

**Tab 1—Determination and Findings (D&F)—Authorization for Use of Other than Full-and-Open Competition in the Award or Modification of Contracts Funded under the President’s Emergency Plan for AIDS Relief**

1. U.S. Agency for International Development (USAID).

Pursuant to the authority set forth in Section 706.302-70(b)(3)(ii) of USAID’s Acquisition Regulation (AIDAR), I have determined that it is necessary to provide for the following exceptions to competition in the award and modification of contracts in support of activities and programs USAID manages under the President’s Emergency Plan for AIDS Relief (PEPFAR) to avoid the impairment of U.S. foreign-assistance and foreign-policy objectives. I make this determination in consideration of the supporting findings set forth below, and it will remain in force and effect from this date through December 31, 2024.

2. The nature and/or description of the action being approved.

As a matter of law and policy, USAID’s normal practice is to follow full-and-open competition in the award of contracts and in instances in which a proposed modification to an existing contract triggers competition requirements. However, in exceptional circumstances, these interests must give way to the overriding objective of providing life-saving interventions on a timely basis. Renewal of this authorization for exceptions to full-and-open competition is necessary to provide the flexibility that is essential to USAID’s ability to implement activities under PEPFAR in a timely and vigilant manner in the context of new and ambitious targets and shifting mandates and priorities.

This authorization covers activities under PEPFAR financed from all sources, including funds accepted by USAID under gift authority and prior-year funding and appropriations from the current and future Fiscal Years, whether appropriated directly to USAID or transferred from another Federal Department or Agency, unless Congress enacts special rules for these appropriations. This action authorizes the award of new contracts by using other than full-and-open competition procedures. It also authorizes non-competitive modifications to existing contracts for additional work similar to that performed under the initial contract.

Authorization of the use of other than full-and-open competition is necessary, given the urgent and overwhelming needs that come from the ambitious targets set for the treatment and prevention of HIV/AIDS under PEPFAR, the vast quantity of resources dedicated to these interventions, and the shifting strategies and priorities of the U.S. Government and the governments of the countries in which we fund HIV/AIDS programs. Expeditiously providing assistance in the most-responsive manner possible takes priority over other options that would delay such assistance, especially where delay or inflexibility could compromise USAID's ability to provide life-saving medicines and treatment to those affected by HIV/AIDS to meet PEPFAR's targets.

3. Citation of the appropriate statute and/or regulation upon which the D&F is based.

Under Section 113(e)(2) of Title 40 of the United States Code (USC), competition requirements shall not impair or affect the authorities of an Executive Branch Department or Agency with respect to "any program conducted for purposes of ... transfer to foreign governments, or foreign aid, relief or rehabilitation." USAID has implemented this provision through Section 706.302-70(b)(3)(ii) of Title 48 of the Code of Federal Regulations (CFR), which provides an exception to competition for "awards for countries, regions, projects, or programs for which the Administrator of USAID makes a formal written determination with supported findings that compliance with full-and-open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program."

Under Section 706.302-70(c)(2) of Title 48 of the CFR, determinations under the authority used herein will not be subject to the requirement for certification by a Contracting Officer or approvals in accordance with Subpart 6.304 of the Federal Acquisition Regulation (FAR).



4. Findings that detail the particular circumstances, facts, or reasoning essential to support the determination. Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.

While it is impossible to list all of the circumstances that justify the use of this authorization, the following are some of the most-common situations in which it continues to be necessary, and examples of how the Expedited Procedures Package (EPP) of which this authorization in a part, has supported U.S. foreign-assistance objectives:

First, bilateral PEPFAR portfolios at times experience the need to extend existing contracts beyond their present scope to bridge gaps between existing activities and programs and the establishment of new ones. Indeed, the continuation of treatment regimens such as anti-retroviral (ARV) medication is of utmost importance during programmatic changeovers and transitions. Expedited procedures that authorize the extension of programs beyond their present scopes of work will enable USAID to maintain treatment regimes, patient relations, information systems, and other programmatic components while advancing the goals of PEPFAR. In one example, the USAID Mission in the Republic of Zambia used the EPP to increase and extend a contract to continue providing critical prevention and treatment for HIV in six of Zambia's ten Provinces after the openly competed follow-on award was protested, which caused an unanticipated delay of more than six months. The EPP allowed the Mission to extend the prior contract rapidly to ensure continued coverage of essential care and prevent serious disruption in Zambia's progress toward epidemic control. In the absence of this authority, the Mission would have been unable to extend the contract, or would have faced severe delays in extending it, which would have resulted in a gap in care that could have cost lives as well as wasted financial and managerial resources.

In addition, as funding levels for newly emerging priority areas change and programs expand under PEPFAR, USAID often uses existing contracts to meet the demand, which sometimes exhausts the available approved Total Estimated Cost of an award years before its original completion date. When this happens, stopping programs prematurely or re-competing an award is not necessarily in the best interest of USAID, PEPFAR, or U.S. foreign policy, and USAID needs the tools to respond flexibly and conduct expedited procurements. When such rapid changes are necessary, existing contractors might not be able to absorb all of the allocated funding or demand, and a Mission or the Bureau for Global Health might need to add new activities and contractors in an urgent manner.



Moreover, as priorities under PEPFAR continue to evolve, significant and unanticipated changes can occur in the supplies and services needed to carry out activities and initiatives. Several programs under PEPFAR countries are transitioning the delivery of care and other programmatic components to local institutions. When the schedules for such transitions experience delays and modifications, USAID's programs need the flexibility to fill gaps and provide technical assistance to ensure the sustainability of investments under PEPFAR. For example, the USAID Mission in the Socialist Republic of Vietnam used the EPP to allow one contractor to continue its work in shifting the financing of HIV programs, including ARVs, to the host government. A two-year, sole-source contract allowed the Mission to engage the most-qualified contractor efficiently, by building on previous investments to ensure no disruption took place during this pivotal stage in the Journey to Self-Reliance.

As PEPFAR programs rapidly scale up and their technical priorities shift, USAID's Mission often require commensurate shifts in their staffing to ensure adequate oversight of U.S. foreign-assistance investments. In many instances, the rapid expansion and re-organization of staffing is required to meet demands set forth by the Office of the U.S. Global AIDS Coordinator (OGAC). While following standard contracting procedures for Personal Services Contracts (PSCs) could take up to one year, the use of restricted competition to issue PSCs allows Missions to obtain the services of new qualified staff and/or adjust existing staff in an expeditious manner to support programming under PEPFAR. By facilitating the alignment of staff technical skills with evolving technical priorities, the EPP allows USAID to ensure our programs remain at the forefront of global efforts to reach epidemic control.

Other urgent or critical situations could arise in which it might be necessary to rely on this authority. The EPP provides the flexibility necessary for Missions to respond most appropriately to these situations, without undue procedural constraints that would negatively affect program results. For example, OGAC provided additional funding to the PEPFAR programs in South Africa to implement an "HIV Treatment Surge Plan" to reach epidemic control by 2020. OGAC subsequently declared that country's epidemic to be in a heightened "state of emergency," and demanded an urgent and transformative response, including the more-efficient use of contracts, and the expansion of high-performing awards. The EPP permitted rapid reallocations of hundreds of millions of dollars, the prompt

implementation of unexpected surge funding, and efficient revisions to major awards for the care and treatment of HIV to respond to OGAC's requirements.

Finally, this authorization furthers the Journey to Self-Reliance by allowing USAID to limit solicitations to a specific type of entity (e.g., local partners) and to diversify the contractors that implement programs in a geographic area.

5. A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.

I have determined that it continues to be critical to the objectives of PEPFAR that USAID be able to maintain flexibility to respond rapidly and effectively to the HIV/AIDS pandemic and to save lives. Since President George W. Bush launched PEPFAR in 2003 as an emergency response to HIV, substantial progress has taken place controlling the epidemic; however, the urgency in the U.S. Government's response to the pandemic remains. Understanding that we can best control HIV by pivoting to a data-driven approach that targets geographic areas and populations strategically to achieve the most impact for our investments, PEPFAR 3.0 is increasingly data-driven, from the national level down to the most-granular site level, to guide programmatic decision-making and solidify sustainability and quality. To be responsive, it is imperative that assistance can flow rapidly to the area where it is needed most, with the most-effective interventions. The timeframe required by fully competitive award procedures, if followed, will not enable USAID to act in a manner consistent with U.S. foreign policy. The magnitude of the HIV/AIDS pandemic and the need for urgent assistance, coupled with the anticipated continuing high levels in authorized funding and the continued need to reach targets set by the Administration and Congress, necessitate the availability and use of expedited procedures. In light of such needs, the use of the cited authorities to expedite acquisition on a case-by-case basis will provide the flexibility to implement PEPFAR programs effectively. Failure to do so will result in an impairment of the U.S. Government's foreign-assistance objectives.

6. Expiration date of the D&F, if required.

This D&F is effective through December 31, 2024.

7. The signature of the official authorized to sign the D&F and the date signed.



In accordance with Section 706.302-70(b)(3)(ii) of the AIDAR , as Administrator of USAID I am the appropriate official to sign this class D&F.

  
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Administrator Mark A. Green

12/31/2017  
Date