§ 226.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of USAID to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in §§ 226.26.

(4) Property management requirements in §§ 226.31 through 226.37.

(5) Records retention as required in § 226.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of USAID and the recipient, provided the responsibilities of the recipient referred to in paragraph 226.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 226.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. USAID reserves the right to require refund by the recipient of any amount which USAID determines to have been expended for purposes not in accordance with the terms and condition of the award, including but not limited to costs which are not allowable in accordance with the applicable Federal cost principles or other terms and conditions of the award. If not paid within a reasonable period after the demand for payment, USAID may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient, or

(3) Taking other action permitted by law.

(b) Except as otherwise provided by law, USAID will charge interest on an overdue debt in accordance with 4 CFR Chapter II, ‘Federal Claims Collection Standards.’

Subpart E—Additional Provisions For Awards to Commercial Organizations

§ 226.80 Scope of subpart.

This subpart contains additional provisions that apply to awards to commercial organizations. These provisions supplement and make exceptions for awards to commercial organizations from other provisions of this part.

§ 226.81 Prohibition against profit.

No funds shall be paid as profit to any recipient that is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

§ 226.82 Program income.

The additional costs alternative described in § 226.24(b)(1) may not be applied to program income earned by a commercial organization.

Subpart F—Miscellaneous

§ 226.90 Disputes.

(a) Any dispute under or relating to a grant or agreement shall be decided by the USAID Agreement Officer. The Agreement Officer shall furnish the recipient a written copy of the decision.
(b) Decisions of the USAID Agreement Officer shall be final unless, within 30 days of receipt of the decision, the grantee appeals the decision to USAID’s Deputy Assistant Administrator for Management, USAID, Washington, DC 20523. Appeals must be in writing with a copy concurrently furnished to the Agreement Officer.

(c) In order to facilitate review on the record by the Deputy Assistant Administrator for Management, the recipient shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

(d) Decisions by the Deputy Assistant Administrator for Management shall be final.

§ 226.91 Marking.

(a) USAID policy is that all programs, projects, activities, public communications, and commodities, specified further at paragraph (b)-(e) of this section, partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward must be marked appropriately overseas with the USAID Identity, of a size and prominence equivalent to or greater than the recipient’s, other donor’s or any other third party’s identity or logo.

(1) USAID reserves the right to require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government’s identity be larger and more prominent if circumstances warrant; any such requirement will be on a case-by-case basis depending on the audience, program goals and materials produced.

(2) USAID reserves the right to request pre-production review of USAID funded public communications and program materials for compliance with the approved Marking Plan.

(3) USAID reserves the right to require marking with the USAID Identity in the event the recipient does not choose to mark with its own identity or logo.

(4) To ensure that the marking requirements “flow down” to subrecipients of subawards, recipients of USAID funded grants and cooperative agreements or other assistance awards are required to include a USAID-approved marking provision in any USAID funded subaward, as follows:

As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient’s, subrecipient’s, other donor’s or third party’s is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity.

(b) Subject to §226.91 (a), (h), and (j), 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), must be marked with the USAID Identity. Temporary signs or plaques should be erected early in the construction or implementation phase. When construction or implementation is complete, a permanent, durable sign, plaque or other marking must be installed.

(c) Subject to §226.91 (a), (h), and (j), technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID must be marked with the USAID Identity.

(1) Any “public communications” as defined in §226.2, 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 shall provide the Cognizant Technical Officer (CTO) 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 shall submit one electronic and/or one hard copy of all final documents to USAID’s Development Experience Clearinghouse.

(d) Subject to §226.91 (a), (h), and (j), events financed by USAID such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, must be marked appropriately 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 are encouraged otherwise to acknowledge USAID and the American people’s support.

(e) Subject to §226.91 (a), (h), and (j), 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, must be marked with the USAID Identity.

(f) After technical evaluation of applications for USAID funding, USAID Agreement Officers will request Apparent Successful Applicants to submit a Branding Strategy, defined in §226.2. The proposed Branding Strategy will not be evaluated competitively. The Agreement Officer shall review for adequacy the proposed Branding Strategy, and will negotiate, approve and include the Branding Strategy in the award. Failure to submit or negotiate a Branding Strategy within the time specified by the Agreement Officer will make the Apparent Successful Applicant ineligible for award.

(h) Presumptive exceptions: (1) The above marking requirements in §226.91 (a)–(e) 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) These exceptions are presumptive, not automatic and must be approved by the Agreement Officer. Apparent 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.

(i) In cases where the Marking Plan has not been complied with, 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 non-compliance with the Marking Plan will be governed by the uniform suspension and termination procedures set forth at 22 CFR 226.61 and 226.62.

(j) USAID Principal Officers, defined for purposes of this provision at § 226.2, 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 Cognizant Technical Officer. 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 Cognizant Technical Officer 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.

(k) 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 work is changed to accommodate any costs associated with marking. In the event a waiver is rescinded, the marking requirements shall apply from the date forward that the waiver is rescinded. In the event of the rescinding of a waiver after the date of completion as defined in 22 CFR 226.2 but before closeout as defined in 22 CFR 226.2, the USAID mission or operating unit with initial responsibility
§ 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

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:


2. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)— All contracts and subawards in excess of $2,000 for construction or repair to be performed in the United States awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874, as supplemented by Department of Labor regulations (29 CFR part 7)). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)— When required by Federal program legislation, all construction, alteration, and/or repair contracts to be performed in the United States awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)— Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts to be performed in the United States and in excess of $2500 for other such contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay.