

ALERT

USAID Adopts Pilot Program to Enhance Vetting of Contractors and Grantees

June 30, 2015

On June 26, 2015, the United States Agency for International Development (USAID) issued a final rule titled “Partner Vetting in USAID Assistance.” Consistent with a recent trend of increased oversight of USAID contractors and grantees, the rule implements a pilot program for the Partner Vetting System (PVS) for USAID assistance and acquisition awards. The program will apply to all types of funding USAID provides, including grants, contracts, and cooperative agreements.

The intent of the pilot program, and ultimately the permanent PVS, is to mitigate the potential that USAID funding inadvertently benefits individuals or entities considered to be terrorists, supporters of terrorists, or affiliated with terrorists. Under the pilot program, USAID will vet key individuals of non-governmental organizations (NGOs) who apply for USAID funding. Under the rule, USAID is left with great discretion as to which awards of funding will be subject to vetting. However, for those awards subject to the PVS, USAID may only make an award after finding the presumptive awardee eligible based on the vetting process. While the Office of Foreign Assets Control (OFAC) already maintains a list of Specially Designated Nationals (SDN) who are blocked from receiving U.S. funds, the SDN list contains only publicly available information.

The vetting process under the PVS program will enable USAID to fully vet individuals against an inclusive set of terrorist information in U.S. Government databases. USAID is hopeful that access to a broader range of information during the vetting process will better mitigate the risk of U.S. taxpayer funds flowing to entities that are supporters of, or affiliated with, terrorists. In order to enforce this goal, USAID has determined that, for example, if any key personnel of an offeror

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fail the vetting process, the offeror is deemed to have failed the vetting process and is thus ineligible for award. Companies that have failed the vetting process have the right to request a reconsideration from USAID within seven days of learning that they have been deemed ineligible based on the findings of the vetting process.

The ability to request reconsideration of an exclusion decision is welcome news for USAID partners, but it remains to be seen how the PVS program will work in practice. Industry has expressed concern that USAID's "closed door" vetting process could lead to a finding of ineligibility with little information provided about the basis for USAID's decision. Nonetheless, USAID contractors and grantees would be wise to enhance their internal protocols for vetting partners and key personnel to minimize the risk of jeopardizing an award.

The pilot program is currently limited to five countries: Guatemala, Kenya, Lebanon, Philippines, and Ukraine. These countries were selected for the pilot program because they represent different risk levels and geographic areas. However, USAID does have the authority to conduct vetting outside the PVS pilot program if a risk assessment indicates that such vetting is necessary to safeguard USAID funds.

The final rule is effective July 27, 2015 and according to USAID's responses to comments made regarding the interim rule, will only apply to awards made after this date.