

Flexibility Act does not apply. However, this proposed rule is being published in order to elicit comments and to provide transparency in the promulgation of federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–39

Government property management and Personal property.

Dated: May 26, 2009.

Stan Kaczmarczyk,

Acting Associate Administrator, Office of Governmentwide Policy.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR part 102–39 as set forth below:

PART 102–39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

1. The authority citation for 41 CFR part 102–39 continues to read as follows:

Authority: 40 U.S.C. 121(c); 40 U.S.C. 503.

2. Amend § 102–39.60—

a. In paragraph (a) by removing the fifth entry “15 Aircraft and airframe structural components (except FSC Class 1560 Airframe Structural Components).”;

b. Revising paragraph (e); and

c. Adding paragraph (m).

The revision and addition read as follows:

§ 102–39.60 What restrictions and prohibitions apply to the exchange/sale of personal property?

* * * * *

(e) Property with a condition code of scrap, as defined at FMR 102–36.40, except:

(1) Property that has utility and value at the point in time when a determination is made to use the exchange/sale authority; or

(2) Scrap gold for fine gold.

* * * * *

(m) Aircraft and aircraft parts, unless there is full compliance with all aircraft and aircraft parts restrictions and

limitations in FMR part 102–33 (41 CFR part 102–33).

§ 102–39.80 [Amended]

3. Amend § 102–39.80, second sentence, by adding “exchanged or” before “sold”.

[FR Doc. E9–15157 Filed 6–25–09; 8:45 am]

BILLING CODE 6820–14–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 704, 713, 714, 715, 744, and 752

RIN 0412–AA63

Partner Vetting in USAID Acquisitions

AGENCY: United States Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development (USAID) is considering implementation of a Partner Vetting System for USAID assistance and acquisition awards. The purpose of the Partner Vetting System is to help ensure that USAID funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners. In order to apply the Partner Vetting System to USAID acquisitions, USAID is proposing to amend 48 CFR Chapter 7. The agency will not apply the Partner Vetting System to USAID acquisitions until after review of the public comments submitted under this proposed rule and promulgation of a final rule by USAID.

DATES: Submit comments on or before August 25, 2009.

ADDRESSES: You may submit comments, identified by RIN number 0412–AA63, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* AIDARPartnerVetting@usaid.gov.

Include RIN number 0412–AA63 in the subject line of the message.

- *Fax:* 202–216–3135.

- *Mail:* U.S. Agency for International Development, Office of Acquisition & Assistance, Policy Division, 1300 Pennsylvania Avenue, NW., Room 7.9–8, Washington, DC 20523–0001.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this

rulemaking. All comments received will be included in the public docket without change and will be made available online at <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Jennifer Norling, Telephone: 202–712–1807, E-mail:

AIDARPartnerVetting@usaid.gov.

SUPPLEMENTARY INFORMATION:

Public Participation: USAID welcomes all comments on this proposed rule, but would most particularly appreciate comments addressing the proposed process for separating source selection from vetting. Additionally, we would appreciate comments on the proposed timing for vetting.

Because security screening precautions have slowed the delivery and dependability of surface mail and hand delivery to USAID/Washington, USAID recommends sending all comments to the Federal eRulemaking Portal. The e-mail address and fax number listed above are provided in the event that submission to the Federal eRulemaking Portal is not convenient (all comments must be in writing to be reviewed). You may submit comments by electronic mail, avoiding the use of any special characters and any form of encryption.

A. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, USAID established a new system of records (see 72 FR 39042), entitled the “Partner Vetting System” (PVS) to support the vetting of key individuals of non-governmental organizations (NGOs) who apply for USAID contracts, grants, cooperative agreements, or other funding and of NGOs who apply for registrations with USAID as Private and Voluntary Organizations. In January 2009, USAID published a final rule (74 FR 9) to add PVS to its Privacy Act regulation, 22 CFR 215, and to exempt portions of this system of records from one or more provisions of the Privacy Act. The supplementary information to this final rule provided a comprehensive discussion of the legal basis for partner vetting.

The effective date for the PVS Privacy Act final rule has been extended three times, most recently on May 4, 2009 (see 74 FR 20871) and at this time, USAID

has not yet made a final decision whether to implement PVS. If and when USAID decides to implement PVS, it will be implemented incrementally, with an initial pilot program in several USAID locations worldwide.

USAID intends to apply PVS to both assistance and acquisitions. In order to apply PVS to USAID acquisitions, USAID must amend 48 CFR Chapter 7, which is USAID's procurement regulation. As required by 41 U.S.C. Chapter 7, Section 418b, agencies must publish a notice in the **Federal Register** when a proposed procurement regulation has a significant effect beyond the internal operating procedures of the agency and provide for a public comment period for receiving and considering the views of all interested parties.

USAID seeks comments through this proposed rule to help ensure successful implementation of PVS to USAID acquisitions that minimizes the impact on our programs and contractors while still protecting against the possibility that USAID funds could benefit terrorist groups. USAID will only finalize this rule if USAID approves PVS and after reviewing public comments received in response to this proposed rule.

Need for partner vetting. Consistent with applicable law and agency policy, USAID already has taken a number of steps to help ensure that agency funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists. USAID recognizes, however, that more can be done to ensure adequate due diligence in certain situations. Accordingly, to complement its requirements for terrorist financing clauses, terrorist financing certifications, and review of public lists of designated groups and individuals, USAID established PVS.

Among other things, PVS will facilitate the management and collection of information from individuals, officers, employees, or other officials of organizations that seek to receive USAID funding. The information will be used to conduct national security screening of such individuals and organizations to ensure that USAID funds do not inadvertently or otherwise provide support to entities or individuals associated with terrorism. To properly conduct this screening, it is necessary to collect information on "key individuals"—the principal officers and other key employees and personnel of USAID contractors.

To minimize the risk that USAID funds will be diverted to terrorists or for terrorist activities, USAID must take into account the range of activities it

carries out and the range of circumstances under which those activities are implemented. Safeguards and scrutiny should be correlated with risk. Accordingly, USAID will perform a risk based assessment to determine the likelihood that the funds, goods, services, or other benefits to be provided could intentionally or inadvertently benefit terrorists or their supporters, including people or organizations who are not specifically designated by the U.S. Government but who may nevertheless be linked to terrorist activities. Key factors that USAID will consider in this assessment will include, but are not limited to, the nature of what is being provided (e.g., cash, goods, services), the type of entity that will be implementing the activity (e.g., U.S. Non-Governmental Organization (NGO), U.S. contractor, foreign NGO, foreign contractor, international organization), the geographic location of the activity, the safeguards available and how easily funds could be diverted or misused. Other considerations, while not necessarily factors in the risk assessment, include the urgency of the activity and the foreign policy importance of the activity.

Vetting and source selection. If PVS is approved and if this rule is finalized, USAID intends to apply PVS to acquisitions in a manner that protects the integrity of the source selection process and also ensures that USAID's Office of Security (SEC) is able to obtain information necessary to vet key individuals and protect that information from unnecessary disclosure. To accomplish this, no individual involved in the source selection process, including the contracting officer, will have access to the information offerors submit for partner vetting, other than to confirm the key individuals the offerors have submitted.

When an acquisition is subject to vetting, a provision in the solicitation will notify offerors of the vetting requirements and procedures. The contracting officer will instruct offerors when to submit the completed USAID Partner Information Form, USAID Form 500-13 ("the Form"), to the vetting official identified in the solicitation. Each Mission or office will have flexibility in determining the appropriate individual to be the vetting official, but the vetting official will be a U.S. citizen employee of USAID who is not involved in the source selection process. In addition to receiving the completed Forms, the vetting official will be responsible for responding to questions from offerors about information to be included on the Form,

coordinating with SEC, and conveying the vetting determination to each vetted offeror and the contracting officer.

The Form identifies the information required for the key individuals of the offeror and required subcontractors. Key individuals include principal officers of the organization's governing body (e.g., chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees), the principal officer and deputy principal officer of the organization (e.g., executive director, deputy director, president, vice president), the program manager or chief of party for the USG-financed program, and any other person with significant responsibilities for administration of the USG-financed activities or resources, including key personnel. The terms "key individual" and "key personnel" are not synonymous; all key personnel will be key individuals, but not vice versa.

Key personnel are those personnel directly responsible for management of the contract or whose professional/technical skills are certified by the requiring office as being essential for successful implementation of the activity. They are designated in the contract and require USAID approval as described in *Automated Directives System Chapter 302—USAID Direct Contracting*. All key personnel, whether or not they are employees of the offeror, are considered key individuals and must be vetted.

The contracting officer determines the appropriate stage of the acquisition cycle for offerors to submit the Form to the vetting official as specified in the solicitation. For negotiated procurements using FAR Part 15, this stage will typically be when the contracting officer establishes the competitive range (48 CFR 15.306(c)). For other acquisitions including those under FAR Part 13—Simplified Acquisition Procedures, FAR Part 14—Sealed Bidding, and task orders issued under Indefinite Quantity Contracts (IQCs) under FAR Part 16, this stage will most likely be just prior to award. Regardless of the point at which vetting begins, source selection proceeds separately from vetting. An offeror must pass vetting in order to be eligible for a USAID award, but this is not a source selection factor, nor a standard for determining the offeror's responsibility.

When vetting at the competitive range stage, after all vetting determinations are received from SEC, the vetting official notifies offerors that they either have passed or have not passed vetting. For offerors who have not passed, the vetting official will include in the notification as detailed a written

explanation of the basis of the vetting determination as SEC determines releasable. In determining what information may be released, SEC will take into consideration the classification or sensitivity of the information, the need to protect sources and methods, and status of ongoing law enforcement and intelligence community investigations or operations.

Concurrently, the vetting official also notifies the contracting officer that all vetting determinations have been provided to the offerors. The vetting official indicates to the contracting officer whether or not all offerors have passed vetting but will not provide the contracting officer with specific vetting information. The contracting officer may then request final revised proposals when discussions are completed. If not all offerors have passed vetting, then the contracting officer may provide as much time as is practicable for offerors to submit their revised final proposals. The additional time is intended to allow offerors to make changes to their proposals to accommodate any changes in key individuals and to request reconsideration of the vetting determination if appropriate. Offerors who change any key individuals for any reason, including but not limited to failure to pass vetting or for reasons related to their technical proposals, must submit their revised Form to the vetting official as soon as possible to allow for vetting of individuals not previously vetted.

The contracting officer makes the source selection decision independently from the vetting process. The contracting officer then confirms with the vetting official that the apparently successful offeror has passed vetting and proceeds with award. Only offerors who have passed the vetting process are eligible for award. When the contracting officer is ready to make award but the vetting official is unable to confirm that the apparently successful offeror has passed vetting, the contracting officer will wait as long as is practicable for the vetting official's confirmation. However, at such time as the Government's need for the contract precludes delaying the award any longer, the contracting officer will proceed with award to the next offeror(s) who represents the best value in accordance with the evaluation criteria of the solicitation and passes vetting.

Subcontracts. Partner vetting would also apply to subcontractors. In most circumstances, only those subcontracts for which consent is required in accordance with FAR clause 52.244-2 will be vetted. The contracting officer will not consent to a subcontract until

the subcontractor's key individuals have passed vetting. When the agency considers it appropriate, additional subcontracts for certain classes of items (supplies and services) that are considered higher risk will also be vetted, even if consent is not required. The contracting officer will identify these classes of items in the solicitation and the contractor will be responsible for ensuring that these subcontracts at any tier are vetted before placing the subcontracts.

In the pre-award stage, offerors may instruct their prospective subcontractors who are subject to vetting to begin the process at any time after the contracting officer notifies them to submit their Form. After contract award, the contractor is responsible for directing prospective subcontractors to submit the Form as soon as possible after selecting them, in order to have the vetting determination from the vetting official in time to place the subcontract. Subcontractors will submit their Form directly to the vetting official, who will notify the subcontractor of the vetting determination and provide any releasable information from SEC. The vetting official will inform the contractor, or a subcontractor entering into a lower tier subcontract subject to vetting, of the vetting determination only. The prospective subcontractor may choose to share the information provided by the vetting official to the contractor.

Post-award vetting. As stated in the proposed clause at section (48 CFR) 752.204-71(c), contractors must resubmit the Form annually or when they replace key individuals with individuals who have not been previously vetted for that contract.

In order to implement partner vetting, USAID proposes to add a new subpart 704.70 to (48 CFR) AIDAR, with an associated solicitation provision and contract clause in (48 CFR) AIDAR part 752. Additionally, USAID proposes to amend (48 CFR) AIDAR parts 713, 714, and 715, and add new part 744 to include reference to the requirements at (48 CFR) AIDAR subpart 704.70.

B. Regulatory Planning and Review

Under Executive Order (E.O.) 12866, USAID must determine whether a regulatory action is "significant" and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). USAID has determined that this Proposed Rule is not an "economically significant regulatory action" under Section 3(f)(1) of E.O.12866. The application of the Partner Vetting System to USAID acquisitions will not

have an economic impact of \$100 million or more. The regulation will not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, nor public health or safety in a material way. However, as this proposed rule is a "significant regulatory action" under Section 3(f)(4) of the E.O., USAID will submit it to OMB for review.

C. Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USAID has considered the economic impact of the rule and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The proposed changes to the (48 CFR) AIDAR use information collected via USAID Partner Information Form, USAID Form 500-13, which was approved in accordance with 44 U.S.C. 3501 by the Office of Management and Budget on August 19, 2008 (OMB Control Number 0412-0577).

List of Subjects in 48 CFR Parts 704, 713, 714, 715, 744, and 752

Government procurement.

For the reasons set forth in the preamble, the U.S. Agency for International Development proposes to amend 48 CFR chapter 7 as follows:

1. The authority citation for 48 CFR parts 704, 713, 714, 715, and 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

PART 704—ADMINISTRATIVE MATTERS

2. Add Subpart 704.70 to read as follows:

Subpart 704.70—Partner Vetting

Sec.
704.7001 Scope of subpart.
704.7002 Definitions.
704.7003 Policy.
704.7004 Procedures.
704.7004-1 Preaward requirements.
704.7004-2 Post award requirements.
704.7004-3 Subcontracts.
704.7005 Solicitation provision and contract clause.

Subpart 704.70—Partner Vetting

§ 704.7001 Scope of subpart.

This subpart prescribes the policies and procedures to apply partner vetting to USAID acquisitions.

704.7002 Definitions.

As used in this subpart—

Key individual means:

(1) Principal officers of the organization's governing body (e.g., chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees);

(2) The principal officer and deputy principal officer of the organization (e.g., executive director, deputy director, president, vice president);

(3) The program manager or chief of party for the USG-financed program; and

(4) Any other person with significant responsibilities for administration of the USG-financed activities or resources, such as key personnel as described in Automated Directives System Chapter 302. Key personnel, whether or not they are employees of the prime contractor, must be vetted.

Vetting official means the USAID employee identified in the solicitation or contract as having responsibility for receiving vetting information, responding to questions about information to be included on the Partner Information Form, coordinating with the USAID Office of Security (SEC), and conveying the vetting determination to each offeror, potential subcontractors subject to vetting, and the contracting officer. The vetting official is not part of the contracting office and has no involvement in the source selection process.

704.7003 Policy.

In the interest of national security, USAID may determine that a particular acquisition is subject to partner vetting. In that case, USAID will require vetting of the key individuals of certain offerors, including key personnel whether or not they are employees of the offeror, and first tier subcontractors. When USAID conducts partner vetting, it will not award a contract to any offeror who does not pass vetting.

704.7004 Procedures.**704.7004-1 Preaward requirements.**

(a) When USAID determines an acquisition to be subject to vetting, the contracting officer determines the appropriate stage of the acquisition cycle to require offerors to submit the completed USAID Partner Information Form, USAID Form 500-13, to the vetting official identified in the solicitation. The contracting officer must specify in the solicitation the stage at which the offerors will be required to submit the vetting Form.

(b) For negotiated procurements using FAR Part 15, this stage will typically be

when the contracting officer establishes the competitive range (48 CFR 15.306(c)). However, the contracting officer may determine that vetting is more appropriate immediately prior to award and require only the apparently successful offeror to submit the completed Form.

(c) For other acquisitions including those under FAR Parts 13 and 14, and task orders issued under Indefinite Quantity Contracts under FAR Part 16, the contracting officer determines the appropriate time to require potential awardee(s) to submit the completed Partner Information Form to the vetting official.

(d) The source selection authority makes the source selection determination separately from the vetting process and without knowledge of vetting-related information other than that the apparently successful offeror has passed or not passed vetting.

(e) The contracting officer may only award to an offeror who has passed partner vetting.

704.7004-2 Post-award requirements.

For those acquisitions the agency has determined are subject to vetting, the contractor must submit the completed Form annually and any time it changes:

(a) Key individuals, including all key personnel, and

(b) Subcontractors for which vetting is required.

704.7004-3 Subcontracts.

(a) Vetting is required for all subcontracts for which consent is required under FAR clause 52.244-2, Subcontracts.

(b) The contracting officer must not consent to a subcontract with any subcontractor subject to partner vetting until that subcontractor has passed vetting.

(c) Vetting may be required for subcontracts at any tier for certain classes of items (supplies and services). The contracting officer must identify these classes of items in the solicitation.

(d) The contractor may instruct prospective subcontractors who are subject to partner vetting to submit the Form to the vetting official as soon as the contractor submits the Partner Information Form for its key individuals.

704.7005 Solicitation provision and contract clause.

(a) The contracting officer will insert the provision at 752.204-70 Partner Vetting Pre-Award Requirements, in all solicitations USAID identifies as subject to Partner Vetting.

(b)(1) The contracting officer will insert the clause at 752.204-71 Partner

Vetting, in all solicitations and contracts USAID identifies as subject to partner vetting.

(2) The contracting officer will use the clause with its Alternate I when USAID determines that subcontracts at any tier for certain classes of supplies or services are subject to vetting.

PART 713—SIMPLIFIED ACQUISITION PROCEDURES

3. Add Section 713.106-370 to Subpart 713.1 to read as follows:

713.106-370 Partner Vetting.

If an acquisition is identified as subject to Partner Vetting, see (48 CFR) AIDAR 704.70 for the applicable procedures and requirements.

PART 714—SEALED BIDDING

4. Add Section 714.408-170 to Subpart 714.4 to read as follows:

714.408-170 Partner Vetting.

If an acquisition is identified as subject to Partner Vetting, see (48 CFR) AIDAR 704.70 for the applicable procedures and requirements.

PART 715—CONTRACTING BY NEGOTIATION

5. Add Subpart 715.70 to read as follows:

* * * * *

Subpart 715.70—Partner Vetting**715.70 Partner Vetting.**

If an acquisition is identified as subject to Partner Vetting, see (48 CFR) AIDAR 704.70 for the applicable procedures and requirements.

6. Add Part 744 to read as follows:

PART 744—SUBCONTRACTING POLICIES AND PROCEDURES**Subpart 744.2—Consent to Subcontracts****744.202-170 Partner Vetting.**

If an acquisition is identified as subject to Partner Vetting, see (48 CFR) AIDAR 704.70 for the applicable procedures and requirements.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend part 752 by adding sections 752.204-70 and 752.204-71, to read as follows:

752.2 Texts of Provisions and Clauses.

* * * * *

752.204–70 Partner Vetting Pre-Award Requirements.

As prescribed in (48 CFR) AIDAR 704.7005(a), insert the following provision in all solicitations subject to vetting:

Partner Vetting Pre-Award Requirements (XXXX 2009)

(a) USAID has determined that any contract resulting from this solicitation is subject to partner vetting. Terms used in this provision are defined in paragraph (b) of the AIDAR clause at 752.204–71 Partner Vetting, of this solicitation. An offeror that has not passed vetting is ineligible for award.

(b) The following are the vetting procedures for this solicitation:

(1) Prospective offerors review the attached USAID Partner Information Form, USAID Form 500–13, and submit any questions about the Form or these procedures to the contracting officer by the deadline for questions in the solicitation.

(2) The contracting officer notifies the offeror when to submit the Form. For this solicitation, USAID will vet at *[insert in the provision the applicable stage of the source selection process at which the Contracting Officer will notify the offeror(s) who must be vetted]*. Within the timeframe set by the contracting officer in the notification, the offeror must complete and submit the Form to the vetting official named in paragraph (d) of the AIDAR clause at 752.204–71 Partner Vetting, of this solicitation. Note: Offerors who submit using non-secure methods of transmission do so at their own risk.

(3) The offerors must notify proposed subcontractors of this requirement when the subcontractors are subject to vetting.

(c) Vetting is conducted independently from any discussions the contracting officer may have with an offeror. The offeror and any subcontractor subject to vetting must not provide vetting information to other than the vetting official. The offeror and any subcontractor subject to vetting will communicate only with the vetting official regarding their vetting submission(s) and not with any other USAID or USG personnel, including the contracting officer or his/her representatives. Exchanges between the Government and an offeror about vetting information submitted by the offeror or any proposed subcontractor are clarifications in accordance with FAR 15.306(a). The contracting officer designates the vetting official as the only individual authorized to clarify the offeror's and proposed subcontractor's vetting information.

(d)(1) The vetting official notifies the offeror that it:

(i) Has passed vetting,
 (ii) Has not passed vetting, or
 (iii) Must provide additional information, and resubmit the Partner Information Form with the additional information within the number of days the vetting official specified in the notification.

(2) The vetting official will include in the notification any information that USAID's Office of Security determines releasable. In its determination, SEC will take into consideration the classification or sensitivity

of the information, the need to protect sources and methods, or status of ongoing law enforcement and intelligence community investigations or operations.

(e) *Reconsideration.* (1) Within 7 calendar days after the date of the vetting official's notification, an offeror that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the offeror's additional information warrants a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(f) *Revisions to vetting information.*
 (1) Offerors who change key individuals, whether the offeror has previously passed vetting or not, must submit a revised Partner Information Form to the vetting official. This includes changes to key personnel resulting from revisions to the technical proposal.

(2) The vetting official will follow the vetting process in paragraph (d) of this clause for any revision of the offeror's Form.

(g) *Award.* At the time of award, the contracting officer will confirm with the vetting official that the apparently successful offeror has passed vetting. The contracting officer may award only to an apparently successful offeror that has passed vetting.

752.204–71 Partner Vetting.

As prescribed in (48 CFR) AIDAR 704.7005(b), insert the following clause in all contracts subject to vetting:

Partner Vetting (XXXXX 2009)

(a) The contractor must comply with the vetting requirements for key individuals under this contract.

(b) Definitions. As used in this provision—
Key individual means:

(1) Principal officers of the organization's governing body (e.g., chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees);

(2) The principal officer and deputy principal officer of the organization (e.g., executive director, deputy director, president, vice president);

(3) The program manager or chief of party for the USG-financed program; and

(4) Any other person with significant responsibilities for administration of the USG-financed activities or resources, such as key personnel as described in Automated Directives System Chapter 302. Key personnel, whether or not they are employees of the prime contractor, must be vetted.

Vetting official means the USAID employee identified in paragraph (e) of this clause as having responsibility for receiving vetting information, responding to questions about information to be included on the USAID Partner Information Form, USAID Form 500–13, coordinating with the USAID Office of Security, and conveying the vetting determination to each offeror, potential subcontractors subject to vetting, and to the contracting officer. The vetting official is not

part of the contracting office and has no involvement in the source selection process.

(c) The Contractor must submit a USAID Partner Information Form, USAID Form 500–13, to the vetting official identified below during the contract period—

(1) Annually by the anniversary date of contract award, and

(2) When the Contractor replaces key individuals with individuals who have not been previously vetting for this contract.

Note: USAID will not approve any key personnel who have not passed vetting.

(d) The designated vetting official is:

Vetting official: _____
 Address: _____

E-mail: _____
 (for inquiries only)

(e)(1) The vetting official will notify the Contractor that it—

(i) Has passed vetting,
 (ii) Has not passed vetting, or
 (iii) Must provide additional information, and resubmit the Partner Information Form with the additional information within the number of days the vetting official specifies.

(2) The vetting official will include in the notification any information that USAID's Office of Security determines releasable. In its determination, SEC will take into consideration the classification or sensitivity of the information, the need to protect sources and methods, or status of ongoing law enforcement and intelligence community investigations or operations.

(f) *Reconsideration.* (1) Within 7 calendar days after the date of the vetting official's notification, the contractor or prospective subcontractor that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the Contractor's additional information warrants a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(g) A notification that the Contractor has passed vetting does not constitute any other approval under this contract.

(h) When the Contractor anticipates awarding a subcontract for which consent is required under FAR clause 52.244–2, Subcontracts, the subcontract is subject to vetting. The prospective subcontractor must submit a USAID Partner Information Form, USAID Form 500–13, to the vetting official identified in paragraph (d) of this clause. The contracting officer must not consent to award of a subcontract to any organization that has not passed vetting when required.

(i) The Contractor agrees to incorporate the substance of paragraphs (a) through (g) of this clause in all subcontracts under this contract.

(End of clause)

Alternate I (XXX 2009). As prescribed in 704.7005(b)(2), substitute paragraphs (h) and (i) below for paragraphs (h) and (i) of the basic clause:

(h)(1) When the Contractor anticipates awarding a subcontract for which consent is required under FAR clause 52.244-2, Subcontracts, the subcontract is subject to vetting. The prospective subcontractor must submit a USAID Partner Information Form, USAID Form 500-13, to the vetting official identified in paragraph (d) of this clause. The contracting officer must not consent to award of a subcontract to any organization that has not passed vetting when required.

(2) In addition, prospective subcontractors at any tier providing the following classes of items (supplies and services):

must pass vetting. Contractors must not place subcontracts for these classes of items until they receive confirmation from the vetting official that the prospective subcontractor has passed vetting.

(i) The Contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

Maureen A. Shauket,

*Director, Office of Acquisition and Assistance,
U.S. Agency for International Development.*

[FR Doc. E9-15012 Filed 6-25-09; 8:45 am]

BILLING CODE 6116-01-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 605

[Docket No. FTA-2008-0044]

RIN 2132-AB00

School Bus Operations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Federal Transit Administration (FTA) hereby withdraws

a notice of proposed rulemaking (NPRM) regarding school bus operations published in the **Federal Register** on November 18, 2008. FTA has determined that withdrawal of the NPRM is appropriate in consideration of public misperceptions with FTA's regulatory proposal.

DATES: *Effective Date:* The proposed rule, published on November 18, 2008 (73 FR 68375), is withdrawn as of June 26, 2009.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

On November 18, 2008, FTA issued a Notice of Proposed Rulemaking (NPRM) to amend its school bus operations regulations at 49 CFR part 605.¹ FTA issued the NPRM to make the regulations consistent with the changes to the Agency's authorization statute, 49 U.S.C. 5323(f), as amended by Section 3023(f) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU);² to provide clarification about the regulations in the context of the recent decision by the U.S. District Court for the Western District of New York in *Rochester-Genesee Regional*

¹ Federal Transit Administration, Notice of Proposed Rulemaking on School Bus Operations, 73 FR 68375 (Nov. 18, 2008).

² Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) sec. 3023, 49 U.S.C. 5323(f) (2006).

Transportation Authority v. Hynes-Cherin; ³ and generally, to update the regulation based on experience and industry practice. Through the NPRM, FTA intended to provide its grantees with a regulatory basis which would allow them to continue to provide the service that FTA historically has allowed through administrative adjudications, while simultaneously satisfying the statutory requirements of 49 U.S.C. 5323(f).

The comment period for the NPRM closed on February 18, 2009. FTA has received and considered all 233 written comments in response to the NPRM. Although FTA received a good deal of support for the NPRM, many commenters opposed it. Generally, critics of the NPRM believed that FTA was attempting to restrict opportunities for its grantees to provide transportation, when in fact, FTA was attempting to allow its grantees to provide service it historically has allowed. FTA finds, moreover, that many commenters misunderstood FTA's objectives to rectify a significantly outdated regulatory scheme.

The Withdrawal

In consideration of the foregoing, FTA hereby withdraws its NPRM on school bus operations for FTA Docket Number FTA-2008-0044, as published in the **Federal Register** on November 18, 2008 (73 FR 68375). FTA will revisit the issues addressed in the NPRM in the near future.

Issued in Washington, DC, on this 23rd day of June 2009.

Peter M. Rogoff,

Administrator.

[FR Doc. E9-15346 Filed 6-24-09; 4:15 pm]

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³ 531 F.Supp.2d 494 (W.D.N.Y. 2008).