Functional Series 300 – Acquisition & Assistance
ADS Chapter 306 – Interagency Agreements

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306.1 OVERVIEW

Effective Date: 10/01/2002

This ADS chapter outlines the policies and procedures that govern when and how USAID may

- Pay to use ("buy") the services and facilities of other Federal agencies,
- Be paid to make available ("sell") its services and facilities to other Federal agencies, and
- Use other arrangements to engage with other Federal agencies.

The chapter helps you determine under what circumstances USAID may engage with other agencies and what form of agreement to use for each type of interagency arrangement.

There are several different ways that USAID might engage with another agency. USAID can

- "Buy" services from another Federal agency. Several types of agreements exist to do this, including:

  a. Participating Agency Service Agreement (including what formerly was known as a Resources Support Services Agreement (RSSA) (see **306.3.2.2**);

  b. Participating Agency Program Agreement (formerly often known as a 632(b) "interagency agreement" or "IAA") (see **306.3.2.10**);

  c. Other forms of agreements under section 632(b) of the Foreign Assistance Act of 1961, as amended (FAA) (see **306.3.2.19**);

  d. An order under the Economy Act ("Economy Act order") (see **306.3.3**);

  e. An agreement under the Government Management Reform Act (see **306.3.5.4**); and

  f. Agreements to purchase information technology goods and services (see **306.3.5.7**) or other goods and services from the General Services Administration (see **306.3.5.3**).

- "Sell" its services to another Federal agency under

  a. An Economy Act order (see **306.3.3.7**), or

b. FAA section 632(b) (under limited circumstances) (see **306.3.3.7**).

- Give money to another agency for the other agency's program in the form of

  a. A transfer under FAA section 632(a) (see **306.3.7**), or

  b. An allocation under FAA section 632(a) (see **306.3.7**).

- Receive money from another agency or organization for a USAID program in the form of

  a. A transfer under FAA Section 632(a) (under limited circumstances) (see **306.3.7.11**), or

  b. An allocation under FAA Section 632(a) (under limited circumstances) (see **306.3.7.11**).

- Detail employees to other Federal agencies or receive details of employees from other Federal agencies on a reimbursable or nonreimbursable basis (see **306.3.8** and **ADS 432**).

This chapter also provides samples and instructions for completing the forms for the various types of interagency arrangements mentioned above.

This chapter does not apply to the International Cooperative Administrative Support Services (ICASS) program (**ADS 520**).

In using this chapter, you should review sections 306.3.2 through 306.3.9 to understand better the different types of arrangements. After finding the arrangement that best matches what you want to achieve, you should then follow the procedures for that type of agreement. It is recommended that you consult with the Office of the General Counsel, the cognizant Regional Legal Advisor, the Office of Procurement, or Warranted Contracting Officer for additional guidance early in the process.

306.2 PRIMARY RESPONSIBILITIES

Effective Date: 10/01/2002

a. **Senior USAID Management.** Assistant Administrators and Mission Directors are responsible for determining, if necessary, that the requirements of section 621(a) of the Foreign Assistance Act of 1961, as amended ("FAA"), have been met and for determining that a Participating Agency has unique or particular suitability to perform the required technical assistance. (See **306.3.13.3**)

Assistant Administrators and Mission Directors may approve the documentation setting forth the basis on which USAID may use the services of another Federal agency, even when they do not serve as the Agreement Officer (see paragraph e(1) below).

b. The **Bureau for Management, Office of Procurement (M/OP)** is responsible for

- Developing and interpreting policy on behalf of USAID for negotiating, awarding, and administering agreements under FAA section 632(b), the Economy Act, and the Government Management Reform Act. M/OP will consult with PPC in developing such policy to the extent it affects transfers and allocations under FAA section 632(a).

- Negotiating and executing General Agreements, if needed, with other Federal agencies, in consultation with other elements of USAID.

c. The **Bureau for Policy and Program Coordination (PPC)** is responsible for developing and interpreting USAID policy on negotiating, executing, and administering transfers and allocations under FAA section 632(a). PPC will consult with M/OP in developing such policy to the extent it affects the policies governing other types of interagency agreements or any part of this ADS chapter.

d. The **Office of the General Counsel** provides guidance on the use and form of interagency agreements. The Office of the General Counsel (or the cognizant regional legal advisor) must clear interagency agreements executed by Assistant Administrators or Deputy Assistant Administrators under this ADS chapter. In addition, the Office of the General Counsel (or the cognizant regional legal advisor) provides guidance to M/OP and Warranted Contracting Officers regarding interagency agreements they execute. Finally, the Office of the General Counsel approves on a case-by-case basis the use of formats for interagency agreements that may differ from those set forth in this chapter.

e. **Strategic Objective or Results Package Team**

(1) **Agreement Officer.** The authorized USAID signatory for interagency agreements is known as the Agreement Officer. Various individuals within USAID have authority to sign interagency agreements. This authority is generally granted either by name (as in the case of Agreement Officers in the Office of Procurement or the BS-93 backstop, for example) ("Warranted Contracting Officers") or by position (as is the case with Assistant Administrators) (see **ADS 103**).

(a) **Warranted Contracting Officers**. Up to the monetary limits of their contract warrants from the Office of Procurement, warranted contracting officers (overseas and in Washington) may negotiate and sign

- Agreements under FAA section 632(b), including Participating Agency Service Agreements and Participating Agency Program Agreements;

- Economy Act orders under which USAID is the ordering agency;
- Agreements under the Government Management Reform Act, and
- Agreements under the Information Technology Management Reform Act of 1996.

(b) **Assistant Administrators**. The authority of Assistant Administrators with regard to negotiating and executing interagency agreements in this chapter is set forth in:

- **ADS 103.3.8.10** – agreements under FAA section 632(b);
- **ADS 103.3.8.2.b.7** – transfers and allocations under FAA section 632(a); and
- **ADS 103.3.8.16** – reimbursable program agreements under the Economy Act ("reverse" Economy Act orders) or FAA section 632(b) where USAID is the supplying agency. This ADS chapter also confers authority on certain other officers to sign such agreements.

The USAID Agreement Officer (whether a warranted contracting officer or an Assistant Administrator), as the signatory for an interagency agreement, bears the legal responsibility for the agreement. Therefore, only an Agreement Officer may sign, modify, or terminate an interagency agreement on behalf of USAID. The Agreement Officer is also responsible for overall liaison and coordination with the Participating or Servicing Agency on interagency agreements that the Agreement Officer signs. After the Cognizant Technical Officer initiates the closeout of an interagency agreement under **306.3.12**, the Agreement Officer is responsible for carrying out or notifying or assigning others to carry out the actions necessary under that section to close out the agreement.

Before executing any USAID-financed Participating Agency Service Agreement, Participating Agency Program Agreement, Government Management Reform Act agreement, Information Technology Management Reform Act agreement, Economy Act Order, or modification thereto, the Agreement Officer is responsible for

- Negotiating costs in the financial plan of the agreement in accordance with the Mandatory Internal Reference to this chapter entitled, **Primer and Checklist for Conducting Cost and Price Analysis for Interagency Agreements** and relevant sections of this chapter.
- Ensuring that appropriate documentation is prepared, including but not limited to

- A written justification regarding the use of an agreement under FAA section 632(b), if applicable (see **Sample PASA Action Memorandum** and **Sample PAPA Action Memorandum**);

- A price comparison under **Office of Management and Budget (OMB) Circular A-76** or exception to it (**306.3.1.1**);

- A negotiation memorandum that discusses the chronology of the action from request to negotiation and discusses the highlights of the cost negotiations (**306.3.11**);

- Approval of any proposed contracting by the Participating Agency (**306.3.2.7**); and

- Approval, if necessary, from the Bureau for Management, Office of Administrative Services, or the Mission equivalent, if Participating or Servicing Agency personnel will work in USAID space (**306.3.13.9**).

- Ensuring that the interagency agreement is in the proper format and contains the appropriate provisions as prescribed by this chapter.

The Agreement Officer must keep the interagency agreement and all associated documentation in a clearly labeled file. This file is the Agency's official record of actions relating to the agreement. The Agreement Officer must keep the file up-to-date and readily available for ongoing reference during the negotiation, implementation, and close-out of the agreement. The Agreement Officer should add correspondence, modifications, and other agreement documentation to this file as they are created.

(2) **Activity Manager/Cognizant Technical Officer**

(a) Agreements under FAA section 632(b), Economy Act, Information Technology Management Reform Act, and Government Management Reform Act.

The Activity Manager is responsible for developing the rationale for utilizing other Federal agencies. The Activity Manager must prepare and send the necessary acquisition and assistance request (whether in electronic form or in the form of a **Modified Acquisition and Assistance Request Document** (MAARD) (or successor document)) and related documentation necessary to initiate the action to the Agreement Officer for the proposed interagency agreement. The Cognizant Technical Officer is responsible for overseeing all technical matters with the Participating Agency, monitoring, in a manner appropriate to the nature of the interagency agreement, the performance and effectiveness of services being provided, and keeping the Agreement

Officer advised of any problems or need for changes. For example, under a Participating Agency Program Agreement, the Cognizant Technical Officer would monitor the program and receive and evaluate reports to ensure that the Participating Agency makes appropriate progress. In the case of an interagency agreement with a franchise fund from whom USAID is buying procurement services, the Cognizant Technical Officer's role is not only to monitor the franchise fund's performance but also to serve, or name someone to serve, as the Cognizant Technical Officer for the contract awarded under the franchise fund agreement. In all cases, the Cognizant Technical Officer will be the primary person responsible for addressing implementation and technical issues arising under the interagency agreements as well as for monitoring performance.

(b) The Cognizant Technical Officer is also responsible for initiating the close-out following the procedures in **306.3.12**.

(c) Regarding allocations and transfers under FAA section 632(a), the Activity Manager drafts, in consultation with the Office of the General Counsel (or the cognizant regional legal advisor) a memorandum of agreement, if used, to effect the transfer or allocation of funds under FAA section 632(a). In addition, the Activity Manager serves as the principal contact and liaison for informal communications between USAID and the recipient agency under the FAA section 632(a) allocation or transfer agreement.

(d) The Cognizant Technical Officer is responsible for reviewing and administratively approving billings from the Participating or Servicing Agency for work performed under interagency agreements.

f. The **paying office** is responsible for receiving billings, forwarding them to the Cognizant Technical Officer for administrative approval, and processing payments in accordance with **ADS 630**.

g. The Bureau for Economic Growth, Agriculture, and Trade, **Center for Human Capacity Development** (EGAT/HCD) has overall responsibility for participant training and for clearing every acquisition and assistance request that includes an element for participant training.

h. **Bureau for Management, Office of Administrative Services (M/AS)/Mission Executive Officer.** When a Participating Agency Service Agreement, a Participating Agency Program Agreement or any other type of interagency agreement requires USAID to furnish facilities, working space, or other logistic support in kind, M/AS (to the extent required by **306.3.13.9**) or the Mission Executive Officer (as required by 306.3.13.9) is responsible for clearing the acquisition and assistance request, before its submission to the Agreement Officer.

i. **Participating, Servicing, or Recipient Agency.** Unless USAID agrees otherwise in writing, the Participating or Servicing Agency is responsible for activity performance, including staffing, supervising, making administrative arrangements, backstopping, and reporting, subject to general guidance from USAID and the provisions of the interagency agreement. The Participating or Servicing Agency is also responsible for informing USAID of potential issues or problems that may affect implementation of the agreement.

(1) Under a Participating Agency Program Agreement, the Participating Agency will normally be performing fairly autonomously from USAID – analogous to a grantee under a USAID grant.

(2) Under a Participating Agency Service Agreement, the Participating Agency is expected to supply USAID with personnel that have the requisite expertise called for by the agreement. Participating Agency personnel working under the PASA will receive all personnel support from the Participating Agency. USAID furnishes agreed upon logistic support (such as ICASS services) to employees of the Participating Agency assigned to the PASA who work in USAID space or under USAID supervision.

(3) Under Government Management Reform Act or franchise fund agreements, the Servicing Agency will generally perform designated administrative functions for USAID on the Servicing Agency's own premises. Under such an arrangement, USAID will provide the Servicing Agency with appropriate technical input. The Servicing Agency will generally not need logistical support from USAID, and USAID will not be involved in personnel and other administrative issues of the Servicing Agency.

(4) Since Economy Act orders are generally used when FAA section 632(b) or another statutory authority does not apply, Economy Act orders may encompass a wide range of activities and services. As a result, the Servicing Agency's responsibilities will vary depending on the activity in question. The same will be true for interagency agreements under FAA section 632(b) that are not PASAs, RSSAs, or Participating Agency Program Agreements.

(5) Under FAA section 632(a) transfers and allocations, the Recipient Agency has the ultimate responsibility for programmatic and financial accountability for the funds that USAID transfers or allocates to it and for the programs it undertakes with those funds. With regard to allocations (but not transfers), USAID retains a modicum of responsibility in that the Recipient Agency must inform USAID when it actually obligates the funds and USAID must record the obligation.

306.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 10/01/2002

USAID can use various types of agreements and instruments to carry out its responsibilities under the **Foreign Assistance Act of 1961, as amended (FAA)**.

Generally, USAID directly obligates and manages its own funds, implementing programs primarily through contracts and grants with private-sector entities and individuals. Under appropriate circumstances, USAID may also engage other Federal agencies to help implement the FAA. In addition, USAID performs services for other Federal agencies, consistent with the policies and objectives of the FAA.

306.3.1 Under what circumstances may USAID use the facilities and services of other Federal agencies?

In general, where United States private organizations are willing and able to perform a certain type of commercial service, USAID should obtain such services from the private sector on a competitive basis, unless it is impractical to do otherwise. ADS **306.3.1.1** addresses this general requirement and exceptions to it.

306.3.1.1 How does OMB Circular A-76 affect USAID's authority to enter into agreements with other Agencies?

Effective Date: 10/01/2002

a. **General Requirement Under OMB Circular A-76**

Office of Management and Budget (OMB) Circular A-76 establishes United States Government-wide policy regarding the performance of commercial activities by Federal agencies. It sets forth procedures that USAID uses to determine when it can buy from another Federal agency goods and services that can be obtained from a private commercial source. The procedures include a rigorous comparison, when applicable, between the cost of contracting with a private entity and the cost of buying from a Federal agency.

b. **Three Major Exceptions**

USAID does not need to meet the cost comparison standards of OMB Circular A-76 when

- The other agency will perform inherently governmental functions (**306.3.13.1**);
- The other agency will provide services to USAID under a statute that is an exception to OMB Circular A-76 (for example, technical assistance under FAA section 621(a) or services under the **Government Management Reform Act (GMRA)**); or
- The services of the other agency will involve 10 or fewer full-time equivalents (FTE) (**306.3.13.6**)

At least one of these three situations applies to most agreements under which USAID buys services from other agencies. However, even when the cost comparison requirements of OMB Circular A-76 apply (because the other agency will perform a

commercial service involving more than 10 FTE), USAID may acquire the needed services from the other agency after satisfying those cost comparison requirements.

The documentation for USAID approval of an activity under which USAID "buys" services from another Federal agency should specify on which of the above bases USAID will use the services of that agency. If the services the other agency will perform qualify as inherently governmental functions, the particular inherently governmental functions contemplated should be identified in the action memorandum to approve the activity. See **ADS 103.3.8.10**.

1. **Inherently Governmental Functions Exception**

A rigorous cost comparison under OMB Circular A-76 is not required when the other Federal agency will be used to perform inherently governmental functions (as defined in paragraph 6.e of OMB Circular A-76), since these functions are not in competition with the commercial sector and are not subject to OMB Circular A-76. (See **306.3.13.1** and **OMB Circular A-76, paragraph 7.c(2)**)

2. **FAA Section 621(a) Exception**

Also, by its terms, OMB Circular A-76 applies "[u]nless otherwise provided by law" to all executive agencies (paragraph 7.a) and does not apply when "contrary to law, Executive Orders, or any treaty or international agreement" (paragraph 7.c) (see **OMB Circular A-76 paragraphs 7.a and 7.c**). USAID's legislation includes FAA section 621(a), which provides

> In such fields as education, health, housing, or agriculture, the facilities and resources of other Federal agencies shall be utilized when such facilities are particularly or uniquely suitable for technical assistance, are not competitive with private enterprise, and can be made available without interfering unduly with domestic programs.

USAID considers this statutory provision to be an exception to OMB Circular A-76, when the three criteria allowing USAID to use other Federal agency resources for technical assistance are met. (See **306.3.13.4** and **306.3.13.5** for a discussion of when the facilities of a Participating Agency are "uniquely" or "particularly" suitable for technical assistance.)

3. **Exception for Activities Involving 10 or Fewer FTE**

Finally, OMB Circular A-76 procedures (see **D.5 of Chapter 1 of Part I, Circular No. A-76 Revised Supplemental Handbook, Performance of Commercial Activities (March 1996)**) state that activities involving 10 or fewer full-time equivalents (FTE) may be performed by a Federal agency without a cost comparison if the contracting officer [that is, the Agreement Officer] determines that the agency will provide the required services at "fair and reasonable prices." (see **306.3.13.6**).

306.3.2 FAA Section 632(b) Agreements

Effective Date: 10/01/2002

Assuming the requirements of OMB Circular A-76 either do not apply or are met (**306.3.1.1**), USAID may obtain the services of another agency under **section 632(b) of the Foreign Assistance Act of 1961, as amended (FAA)**, which provides

> Any officer of the United States Government carrying out functions under this Act, may utilize the services (including defense services) and facilities of, or procure commodities, defense articles, or military education and training from, any agency of the United States Government as the President shall direct, or with the consent of the head of such agency, and funds allocated pursuant to this subsection to any such agency may be established in separate appropriation accounts on the books of the Treasury.

Under this authority, USAID may enter into agreements with other U.S. Government agencies to carry out functions under the FAA. This authority is the basis for entering into

- A Participating Agency Service Agreement (PASA) (**USAID Form 306-2**);
- A Participating Agency Program Agreement (PAPA) (**USAID Form 306-1**) (formerly often called a "632(b) Agreement," "Interagency Agency Agreement" or "IAA"); or
- Other reimbursable agreements (that obligate funds) with other Federal agencies (see **306.3.2.19**).

FAA Section 632(b) was in the past also the authority for entering into a Resources Support Services Agreement (RSSA) (AID Form 240-2). However, that form of agreement has been discontinued. In the future, such agreements will be in the form of a PASA (USAID Form 306-2).

The PASA and PAPA standard formats are geared to different kinds of relationships between USAID and the other agency ("Participating Agency"). Briefly,

- A PASA contemplates **services** performed by the Participating Agency directly to USAID or on USAID's behalf to third parties, such as a cooperating country ministry, whether overseas or in the United States. The scope of work should indicate whether the services will be provided for a specific activity within a definite time or as an ongoing resource for technical services. (See **306.3.2.2**.)
- A PAPA may be used in a variety of circumstances but is most likely to be used where the Participating Agency will implement a defined **program** with relatively little day-to-day direction or supervision from USAID. (See **306.3.2.10**.)

In addition to the PASA and PAPA formats, USAID may sign agreements under FAA section 632(b) in a different format when the Office of the General Counsel or the

cognizant Regional Legal Advisor concludes that such a format is more appropriate and better meets USAID's need for the activity in question (see **306.3.2.19**).

In general, to the extent that a proposed arrangement between USAID and another agency meets the requirements for a PASA under this chapter, the PASA format rather than the PAPA format should be used. The choice between these two formats is further discussed below.

306.3.2.1 What are General Agreements? When and how are they used?

Effective Date: 10/01/2002

In past years, USAID sometimes executed General Agreements with those Federal agencies most often called upon for assistance, such as the Departments of Agriculture, Commerce, Health and Human Services, Interior, and Labor, and the General Services Administration. These General Agreements were negotiated by the Bureau for Management, Office of Procurement (M/OP), in consultation with other units of USAID. General Agreements established the policy for working relationships with other agencies for the provision of services, but did not in themselves provide for such services or obligate funds for them. Most recent arrangements with other Federal agencies have been self-contained agreements, entered into with reference to a pre-existing General Agreement. In the future, USAID will generally use self-contained interagency agreements but may use a form of General Agreement if the circumstances warrant one. For example, where a number of USAID offices or Missions are expected to enter into agreements with the same Federal agency, dealing with essentially the same subject matter within a limited time, use of a General Agreement may be an efficient means to reach agreement on key issues and procedures governing relations with that agency. M/OP, in consultation with the Office of the General Counsel, will determine the advisability of a General Agreement and will have the lead role in negotiating the General Agreement on behalf of USAID.

306.3.2.2 PASA – What is a Participating Agency Service Agreement (PASA) and when should USAID use it to "buy" services from another Federal agency?

Effective Date: 10/01/2002

PASAs are agreements with other Federal agencies for specific services or support. The services or support may be either (1) activity-specific services tied to a specific goal to be performed within a definite time or (2) continuing general professional support services that have a broad objective but no specific readily measurable tasks to be accomplished within a set time.

USAID traditionally obtained services of the first type under PASAs (typically for performance outside the United States). In the past, USAID obtained services of the second type under a Resources Support Services Agreement (RSSA) (USAID form AID 240-2) (typically for performance in Washington), but now may obtain such services using the PASA format. **(See 306.3.2.3)** The RSSA format will not be used for future

agreements. The old distinctions between a PASA and a RSSA will no longer require the use of different agreement formats.

USAID enters into a PASA to obtain technical assistance in the Participating Agency's field of competence only in cases where

- USAID direct-hire staff are not available, and
- The Participating Agency has facilities and resources that are particularly or uniquely suitable for technical assistance, are not competitive with private enterprise, and can be made available without unduly interfering with domestic programs. (See **306.3.13.3**.)

PASAs may provide for either long- or short-term employees. Under a PASA, USAID usually specifies where the technical assistance is to occur (for example, in a USAID Mission, in USAID/Washington, in a cooperating country ministry or other institution). A PASA format is preferable over a PAPA format where the Participating Agency will furnish technical assistance directly to USAID.

306.3.2.3 PASA – How does USAID now obtain RSSA-type services?

Effective Date: 10/01/2002

In the past, under a Resources Support Services Agreement (RSSA) (AID Form 240-2), another Federal agency agreed to provide USAID continuing general professional support assistance that had a broad objective but no specific, readily measurable tasks to be accomplished within a set time. A RSSA normally involved performance in USAID/Washington and was funded only by USAID/Washington Bureaus and Offices. RSSA personnel occasionally provided temporary duty (TDY) assistance to USAID Missions but usually were not assigned overseas on a long-term basis. For example, under RSSAs, other Federal agencies might have agreed to handle USAID participant trainees, provide informational support, or furnish continuing technical advice for USAID's nutrition program or environmental program.

Now USAID obtains such services and arrangements using the PASA format. Pre-existing RSSAs continue to be effective according to their terms.

306.3.2.4 PASA – To what extent may PASAs make use of non-direct-hire personnel?

Effective Date: 10/01/2002

In general, USAID should fund only permanent employees of the Participating Agency or personnel of the Participating Agency engaged under pre-existing employment, contract or other arrangements already in place to support the Participating Agency's regular functions. Whenever contracting under a PASA is proposed, USAID should consider whether USAID should contract directly for the services proposed to be contracted by the Participating Agency. This would give USAID direct control over the

acquisition and would avoid having to pay overhead to the Participating Agency on the costs of its services under the PASA.

USAID prefers that Participating Agency personnel under PASAs, however funded, have U.S. Government direct-hire employment status at their parent agency. Direct-hire employees generally include all career Federal employees, for example, General Schedule (GS), Foreign Service, and active military.

U.S. citizen direct-hire employees of a Participating Agency under a PASA may be authorized by USAID to perform functions similar to those performed by USAID direct-hire United States citizen employees, such as

- Officially representing USAID at program-related functions,
- Approving USAID program-related documents,
- Supervising USAID program-funded employees, and
- Administratively approving vouchers directly related to their program (other than those of their own Participating Agency).

Participating Agency personnel are employees of their agency, and are generally subject to their agency's personnel and payroll rules and policies. USAID generally treats Participating Agency direct-hire employees the same as it does USAID direct-hires when they are overseas. In the United States, Participating Agency personnel normally follow the procedures established by their own agencies. M/OP or the Agreement Officer is responsible for answering all questions concerning interpretation and application of USAID regulations to Participating Agency personnel. M/OP or the Agreement Officer will call upon other USAID offices for advice and guidance, as needed, to respond to such questions.

306.3.2.5 PASA – What personnel policies apply to PASAs?

Effective Date: 10/01/2002

a. **Participating Agency Responsibilities** – The Participating Agency has full responsibility for performing the technical services required under this Agreement, including staffing, supervision, backstopping, promotion, and reporting, subject to general guidance from USAID.

Participating Agency personnel remain on the Participating Agency's employment rolls and are subject to the Participating Agency's position ceilings and regular promotion procedures. Participating Agency personnel assigned in the United States operate under the rules and regulations of the Participating Agency unless otherwise required by law or USAID regulations. When overseas, Participating Agency United States citizen direct-hire employees are subject to USAID regulations and are entitled, to the extent regulations permit, to the same support and privileges as USAID direct-hire United

States citizen staff (see **ADS Functional Series 400**). In addition, Department of State Standardized Regulations govern most overseas differentials, benefits, and allowances provided to Participating Agency staff overseas. In spite of the fact that USAID regulations govern Participating Agency personnel assigned overseas, the Participating Agency is responsible to perform all administrative and supervisory duties required for its employees.

Before Participating Agency personnel may undertake an overseas assignment, the Participating Agency must make the necessary administrative arrangements, including all predeparture clearances (for example, security, language training and testing, and orientation). The Participating Agency must obtain medical clearances from State/M/MED or an administrative waiver of medical clearance from M/OP for the employee and all authorized dependents before they may travel to post.

b. **Post of Assignment** – For long-term overseas assignments, Civil Service employees of other agencies are usually given a time-limited Foreign Service appointment.

All Participating Agency direct-hire employees stationed overseas and funded under a PASA are entitled to the same privileges and immunities as equivalent USAID United States citizen direct-hire employees at the same post. However, it is possible that support for such Participating Agency employees may not come from the same source as support for USAID direct-hire staff. For example, in some instances, housing for Participating Agency employees may be provided by a host-country institution rather than by USAID or the Embassy as for USAID employees. In any event, Participating Agency employees' housing and facilities are to be equivalent to those provided to comparable USAID United States citizen direct-hire employees.

Participating Agency employees stationed overseas under a PASA will receive the same commissary, recreation club, and other similar privileges as USAID United States citizen direct-hire employees when allowed by the regulations of the organization to which the facility is attached. Participating Agency employees and their dependents are entitled to the same health benefits as USAID direct-hire employees.

c. **Time and Attendance Records** – Unless USAID agrees otherwise, Participating Agency personnel serving overseas are responsible for forwarding their time and attendance records to the Participating Agency for recordkeeping and for the processing of salary payments.

306.3.2.6 PASA – To what extent may a Participating Agency contract out for the services it provides under a PASA?

Effective Date: 10/01/2002

Normally, it is expected that the Participating Agency itself will provide most if not all required technical assistance from its own in-house direct-hire staff and already-existing employment, contractual, and other arrangements in order for the determination to be

made and to be justified that the Participating Agency has unique or particular suitability to perform the work covered by the PASA.

Indeed, in those instances where USAID expects the Participating Agency to contract out a substantial amount of the services to be rendered, the PASA format may or may not be appropriate, depending on the circumstances. For example, under an interagency arrangement with the United States Army Corps of Engineers for an overseas construction activity, most of the planned construction activities, other than in-house construction management services, would be contracted out to private-sector firms. In such an example, USAID typically would simply lack the capability for direct contracting for the construction services, and part of the Participating Agency's unique suitability would be its recognized ability to contract for this type of work while maintaining construction management control.

- If the United States Army Corps of Engineers would supply, from its existing onboard staff, engineers and other technical personnel to give USAID the in-house expertise to manage the construction effort in the name of USAID (for example, USAID would sign the contract with the construction contractor), then a PASA arrangement would be appropriate. (See **306.3.2.8**)

- If, on the other hand, the United States Army Corps of Engineers is expected to substantially manage the effort (for example, preparing bid specifications, review bid documents, manage construction contractors) without significant substantive review by USAID, then the PAPA format (see **306.3.2.11**) may be more appropriate. In such a case, the United States Army Corps of Engineers could enter into the construction contract in its own name.

It may also be appropriate for a Participating Agency to award contracts in support of its efforts under a PASA if, for example, adapting its domestic capabilities to the needs of developing countries may require the Participating Agency to acquire, by contract, support or ancillary services not otherwise available to it for its domestic programs. This type of contracting, however, should be marginal, not a significant portion of the overall Participating Agency effort.

The Agreement Officer must specifically approve in advance in writing any plan for contracting by the Participating Agency under the PASA.

306.3.2.7 PASA – How does the Participating Agency obtain USAID's approval for contracting out?

Effective Date: 10/01/2002

The Agreement Officer must specifically authorize in advance, in writing, each contracting action proposed by a Participating Agency in support of a Participating Agency Service Agreement, other than contracting and other arrangements already in place at the time the Participating Agency Service Agency is signed by the two agencies. Accordingly, the Activity Manager should ask the Participating Agency to indicate clearly the extent of anticipated contracting in its proposal or budget submission

to USAID. Ideally, the Participating Agency will identify proposed contracting before USAID signs the Participating Agency Service Agreement, and the advance written approval required by this section will be reflected in the text of the Participating Agency Service Agreement.

As part of its proposal or budget submission to USAID, the Participating Agency must clearly indicate any anticipated contracting out (for example, equipment purchases or consulting services). If the proposal or budget submission identifies no contracting out, the Activity Manager should confirm this with the Participating Agency. If the Participating Agency plans to contract for goods or services as part of the proposed services, the Participating Agency must justify the contracting in writing. The Activity Manager should closely examine the justification for the proposed contracting, bearing in mind that USAID will generally have to pay the Participating Agency overhead on all costs incurred, including contracting. The Agreement Officer must review and approve the justification for contracting before he or she signs the Participating Agency Service Agreement. If, for any reason, the Participating Agency does not identify the need to contract for goods or services before the parties sign the Participating Agency Service Agreement, the Participating Agency must still justify the contracting in writing and obtain the Agreement Officer's written approval (after a review by the Cognizant Technical Officer) before the Participating Agency may award contracts.

306.3.2.8 PASA – Documentation and Execution

Effective Date: 10/01/2002

A complete Participating Agency Service Agreement consists of the following elements:

- Face sheet
- Schedule
- Annex A, Statement of Work
- Annex B, Budget Plan
- Annex C, Standard Provisions

Use the Mandatory Reference template to create a PASA as follows:

a. **PASA Face Sheet (USAID Form 306-2)**

Title	Insert the name of the "Participating Agency."
Award Number	For USAID/Washington issued awards, enter the NMS created award number. For Mission issued awards, enter an award number which complies with the numbering conventions in **306.3.10**.
Blocks 1-5	Insert the information requested. In USAID/Washington, the acquisition and assistance (A&A) request Number, Block 5, will be generated by NMS when the Requesting Office creates a Request in the NMS A&A Planning Module. In Missions, use the assigned MAARD Number.

Block 6	Insert the [initial] fiscal year in which funds are being obligated or the fiscal year of the action for unfunded amendments.
Block 7	State the month, day, and year the services are estimated and/or authorized to begin under the agreement.
Block 8	State the month, day, and year the services are to be complete.
Block 9	A: Prior funding, if any. Leave blank if this is the initial PASA. B: Amount obligated as a result of this PASA. If funds are being deobligated, state amount of decrease. If action is an unfunded modification, enter 0. C: Total obligated funding after execution of this PASA (should equal the sum of 9A and 9B).
Block 10	State the statutory basis for funding the services, for example, the sections of the FAA and/or provision in the appropriations act.
Block 11	A. Give a brief description of the services, identifying the Strategic Objective and the Intermediate Result supported by this agreement. A more detailed description should be provided in Annex A. B. Enter the name of the country where the Participating Agency employee(s) will be assigned.
Block 12	State the names, office symbols, and addresses of the representatives (if any) of the parties other than the signatories. If more than one such additional representative is being named for either party, the other names may be stated in Annex A, Scope of Work.
Block 13	The signatories will sign the agreement on the "BY" line. Give the names and titles for both signatories and the dates of their signatures.
Block 14	Mark X if the annex or schedule in question is attached. Annexes A, B, and C should be attached except, for example, in the case of amendments that merely add funding without changing substantive provisions of the annexes.

b. **PASA Schedule**: Use the prescribed PASA schedule contained in the PASA format provided with this chapter. While the schedule may be tailored to incorporate appropriate and case-specific information, care should be taken to ensure that "custom provisions" are not in conflict with either standard language in the prescribed PASA schedule or the Standard Provisions in Annex C.

c. **PASA Annex A, Statement of Work** describes the services the Participating Agency will perform, including the following, if applicable:

- The duties of the various Participating Agency employees, the objective or goal of their technical assistance;
- Anticipated Results, including targets and timeframes;
- The post of assignment and duty station of PASA employees overseas;

- To whom the Participating Agency employees will be responsible in the Mission or other USAID office;
- Colleagues in the counterpart agency in the cooperating country;
- Who will provide support, if any, for Participating Agency employees;
- A description of the support to be provided;
- Required language proficiency; and
- The frequency of travel, if any.

Care should be taken to ensure that requirements in the Statement of Work do not include items that are already addressed in the PASA schedule and/or Standard Provisions (Annex C) (for example, reporting requirements).

d. **PASA Annex B, Budget** sets forth the negotiated costs of the services that the Participating Agency will perform and serves as the format by which the Participating Agency will submit financial reports. Because a PASA is an obligating document, the budget must provide sufficient detail to support an obligation of USAID funds. The budget must reflect the total estimated cost for the life of the PASA, regardless of whether USAID initially fully funds the agreement. See **306.3.11** for guidance on budget negotiation and documentation.

e. **PASA Annex C, Standard Provisions** will usually be attached to the PASA in their original form. No changes are to be made in the text of the Standard Provisions themselves unless a deviation is approved in accordance with **306.3.14**.

Follow the guidance in **306.3.12** to close out a Participating Agency Services Agreement.

306.3.2.9 PASA – Processing the Agreement

Effective Date: 10/01/2002

a. **New Management System (NMS)**

All PASAs issued in USAID/Washington must be entered by the Activity Manager into the NMS as an acquisition and assistance request. (For more detailed instructions, access the “User Manuals” from the USAID intranet NMS Support Center home page). On the Initial Tab in the Planning Module, enter “Participating Agency Service Agreement” as the Request Category and “Participating Agency Service Agreement” as the Proposed Award Action Type. The Assistant Administrator, Deputy Assistant Administrator, or a warranted contracting officer, as the case may be, should be

selected as the Agreement Officer. The PASA statement of work, budget, and action memorandum (See **306.3.2.9 paragraph b**) should be loaded in the Documents Tab, and should be identical to the final cleared hard copy of the Agreement.

Once the acquisition and assistance request is complete and the individual in the role of NMS Program Manager has designated the Agreement Officer, the Program Manager will contact the Agreement Officer via e-mail, specify the NMS organization and request numbers for the PASA, and request that he or she select a Negotiator. The Negotiator will review the request and then advise the Program Manager to commit funds. After funds are committed, the Negotiator will accept the request into the Formation module and prepare the PASA for obligation by the Agreement Officer. The PASA award must be prepared using PRODOC, the Agency's contract writing system.

The Agreement Officer should ask the Authorized Representative of the Participating Agency to sign the PASA first and then return the document to the Agreement Officer for signature and obligation of funds. PASA funds are considered obligated only after both parties have signed the document. When the Agreement Officer signs the PASA to obligate funds, he or she must concurrently record the obligation in NMS.

Preferably, the Participating Agency should sign the PASA either (1) first and then return the PASA to the Agreement Officer for signature or (2) contemporaneously with the Agreement Officer, for example in a joint ceremony. In either case, the Agreement Officer should only sign the PASA to obligate the funds when he or she can concurrently record the obligation in the NMS.

b. **Approval and Documentation**

1. **Action Memorandum.** All PASAs must be accompanied by an action memorandum to the Agreement Officer, usually prepared by the Activity Manager. The action memorandum should provide sufficient background and information, including a justification and determination under Section 621(a), if required, to support the use of a PASA, a statement of how the activities support the Strategic Objective, whether the PASA is a follow-on to a pre-NMS PASA, and whether congressional notification requirements have been met. For PASAs for countries with established close-out dates, the action memorandum should either confirm that the PASA will be completed before close-out, or cite USAID approval of the PASA as a post-presence activity. A sample action memorandum is attached. See **Sample PASA Action Memorandum**.

2. **Transmittal Letter.** The transmittal letter is a letter printed on Agency letterhead by which the Agreement Officer transmits the PASA to the Authorized Representative (signatory) of the Participating Agency and explains why the Participating Agency is required to sign the PASA before USAID. See **Sample Letter of Transmittal for PAPA or PASA**.

3. **Drafting and Clearances.** The Activity Manager will prepare or provide the Action Memorandum, Face Sheet, Statement of Work, Standard Provisions and Annexes A and B for PASAs and will obtain clearances (see the following illustrative list) before USAID executes the PASA.

Clearance Point	Explanation
Activity design office	for consistency and accuracy
Director of technical office Program/budget/controller office	for fiscal data accuracy
Country desk officer(s)	if appropriate, for cooperating country Missions
Office of the General Counsel or the Regional Legal Advisor	for legal clearance
Negotiator	for processing NMS Request for obligation – the last step before signature of the transmittal letter by the Agreement Officer

4. **Signatures.** The Activity Manager, assisted by other appropriate USAID personnel, may discuss the draft PASA with the Participating Agency in order to reach agreement in principle at the technical level on the terms of the PASA before all USAID clearances have been obtained. The PASA must be fully cleared by all concerned USAID offices and approved by the Agreement Officer before the final text of the PASA is presented to the Participating Agency for its signature. The Agreement Officer will sign after the Participating Agency, thereby obligating USAID funds, and concurrently record the obligation in NMS.

5. **Distribution of PASA Documents.** Once both agencies have signed the PASA and the Agreement Officer has recorded the obligation in NMS, the Cognizant Technical Officer must give one signed original to the Participating Agency and file the second signed original in the files of the cognizant Technical Office. The Cognizant Technical Officer must send a hard copy of the signed agreement to the Bureau for Management, Office of Financial Management, Cash Management Payments Division, M/FM/CMP.

c. **Modifications**

USAID and the Participating Agency may amend a Participating Agency Service Agreement by executing an amended **PASA Face Sheet (USAID Form 306-2)** and whichever other attachments (the Statement of Work or Annexes A, B, or C) require revision.

d. **Completion and Closeout of a Participating Agency Program Agreement**

Follow the guidance in **306.3.12** to complete and close out a Participating Agency Service Agreement.

306.3.2.10 PAPA – What is a Participating Agency Program Agreement (PAPA) and when should USAID use it to "buy" services from another Federal agency?

Effective Date: 10/01/2002

Another type of interagency agreement under FAA section 632(b) is the Participating Agency Program Agreement (PAPA) format.

USAID uses this format when the other Federal agency is expected to implement a program with relatively little day-to-day oversight or direct supervision by USAID and the other agency's functions will be primarily performed at a place other than at USAID. USAID also uses the PAPA format if it expects the Participating Agency to contract out for a substantial portion of the services necessary to implement the program. In either case, the Participating Agency is likely to be performing inherently governmental functions as described below. **(See 306.3.13.1)**

USAID also may use the PAPA format for programs to obtain technical assistance that will not be directly furnished to USAID or under USAID direction. Under such an arrangement the Participating Agency may still be performing inherently governmental functions with respect to its management of the activity and its decision-making with regard to U.S. Government funds.

306.3.2.11 PAPA — Documentation and Execution

Effective Date: 10/01/2002

This section describes the format and procedures to follow in preparing, executing, and implementing a Participating Agency Program Agreement.

Technical officers of the cognizant Bureau are responsible for preparing documentation for PAPAs and entering the required request into the Acquisition & Assistance (A&A) planning module of New Management System (NMS). The processing of PAPAs in the NMS is summarized below (see **306.3.2.12**).

A complete Participating Agency Program Agreement consists of the following elements:

- Face sheet
- Schedule
- Annex A, Program Description
- Annex B, Financial Plan and Budget
- Annex C, Standard Provisions

General instructions on the preparation of these and ancillary documents follow:

a. **PAPA Face Sheet (USAID Form 306-1)**

Title	Insert the name of the "Participating Agency."
Award Number	Insert the Award Number.
Modification Number	Insert the Modification Number, if you are amending or modifying an ongoing PAPA.
Blocks 1-5	Insert the information requested. In Blocks 1 and 2, the program (or component) title and number, if any, should be stated. The [NMS Award Number][Funds Control Number], Block 5, will be generated by NMS as the NMS Negotiator sets the award up for obligation. Block 5 is to be filled in before the Agreement Officer signs the transmittal letter.
Block 6	Insert the [initial] fiscal year in which funds are being obligated or the fiscal year of the action for non-funded amendments.
Block 7	State the month, day, and year when the program will begin.
Block 8	State the month, day, and year by which the program is to be completed. See Section A.2 of the Standard Provisions Annex for definition of "Completion Date."
Block 9	A: Prior funding, if any. Leave blank if this is the initial PAPA. Pre-existing PAPAs that were not originally entered in the Acquisition and Assistance (A&A) module in NMS may not be incrementally funded in NMS. They must be written as new PAPAs if they have never been entered into NMS. Only PAPAs awarded in NMS may be amended in NMS. B: Amount obligated as a result of this PAPA. If funds are being deobligated, state the amount of the decrease. C: Total obligated funding after execution of this PAPA (should equal the sum of 9A and 9B).
Block 10	State the statutory basis for funding the program, for example, the sections of the FAA and/or provision in the appropriations act.
Block 11	Give a brief program description including the Strategic Objective and the Intermediate Result supported by this award. A more detailed description is to be provided in Annex A.
Block 12	State the names, office symbols, and addresses of the representatives (if any) of the parties other than the signatories. If more than one such additional representative is being named for either party, the other names may be stated in the Special Provisions section of the Schedule.
Block 13	The signatories will sign the agreement on the "BY" line. Give the names and titles for both signatories and the dates of their signatures.
Block 14	Mark X if the Schedule or annex in question is attached. The Schedule and Annexes A, B, and C should be attached except, for example, in the case of amendments that merely add funding without changing substantive provisions of the Schedule or the annexes.

b. **PAPA Schedule**

Section A-E	These sections set forth the purposes of the PAPA and of the program, fiscal, billing, and reporting requirements of the program. Complete and/or modify these sections as necessary for the particular program
Section F	In this section, include any special requirements relating to the program and specify any modifications of or deviations from the Standard Provisions. (See the instructions below regarding the Standard Provisions.) Also, use Section F as a continuation for blocks on the face sheet that exceed the space available. Choose the first version of the 22 CFR 216 clause if all activities financed under the PAPA are subject to a categorical exclusion and a categorical exclusion has been approved by USAID prior to the execution of the PAPA. Otherwise, the second version of the clause in 22 CFR 216 should be included in the PAPA. Special consideration should be given to issues such as procurement source, origin, and nationality and country eligibility, which may be treated in this section if necessary. Use the paragraph d of clause 3, "Source and Origin of Commodities; Nationality of Suppliers of Commodities and Services," if the Participating Agency will be permitted to issue its own source, origin, and nationality waivers in accordance with the stated criteria. Also specify if the Participating Agency will have other responsibilities for tracking non-U.S. procurement.

c. **PAPA Annex A: Program Description**

The Activity Manager prepares the program description, usually based on information or a draft provided by the Participating Agency.

This annex describes the program for which funds are being transferred to the other agency. It should specify the respective roles of the parties and entities involved. It should include targets and timeframes for anticipated results. Special reporting and other implementation requirements for the program, if any, may be specified in this annex.

Because a PAPA is an obligating document, the program description must provide sufficient detail to support an obligation of USAID funds.

d. **PAPA Annex B: Financial Plan and Budget**

This annex should be used to set forth the financial plan and the budget for the activity. The Participating Agency is initially responsible for developing the budget. In general, the budgets should be presented in a manner that makes them most meaningful. Budgets should flow from the Annex A, Program

Description, and should provide a basis for reviewing the cost estimates of the principal inputs. Budgets should also be used to examine whether inputs are proportionate to expected results and, similarly, whether results are commensurate with the program purpose.

Because a PAPA is an obligating document, the financial plan and budget must provide sufficient detail to support an obligation of USAID funds. Budget line items should relate to the activities that are actually expected to take place.

e. **PAPA Annex C: Standard Provisions**

The Standard Provisions must be used as preprinted. No changes are to be made in the text of the Standard Provisions themselves unless a deviation is approved as described in **306.3.14.** Any change must be identified by including the phrase "(Deviation approved xx/xx/20xx)" after the title of the provision.

Clause G, "Audit and Inspection Rights," may be modified or deleted only with the approval of the Office of the Inspector General of USAID.

Clause H.1, "Other Agreements," does not apply in those countries where a USAID framework economic assistance bilateral agreement is in effect.

306.3.2.12 PAPA — Processing the Agreement

Effective Date: 10/01/2002

a. **New Management System (NMS)**

All PAPAs must be entered into the NMS as an acquisition and assistance request. (For more detailed instructions, access the "User Manuals" from the USAID intranet NMS Support Center home page.) On the Initial Tab in the Planning Module, the Request Category is "Participating Agency Program Agreement" and the Proposed Award Action Type is "Participating Agency Program Agreement." The Assistant Administrator, Deputy Assistant Administrator, or a warranted contracting officer, as the case may be, should be selected as the Agreement Officer. The PAPA statement of work, budget, and action memorandum (See **306.3.2.9 paragraph b**) should be loaded in the Documents Tab, and should be identical to the final cleared hard copy of the Agreement.

Once the acquisition and assistance request is complete and the individual in the role of the NMS Program Manager has designated the Agreement Officer, the Requester will contact the Agreement Officer via e-mail, specify the NMS organization and request numbers for the PAPA, and request that he or she select a Negotiator. The Negotiator will review the request and then advise the Program Manager to commit funds. After funds are committed, the Negotiator will accept the request into the Formation module and prepare the PAPA for obligation by the Agreement Officer. The PAPA award must be prepared using PRODOC, the Agency's contract writing system. The different roles

in NMS and their responsibilities are spelled out at **http://inside.usaid.gov/nms/aa/aplusrln.htm** (available only to USAID intranet users).

The Agreement Officer should ask the Authorized Representative of the Participating Agency to sign the PAPA first and then return the document to the Agreement Officer for signature and obligation of funds. PAPA funds are considered obligated only after both parties have signed the document. When the Agreement Officer signs the PAPA to obligate funds, he or she must concurrently record the obligation in NMS.

Preferably, the Participating Agency should sign the PAPA either (1) first and then return the PAPA to the Agreement Officer for signature or (2) contemporaneously with the Agreement Officer, for example in a joint ceremony. In either case, the Agreement Officer should only sign the PAPA to obligate the funds when he or she can concurrently record the obligation in the NMS.

b. **Approval and Documentation**

1. **Action Memorandum.** All PAPAs must be accompanied by an action memorandum to the Agreement Officer, usually prepared by the Activity Manager. The action memorandum should provide sufficient background and information, including a justification and determination under Section 621(a), if required, to support the use of a PAPA, a statement of how the activities support the Strategic Objective, whether the PAPA is a follow-on to a pre-NMS PAPA and whether congressional notification requirements have been met. For programs in countries with established close-out dates, the action memorandum should either confirm that the program will be completed before close-out, or cite USAID approval of the program as a post-presence activity. See **Sample PAPA Action Memorandum**.

2. **Transmittal Letter.** The transmittal letter is a letter printed on Agency letterhead by which the Agreement Officer transmits the PAPA to the Authorized Representative (signatory) of the Participating Agency and explains why the Participating Agency is required to sign the PAPA before USAID. See **Sample Letter of Transmittal for PAPA or PASA**.

3. **Drafting and Clearances.** The Activity Manager will prepare or provide the Action Memorandum, Face Sheet, Schedule, Annexes A and B, and Standard Provisions for PAPAs and will obtain clearances (see the following illustrative list) before USAID executes the PAPA.

Clearance Point	Explanation
Activity design office	for consistency and accuracy
Director of technical office Program/budget/controller office	for fiscal data accuracy
Country desk officer(s)	if appropriate, for cooperating country Missions
Negotiator	for processing NMS Request for obligation – the last step before signature of the transmittal letter by the Agreement Officer

Clearance by the Office of the General Counsel or by the Regional Legal Advisor is required.

4. **Signatures.** The Activity Manager, assisted by other appropriate USAID personnel, may discuss the draft PAPA with the Participating Agency in order to reach agreement in principle at the technical level on the terms of the PAPA before all USAID clearances have been obtained. The PAPA must be fully cleared by all concerned USAID offices and approved by the Agreement Officer before the final text of the PAPA is presented to the Participating Agency for its signature. The Agreement Officer will sign after the Participating Agency, thereby obligating USAID funds, and concurrently record the obligation in NMS.

5. **Distribution of PAPA Documents.** Once both agencies have signed the PAPA and the Agreement Officer has recorded the obligation in NMS, the Cognizant Technical Officer must give one signed original to the Participating Agency and file the second signed original in the files of the cognizant Technical Office. The Cognizant Technical Officer must send a hard copy of the signed agreement to the Bureau for Management, Office of Financial Management, Cash Management Payments Division, M/FM/CMP.

c. **Modifications**

USAID and the Participating Agency may amend a Participating Agency Program Agreement by executing an amended **PAPA Face Sheet (USAID Form 306-1)** and whichever other attachments (the Schedule or Annexes A, B, or C) require revision.

d. **Completion and Closeout of a Participating Agency Program Agreement**

Follow the guidance in **306.3.12** to complete and close out a Participating Agency Program Agreement.

306.3.2.13 What should be USAID's relationship to a Participating Agency's contractor under an FAA Section 632(b) agreement?

Effective Date: 10/01/2002

In general, USAID should deal with the Participating Agency rather than a contractor engaged by the Participating Agency, unless USAID and the Participating Agency explicitly agree otherwise. In line with this general principle, USAID should not deal directly with the contractor or direct the contractor's work.

306.3.2.14 What procurement procedures must the Participating Agency follow under an FAA Section 632(b) agreement?

Effective Date: 10/01/2002

In general, under an FAA Section 632(b) agreement, a Participating Agency must follow its own procurement procedures, including the Federal Acquisition Regulation (FAR), if applicable. FAA section 632(b) does not itself confer authority on the Participating Agency to deviate from the FAR. The Participating Agency may not use the FAA section 632(b) agreement to avoid restrictions of the Competition in Contracting Act. The Participating Agency must follow certain USAID regulations, such as USAID approval of salaries in excess of the ES-6 level (see **ADS 302.5.3**), and the **AIDAR (48 CFR chapter 7)** provisions with respect to source, origin, nationality, and commodity eligibility (see **ADS 312**). Any such USAID-specific regulations that USAID requires the Participating Agency to follow must be identified in the FAA section 632(b) agreement.

USAID employees should not propose the names of individuals, firms, or institutions to employees of a Participating Agency for contracting under a PASA. However, this restriction does not preclude discussions between USAID employees and Participating Agency employees when the individuals, firms, or institutions have been initially located and identified by the Participating Agency.

306.3.2.15 How may USAID request or obtain the services of a particular direct-hire employee of another agency under an FAA Section 632(b) agreement?

Effective Date: 10/01/2002

In general, under an FAA Section 632(b) agreement, USAID should not request or expect to receive the services of a particular individual employee of the Participating Agency. The choice of personnel to perform the services under an FAA Section 632(b) agreement is the responsibility of the Participating Agency. If USAID wants the services of a particular individual and does not need the services of the parent agency or the services of the parent agency would be merely incidental, and the individual will perform the required services primarily in the United States, then USAID should try to arrange a reimbursable "detail-in," that is, a detail of the individual to USAID (see **306.3.8** and **ADS 432.5.3**). Details-in may cost less than a comparable FAA Section 632(b) agreement if, as usually occurs, the FAA Section 632(b) agreement includes an overhead charge and the detail-in does not. USAID may arrange for the detail-in of an

individual to be posted overseas, but such a detail-in may be more problematic than a domestic placement.

306.3.2.16 May USAID's authorities be "transferred" to the Participating Agency under an FAA section 632(b) agreement?

Effective Date: 10/01/2002

Sometimes people speak of USAID authority being "transferred" to the Participating Agency under an FAA section 632(b) agreement. It would be more accurate to say that because the Participating Agency under an FAA section 632(b) agreement is in some respects like USAID's agent in carrying out functions under the FAA, the Participating Agency may exercise FAA authorities that attach to and "go with" the funds. The Participating Agency need not have those authorities in its own right or in connection with its regular domestic or even international programs.

For example, FAA section 636(a), 22 U.S.C. 2396(a), provides that "[a]ppropriations for the purposes of or pursuant to this Act . . . shall be available for" some seventeen specific purposes. These purposes include the authority to enter into personal services contracts and to fund travel across fiscal years and other uses. The intent of FAA section 636 is to provide authority for uses that would otherwise be prohibited by statute or decisions of the General Accounting Office. Because the authority goes with the appropriation, an agency receiving funds under an FAA section 632(b) agreement can use those authorities in furnishing goods and services.

Another example of authority that "goes with" the funds is the extraordinary authority in FAA section 636(b), 22 U.S.C. 2396(b). That section provides that "[f]unds made available for the purposes of this Act may be used . . . for expenditures outside the United States for the procurement of supplies and services and for other administrative and operating purposes (other than compensation of personnel) without regard to such laws and regulations governing the obligation and expenditure of funds of the United States Government as may be necessary to accomplish the purposes of this Act." This authority is available to the Participating Agency under an FAA section 632(b) agreement because the authority applies to the funds and not a particular agency.

306.3.2.17 Do statutory prohibitions applicable to USAID's use of funds apply to a Participating Agency using those funds under an FAA section 632(b) agreement?

Effective Date: 10/01/2002

Yes. Statutory prohibitions, such as those contained in USAID appropriations acts and the Foreign Assistance Act of 1961, as amended, that state, for example, "None of the funds made available by this Act [or appropriated to carry out this Act] may be obligated or expended to finance" a certain activity, "attach" to the funds themselves and apply whether the obligating or implementing agency is USAID or another Federal agency under an FAA section 632(b) agreement.

306.3.2.18 How does the source of funding (for example, operating expense vs. program funds) affect USAID's decision to use PASAs and PAPAs?

Effective Date: 10/01/2002

To the maximum extent possible, USAID should use program funds for PASAs and PAPAs. Therefore, such agreements should contribute directly to economic development and relate to identifiable program activities. Their primary purpose should not be to assist USAID generally to manage its foreign assistance program. (See guidance on program and operating expense funds in **ADS 601**, **602**, and **603**.)

On an exceptional basis, the Assistant Administrator for Management (AA/M) or his or her designee may approve operating expense funding of PASAs for general USAID management and support services.

PAPAs are not designed to be an appropriate instrument for obligating operating expense funds. The clauses of a PAPA were not drafted with that purpose in mind. If necessary and appropriate, USAID may use the authority of FAA section 632(b) to "buy" services from another Federal agency using operating expense funds, but the agreement drafter would have to tailor the agreement for that purpose, with the help of the Office of General Counsel (GC). As drafted, the standard PASA and PAPA are not suited for that purpose. Another type of FAA section 632(b) agreement, a reimbursable agreement similar in some respects to an Economy Act order (see **306.3.2.19**), may be used with either program funds or operating expense funds. It may be particularly useful for operating-expense funded arrangements where PASAs and PAPAs are not appropriate.

306.3.2.19 What types of agreements may USAID enter into under the authority of FAA 632(b) other than PASAs and PAPAs and what formats may USAID use for such agreements?

Effective Date: 10/01/2002

In addition to PASAs and PAPAs, USAID may enter into agreements to buy goods and services from other Federal agencies under the authority of FAA section 632(b) even when the PASA and PAPA formats are not appropriate. A general, standard-form FAA section 632(b) agreement format is set forth in the Additional Help document, **Sample 632(b) Reimbursement Agreement From USAID to Another Agency**.

It is important to remember that FAA section 632(b) may be used as the legal basis for an agreement (and an obligation of funds) even if the form of the agreement differs from a PASA, PAPA, or other sample FAA section 632(b) agreement formats in this chapter. Thus, it may be feasible to use another agency's Economy Act form for an order but change the legal citations to refer to FAA section 632(b) and otherwise modify the agreement accordingly. FAA section 632(b) does not itself prescribe agreement formats. As a matter of policy, however, USAID drafters of interagency agreements that may be signed under the authority of FAA section 632(b) are encouraged to use the authority of FAA section 632(b) for the agreements rather than, for example, the Economy Act. Drafters are also encouraged to use the formats prescribed in this

chapter rather than other ad hoc formats. The Office of the General Counsel or the cognizant Regional Legal Advisor must approve the use of a format other than as prescribed in this chapter for any agreements under FAA section 632(b).

306.3.2.20 Do FAA 632(b) Agreements obligate funds?

Effective Date: 10/01/2002

Yes. USAID may obligate funds under a PASA, PAPA or other FAA section 632(b) agreement. In this regard, FAA section 632(b) agreements differ from agreements under FAA section 632(a) or under the Economy Act. FAA section 632(a) agreements do not obligate funds. Economy Act orders constitute contingent obligations that are subject to deobligation if the funds are not subobligated within the period of availability (see the Economy Act at **31 U.S.C. 1535(d)**).

By contrast, funds obligated under an FAA section 632(b) agreement within the period of availability remain available to the Participating Agency for expenditure, according to the terms of the agreement, without reapportionment after the end of the fiscal year of obligation. The funds remain available for expenditure in the same way that funds obligated under a contract or grant with a private entity would. Some Participating Agencies do not understand that the FAA section 632(b) agreement obligates the funds and they may try to treat the funds made available under FAA section 632(b) in the same way they would treat funds under an Economy Act order. USAID should stress in discussions with the Participating Agency that an FAA section 632(b) agreement is not subject to the Economy Act and that funds obligated under such an agreement are a full obligation, not a contingent obligation. To avoid confusion on this point, USAID should not cite the Economy Act as a basis (or an additional basis) for authority to enter in FAA section 632(b) agreements.

306.3.2.21 What are USAID's responsibilities for program accountability and audit under FAA section 632(b) agreements?

Effective Date: 10/01/2002

USAID is accountable for the funds it obligates under FAA section 632(b) and must provide the necessary oversight and coordination for the services or program it finances. USAID does not audit a Participating or Servicing Agency under an FAA section 632(b) agreement. However, USAID may require the Participating or Servicing Agency to include audit clauses in the agreements the latter enters into with contractors, grantees, and cooperative agreement recipients. Typically, there is no audit clause in a PASA because the Participating Agency is not likely to award contracts, grants, and cooperatives agreements of a size that would warrant audit clauses.

306.3.2.22 When may USAID supply ("sell") its services to another Federal agency under FAA Section 632(b)?

Effective Date: 10/01/2002

See **306.3.3.7**.

306.3.3 Economy Act Orders

Effective Date: 10/01/2002

306.3.3.1 What are Economy Act orders and when may USAID use them to buy services from other Federal agencies?

Effective Date: 10/01/2002

USAID has authority under the **Economy Act, 31 U.S.C. 1535**, which applies throughout the United States Government, to place an order with another agency for goods or services if

- Funds are available;
- The Contracting Officer decides the order is in the best interest of the United States Government;
- The servicing agency is able to provide the ordered goods or services; and
- The Contracting Officer decides that the ordered goods or services cannot be provided as conveniently or as cheaply by a commercial enterprise.

A thorough discussion of the Economy Act can be found in chapter 15 of Mandatory Reference, Principles of Federal Appropriations Law, Second Edition, Vol. IV located on the web at **http://www.gao.gov/special.pubs/PFALVolumeIV.pdf**. The Economy Act applies to agencies and instrumentalities of the United States Government. Thus, it applies to all three branches of the Federal government, so that USAID may place orders with legislative and judicial branch agencies as well as executive ones. It also applies to government corporations, temporary boards, and commissions but not to the United States Postal Service, Indian tribes, the Government of the District of Columbia, or the National Guard except possibly where the National Guard is called into Federal service. Finally, the Economy Act authorizes intra-agency (for example, between two Bureaus) as well as interagency transactions.

The procedures and policies governing the use of an order under the Economy Act (an "Economy Act order") are set forth in **Part 17.5 of the Federal Acquisition Regulation (FAR)**, which requires that each Economy Act order be supported by a Determination and Finding, approved by the Contracting Officer that

a. Use of an Economy Act order is in the best interest of the Government; and

b. The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

An Economy Act order must be evidenced by a written order or agreement in advance, signed by the two agencies. Sample Economy Act orders are set forth in **306.3.3.5**.

306.3.3.2 Under an Economy Act order, when may the servicing agency contract out for goods and services?

Effective Date: 10/01/2002

If the Economy Act order requires contracting action by the servicing agency, FAR 17.503 states that the Determination and Finding (see **306.3.3.1**) must include a statement that at least one of the following circumstances applies:

a. The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the Economy Act order, to meet the requirements of the servicing agency for the same or similar supplies or services;

b. The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within USAID; or

c. The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

306.3.3.3 What policies and procedures apply to Economy Act orders from USAID to other agencies?

Effective Date: 10/01/2002

FAR Subpart 17.5, "Interagency Acquisitions Under the Economy Act," sets forth the policies and procedures for Economy Act orders. Under the FAR, USAID may use the Economy Act to obtain commodities and services from another Federal agency when other, more specific statutory authority for using the other agency does not exist.

In addition, **OMB Circular A-34**, sections 12.6 and 12.7, sets forth general OMB guidance on Economy Act orders.

306.3.3.4 Does signing an Economy Act order obligate funds?

Effective Date: 10/01/2002

An Economy Act order is a contingent obligation of funds. This means that the ordering agreement may initially be recorded as an obligation like any other contract. However, the ordering agency must deobligate funds at the end of the period of availability to the extent that the servicing agency has not either actually performed the services or incurred valid subobligations through contracts or grants with third parties. If the servicing agency does not record valid subobligations to cover all or part of an Economy Act order before the period of availability to make obligations of the ordering account expires, then the servicing agency may not fill that part of the order. For this reason, when USAID buys goods or services from another agency under an Economy Act order, it may be desirable to review implementation of the order before the expiration of the availability of the funds involved. In this way, USAID can try to ensure that the servicing agency will be able to obligate the funds fully during the period of availability and

thereby reduce the likelihood that funds will be lost due to a failure to obligate them fully on a timely basis.

In contrast with an Economy Act order, an agreement under section 632(b) of the Foreign Assistant Act of 1961, as amended ("FAA"), obligates funds and, therefore, the Participating Agency under such an agreement does not have to subobligate the funds within the period of availability of the funds. Once funds are obligated under an FAA section 632(b) agreement, they are available for subobligation for the period of performance under the agreement without regard to the fiscal year of availability of the funds. (See **306.3.2** for information on FAA 632(b) agreements.)

306.3.3.5 What are the form and content of an Economy Act order?

Effective Date: 10/01/2002

There is no required agreement format for Economy Act orders. Either agency may prepare the agreement format. Where USAID is the supplying agency under an Economy Act order, rules or prohibitions specifically applicable to FAA funds (for example, Congressional notification requirements, restrictions on assistance to a country) do not apply, unless the ordering agency is using FAA funds or the funds have a comparable restriction. See the sample agreement formats for USAID as ordering agency (**Sample Economy Act Order From USAID**) and as supplying agency (**Sample Economy Act Order to USAID**). Only warranted Contracting Officers may sign Economy Act orders, up to the limits of their warrants, when USAID is the ordering agency.

306.3.3.6 When does USAID prefer to use an Economy Act order over a PASA or PAPA?

Effective Date: 10/01/2002

In general, USAID will prefer to enter an interagency agreement under FAA section 632(b) rather than make an order under the Economy Act because

- Section 632(b) is specific to USAID and the foreign assistance program and
- It supports an obligation of funds.

USAID may accede to a supplying agency's preference to use an Economy Act order instead of a PASA, PAPA, or other agreement under FAA section 632(b) when the other agency performs the desired services for all or a large number of United States Government agencies besides USAID. In such instances, the supplying agency may have procedures and forms that it typically uses for the services. Requiring the other agency to follow USAID procedures or to modify its procedures to fit the requirements of section 632(b) may not be reasonable or feasible. Additionally, an Economy Act order may be more appropriate when the supplying agency has only a limited active role in supplying of the services being obtained, for example, because the Federal agency's contractor will supply the goods or services directly to USAID.

On the other hand, because a section 632(b) agreement constitutes an obligation of funds, it allows forward funding, that is, an obligation of funds across fiscal years, subject to FAA section 635(h) (five-year limitation on obligations) and to USAID policy on forward funding (see **ADS 602** and **ADS 603**).

306.3.3.7 What procedures apply when USAID supplies ("sells") its services to another Federal agency?

Effective Date: 10/01/2002

a. **Economy Act Orders**

USAID has the authority under the Economy Act also to provide goods or services to other Federal agencies on the same basis as stated above (**306.3.3**). For example, the National Institutes of Health, the Centers for Disease Control and Prevention and the Department of Defense are among the agencies that have placed Economy Act orders with USAID in the recent past.

An Economy Act order under which USAID is the selling agency operates essentially as described in 306.3.3, except that the roles of USAID and the other agency as seller and buyer are reversed. See the sample agreement formats for USAID as ordering agency (**Sample Economy Act Order From USAID**) and as supplying agency (**Sample Economy Act Order to USAID**). Guidance on the recovery of indirect costs is found at **306.3.6**.

b. **FAA Section 632(b)**

Section 632(b) of the Foreign Assistance Act of 1961, as amended (FAA), authorizes agencies "carrying out functions under" the FAA to use the services of other agencies to do so. A few Federal agencies, in addition to USAID, are authorized to carry out certain functions under the FAA. Under FAA section 632(b), therefore, these other agencies may "buy" the services of USAID to help perform those functions. These other agencies (and some of their FAA programs) include:

- The Department of State (International Narcotics Control and Law Enforcement, Migration and Refugee Assistance, Emergency Refugee and Migration Assistance, and Nonproliferation, Anti-Terrorism, Demining and related programs);
- The Trade and Development Agency;
- The Treasury Department (International Affairs Technical Assistance and debt restructuring);
- The Peace Corps;

- The Department of Defense (International Military Education and Training and Foreign Military Financing Program); and

- The Overseas Private Investment Corporation.

Unlike an Economy Act order, an agreement under FAA section 632(b) can definitively obligate funds when it is signed, and the funds do not have to be deobligated if they are not subobligated within the authorized obligation period. As a result, funds for both program activities and administrative costs can be obligated up front. Also unlike an Economy Act order, even funds for outlying years can be obligated when the agreement is signed, subject to FAA section 635(h) (five-year limitation on obligations) and USAID policy on forward funding (see **ADS 602** and **ADS 603**).

See a **Sample 632(b) Reimbursement Agreement From the Department of State to USAID** by which USAID may sell its services to the Department of State (or with authority to buy such services under FAA section 632(b)). USAID may use other formats for the agreement, subject to the approval of the Office of the General Counsel or the cognizant regional legal advisor. Guidance on the recovery of indirect costs is found at 306.3.6.

c. **Approval and Execution of an Agreement to Sell USAID Services**

The USAID officer authorized by **ADS 103.3.8.16** whose unit will furnish services under an Economy Act order or an agreement under FAA section 632(b) is authorized to sign the order or agreement. All reimbursable agreements permitted under this section must be cleared in advance by the Bureau for Management, Office of Financial Management (M/FM), the Bureau for Policy and Program Coordination, Office of Budget (PPC/B), and each implementing unit expected to furnish goods and services under the order or agreement. Signature or clearance of an order or agreement will signify, among other things, that the direct and indirect costs, if any, charged to the other agency will reasonably compensate USAID for the budgetary burden it will incur to carry out the program (see 306.3.6 and see Additional Help document, **Sample Economy Act Order to USAID**).

306.3.4 FAR Part 8

Effective Date: 10/01/2002

306.3.4.1 What supplies must USAID buy from other Federal agencies under FAR Part 8?

Effective Date: 10/01/2002

FAR Part 8 requires USAID to buy supplies from other Federal agencies according to a descending order of priority that includes

- Inventories of other Federal agencies;

- Excess from other agencies (see **FAR Subpart 8.1**);

- Mandatory Federal Supply Schedules (see **FAR Subpart 8.4**); and
- Optional use Federal Supply Schedules (see **FAR Subpart 8.4**).

In addition, USAID must buy services from other Federal agencies according to a descending order of priority that includes

- Mandatory Federal Supply Schedules (see **FAR Subpart 8.4**); and
- Optional use Federal Supply Schedules (see **FAR Subpart 8.4**).

Sources for supplies other than those listed in this section may be used as prescribed in **FAR 8.001** and in an unusual and compelling urgency as prescribed in **FAR 6.302-2** and in **41 CFR 101-25.101-5**.

306.3.5 Cooperative Administrative Support Units (CASUs)

Effective Date: 10/01/2002

306.3.5.1 What are Cooperative Administrative Support Units (CASUs) and when may USAID enter into agreements to obtain goods and services from them?

Effective Date: 10/01/2002

Cooperative Administrative Support Units (CASUs) are entrepreneurial organizations within various Federal agencies that provide best-value support services to other agencies on a cost-reimbursement basis. The CASU program, established by the Government Management Reform Act of 1994, generally operates under the Economy Act, which allows one Federal agency to provide services to, or obtain services from, another one. However, USAID may also use the authority of FAA section 632(b) to buy goods and services from a CASU. The decision whether to use the authority of the Economy Act or FAA section 632(b) may be based on an analysis of the particular matter in accordance with **306.3.2** and **306.3.3**.

The first CASUs were established in 1986 as an outgrowth of the President's Council on Management Improvement. The National CASU Board charters the various CASUs under the auspices of the Interagency Council on Administrative Management, usually based on unusual competencies that certain agencies have developed. CASUs receive no Federal appropriations of their own and must be self-supporting. A host agency provides the CASU essential administrative and financial services. Where needed, the host agency may provide accounting and billing support, telecommunications services, and legal services for the Executive Director and staff of the CASU.

CASUs can provide services in the areas of administrative support, financial and procurement management, human resources, light industrial, mail management, printing/duplicating/copier, professional and technical, and training. Ten lead agencies are operating CASUs:

Agency	CASU
United States Army Corps of Engineers	Fort Worth CASU
Department of the Treasury	Franchise Business Activity (seven organizations nationwide)
United States Navy – FISC	Greater Hampton Roads CASU
Health and Human Services	Mid America CASU
Veterans Administration Medical Center	Minnesota CASU
United States Department of Agriculture National Finance Center	New Orleans CASU
Department of Labor	Northeast Regional CASU
Federal Aviation Administration Civil Aerospace	Oklahoma CASU Medical Institute
Interior – Minerals	Rocky Mountain Regional Management Service CASU
Veterans Administration Logistics Management	Southeast Regional CASU

Detailed information on CASUs, including a complete listing of CASUs and a list of services provided by each organization is available at **http://www.casu.gov/**.

It is important to remember that individuals who are obtained through a CASU are not government employees. Using a CASU or other interagency agreement does not change any of the rules on dealing with contractors' employees or restrictions on contractors' employees performing "inherently governmental" services.

When considering whether to use another agency to conduct a procurement, the Activity Manager should discuss the proposed action with the Contracting Officer early in the process. The Contracting Officer can help determine whether the procurement is appropriate for "outsourcing" to a CASU organization and identify any USAID specific clauses that have to be included in the contract. If, for example, a CASU follows the Federal Acquisition Regulations and its own Federal agency's acquisition regulations, the USAID requesting office must specify any additional USAID requirements that have to be included in a contract.

Some CASUs have been designated as franchise funds under the **Government Management Reform Act of 1994** (GMRA), which gives them specific authority to provide services. (See **306.3.5.6**) An important benefit of this designation is that funds are considered to be obligated at the time they are transferred to a franchise fund from another agency.

CASU agreements may be most useful for individual procurements of goods or services that do not require overseas assignment of personnel. If a CASU is called upon to issue contracts involving travel and work overseas, it may have to confront a number of issues about which a CASU organization would normally be unfamiliar - including laws

and policies unique to USAID. Such a CASU agreement will require ad hoc review and guidance by the Office of Procurement and the Office of the General Counsel.

When USAID requests a CASU to undertake a procurement on USAID's behalf, USAID must sign an interagency agreement with the CASU and must record the agreement in the New Management System (NMS) in order for the action to be included in USAID's procurement records.

306.3.5.2 What has been USAID Experience with CASUs?

Effective Date: 10/01/2002

CASUs are most likely to be useful to USAID as suppliers of administrative or management support either financed with Operating Expense (OE) funds or with program funds if the program-funded activities do not require assignment of personnel overseas (see **ADS 601, Funding Source Policy**). Unlike PASAs, RSSAs, PAPAs and other interagency agreements under FAA section 632(b), the CASU mechanism is used to obtain a variety of support services in a cost-effective and efficient way, not to manage an activity.

Some offices have successfully used CASUs to obtain staff, for example technical specialists in population, health, and nutrition and program-funded implementation and support personnel. The selected personnel who already had security clearances were able to start work quickly. AA/M approval was required to permit the personnel to work in the regular USAID office space. The Bureau for Global Health's evaluation of their experience with the CASU/Franchise Business Activity -- West program was overwhelmingly positive. Other offices have successfully obtained short-term litigation support that was provided within a few days (because no security clearance was required) or to hire a contractor from a GSA schedule contract to establish a secretariat for a new agency initiative.

The Office of Human Resources estimates that the cost of CASU arrangements will total approximately 130 per cent of cost of salaries. This amount covers the benefits package for the personnel and the other agency's fee. The rate may be closer to 160 percent for highly skilled technical personnel and closer to 115 – 120 percent for less skilled personnel.

306.3.5.3 What are General Services Administration (GSA) schedule contracts and when may USAID "buy" goods and services from another Federal agency under them?

Effective Date: 10/01/2002

The General Services Administration (GSA) schedule contracts are available for orders from all government agencies. Schedule contracts cover a wide-range of goods and services including professional and management services. GSA Schedules are listed at **http://www.gsaelibrary.gsa.gov/**. The series of contracts covering Management, Organization, and Business Improvement (MOBIS) may be particularly useful to USAID. MOBIS contracts are listed under item 874 of the Schedules and include such things as

consulting services and training services. Unless a schedule purchase is within an individual's credit card authority, the action must be handled by a Contracting Officer.

306.3.5.4 What are franchise funds, and when may USAID use the Government Management Reform Act of 1994 to "buy" goods and services from another Federal agency under it?

Effective Date: 10/01/2002

Section 403 of the **Government Management Reform Act (GMRA) of 1994**, P.L. 103-356, authorized six executive agencies, designated by the Director of the Office of Management and Budget, to establish franchise funds on a pilot basis. Franchise funds operate at the Departments of Commerce, Health and Human Services, Interior, Treasury and Veterans Affairs, and the Environmental Protection Agency. The franchise funds are a subset of the cooperative administrative support units described in **306.3.5.1** and **306.3.5.2**.

All pilot franchise funds operate multiple business lines. The following summarizes the primary services provided by each pilot franchise fund:

Pilot Franchise Fund	Primary Services
Department of Commerce	
National Oceanic and Atmospheric Administration Administrative Service Centers	Acquisition management Financial services Engineering Environmental compliance
Office of Computer Services	Information technology, administrative & financial management Services
Department of Health and Human Services	
Office of Federal Occupational Health	Clinical occupational health Environmental health Employee assistance programs
Department of the Interior	Administrative systems and systems support services Administrative operations Information technology services Facilities management and services Training and development Consolidated / integrated administrative management
Department of Treasury	Financial consulting Financial systems implementation Financial education Collaborative consulting Consolidated / integrated administrative management Accounting services
Department of Veterans Affairs (VA)	

Pilot Franchise Fund	Primary Services
Austin Automation Center:	Access to mainframe and distributed applications Telecommunications and related connectivity Data entry Disaster planning and recovery services
VA Records Center and Vault:	Secure off-site records management and storage services
Security & Investigations:	Security investigations, ID production
VA Law Enforcement:	Customer oriented police officer training
Financial Services Center:	Payroll processing
ADP and Adaptive Training Service:	Office automation training and adaptive technologies for the physically challenged
Environmental Protection Agency (EPA)	(currently services only EPA customers)

The pilot programs are currently scheduled to expire on October 1, 2002. At this time, the franchise funds are authorized, consistent with OMB guidelines, to provide common administrative support services to their parent agencies and to other Federal agencies when such services can be provided more efficiently through the franchise funds than by other means. Before utilizing a franchise fund, the requester should verify that the program has been extended.

The General Accounting Office has stated that the term “common administrative services,” although not explicitly defined in the Government Management Reform Act, includes support services that most agencies require in order to operate efficiently and effectively, and may include both inherently governmental and commercial functions as defined in the September 1992 Policy Letter 92-1 of the Office of Federal Procurement Policy.

To provide the services, the franchise funds are authorized to acquire capital equipment, automated data processing systems, and financial management and management information systems.

Fees for the services must be established at a level to cover the total estimated costs of providing the services. The funds are to expand public-public and public-private competition for the delivery of services, thereby ultimately conserving Government resources in a balanced budget environment. To ensure competition, USAID offices contemplating obtaining services through a franchise fund should explore various franchise fund providers, if possible. Proposals should then be requested from a reasonable number of potential providers.

USAID’s experience with franchise funds is emerging. It will be important to study guidance on the use of specific franchise funds or specific services under franchise funds (procurement services, for example) that the Agency issues through General

Notices and Interim Updates to this chapter. See, for example, **Series 300 Interim Update 02-01, Use of GovWorks and Other Franchise Funds**. This supplemental guidance will highlight differences in policy and procedure between GMRA agreements and other interagency agreements that will be important in the issuance and administration of franchise fund agreements.

306.3.5.5 How do franchise fund agreements under the Government Management Reform Act of 1994 differ from Economy Act orders and FAA section 632(b) agreements?

Effective Date: 10/01/2002

Interagency orders for services placed with franchise funds are authorized under the Government Management Reform Act of 1994, and as such, the ordering agency need not rely on the authority of the Economy Act, the default authority (in the absence of other specific authority) by which Federal agencies may obtain goods and services from other Federal agencies. (See **306.3.3** for information on the Economy Act.) This means that, when applicable, the Government Management Reform Act of 1994 may be cited as an independent basis for obtaining services from a franchise fund without citing either the Economy Act or USAID-specific authority under FAA section 632(b). Moreover, the analyses and justifications normally required under OMB Circular A-76 and FAA section 621(a) do not apply because they are superseded by GMRA's explicit authorization for the franchise funds to provide common administrative support services to other agencies (including USAID).

Also, since their legal basis is different, franchise fund agreements need not follow the format or guidance applicable to Economy Act orders or various types of FAA section 632(b) agreements. In general, therefore, a franchise fund agreement may have whatever form and substance the Office of Procurement and the Office of the General Counsel believe are necessary, on a case-by-case basis, to address USAID's interests adequately.

Unlike Economy Act orders but like FAA section 632(b) agreements, a franchise fund agreement under GMRA may be an obligation of funds. If it is intended to obligate funds, the franchise fund agreement must have a sufficiently detailed scope of work and budget to support the obligation (see **ADS 621**).

306.3.5.6 GMRA Agreements — Documentation and Execution

Effective Date: 10/01/2002

Warranted contracting officers will draft and execute GMRA agreements, in the form of the **Sample GMRA Agreement** or such other format as the cognizant warranted contracting officer deems appropriate under the circumstances consistent with guidance from the Office of Procurement.

306.3.5.7 When may USAID "buy" goods and services from the General Services Administration under the Information Technology Management Reform Act of 1996?

Effective Date: 10/01/2002

The **Information Technology Management Reform Act of 1996 (ITMRA)** authorizes Federal agencies to provide procurement services and support services to other agencies in the area of information technology. Under ITMRA, the General Services Administration's Federal Technology Service runs the Federal Acquisition Services for Technology program (FAST), the Federal Computer Acquisition Center (FEDCAC), the Federal Information Systems Support Program (FISSP), and the Federal Systems Integration and Management Center (FEDSIM) that can provide information technology hardware, software, or services.

ITMRA provided authority (**40 U.S.C. 757**) for the establishment of the Information Technology Fund, a revolving fund. An interagency agreement under ITMRA can obligate funds at the time the agreement is signed. The obligation remains in force for the entire period of performance, not in excess of five years, even if it crosses fiscal-year boundaries, because it is governed by ITMRA rather than the **Economy Act**. At the time USAID signs an obligating interagency agreement with the General Services Administration (GSA), USAID must have a bona fide, current need for the goods or services that GSA will provide.

(See **ADS 548** regarding the authority, policy, and procedures for the management and use of the Agency's full range of information technology services.)

The **FAST** program works through contractors certified by the Small Business Administration. Under the program, USAID may obtain goods and services to support information technology, including information systems engineering, systems and facilities management and maintenance, and information systems security support services. Under FAST, USAID enters into an interagency agreement with GSA, which uses its expertise to select the best procurement alternative to satisfy USAID's information technology needs set forth in the agreement. For its services, GSA charges USAID a fee. GSA administers the contracts and delivery orders and resolves contractual problems and issues and adjudicates all disputes with suppliers.

USAID may enter into an agreement with GSA to procure goods or services under FAST. In general, GSA has agreed to use an interagency agreement format proposed by USAID, which includes a face sheet and a "Memorandum of Agreement" setting forth the terms and conditions for carrying out the interagency arrangement. The cognizant contracting officer for M/IRM may sign the form on behalf of USAID.

FEDCAC develops, awards, and administers innovative contracting solutions to address Federal agency requirements for information technology (IT) products and services for the GSA Federal Technology Service. FEDCAC's contract solutions are intended to represent state-of-the-art information technology available to authorized Federal agency users. FEDCAC permits incremental funding of task orders and offers services such as

- Acquisition Expertise;
- Cost/Price Expertise;
- Warranted Contracting Officers;
- Experienced Project Management; and
- Consulting Expertise.

FEDCAC receives two types of revenue to support its operations: contract access fees and consulting fees. FEDCAC charges an access fee for customers to use its contract mechanisms. This access fee reimburses FEDCAC for the cost of administering its master contracts. FEDCAC charges consulting fees for advice it furnishes on acquisitions, cost and pricing, and project management.

To obtain consulting support from FEDCAC, USAID enters into a memorandum of understanding, interagency agreement or similar document with FEDCAC that outlines the level of support required, the estimated cost to provide the support, and other reporting and contractual elements. USAID may use either a GSA or USAID form for the agreement or understanding, and the cognizant contracting officer for M/IRM may sign the form on behalf of USAID.

FEDSIM provides value-added information technology services and support to all branches and departments of the Federal Government worldwide. As a part of GSA's Federal Technology Service, FEDSIM is the recognized within the Government for large systems integration projects.

In addition to processing orders, FEDSIM analyzes the client's needs, determines the best acquisition strategy, and provides a private sector solution. It provides a wide range of support for planning, developing, acquiring, implementing, maintaining, and managing information technology resources and support services. Its information technology support services include:

- Project Management
  - -- Perform requirements analysis
  - -- Technical guidance and leadership to project team
  - -- Monitor project milestones, performance, budget, and schedule

- Financial Management
  - -- Track funding (revenue and obligations)
  - -- Certify contractor invoices for payment

- Contract Management
  - -- Develop acquisition strategies
  - -- Develop acquisition packages
  - -- Document evaluation results and conduct debriefings
  - -- Award and administer task orders

FEDSIM uses a variety of contracts including multiple award indefinite quantity contracts, other Government-wide Agency Contracts (GWACs), indefinite delivery indefinite quantity contracts with small businesses and 8(a) companies, and GSA Schedules.

The General Services Administration has developed its own form of interagency agreement for use in FEDSIM procurement. USAID may use the GSA form or, if GSA agrees, a USAID form, and the cognizant contracting officer for M/IRM may sign the form on behalf of USAID.

306.3.6 Indirect Cost Principles

Effective Date: 10/01/2002

306.3.6.1 What are USAID's indirect costs for reimbursable programs it performs on behalf of another agency, and when may it recover such costs from the other agency?

Effective Date: 10/01/2002

For purposes of this **ADS chapter**, indirect costs are all costs of an interagency reimbursable program (as defined below) that one agency charges another agency and that are not direct costs, however those costs may be denominated (for example, overhead, administrative fee, or surcharge). An interagency reimbursable program is a mutually agreed arrangement by which one Federal agency provides goods and services to or on behalf of another Federal agency and the agency receiving the goods or services reimburses (in effect, "pays") the servicing agency for the goods and services. Costs identified specifically with the reimbursable program are direct costs.

As analyzed by the Comptroller General, indirect costs consist of operational overhead and general and administrative support overhead.

a. Operational overhead includes support costs for the agency unit (at USAID, this would typically be a Bureau or mission) that actually provides the specified goods and services under the reimbursable program.

b. General and administrative support overhead refers to costs of ancillary activities of units within an agency that support the unit that implements the reimbursable program. Ancillary activities generally would include but not be limited to contract administration, budget and accounting, general counsel, personnel services, security, computer and technical support services, supply, transportation, procurement and contracting, and miscellaneous administrative services. At USAID, M/OP, M/HR, M/FM, GC, and Security would be among the offices or units that perform ancillary activities.

c. Significance. To be recoverable by USAID, indirect costs must be shown, either actually or by reasonable inference, to benefit the buying agency, i.e. to be significant. If an indirect cost item does not bear a significant relationship to the goods or services USAID provides and is not funded from

currently available appropriations, it should not be included as an element of actual costs for purposes of the reimbursable program agreement.

d. Recognition. If an overhead expense is significant (as defined above), then like other cost elements, it may be recognized and recovered.

USAID has the authority to carry out reimbursable programs for other Federal agencies under the Economy Act or under FAA section 632(b) (see **306.3.3.7**). When USAID does not fully recover the costs of reimbursable programs it implements for other agencies, it unnecessarily burdens the already scarce administrative resources available for its own programs. Moreover, with regard to Economy Act orders, the Comptroller General of the United States has determined that government agencies are required to recover "full cost" (including administrative overhead) for the services they perform for other Federal agencies (56 Comp. Gen. 275 (1977)). If not, the unreimbursed cost is in effect charged to the performing agency, and the appropriation of the buying agency is "illegally augmented because it does not bear all of the cost of the work done for it" (57 Comp. Gen. 674 (1978), at 678).

306.3.6.2 What indirect cost rate should USAID charge for reimbursable programs it performs for other agencies?

Effective Date: 10/01/2002

In accord with the principles stated above, USAID may request reimbursement for its indirect costs in connection with reimbursable programs it implements on behalf of other Federal agencies. USAID has established a rate of 10 percent of the total agreement amount for the reimbursable program. If possible, M/FM should seek an agreement with the other agency that USAID may charge and receive payment for its indirect costs in annual installments over the life of the reimbursable program.

a. **Standard Indirect Cost Rate**

USAID's indirect cost rate comprises both operational overhead as well as general and administrative support overhead (see **306.3.6.1**). The Bureau for Program Policy and Coordination, Office of Budget (PPC/B) determined the 10 percent indirect cost rate by approximating the fraction represented by total operating expenses divided by total program costs over a recent multiyear period (with some adjustments to eliminate major distortions).

$$\frac{\text{Adjusted operating expenses}}{\text{Adjusted program costs}} = 10\%$$

PPC/B will periodically review this indirect cost rate and revise it when appropriate.

USAID will apply the amounts it receives as payment for indirect costs in accordance with **306.3.6.4**.

b. **Flat Fee Approach**

The indirect cost rate approach may not be best for all reimbursable programs, particularly small programs or programs that are highly labor intensive. PPC/B, in consultation with M/FM, may in such circumstances, prescribe the use of a **flat fee** approach (analogous to the "standard cost" approach described in **306.3.6.8**). Such a flat fee might comprise two main components: a **processing fee** for processing and start-up costs and an **implementation fee** based on the anticipated costs of implementing the program. PPC/B would establish the processing fee (or a fee schedule) for the services of the Management Bureau and other Bureaus and Offices (including those of M/OP, M/IRM, M/FM, PPC/B, M/HR, GC) that applies to a certain class or classes of reimbursable programs. The applicable processing fee is to be based on average costs of salary, benefits, and other support costs of processing the documentation related to the reimbursable program, negotiating and signing contracts, establishing letters of credit, and other necessary start-up costs. USAID would charge this processing fee (when applicable) regardless of the size of the reimbursable program.

The second component of the flat fee approach might be an implementation fee for the cost of the services of the USAID implementing bureaus or other operating units most heavily involved in the reimbursable program. The implementing units would calculate their annual work year level of effort necessary to implement the program based on their standard costs. The reimbursable program agreement would identify both components of the flat fee—the processing fee and the implementing fee.

c. **Special Indirect Cost Rate**

Finally, there may be instances where neither the usual indirect cost rate nor a flat fee would be appropriate method for recovering indirect costs. Such instances might include unusual circumstances associated with the location of the services, special organizational arrangements and the nature of the facilities and resources used. In such instances, it may be appropriate to establish a **special indirect cost rate** applicable to the particular reimbursable program if, in the judgment of PPC/B, this approach more accurately reflects the actual burden on the USAID operating expense account.

306.3.6.3 What direct costs should USAID charge for reimbursable programs it performs for other agencies?

Effective Date: 10/01/2002

Regardless of the treatment of indirect costs under a particular reimbursable program, USAID should always charge identifiable **direct** costs under the program where appropriate and justified. Direct costs might include the costs of a personal services contract, office space rental and office equipment that are wholly dedicated to the reimbursable program and that are incurred only because of the reimbursable program.

306.3.6.4 How will USAID allocate the funds it receives as reimbursement of direct and indirect costs under reimbursable programs?

Effective Date: 10/01/2002

The funds made available to USAID for reimbursement of indirect costs will be applied to the USAID operating expense account, since that is the account that will be burdened if indirect costs are not reimbursed. Bureaus and Missions involved in implementing reimbursable programs will receive the funding for **direct** costs of the program, to the extent these are identified. USAID implementing and other units will be reimbursed for their **indirect costs** through the normal allocation of operating expense throughout the agency. The needs of various Bureaus and offices for operating expense funds will presumably reflect their planned level of effort in implementing or supporting any reimbursable programs, along with all of their other activities.

306.3.6.5 Under what circumstances may USAID forego charging the buying agency the full costs of carrying out the implementing program?

Effective Date: 10/01/2002

If USAID provides services to or for another agency, using USAID's own funds authorized for such services, USAID would not be considered to have improperly augmented the appropriation of the other agency. In such a case, the cognizant Assistant Administrator, with the clearance of the Assistant Administrator for Management, may in his or her discretion, decide not to seek reimbursement of either direct or indirect costs USAID might incur in providing the services.

306.3.6.6 How does USAID deal differently with the State Department than with other agencies when carrying out reimbursable programs for it?

Effective Date: 10/01/2002

The State Department is different from other agencies because USAID and State have joint responsibility in managing certain programs, such as the Economic Support Fund. In those cases where the program to be undertaken is already factored into USAID's program and operating expense budgets, the programs that USAID would undertake with such funds would probably not qualify as reimbursable programs. On the other hand, where carrying out a program at the State Department's behest will impose an unanticipated or unbudgeted burden on USAID's operating expense account (for example, in response to urgent requests outside of the normal planning cycle or after the operational year budget is set), USAID should insist that State transfer funds for the program under FAA section 632(b) and include appropriate line items for administrative and other indirect costs, as well as all direct costs the USAID implementing unit would incur to implement the program.

Alternatively, where the State Department transfers or allocates funds to USAID under FAA section 632(a), USAID may insist that the State Department transfer or allocate a commensurate amount from its Salaries and Expenses account, for example, to USAID's operating expense account. In any event, the USAID implementing unit should

identify and charge against the transferred or allocated funds the direct costs of administering the program.

306.3.6.7 When may USAID reimburse indirect costs?

Effective Date: 10/01/2002

In addition to direct costs, USAID must reimburse a Participating Agency's indirect costs (overhead) proportionately allocable to the transaction when requested by the requesting agency. Overhead costs paid from currently available appropriations and significantly related to the work being performed are recoverable to the same extent as direct cost and must be paid by the requesting agency.

The Bureau for Management, Office of Procurement, Procurement Support Division, Overhead/Special Costs & Close-out Branch (M/OP/PS/OCC) evaluates and establishes the indirect cost rate for the Office of International Cooperation and Development of the Foreign Agriculture Service (FAS/ICD) in the Department of Agriculture. This is because USAID is the largest U.S. Government-funding agency for FAS/ICD. M/OP/PS/OCC negotiates the indirect cost rate for FAS/ICD annually and issues a formal letter to establish the rate. M/OP/PS/OCC does not do this for other Federal agencies because USAID does not have a comparable predominant funding role for them.

Because of USAID's limited or insignificant involvement with other Federal agencies, USAID generally accepts the indirect cost rates they propose without further negotiation. Indeed, substantial deference may be accorded the other Federal agencies in establishing their indirect cost rates. The Economy Act does not require a detailed cost audit by the ordering agency. Nonetheless, a minimal level of review is permitted. In this regard, USAID might ask the servicing agency questions like the following (if applicable) to help document the basis for the indirect cost rate used:

- What types of cost elements will the other agency recover through the proposed indirect cost rate?
- How did the other agency develop the indirect cost rate and what data can it provide to support the rate?
- Does the other agency have actual historical indirect cost rate information for recent years that it can use for comparison?
- If the other agency has no historical rate information and cannot submit supporting data, on what basis did the other agency determine the rate to be reasonableness?
- Which other agencies have recognized the rate on other awards?

For general assistance in analyzing indirect costs, consult M/OP/PS/OCC. However, as noted above, M/OP/PS/OCC's (that is, USAID's) ability to analyze and challenge indirect cost rates of agencies other than FAS/ICD is limited.

306.3.6.8 When may USAID reimburse a Participating Agency for "standard costs"?

Effective Date: 10/01/2002

Alternatively, USAID may reimburse indirect costs of a Participating Agency based on reasonable standard cost determinations, instead of an indirect cost rate as described above. "Standard costs" are estimated "actual costs" that may be based on previous acquisitions, historical costs, or some hourly cost or rate methodology. The Participating Agency should review its methodology for determining standard costs periodically (at least once every two years) to ensure that the standard costs are still realistic and reasonable. The Agreement Officer may encourage the Participating Agency to perform such a review if it has not done one within the past two years.

306.3.7 Transfers and Allocations under FAA Section 632(a)

Effective Date: 10/01/2002

306.3.7.1 What are transfers and allocations under FAA Section 632(a)?

Effective Date: 10/01/2002

In some instances, USAID may decide to transfer or allocate a portion of its appropriated funds to another Federal agency under **section 632(a) of the FAA**, which provides:

> The President may allocate or transfer to any agency of the United States Government any part of any funds available for carrying out the purposes of this Act. . . . Such funds shall be available for obligation and expenditure for the purposes for which authorized, in accordance with authority granted in this Act or under authority governing the activities of the agencies of the United States Government to which such funds are allocated or transferred.

Under a Section 632(a) transfer or allocation, USAID makes funds available for the program of another United States Government agency that will further the purposes of the FAA. Section 632(a) transfers and allocations are usually effected using a Memorandum of Agreement (see sample Memoranda of Agreement for transfers in **306.3.7.7**), in conjunction with the appropriate United States Treasury and Office of Management and Budget (OMB) forms. The Memorandum of Agreement is not legally required to effect the transfer or allocation, but it is a convenient way to document the transaction and to obtain the Recipient Agency's agreement to critical terms and conditions of the transfer or allocation.

306.3.7.2 What are the differences between a transfer and an allocation under FAA Section 632(a)?

Effective Date: 10/01/2002

In some instances, USAID may prefer a transfer to an allocation because the former is the "cleaner" transaction. (USAID moves funds entirely out of its control into the budget of another agency.) In other cases, USAID may prefer an allocation if it wants to maintain a closer connection with the Recipient Agency or needs to know when and how the Recipient Agency is spending the allocated funds. Further, USAID sometimes prefers allocations since it can get "credit" for using the funds because they technically stay on USAID's books.

Some Recipient Agencies have refused or been reluctant to accept transfers of funds under FAA section 632(a) because they do not fully understand them and choose to receive an allocation instead. However, FAA section 632(a) constitutes both the authority for USAID to make a transfer or allocation and the authority of the Recipient Agency to receive a transfer or allocation. Consequently, a prospective Recipient Agency's decision not to accept a transfer or allocation should not be based on a perceived lack of legal authority to do so.

306.3.7.3 Do FAA Section 632(a) transfers and allocations obligate funds?

Effective Date: 10/01/2002

Neither a transfer nor an allocation under FAA Section 632(a) constitutes an obligation of funds by USAID. In both cases, the funds are obligated by the Recipient Agency.

A section 632(a) transfer is a budget authority transfer that moves the funds out of the USAID account for which they were appropriated into an account of the Recipient Agency. The funds are no longer carried in USAID's operational year budget (OYB). It is as if the funds were appropriated directly to the Recipient Agency. The transfer is effected by means of a **Standard Form (SF-) 1151**, a Nonexpenditure Transfer Authorization. The Recipient Agency records the obligation when it enters into contracts, grants, or other obligating agreements after receiving the funds.

A Section 632(a) allocation is a transfer of obligation authority. Under a Section 632(a) allocation, the funds remain in USAID's account but USAID allocates them to the Recipient Agency for obligation. USAID records the obligation only after the Recipient Agency informs USAID that it has obligated the funds. The Recipient Agency is responsible for obligating the funds and meeting the financial reporting requirements stipulated by USAID. The funds must be obligated within their period of availability and within their respective period of apportionment. Sometimes USAID allocates funds for which the period of availability for obligation goes beyond the initial fiscal year when the Recipient Agency receives them. Suppose, in such a case, that the Recipient Agency does not obligate all of these funds during the first fiscal year. If this happens, the Recipient Agency cannot obligate the remaining funds until the Activity Manager (with the clearance of M/FM) notifies it in writing that OMB has approved a new

apportionment and operational year budget (OYB) level for the funds in the new fiscal year.

306.3.7.4 Under FAA section 632(a), can USAID transfer or allocate funds that have already been obligated?

Effective Date: 10/01/2002

No. USAID cannot transfer or allocate to another agency under FAA Section 632(a) funds that have already been obligated. In those instances where USAID-appropriated funds have already been obligated, for example, under a strategic objective agreement, such funds may be made available to another agency under the authority of FAA Section 632(b) (see **306.3.2**). FAA Section 632(a) may be used to transfer or allocate previously obligated funds to another agency only if the funds are first deobligated and subsequently made available (see **ADS 621**).

306.3.7.5 What are the respective financial and programmatic responsibilities of USAID and the Recipient Agency under FAA Section 632(a) transfers and allocations?

Effective Date: 10/01/2002

Under either a transfer or an allocation, the Recipient Agency has financial and programmatic accountability for the funds transferred or allocated. This position is based in part on Conference Report language in the fiscal year (FY) 1995 Appropriations Act, which states that

> [t]he conferees expect that for a transfer or allocation by AID to another agency, where the transfer or allocation constitutes an obligation of funds, AID should be the agency of the United States ultimately responsible for programmatic and financial accountability. In those instances where a transfer or allocation does not constitute an obligation, the ultimate responsibility for programmatic and financial accountability should fall on the agency of the United States receiving and obligating the funds.
>
> (Emphasis added. House Conference Report to accompany H.R. 4426, August 1, 1994, p. 28. See also Section 102(d) of the FREEDOM Support Act of 1992 ("Any agency managing and implementing an assistance program for the independent states of the former Soviet Union shall be accountable for any funds made available to it for such program." See House Conference Report to accompany H.R. 4426, August 1, 1994, p. 28.))

Although the context of the above-quoted conference language was transfers and allocations for assistance to the New Independent States of the former Soviet Union, USAID's Office of the General Counsel applies the analysis to all transfers and allocations, whatever the source of funds.

Under an allocation, USAID retains a modicum of financial responsibility in that the Recipient Agency must report to USAID when it actually obligates the funds and USAID must record the obligation. Also, the Recipient Agency gives USAID monthly and quarterly financial reports, as well as an annual certification that information on

obligations and disbursements was correct and that it expended funds for the purpose stated in the allocation agreement.

The Recipient Agency must administer the transferred or allocated funds in accordance with all applicable law (including the laws applicable to USAID funds) and is responsible and accountable for the management, audit, and use of such funds. However, for the purposes of USAID's appropriation act, which prohibits obligating more that 15 percent of its appropriations in the last month of their availability, neither transfers nor allocations reduce the base amount to which the 15 percent is applied. For example, assume a $100 million appropriation from which USAID transferred and/or allocated $20 million. USAID and all agencies that have received transfers or allocations from that appropriation must have obligated at least $85 million in total before the last month of the funds' availability.

306.3.7.6 What administrative authority applies to the obligation and expenditure of the funds by the Recipient Agency?

Effective Date: 10/01/2002

Section 632(a) of the FAA permits the Recipient Agency to use the administrative authorities of the FAA or its own administrative authorities (or a combination of both) to obligate and expend the funds transferred or allocated to it.

306.3.7.7 What forms of agreements does USAID use for FAA Section 632(a) transfers and allocations?

Effective Date: 10/01/2002

Transfer and allocation agreements usually take the form of Memoranda of Agreements (MOAs). The Activity Manager usually works with the Office of General Counsel to draft the agreement.

a. **Transfer Agreements**

A transfer agreement is typically a "bare bones" Memorandum of Agreement that includes a very general statement of purpose and statements that

- USAID will transfer the funds from its account to the Recipient Agency's account by means of a Nonexpenditure Transfer Authorization, **SF-1151**;
- The Recipient Agency will administer the funds transferred under the Memorandum of Agreement in accordance with all applicable law; and
- The Recipient Agency is responsible and accountable for the management, audit, and use of the funds.

Also, the Memorandum of Agreement should state USAID's and the Recipient Agency's account information, if known at the time of signature.

Sample FAA Section 632(a) transfer agreements follow:

- **Sample 632(a) Memorandum of Agreement to Transfer Funds From USAID to Another Agency**
- **Sample 632(a) Memorandum of Agreement to Transfer Funds to USAID From Another Agency**
- **Sample Letter of Transmittal for 632(a) Transfer**
- **Sample 632(a) Transfer Amendment**

b. **Allocation Agreements**

An allocation agreement is usually in the form of a Memorandum of Agreement that contains the same general provisions as a transfer agreement but also includes other provisions primarily relating to the fact that the funds remain in USAID's account (see **306.3.7.5**). Like a transfer agreement, an allocation agreement is typically "bare bones," including a very general statement of purpose and clauses stating that

- USAID will transfer the funds from its account to the Recipient Agency's account by means of a Nonexpenditure Transfer Authorization, SF-1151;
- The Recipient Agency will administer the funds transferred under the Memorandum of Agreement in accordance with all applicable law; and
- The Recipient Agency is responsible and accountable for the management, audit, and use of the funds.

In addition, the allocation agreement may specify the date by which the allocated funds must be obligated and the planned disposition of allocated funds that are not obligated by that date. In some instances, USAID may want the Recipient Agency to return the funds to USAID in time to allow USAID to obligate them. Alternatively, if the funds are available for more than one fiscal year, USAID may allow the Recipient Agency to obligate them in a later fiscal year after USAID obtains a new apportionment from the Office of Management and Budget and so notifies the Recipient Agency.

Allocation agreements also should require the Recipient Agency to

- Provide a quarterly Report on Budget Execution (SF-133) (see **http://www.whitehouse.gov/omb/reports/sf133/index.html**), in accordance with **Office of Management and Budget (OMB) Circular A-34**, and at fiscal year-end, a TFS 2108 report to the USAID Office of

Financial Management, Central Accounting and Reporting Division, M/FM/CAR; and

- Provide to USAID a monthly summary of current obligations incurred and actual recoveries of prior year obligations. The summary information must be consistent with the quarterly information required on line 4 and line 8 of the SF-133, except that it must be submitted every month.

These reporting requirements are necessary to allow USAID to record properly the Recipient Agency's obligations of the allocated funds.

Finally, the Memorandum of Agreement should state USAID's and the Recipient Agency's account information, if known at the time of signature.

Sample FAA Section 632(a) allocation agreements follow:

- **Sample 632(a) Memorandum of Agreement to Allocate Funds From USAID to Another Agency**
- **632(a) Memorandum of Agreement to Allocate Funds to USAID From Another Agency**
- **Sample Letter of Transmittal for 632(a) Allocation**
- **Sample 632(a) Allocation Amendment**

306.3.7.8 How long does it take to complete FAA Section 632(a) transfers and allocations and what is the process?

Effective Date: 10/01/2002

The following describes the usual mechanics of transfers and allocations under FAA Section 632(a).

Transfers take at least three weeks to complete (most of the lead time being for the apportionment). Allocations may be completed in one to three weeks. These are optimal times. Frequently the process takes longer.

a. **Transfers** –

- Once USAID and the Recipient Agency sign the applicable Memorandum of Agreement or at least agree in principle on its terms, the cognizant Bureau sends a memorandum to PPC/B. The request should include the account numbers of both USAID and the Recipient Agency.
- PPC/B in turns sends a memorandum to the Office of Management and Budget (OMB) and M/FM requesting the apportionment.

- The Bureau for Management, Office of Financial Management, Central Accounting and Reporting Division, Funds Control/General Ledger (M/FM/CAR/FCGL) prepares an SF-132, Schedule of Apportionment Action (see **http://www.whitehouse.gov/omb/circulars/a11/2002/s121.pdf**), and sends it to OMB.

- After OMB examiners review the documents and find them acceptable, OMB signs the Standard Form 132 and faxes it back to M/FM.

- When M/FM/CAR/FCGL has in hand both the Memorandum of Agreement signed by USAID and the Recipient Agency and the signed Standard Form 132, M/FM/CAR/FCGL executes the **Standard Form 1151** and sends it to the Department of the Treasury (Treasury) to request the transfer.

- Treasury then executes the Standard Form 1151, transfers the funds from USAID's account to the Recipient Agency's account as directed, and sends an approved copy of the form to both M/FM and the Recipient Agency.

Unless USAID agrees otherwise, the Recipient Agency is responsible for preparing and submitting any required notification to the Congress.

It should be noted that if USAID sends Standard Forms 132 to OMB and the actual sequence of transfers involved changes from the plan laid out in the forms, USAID must redo the forms to show the correct sequence because the forms are cumulative.

b. **Allocations** – An apportionment must have been accomplished before an allocation under Section 632(a) of the Foreign Assistance Act of 1961, as amended, may be effected. When OMB has apportioned the funds and the cognizant USAID Bureau sends M/FM/CAR/FCGL a copy of the applicable Memorandum of Agreement signed by USAID and the Recipient Agency, M/FM/CAR/FCGL executes the Standard Form 1151 and sends it to Treasury. Treasury then moves the funds from the original account to the subsidiary account. For example, in the case of an allocation from USAID to the Department of State, the applicable accounts might be as follows:

USAID:	72-X-1037
Department of State:	19-72-X-1037

c. **Crossing Fiscal Year Boundaries** – Bureaus should submit apportionment requests only in the fiscal year in which the action will be completed. When funds are apportioned in one year and the transfer or

allocation will occur in a subsequent fiscal year, the funds must be unapportioned and then apportioned again – a lengthy process -- in the fiscal year in which the transfer or allocation will occur.

306.3.7.9 Must a Recipient Agency apply USAID policies to activities it carries out with funds it receives from USAID through transfers and allocations under FAA Section 632(a)?

Effective Date: 10/01/2002

a. **USAID Policies**

While the Recipient Agency must comply with all applicable law, such compliance would not necessarily include USAID's own, sometimes broad, implementation of statutes as reflected in its internal policies. Since it is not really appropriate for one agency to impose its internal policies on another, USAID generally does not expect the Recipient Agency to follow USAID's policies unless the Recipient Agency agrees to follow specific policies identified in the transfer or allocation agreement. In any event, USAID should not attempt and does not purport to manage or monitor another agency's performance under FAA section 632(a) transfers and allocations. The Recipient Agency is answerable to the Office of Management and Budget, its own inspector general, and other cognizant authorities.

In cases involving a sensitive USAID policy, USAID may, if its wishes, review the Recipient Agency's description of the proposed activity to satisfy itself that the policy in question will not be violated. If after the review, USAID has concerns about potential violations of the policy, it can point these out informally to the Recipient Agency before transferring or allocating the funds. This type of policy review is not required, however, and such a policy review does not impose the USAID policy on the Recipient Agency or diminish the Recipient Agency's responsibility to comply with all applicable law.

b. **Environmental Regulations**

Although the Recipient Agency is permitted to use its own administrative procedures in administering the transferred or allocated funds, it may not be prudent for USAID to proceed with a transfer or allocation when USAID is on actual notice that the Recipient Agency's procedures are inadequate for the proposed activity.

To attain some assurance that environmental concerns will be treated substantively, USAID may require in the memorandum of agreement that, before the Recipient Agency may obligate the transferred or allocated funds, it must present to USAID the environmental procedures it will follow (although USAID does not have to approve them). Again, as in paragraph a above, this type of review is not required.

306.3.7.10 What is the role of the Department of State Coordinator under FAA section 632(a) transfers and allocations of SEED Act and FREEDOM Support Act funds?

Effective Date: 10/01/2002

The Support for East European Democracy (SEED) Act and the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act) each require a coordinator within the Department of State for Eastern Europe and for the former Soviet Union, respectively to coordinate and oversee all U.S. Government assistance activities in each of these areas. As of July 2001, the President designated one State Department representative to assume the responsibilities of coordinator for U.S. Government activities in both areas.

The Department of State Coordinator determines, in consultation with various U.S. Government agencies (and, as appropriate, Congress), the amount of SEED Act or FREEDOM Support Act funds that USAID will transfer or allocate to such agencies and for what purposes. As a rule, the Department of State Coordinator also prepares the necessary Congressional notifications for these transfers or allocations.

USAID prepares a memorandum of agreement for signature by the Bureau for Europe and Eurasia's Assistant Administrator (AA/E&E) or Deputy Assistant Administrator (DAA/E&E) for the transfer or allocation to the designated U.S. Government agency. The action memorandum requesting the AA or the DAA's approval of the transfer or allocation and of the memorandum of agreement specifies that the cognizant State coordinator will be responsible for overseeing and managing the activities to be carried out by the U.S. Government agency receiving the transfer or allocation. The Department of State Coordinator also normally clears each action memorandum and its accompanying memorandum of agreement.

The memorandum of agreement for transfers signed by USAID and the designated U.S. Government agency, while making it clear that the Recipient Agency is legally and programmatically responsible for the funds transferred, normally makes no reference to the role of the Department of State Coordinator. However, in some instances, memoranda of agreement for allocations (under which the funds technically stay on the books of USAID) have referred not only to the accountability of the Recipient Agency but also to specific written communications from the Department of State Coordinator to the Recipient Agency specifying the uses of the allocated funds as well as the Recipient Agency's obligations to regularly report to the Department of State Coordinator on such uses. USAID policy does not require such references, but they may be included in allocation agreements if the Department of State Coordinator requires them.

If the Cognizant Technical Officer or another USAID person becomes aware of potential problems with the manner in which a Recipient Agency is implementing a program with funds transferred or allocated under FAA section 632(a), he or she should bring this information to the attention of the Department of State Coordinator. The Department of State Coordinator has the responsibility to use the information to ensure the proper

management, implementation, oversight, and coordination of activities undertaken with the funds.

306.3.7.11 May USAID receive transfers or allocations from other agencies under FAA Section 632(a)?

Effective Date: 10/01/2002

Occasionally, another Federal agency that is authorized to carry out functions under the FAA (for example, the Department of State, the Department of the Treasury, the Trade and Development Agency, the Department of Defense) may transfer or allocate funds to USAID under FAA section 632(a). Because the funds belong initially to the other agency, the requirements and format of the transfer or allocation agreement may differ from the format USAID normally uses to transfer or allocate funds to other agencies. For such transfers and allocations, the cognizant USAID technical office should consult with the Office of the General Counsel or the regional legal advisor.

306.3.8 Details

Effective Date: 10/01/2002

Details are another means by which USAID may obtain services from, or provide services to, another Federal agency. Details may be established on either a reimbursable or a nonreimbursable basis (see **ADS 432, Details - Civil Service and Foreign Service**). See also **306.3.2.15** and **432.5.3** on differences between details and PASAs. See **432.5.3** on operating expense funding vs. program funding of details. Details are also discussed in chapter 15.1.d of **Principles of Federal Appropriations Law, Second Edition, Vol. IV**.

306.3.9 Security Issues and Interagency Agreements

Effective Date: 10/01/2002

306.3.9.1 What is the NSDD-38 process and how does it affect the assignment of Participating Agency personnel to United States Missions abroad?

Effective Date: 10/01/2002

In accordance with **National Security Decision Directive 38 of June 2, 1982** (NSDD-38),

> [A]ll agencies with staffs operating under the authority of Chiefs of Mission will ensure that, in coordination with the Department of State, the Chiefs of Missions' approval is sought on any proposed changes in the size, composition, or mandate of such staff elements. Departments and agencies wishing to initiate changes should transmit their proposals to Chiefs of Missions in consultation with the Department of State.

a. For PASA and other Federal employees who are either (1) program-funded and under USAID supervision and direction, or (2) funded under USAID's operating expense account, it is USAID's responsibility to ensure compliance with NSDD-38.

b. With regard to PAPA and other Federal employees who serve abroad under USAID program funds but who are not directly under USAID supervision and direction, it is the responsibility of the Participating Agency or other Federal agency to ensure compliance with NSDD-38. Accordingly, Participating Agency Program Agreements should contain a clause indicating that the Participating Agency is responsible for complying with all requirements of National Security Decision Directive 38, as instructed by the Department of State and the chiefs of mission in each cooperating country.

306.3.9.2 What are the security clearance requirements for Participating Agency employees?

Effective Date: 10/01/2002

a. **ADS 566.3.2** and **566.3.7** set forth the security clearance requirements that apply when Participating Agency employees will be assigned to work in USAID space (whether in the U.S. or overseas) under a Participating Agency Service Agreement.

b. If a Participating Agency's employees do not work in USAID space, however, USAID does not need to review their security clearance.

c. The Participating Agency under a Participating Agency Services Agreement or a Participating Agency Program Agreement must ensure that all of its employees assigned or hired overseas and all of its personnel (both employees and contractors) traveling overseas on temporary duty have the requisite security clearance and otherwise comply with the requirements of **12 Foreign Affairs Manual (FAM) 443**.

306.3.10 How are USAID interagency agreements and documents numbered for accounting and other tracking purposes?

Effective Date: 10/01/2002

a. **For Interagency Agreements Signed by a USAID/Washington Agreement Officer**

When an Agreement Officer located in USAID/Washington prepares a USAID-financed interagency agreement under section 632(b) of the Foreign Assistance Act of 1961, as amended, the Economy Act or the Government Management Reform Act (GMRA), the Agreement Officer will use the Acquisition and Assistance (A&A) Module of the Agency's New Management System (NMS) to create and record the agreement. The NMS A&A Modules creates a unique award number for the Agreement that will be noted on the face sheet of the PASA, PAPA, GMRA, or Economy Act order.

Until NMS is revised to include other interagency agreements, the only designations possible in NMS are "PASA" or "RSSA." The user must choose "PASA" for all PASAs but may choose either "PASA" or "RSSA" for PAPAs, Economy Act Orders, or GMRA (franchise fund) Agreements. While designation of the appropriate agreement type may not actually be possible in NMS, it is absolutely critical that the Agreement Officer use the correct format for a given agreement.

Interagency agreements under section 632(a) of the Foreign Assistance Act of 1961, as amended, are recorded in the Agency accounting system and do not require entry into NMS A&A. Numbers should be created and assigned in coordination with FM.

b. **For Interagency Agreements Signed by an Agreement Officer at USAID Overseas Missions**

When an Agreement Officer located in USAID/Washington prepares a USAID-financed interagency agreement under section 632(b) of the Foreign Assistance Act of 1961, as amended, the Economy Act or the Government Management Reform Act (GMRA), the Agreement Officer will assign an agreement number in accordance with Agency policy as follows:

XXX	- X	- XX	- XX	- XXXXX	- XX
1	2	3	4	5	6

1 = The cognizant Contracting Officer's three-digit country code;
2 = Procurement instrument type (all Interagency Agreements must be coded “P”);
3 = The two-digit Delivery Order Number (this will always be “00” for Interagency Agreements and modifications);
4 = The two-digit fiscal year (e.g., 02, 04);
5 = The five-digit sequential award number (00001, 00002, etc.);
6 = The two-digit modification number (this applies, of course, only to modifications).

(See Mandatory Reference, **Contract Information Bulletin 95-24 Uniform Numbering System for USAID-Direct Procurement Documents**)

306.3.11 What are the procedures and guidelines for preparation of negotiation memoranda for interagency agreements?

Effective Date: 10/01/2002

a. Every interagency agreement funded by USAID under the Economy Act or section 632(b) of the Foreign Assistance Act of 1961, as amended, must include a negotiation memorandum as part of the official file. The memorandum should be drafted by the person who actually conducts the negotiations and cost and price analysis (see Part III of Internal Mandatory Reference, **Primer and Checklist for Conducting Cost and Price Analysis for Interagency Agreements**) but must be reviewed, approved, signed, and dated by the cognizant Agreement Officer.

b. The negotiation memorandum must – on its own – reflect the entire process conducted from request to signature of the interagency agreement. The negotiation memorandum must include, at a minimum, the following three parts: (1) overview; (2) summary of key negotiation issues; and (3) discussion of the cost and price analysis.

(1) Overview: This section summarizes the purpose of the interagency agreement and the authority (including required approvals) under which the Agreement Officer signs the agreement. In addition, this section of the

memorandum should discuss all other requirements of this chapter applicable to the given agreement. The drafter is encouraged to reference in the negotiation memorandum other relevant documents in the file.

(2) Summary of Key Negotiation Issues: This section briefly summarizes key points of the negotiation, with a particular focus on understandings between USAID and the Participating Agency on program-critical discussion points. The drafter should consider whether to reflect these critical understandings in the interagency agreement itself. The summary serves as an important historical record in the event that disputes arise later between the parties, especially when cognizant USAID and Participating Agency staff change over time.

(3) Cost and Price Analysis: USAID must perform some kind of cost and price analysis for each interagency agreement. The degree, extent, and method of analysis depend on the specifics of a given interagency agreement. The cost and price analysis for interagency agreements is generally a less rigorous process than the analysis conducted for assistance or acquisition proposals because the other party is a Federal government agency. However, USAID must still perform a cost and price analysis in order to ensure that the program the Participating Agency will undertake (under a Participating Agency Program Agreement, for example) will be conducted in a cost efficient manner, or to ensure that USAID will pay a fair and reasonable price for services the Participating Agency will perform (under a PASA, for example). For information on conducting a cost and price analysis for interagency agreements, see the Mandatory Reference, **Primer and Checklist for Conducting Cost and Price Analysis for Interagency Agreements**.

c. Beyond addressing items (1) to (3) above, there is no required format or minimum length for the negotiation memorandum.

306.3.12 Completion and Closeout of an Interagency Agreement

Effective Date: 10/01/2002

These guidelines for completion and closeout of an interagency agreement apply to the following types of arrangements, where USAID is the “buying” agency, unless the interagency agreement in question provides otherwise:

- PASA,
- PAPA,
- Other reimbursable agreements under FAA section 632(b),
- Economy Act orders, and
- GMRA.

The guidelines do not apply to allocations and transfers under section 632(a) of the Foreign Assistance Act of 1961, as amended.

The Cognizant Technical Officer will inform the Cognizant Agreement Officer to begin the process to close out an interagency agreement within one year after the physical completion of the activity or the Completion Date as established by the interagency agreement, whichever occurs first.

The Agreement Officer will close out interagency agreements by taking, or notifying or assigning personnel to take, the following actions:

a. Obtain a statement from the USAID paying office that (1) certifies that the Participating/Servicing Agency has submitted final payment documents and (2) details the total amount obligated, the total amount expended, and the total amount remaining as unliquidated under the interagency agreement.

b. Request the Cognizant Technical Officer to submit, within 30 days of the request, a statement that the Participating/Servicing Agency has fully complied with all the applicable terms and conditions of the interagency agreement, including the delivery of all required reports. The Cognizant Technical Officer must respond within the specified period by providing the Agreement Officer with

(1) A statement that the Participating/Servicing Agency has fully complied with all the applicable terms and conditions of the interagency agreement, including the delivery of all required reports, or

(2) A statement listing the extent to which the Participating/Servicing Agency has failed to comply with the applicable terms and conditions of the interagency agreement, including the delivery of all required reports.

c. Request the Participating/Servicing Agency to submit, within 60 days of the request, a statement that it has submitted all required financial reports to the USAID paying office, as specified in the interagency agreement.

d. Based on the information received in response to a, b, and c above, determine whether any claims for the unliquidated amount are valid and then deobligate any excess unliquidated funds by mutual agreement with the Participating/Servicing Agency. For certain types of interagency agreements, this assessment may be iterative, performed at several key stages of implementation. For example, under a franchise fund agreement (issued under the authority of the Government Management Reform Act), there may be an opportunity for significant deobligation after the Servicing Agency awards the contract for USAID and then again, later at closeout, when the contract has been fully performed and the interagency agreement has come to an end.

It is also useful to note that under many interagency agreements, the Participating or Servicing Agency may not automatically deobligate excess funds and return them to USAID even if they are diligent in reporting unliquidated balances. For example, the Servicing Agency under a franchise fund agreement

might retain excess funding balances for future USAID work unless USAID specifically asks it to return the funding. USAID's financial management standards dictate that USAID should recover such funds immediately for reprogramming by USAID. USAID may not permit funds to remain in an account held by another agency for unprogrammed future uses (see **ADS 621.3.12**).

e. If the Cognizant Technical Officer or the Participating/Servicing Agency does not submit the information requested within the period specified under b or c above, make the determination based on the best information available to the Agreement Officer and, in his or her discretion, deobligate any excess unliquidated funds after the date when USAID may unilaterally deobligate funds under the terms of the interagency agreement (for example, nine months after the Completion Date of a Participating Agency Program Agreement). To the extent the Agreement Officer decides not to deobligate any apparent excess unliquidated funds, the Cognizant Agreement officer will state in writing, for the files, the reasons for not deobligating such funds. Appropriate reasons might include a reasonable expectation that the Participating/Servicing Agency will submit valid claims for such funds within a reasonable time. If additional follow-up and further communication with the Participating/Servicing Agency are required to liquidate outstanding balances, the Agreement Officer may assign this responsibility to the Cognizant Technical Officer, who will pursue the matter and report at least monthly to the Agreement Officer on progress toward closing out the interagency agreement.

When the Agreement Officer concludes that it is no longer reasonable not to proceed to deobligate unliquidated funds, the Agreement Officer may proceed to deobligate unliquidated funds, in accordance with the interagency agreement, in phases or all at once. It is critical that the Agreement Officer and the Cognizant Technical Officer stay aware of the need for close out of interagency agreements and act appropriately based on the facts of each given case.

f. Once the USAID paying office confirms that it has made final payment (see a, above) and the Cognizant Agreement Officer has deobligated any unliquidated balance,

- Close the interagency agreement file,
- Prepare it for storage following the policies and procedures in ADS 502, The USAID Records Management Program, (see **502.5.7**), and
- Forward it to the record center for disposal.

See the Additional Help document, **Interagency Closeout Documents**, for samples of these documents.

306.3.13 Discussion of Some Key Concepts and Issues

Effective Date: 10/01/2002

306.3.13.1 What is an inherently governmental function?

Effective Date: 10/01/2002

One basis for engaging another Federal agency under FAA section 632(b) is to carry out an inherently governmental function, as defined in OMB Circular A-76, rather than to provide a commercial product or service. **OMB Circular A-76, Performance of Commercial Activities**, establishes Federal policy regarding the performance of commercial activities by the U.S. Government and sets forth procedures for determining whether commercial activities should be performed by contracting with private, commercial sources or by using U.S. Government personnel and facilities.

An inherently governmental function is a function that is so intimately related to the public interest as to mandate performance by Government employees. Inherently governmental functions are defined in OMB Circular A-76 to include those activities that require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government. Under OMB Circular A-76, inherently governmental functions normally fall into two categories:

a. The act of governing, i.e., the discretionary exercise of Government authority, for example, management of Government programs requiring value judgment, as in the conduct of foreign relations; selection of program priorities; direction of Federal employees; and regulation of industry and commerce, including food and drugs.

b. Monetary transactions and entitlements, such as tax collection and revenue disbursements; control of the treasury accounts and money supply; and the administration of public trusts.

As described in section 5, “Definition,” of **Office of Federal Procurement Policy (OFPP) Policy Letter 92-1**

> An inherently governmental function involves among other things, the interpretation and execution of the laws of the United States so as to:
>
> (a) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
>
> (b) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
>
> (c) significantly affect the life, liberty, or property of private persons;
>
> (d) commission, appoint, direct, or control officers of employees of the United States; or

(e) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

Appendix A of OFPP Policy Letter 92-1 sets forth an illustrative list of inherently governmental functions, and Appendix B of that policy letter lists services and actions that are ordinarily not considered to be inherently governmental functions. It may be difficult to determine whether a particular function is an inherently governmental function. The determination must often be made on a case-by-case basis, considering the totality of the circumstances.

Inherently governmental functions may include the selection and oversight of private contractors or grantees or the making of the kinds of programmatic judgments that USAID itself would be called upon to make if it were directly managing the activity in question. For example, another Federal agency performs inherently governmental functions when, on USAID's behalf, it exercises governmental discretion or serves as a steward of public funds and does not merely supply goods or services that might also be obtainable from private sources.

306.3.13.2 What are some examples of inherently governmental functions that USAID has had other Federal agencies perform?

Effective Date: 10/01/2002

Some examples of inherently governmental functions that other Federal agencies have performed for USAID under FAA section 632(b) agreements include:

Agency	Program
Department of State	To make subgrants to collaborating researchers from Israel and other USAID-assisted countries.
Department of Agriculture	To conduct an assessment of the priority needs for training and technical assistance in sanitary and phytosanitary measures in a geographic region from which the United States imports agricultural products.
United States Customs Service	To develop a standard and simplified customs system for the Western hemisphere.
Federal Trade Commission	To carry out policy and training missions to provide technical assistance to cooperating countries on competition policy and consumer protection.
Securities and Exchange Commission	To help develop and implement securities markets and securities regulatory functions in the cooperating countries.
Department of the Treasury	To assist in developing macroeconomic policy, and tax policy and administration.

Agency	Program
Department of Justice	To assist cooperating countries in Eastern Europe in their efforts to curtail organized crime and corruption.
Department of Justice	To support criminal law reform programs in Eastern Europe to ensure an enhanced partnership between the United States and the cooperating countries that promotes the rule of law.
Environmental Protection Agency	To help strengthen the capacity of cooperating countries to provide public sector environmental services.

In some of the examples cited, the technical expertise provided by the Participating Agency may, in principle, exist in the private sector. However, where a component of the program in question is not only to provide technical assistance but also to coordinate the cooperating country's actions with those of counterpart regulatory agencies of the United States Government, a private sector entity will not be able to speak authoritatively on behalf of the United States Government. In other words, the technical assistance may need to be coupled with direct consultations and coordination with the United States Government on key policies and procedures. The cooperating country may need some degree of assurance that the technical assistance it is receiving represents the U.S. Government's perspective rather than primarily the views of the private sector industry or activity that is to be regulated. In cases such as these, the activities of the Participating Agency would qualify as inherently governmental functions.

306.3.13.3 On what basis may USAID acquire technical assistance from another Federal agency?

Effective Date: 10/01/2002

Another possible purpose of engaging another Federal agency is to obtain technical assistance. An agreement under FAA section 632(b) may be appropriate if the arrangement satisfies the criteria of section 621(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381(a)), which provides:

> In such fields as education, health, housing, or agriculture, the facilities and resources of other Federal agencies shall be utilized when such facilities are particularly or uniquely suitable for technical assistance, are not competitive with private enterprise, and can be made available without interfering unduly with domestic programs.

The criteria of FAA section 621(a) may be addressed in the action memorandum (see **Sample PASA Action Memorandum**, and **Sample PAPA Action Memorandum**) for approval of the activity or program in question. Under applicable delegations of authority, the Assistant Administrator or Mission Director is authorized to make the required determination and justification. If the determination and justification cannot be made or if the purpose of engaging the other agency is to obtain a commercial product or service, then a PASA arrangement or an Economy Act order may be more

appropriate, and OMB Circular A-76 may apply. Consult with the Office of General Counsel for further assistance as necessary.

306.3.13.4 When are the facilities of another agency "uniquely suitable" to provide technical assistance?

Effective Date: 10/01/2002

As noted above (see **306.3.1.1**), FAA section 621(a) provides that USAID may use the facilities and resources of another Federal agency when, among other requirements, the facilities of the other agency are particularly or uniquely suitable for technical assistance. In this context, a Participating Agency's facilities are "uniquely suitable" when no source other than the Participating Agency is capable of providing the technical assistance. The requirement of unique suitability is not satisfied by a determination that the Participating Agency has more experience than anyone else or even that traditionally, the Participating Agency has been the only source of this type of technical assistance. "Unique suitability" is a very difficult standard to meet. It requires an absence of expertise in the entire field outside the proposed Participating Agency. It is not satisfied simply because no other entity has approached the problem in exactly the same way. As used in this paragraph, the applicable "field" in which "unique suitability" is being determined must be interpreted broadly. For instance, the field should be "remote sensing," not "remote sensing in northeastern Morocco," absent a detailed explanation of why remote sensing in northeastern Morocco is significantly different from expertise in remote sensing in northwestern Algeria, thereby making the latter expertise unacceptable.

Certain Federal agencies might be considered uniquely suitable to provide services as follows:

Agency	May be uniquely suitable for
The Department of Agriculture	• Developing regulations and policy governing importation and storage of plant germ plasm, • Establishing and regulating plant and livestock quarantine activities.
The Centers for Disease Control and Prevention	• Tracking down the source of disease, or food and drug poisonings through its Epidemic Intelligence service, • Assisting with large-scale immunization programs, • Developing extensive malaria treatment programs.

306.3.13.5 When are the facilities of a Federal agency "particularly suitable" to provide technical assistance?

Effective Date: 10/01/2002

To conclude that USAID may use the facilities and resources of another Federal agency because the agency is "particularly suitable" to provide technical assistance (see

306.3.1.1) requires a showing that the agency has demonstrable expertise of an exceptional nature. The standard of "particular suitability" requires more than a finding that the proposed Participating Agency would win a contract for the technical assistance if it were put up for a competitive award. The proposed Participating Agency must have a clear and substantial superiority over other sources, both private and public. The preponderance of resources available for application to the target program must be much broader in scope and be demonstrably more readily available from the Participating Agency than from other sources. Alternatively, the type of service requested could be such that it involves the development of a governmental regulatory function that can best be performed by the Federal agency charged with the performance of the same regulatory function within the United States Government.

Certain Federal agencies might be considered particularly suitable to provide services in the fields indicated:

Agency	May be particularly suitable for services on
Department of Agriculture	• Soil conservation • Tropical forestry • Photogrammetric data analysis in support of crops, inventories, crop yields and crop substitution programs • Agriculture extension • Agriculture marketing
Bureau of Reclamation	• Watershed management • Large dam construction or rehabilitation • River basin development
Department of Transportation	• Advice on oil-spill clean-up rehabilitation • Standards pertaining to flight control and airport landing systems
Securities and Exchange Commission	• Regulation of securities and exchanges
Internal Revenue Service	• Tax compliance auditing

The Participating Agency must be able to carry out the assistance without unduly interfering with its domestic programs. This would demonstrate that the Participating Agency has excess capacity that can be provided to USAID for purposes of foreign assistance.

The FAA section 621(a) (see **306.3.1.1**) exemption from OMB Circular A-76 applies only to USAID and is not extended to other Federal agencies. Thus, another Federal agency's ability to respond to USAID's request for services under a PASA or to implement a program under a PAPA may be constrained by that agency's own limitations under OMB Circular A-76. In this context, any contract signed by the other Federal agency in carrying out a PASA, PAPA, or other form of agreement with USAID under section 632(b) of the Foreign Assistance Act of 1961, as amended, may be

subject to the provisions of OMB Circular A-76 and the other Federal agency's own internal procedures for complying with OMB Circular A-76 requirements.

306.3.13.6 What justifications are required to allow USAID to obtain 10 or fewer full-time equivalents of service from another Federal agency?

Effective Date: 10/01/2002

For interagency agreements under FAA Section 632(b) (including PASAs, PAPAs, and other agreement formats) to finance activities involving 10 or fewer full-time equivalents (FTEs) from the Participating Agency, there are two options:

a. Following the procedures of OMB Circular A-76, the Agreement Officer may determine that the Participating Agency will provide the required levels of service quality at fair and reasonable prices based on the budget and other documents in the file.

b. The cognizant Assistant Administrator, or his or her designee, may make a determination under the criteria of FAA section 621(a) or other statutory exception, such as the Government Management Reform Act, thereby making OMB Circular A-76 inapplicable.

In many cases, the first option may be administratively easier because it is already required as a normal part of entering into an interagency agreement and, unlike FAA section 621(a), does not require a separate finding that the Participating Agency is uniquely or particularly suitable.

306.3.13.7 What justifications are required to allow USAID to obtain more than 10 full-time equivalents of service from another Federal agency?

Effective Date: 10/01/2002

For interagency agreements for activities involving more than 10 FTEs, there are also two options:

a. The Agreement Officer may do the full-blown cost comparison required under OMB Circular A-76.

b. The cognizant Assistant Administrator, or his or her designee, may make a determination under the criteria of FAA section 621(a) or other statutory exception, such as the Government Management Reform Act, thereby making OMB Circular A-76 inapplicable.

In this case, the second option is typically easier than the first, but if the Agreement Officer cannot make a determination under FAA section 621(a) or another statutory exception, he or she must do the full-blown cost comparison required under OMB Circular A-76 before executing the PASA or PAPA.

306.3.13.8 How is an FTE calculated?

Effective Date: 10/01/2002

A full-time equivalent (FTE) is 1776 annual available hours for full-time or part-time positions and 2007 annual available hours for intermittent positions. One estimates the total hours by skill and divides by 1776 or 2007 to determine the number of FTE (see Mandatory Reference, **OMB Circular A-76 Handbook, Part II, Chapter 2 at B.5.**). Only the hours for performing commercial functions are counted. Hours spent performing inherently governmental functions are excluded because OMB Circular A-76 applies only to commercial activities.

The computation is done on an activity-by-activity basis, not on an agreement basis. Thus, an amendment to an existing agreement for a separate activity is counted separately for purposes of determining the 10 FTE limit.

306.3.13.9 When may another agency's personnel occupy USAID office space or receive logistical support for services it performs for USAID?

Effective Date: 10/01/2002

When (1) an agreement requires USAID/Washington to furnish facilities, working space, or other logistical support in kind and (2) such in-kind support will be in addition to the current allocation to the technical office, the Bureau for Management, Office of Administrative Services (M/AS) must clear acquisition and assistance request before it is submitted to the Bureau for Management, Office of Procurement (M/OP). The M/AS clearance is not required if the technical office does not need to acquire additional resources to furnish the in-kind support to the Participating Agency.

If the logistical support for PASA personnel will be provided by a Mission, the Mission Executive Officer must clear the acquisition and assistance request for all requirements for in-kind support that will be furnished by the Mission.

306.3.13.10 How does USAID obtain goods and services from another Federal agency using two or more distinct (nonfungible) funding sources?

Effective Date: 10/01/2002

For arrangements under which another Federal agency will furnish goods or services to USAID that will be financed by two or more sources of funds that are not fungible (that is, the funds must be separately tracked), it is preferable to sign separate agreements with the other agency for the activities in question rather than one agreement financed with the two or more sources of funds. If, however, the Agreement Officer chooses to sign one agreement (or to amend an existing agreement) under such circumstances, the agreement must make clear the extent to which and how the other agency must separately account for the funds involved. In drafting appropriate clauses, the Agreement Officer must confer with M/FM or the cognizant Mission Controller to be sure that USAID's accounting requirements will be satisfied.

306.3.14 Deviations

Effective Date: 10/01/2002

If the Activity Manager or the Agreement Officer believes that a deviation from the Standard Provisions or the provisions of this ADS chapter is warranted, he or she may request the Director of the Office of Procurement in the Bureau for Management (M/OP) to approve a deviation request. Deviation requests must be submitted sufficiently in advance of the effective date of the deviation to allow adequate time for consideration and evaluation of the request by the Director, M/OP.

A request for deviation must include a complete description of the deviation, the effective date of the deviation, the circumstances in which the deviation will be used, a specific reference to the ADS policy or standard provision being deviated from, an indication as to whether any identical or similar deviations have been approved in the past, a complete justification of the deviation, the name of the participating agency, and the agreement number. Before the request is submitted to the Director, M/OP, the Activity Manager or Agreement Officer shall submit the request for the written comments of the Bureau for Management, Office of Procurement, Policy Division (M/OP/P). M/OP/P must respond within ten working days. A copy of the comments submitted by M/OP/P must be made a part of the deviation request. A copy of each authorized deviation must be furnished to M/OP/P.

The requestor must coordinate with the Office of General Counsel, prior to approval of a deviation by the Director, M/OP.

The requestor must assure that copies of approved deviations are promptly furnished to M/OP/P, so that it may maintain a central record of all deviations that are granted.

306.4 MANDATORY REFERENCES

306.4.1 External Mandatory References

a. **AID Acquisition Regulation (AIDAR) (48 CFR chapter 7)**

b. **41 CFR 101-25.101, Criteria for determining method of supply**

c. **Economy Act (31 U.S.C. 1535, 1536)**

d. Federal Acquisition Regulation (FAR), specifically,

- **FAR Part 8**
- **FAR 6.302-2**
- **FAR 17.5**

e. **12 Foreign Affairs Manual (FAM) 443**

f. **Foreign Assistance Act of 1961, as amended (FAA)**

g. **Government Management Reform Act (GMRA)**

h. **Information Technology Management Reform Act of 1996**

i. **National Security Decision Directive 38 of June 2, 1982 (NSDD-38)**

j. **Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions**

k. **OMB Circular A-34, Electronic Apportionments**

l. **OMB Circular A-76, Performance of Commercial Activities**

m. Principles of Federal Appropriations Law, Second Edition,
- Volume I – **http://www.gao.gov/special.pubs/og91005.pdf**
- Volume II – **http://www.gao.gov/special.pubs/og92013.pdf**
- Volume III – **http://www.gao.gov/special.pubs/og94033.pdf**
- Volume IV – **http://www.gao.gov/special.pubs/PFALVolumeIV.pdf**

n. Standard Form (SF-) 132, Schedule for Apportionment Action (see **http://www.whitehouse.gov/omb/circulars/a11/2002/s121.pdf**)

o. SF-133, Report on Budget Execution (see **http://www.whitehouse.gov/omb/reports/sf133/index.html**)

p. **SF-1151, Nonexpenditure Transfer Authorization**

q. **40 U.S.C. 757, Information Technology Fund**

306.4.2 Internal Mandatory References

a. **ADS 103, Delegations of Authority**

b. **ADS 302, USAID Direct Contracting**

c. **ADS 312, Eligibility of Commodities**

d. **ADS 432, Details – Civil Service and Foreign Service**

e. **ADS 502, The USAID Records Management Program**

f. **ADS 520, International Cooperative Administrative Support Services (ICASS)**

g. **ADS 548, Program-Funded Information Technology (IT)**

h. **ADS 566, U.S. Direct-Hire and PASA/RSSA Personnel Security Program**

i. **ADS 601, Funding Source Policy**

j. **ADS 602, Forward Funding Policy for Program Funds**

k. **ADS 603, Forward Funding – Non-Program Funds**

l. **ADS 621, Obligations**

m. **ADS 630, Payables Management**

n. **Contract Information Bulletin 95-24 Uniform Numbering System for USAID-Direct Procurement Documents**

o. **Modified Acquisition and Assistance Request Document**

p. Participating Agency Program Agreement (PAPA)

- **PAPA Face Sheet (USAID Form 306-1)**
- **PAPA Schedule**
- **PAPA Annex A, Program Description**
- **PAPA Annex B, Financial Plan and Budget**
- **PAPA Annex C, Standard Provisions**

q. Participating Agency Service Agreement (PASA)

- **PASA Face Sheet (USAID Form 306-2)**
- **PASA Schedule**
- **PASA Annex A, Statement of Work**
- **PASA Annex B, Budget**
- **PASA Annex C, Standard Provisions**

r. **Primer and Checklist for Conducting Cost and Price Analysis for Interagency Agreements**

s. **Series 300 Interim Update 02-01, Use of Gov Works and Other Franchise Funds**

306.5 ADDITIONAL HELP

a. Interagency Agreement Closeout Documents

b. Sample 632(a) Allocation Amendment

*c. Sample 632(a) Memorandum of Agreement to Allocate Funds From USAID to Another Agency

*d. Sample 632(a) Memorandum of Agreement to Allocate Funds to USAID From Another Agency

*e. Sample 632(a) Memorandum of Agreement to Transfer Funds From USAID to Another Agency

*f. Sample 632(a) Memorandum of Agreement to Transfer Funds to USAID From Another Agency

g. Sample 632(a) Transfer Amendment

h. Sample 632(b) Reimbursement Agreement From the Department of State to USAID

i. Sample 632(b) Reimbursement Agreement From USAID to Another Agency

j. Sample Economy Act Order From USAID

k. Sample Economy Act Order to USAID

l. Sample GMRA Agreement

m. Sample Letter of Transmittal for 632(a) Allocation

n. Sample Letter of Transmittal for 632(a) Transfer

o. Sample Letter of Transmittal for Participating Agency Program Agreement (PAPA) or Participating Agency Services Agreement (PASA)

p. Sample PAPA Action Memorandum

q. Sample PASA Action Memorandum

306.6 DEFINITIONS

Effective Date: 10/01/2002

Activity Manager
Member of a Strategic Objective Team or subteam who is responsible for the day-to-day management of one or more specific activities. The Activity Manager is selected by the SO Team, and may or may not also have the delegated authorities of a Cognizant Technical Officer (CTO), whose authority to carry out contract management functions are designated by a Contracting or Agreement Officer. **(See "Cognizant Technical Officer (CTO)")** (Chapters 200-203, 306)

Agreement Officer
A person representing the U.S. Government through the exercise of his/her delegated authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This authority is delegated by one of two methods: to the individual by means of a "Certificate of Appointment", SF-1402, as prescribed in FAR 1.603-3, including any limitations on the scope of authority to be exercised, or to the head of each contracting activity (as defined in AIDAR 702.170), as specified in AIDAR 701.601. (Chapters 302, 306, 331)

Cognizant Technical Officer (CTO)
The individual who performs functions that are designated by the Contracting or Agreement Officer, or are specifically designated by policy or regulation as part of contract or assistance administration. **(See "Activity Manager")** (Chapters 200-203, 306)

inherently governmental function
A function that is so intimately related to the public interest as to mandate performance by Federal employees. Inherently governmental functions are defined in OMB Circular A-76 to include those activities that require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government. Inherently governmental functions are discussed at 306.3.13.1. (Chapter 306)

interagency agreement
Any agreement between two Federal agencies by which one agency buys goods or services from the other, including but not limited to an agreement under the authority of FAA section 632(b), the Economy Act, the Government Management Reform Act or similar legislation, or by which one agency transfers or allocates funds to another under the authority of FAA section 632(a). (Chapter 306)

Participating Agency
A Federal agency that enters into a Participating Agency Service Agreement (PASA), Resources Support Services Agreement (RSSA), or Participating Agency Program Agreement (PAPA) with USAID under the authority of FAA section 632(b). (Chapter 306)

Participating Agency Program Agreement (PAPA)
A type of agreement between USAID and another Federal agency under the authority of FAA section 632(b). USAID uses the PAPA format when the other Federal agency is expected to implement a program with relatively little day-to-day oversight or direct supervision by USAID and the other agency's functions will be primarily performed at a place other than at USAID. USAID also uses the PAPA format if it expects the Participating Agency to contract out for a substantial portion of the services necessary to implement the program. In addition, USAID uses the PAPA format for programs to obtain technical assistance that will not be directly furnished to USAID or under USAID direction. (Chapter 306)

Participating Agency Service Agreement (PASA)
Agreement under FAA section 632(b) between USAID and other Federal agencies for specific services or support, where the services or support may be either (1) activity-specific services tied to a specific goal to be performed within a definite time or (2) continuing general professional support services that have a broad objective but no specific readily measurable tasks to be accomplished within a set time. Typically, the other Federal agency would provide the services or support with significant oversight or supervision by USAID, as, for example, when Participating Agency personnel provide services in USAID work space. (Chapter 306)

Recipient Agency
A Federal agency to which another agency transfers allocates funds under the authority of section 632(a) of the Foreign Assistance Act of 1961, as amended. (Chapter 306)

Reimbursable program
A reimbursable program is an activity under which USAID provides goods and services to or on behalf of other Federal agencies, foreign governments, international organizations and private voluntary organizations and that other entity reimburses (in effect, "pays") USAID for the goods and services provided. (Chapter 306)

Resources Support Services Agreement (RSSA)
An agreement formerly used between USAID and other Federal agencies to obtain continuing general support assistance that had a broad objective but no specific readily measurable tasks to be accomplished within set time frames. Such an agreement is now entered into in the form of a Participating Agency Service Agreement (PASA). (Chapter 306)

Servicing Agency
The Federal agency that provides goods or services to another agency under the authority of the Economy Act or similar legislation. (Chapter 306)

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