



# Award Provisions Encouraging More Comprehensive Nondiscrimination Policies by USAID Contractors and Recipients

A Mandatory Reference for ADS Chapter 302

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USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination in the workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran's status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee. USAID does not tolerate any type of harassment, either sexual or nonsexual, of any employee or applicant for employment.

Most federal contractors and recipients are prohibited by law and regulation from discrimination with regard to race, color, religion, sex, national origin, disability, age, genetic information, or veteran status when work under their contract is performed in the U.S. or employees are recruited from the U.S. However, while many of them have chosen to do so, contractors and recipients are not required to implement the same comprehensive nondiscrimination policies required by the Agency for its own employment practices.

In order to encourage all USAID contractors and recipients, including those performing solely overseas, to apply comprehensive nondiscrimination policies that include sexual orientation, gender identity, pregnancy, marital status, parental status, political affiliation, and any other conduct that does not adversely affect performance, USAID is adding the attached award provisions, including non-mandatory components, to all of its contracts and grants. USAID continues to encourage full participation of and partnership with nongovernmental organizations, including faith-based organizations, and the non-mandatory components of the three attached provisions shall not be construed to affect the mission, character or identity of these organizations.

The following language will be added to ADS 302.3.5, Solicitation Requirements and Provisions:

### **302.3.5.9 Nondiscrimination**

Most federal contractors are prohibited by law and regulation from discrimination with regard to race, color, religion, sex, national origin, disability, age, genetic information, or veteran status when work under their contract is performed in the U.S. or employees are recruited from the U.S. The requirements applicable to federal contracts are found in FAR PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS and the clauses in FAR Part 52.227.

Additionally, while not a mandatory requirement, the Agency encourages all organizations performing under USAID contracts, including those performed solely overseas, to apply these same standards of nondiscrimination to other bases, including sexual orientation, gender identity, pregnancy, and any other conduct that does not adversely affect performance, subject to applicable law.

Contracting officers must include the provision “Nondiscrimination” in all solicitations and contracts. This provision contains non-mandatory language that encourages contractors to establish comprehensive nondiscrimination policies for their workplaces.

The following Special Provision will be added to the Mandatory Reference “Special Provisions for Acquisitions” in ADS 302:

**4. Nondiscrimination** (Please refer to ADS 302, section 302.3.5.9, “Nondiscrimination”)

### **302.3.5.9 NONDISCRIMINATION (June 2012)**

FAR Part 27 and the clauses prescribed in that part prohibit contractors performing in or recruiting from the U.S. from engaging in certain discriminatory practices.

USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran’s status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee. USAID does not tolerate any type of harassment, either sexual or nonsexual, of any employee or applicant for employment. Contractors are required to comply with the nondiscrimination requirements of the FAR.

In addition, the Agency strongly encourages all its contractors (at all tiers) to develop and enforce comprehensive nondiscrimination policies for their workplaces that include

protection on these expanded bases, subject to applicable law.

Existing Mandatory Standard Provision for U.S. Nongovernmental Recipients:

**NONDISCRIMINATION (May 1986)**

(This provision is applicable when work under the grant is performed in the U.S. or when employees are recruited in the U.S.)

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this award on the basis of race, color, national origin, age, handicap, or sex.

Existing Required As Applicable Standard Provision for non-U.S. NGOs:

**NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MAY 1986)**

***APPLICABILITY:** This provision is applicable when work under the award is performed in the United States or when employees are recruited in the United States.*

**NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MAY 1986)**

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this award on the basis of race, color, national origin, age, handicap, or sex.

The following provision will replace the provisions above as a Mandatory Standard Provision for both U.S. and Non-U.S. Nongovernmental Recipients. It will be included in all assistance awards:

**NONDISCRIMINATION (June 2012)**

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination on the basis of race, color, national origin, age, disability, or sex under any program or activity funded by this award when work under the grant is performed in the U.S. or when employees are recruited from the U.S.

Additionally, USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination, including harassment, in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran's status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee.

In addition, the Agency strongly encourages its recipients and their subrecipients and vendors (at all tiers), performing both in the U.S. and overseas, to develop and enforce comprehensive nondiscrimination policies for their workplaces that include protection for all their employees on these expanded bases, subject to applicable law.