a supported activity or
earned as a result of the award (see ex-
clusions in §§226.24 (e) and (h)). Pro-
gram income includes, but is not lim-
ited to, income from fees for services
performed, the use or rental of real or
personal property acquired under feder-
ally-funded projects, the sale of com-
modities or items fabricated under an
award, license fees and royalties on
patents and copyrights, and interest on
loans made with award funds. Interest
earned on advances of Federal funds is
not program income. Except as other-
wise provided in USAID regulations or
the terms and conditions of the award,
program income does not include the
receipt of principal on loans, rebates,
credits, discounts, etc., or interest earned on any of them.

Programs mean an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the responsibilities assigned to it.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which Federal sponsorship begins and ends.

Projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

Property means, unless otherwise stated, real property, equipment, supplies, intangible property and debt instruments.

Public communications are documents and messages intended for distribution to audiences external to the recipient’s organization. They include, but are not limited to, correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID funded programs, projects or activities, including signage and plaques; Web sites/Internet activities; and events such as training courses, conferences, seminars, press conferences and the like.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving a grant or cooperative agreement directly from USAID to carry out a project or program. The term includes the following types of U.S. organizations: public and private institutions of higher education; public and private hospitals; quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers; and commercial organizations. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. “Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11).

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of “award” in this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined
in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

Suspension means an action by USAID that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award. Suspension of an award is a separate action from suspension under USAID regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension." See 22 CFR Part 208.

Technical assistance means the provision of funds, goods, services or other foreign assistance such as loan guarantees or food for work, to developing countries and other USAID recipients, and through such recipients to sub-recipients, in direct support of a development objective—as opposed to the internal management of the foreign assistance program. This definition is applicable only to 22 CFR 226.91.

Termination means the cancellation of USAID sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefitting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by USAID that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

USAID means the United States Agency for International Development.

USAID Identity (Identity) means the official marking for the United States Agency for International Development (USAID) comprised of the USAID logo or seal and new brandmark with the tagline that clearly communicates our assistance is "from the American people." The USAID Identity is available on the USAID Web site at http://www.usaid.gov/branding and is provided without royalty, license or other fee to recipients of USAID funded grants or cooperative agreements or other assistance awards.

USAID Partner Co-Branding Guide is a USAID produced publication that is provided free of charge to recipients of USAID funded grants or cooperative agreements or other assistance awards or subawards, that details recommended marking practices and provides examples of USAID funded programs, projects, activities, public communications, and commodities marked with the USAID Identity.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.


EDITORIAL NOTE: At 70 FR 50189, Aug. 26, 2005, §226.2 was amended by adding a definition of Subrecipient, effective Jan. 2, 2006. However, §226.2 already includes a definition of Subrecipient, so the amendment could not be incorporated.

§ 226.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision §226.4.
§ 226.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. USAID may apply more restrictive requirements to a class of recipients when approved by OMB. USAID may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the USAID Deputy Assistant Administrator for Management.

§ 226.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients if such subrecipients are organizations which, if receiving awards directly from USAID, would fall within the definition of recipients. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” as amended.

Subpart B—Pre-award Requirements

§ 226.10 Purpose.

Sections 226.11 through 226.17 prescribe forms and instructions and other pre-award matters to be used in applying for USAID awards.

§ 226.11 Pre-award policies.

(a) Use of grants and cooperative agreements, and contracts. In each instance USAID shall decide on the appropriate award instrument (i.e., grant cooperative agreement or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–06) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, “substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.” Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public notice and priority setting. USAID shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 226.12 Forms for applying for Federal assistance.

(a) USAID shall comply with the applicable report clearance requirements of 5 CFR part 1320, “Controlling Paperwork Burdens on the Public,” with regard to all forms used in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by USAID.

(c) For Federal programs covered by E.O. 12372, “Intergovernmental Review of Federal Programs,” the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 226.13 Debarment and suspension.

USAID and recipients shall comply with the nonprocurement debarment