

**PSC “Line In/Line Out” Changes  
DRG A&A GUIDANCE DRAFT  
October 20, 2017**

**PLANNING AND PROJECT DESIGN IN RELATION TO ACQUISITION AND ASSISTANCE INSTRUMENTS IN DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE (DRG) PROGRAMMING**

**AMPLIFYING GUIDANCE FOR DRG PROGRAMS**

**Introduction**

The success of U.S. Government efforts to support democratic development depends on multiple factors, some of which are not development-related, and broad outcomes that are at times difficult to track and attribute. As a result the choice of instrument can be particularly challenging given the complex operating environment for DRG programs and non-linear democratic trajectories. This guidance intends to reinforce the discipline of development practitioners in considering key questions and issues in the design phase of a project or activity to inform the choice of instrument in the DRG Sector.

**Guidance for DRG Programs**

When planning DRG-related programs, the design phase represents the most appropriate and best opportunity for the Agency to incorporate the context, challenges, and opportunities for achieving development impact. The project design phase is when staff should consider the principal purpose of the acquisition or assistance instrument and the intended relationship between the USG and an awardee. These elements vary by country and sector, and working through the consideration of them can provide insights into the desired relationships.

This document proceeds by documenting USAID policy, the rationale for this amplifying guidance and identifies sample scenarios in the areas of electoral assistance, local governance, civil society, parliamentary strengthening and rule of law programs to highlight consideration of the relationships between the USG and the awardee. The Agency revised its project planning and selection of instrument policies in 2016 to enhance understanding and more effectively link planning considerations with selection of instrument and implementation. While the revised ADS policies are for all development sectors, the Center of Excellence on Democracy, Human Rights and Governance (DRG Center) provides the following sector-specific amplifying guidance, consistent with the new, revised ADS Chapter 304 and ADS 200 series. It allows for greater alignment of the execution of DRG programs with federal law and regulations, while also providing greater clarity on the legal and regulatory frameworks that affect DRG programming.

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## **USAID Policy**

As stated in ADS Chapter 304, USAID has no overall agency goals or targets for the use of acquisition versus assistance instruments. The operating unit and CO/AO must select each instrument based upon the applicable facts and circumstances at the time of selection of the instrument and consistent with applicable laws, regulation, and policy. As a result, this guidance is consistent with the Agency’s intent of not setting overall goals or targets for the use of acquisition or assistance instruments or setting aside or reserving any sector or sub-sector for exclusive or predominant use of acquisition or assistance instruments.

To determine the appropriate instrument, the project design team must objectively assess the *principal* purpose of the instrument and the relationship between the USG and the awardee. In simple terms, choosing between acquisition and assistance depends on whether the USG is either buying services or supplies from the awardee (acquisition) or supporting the ability of an awardee to carry out an activity (assistance). **[Add: Additionally, acquisition is used when the USG requires a high degree of management oversight of a program.]** Since USAID’s acquisition and assistance awards are often targeted to serve ultimate beneficiaries and support particular results or impacts, the existence of ultimate beneficiaries in the host country is not helpful in choosing between acquisition and assistance instruments. **[Delete: However, Missions and independent offices may want to take into consideration the ability of an awardee to achieve the goals of the project to help inform instrument selection.]**

## **Why Amplifying Guidance for the DRG Sector?**

This amplifying guidance and ADS Chapter 304 are intended to ensure that analysis and discussion of the appropriate instrument are conducted early in the activity or project planning and that the ultimate decision should remain in the field, as close to the point of implementation as possible. These considerations are particularly important in dealing with a country’s internal political processes.

**[Delete: Given]** The sensitivities of DRG programming and concerns regarding external influence particularly in civil society, political competition, and consensus-building processes, **[Add: underscore the imperative of following a consistent selection of instrument process. DELETE Congress**

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**has expressed interest in DRG programming related to choice of instrument.]**

Project and activity design teams are asked to consider carefully the context under which resources will be awarded **[Add: and managed]** and the relationship with the awardee **[Add: from award through start-up, implementation and close-out]**—as a provider of services or supplies or to support the awardee’s activities **[Delete: for a public purpose]**. Variances in country context preclude the use of a standardized checklist or other, more prescriptive guidelines. By following a deliberate design process, project design teams are more likely to select the most appropriate instrument to achieve the goals of a particular project. The project design team is responsible for considering these issues as a matter of standard practice. Early involvement of the CO/AO will help to inform their determination of the appropriate selection of instrument. The final determination of the selection of instrument is made by the cognizant CO/AO.

**[PSC Comments:** These additions will reinforce to the design teams that the selection of instrument has implications for how USAID relates to the awardee throughout the life of the activity. We further suggest deleting the words “for a public purpose.” USAID’s revised ADS 304 helpfully clarifies that all USAID acquisition and assistance activities ultimately serve a public purpose, and that the existence of a public purpose is therefore not a useful criterion in determining choice of instrument.]

### **Sample Scenarios**

The DRG Center is a resource throughout the planning and design process to support field staff in programming considerations. While some planning and design activities sometimes present clear cases as either acquisition or assistance, other scenarios in the DRG sector are not immediately clear and require the discipline in the design phase to consider key questions and issues related to the principal purpose and the desired relationship with an awardee. Below are a few examples of activities that establish particular relationships between the USG and the awardee, thereby determining the appropriate instrument.

Field staff is encouraged to use this amplifying guidance as a resource and to consult closely with resources available at post, including Mission Program Offices, Resident Legal Officers (RLOs), and Contracting Officers/Agreement

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Officers (COs/AOs). When in doubt, always seek more specific support and additional input from your cognizant CO/AO with whom the final determination on the selection of instrument rests.

### **Illustrative Examples of DRG Assistance or Acquisition Scenarios**

The examples below are intended to highlight some key aspects related to selection of instrument but are not intended to be determinative of every aspect that may influence a final determination. The central feature of the acquisition examples is that the primary focus of the operating unit is on the need to acquire specified services or supplies required for the activity **[Add: that is in support of the USG's overall mission]**. In contrast, the central feature of the assistance examples is that the primary focus is on transferring federal financial assistance to the awardee to support its mission, activities, and interventions in a designated DRG program area that advance the purpose of the project. In certain cases, the operating unit may have no difficulty distinguishing and selecting between acquisition and assistance. In instances where the overriding principal purpose and program authority can justify a choice of either acquisition or assistance, the operating unit should exercise discretion in choosing which relationship to establish in each particular case.

#### **Elections - Assistance Example**

**[Delete: As part of a long-term strategy in a country with a mixed history of free and fair elections,]** USAID’s principal purpose is to support an organization’s ability to increase the fairness and integrity of electoral processes through a variety of activities including voter education, election monitoring, and support to the Central Election Commission, even though the activity may also include procurement by the awardee of equipment or software to improve transparency.

#### **Elections - Acquisition Example**

As part of a plan to phase out of DRG assistance in a country **[Delete: that has held several rounds of competitive elections widely assessed as credible,]** USAID’s principal purpose is to fulfill a pledge to the host government to procure modernized equipment and software for the central election commission. This could include acquisition of certain technical assistance services to be provided to the electoral commission to ensure effective use of the new hardware and software.

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**[PSC Comments:** For the entire “Examples” section, in order to prevent confusion, keep them as similar as possible to highlight the real differences. For instance, in the above “Elections” examples, readers might otherwise think that in countries with a mixed history of free and fair elections acquisitions should *never* be used for election support, or that acquisition can *only* be used when a country has had several rounds of competitive elections.]

**Opinion Polls - Assistance Example**

USAID’s principal purpose is to support an organization’s ability to enhance public opinion polling for the principal purpose of promoting the use of opinion data by political parties, civil society, and/or governments in order to improve responsiveness to citizens’ needs and priorities. The data provided may also be useful to the USG and other donors, but the principal purpose of the activity is not to acquire this data for the direct benefit or use of the USG.

**Opinion Polls - Acquisition Example**

USAID’s principal purpose is to acquire services for the conduct of public opinion polls to obtain data for the primary purpose of informing USG strategic planning or program designs.

**Civil Society – Assistance Example**

USAID’s principal purpose is to support an entity’s ability to strengthen local organizations’ skills and capacity to organize and advocate on issues of priority to the community. USAID provides funds to a recipient to support its purpose to improve the legal enabling environment for civil society through strengthening of civil society and government capacity, research, etc.

**Civil Society – Assistance Example**

USAID's principal purpose is to support the independent media, free flow of information and freedom of expression and plurality of news sources through strengthening the increasing professionalism standards of local media sector actors and institutions; improving the legal and regulatory environment for freedom of expression; assisting media organizations to improve their business models to allow for editorial independence; and strengthening media support organizations.

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**[PSC Comments:** As written, the example is not explicit whether the independent media is the awardee or beneficiary. Is the USG buying services from an awardee that the USG requires to support independent media? Or is the USG providing financial assistance to local independent media organizations to further their existing mission and activities? As an assistance example, the text must be clear that financial assistance is supporting the awardee’s mission, activities, and interventions.]

**Civil Society – Acquisition Example**

USAID requires specific services to administer grants on behalf of USAID to local organizations. The activity also outsources production of a related USAID-issued civil society research publication.

**Civil Society – Acquisition Example**

USAID’s principal purpose is to acquire and direct Agency-specified services to build the capacity of local entities that have participated in USG programs in order for them to become eligible for direct USAID assistance. In doing so, USAID requires the successful offeror to provide the required services to designated parties and to collaborate closely with and take technical direction from USAID offices and programs that engage local partners.

**Parliamentary Strengthening - Assistance Example**

USAID’s principal purpose is to provide financial support to an organization for the delivery of its activities and interventions aimed at enhancing development of parliament as a multiparty, representative institution. This financial support includes funding for interventions of the recipient that improve the legislative functions through a variety of activities related to the organization, functions of party factions, committee work, constituent outreach, legislative oversight, and other activities to increase the capacity of elected members of legislatures and legislative staff to perform their duties and functions.

**Parliamentary Strengthening - Acquisition Example**

USAID principal purpose is to acquire and provide specified technical assistance and training to increase the capacity of legislatures and legislative

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staff to perform their duties and functions. This could include study tours and exchanges to expose members and staff to comparative legislative practices, as well as the provision of equipment, information technologies, and infrastructure support to modernize legislative processes and facilities.

**[PSC Comments:** The distinguishing factor is clear: that in the Assistance example, the USG is furthering the *recipient’s activities and interventions* and, in the Acquisition example, the USG is *acquiring specified services*. However, the examples include different lists of potential interventions, which could easily be incorrectly interpreted by USAID staff as meaning that those differences also factor into choice of instrument selection. The two lists should be streamlined because the specified activities can be provided through either acquisition *or* assistance. As USAID notes elsewhere, it is the purpose of the instrument (fund services and activities specified by the USG – acquisition vs. financially support the services and activities of the recipient – assistance) and the USG’s relationship with the implementer that should determine choice of instrument.]

### **Local Governance - Assistance Example**

USAID’s principal purpose is to provide financial support to a recipient that enhances its ability to work with civil society organizations, including professional associations, NGOs etc., to increase citizen participation in local decision-making regarding budgeting, public spending, and service delivery. The assistance award could include funds to develop/scale up technologies/tools to enhance social accountability, as well as limited funds for infrastructure projects as identified by the recipient and by civil society.

### **Local Governance - Acquisition Example**

USAID’s principal purpose is to acquire and direct Agency-specified services to build the capacity of local and national government institutions to promote decentralized governance. This includes the development of systems to improve public administration, track public spending. It includes the acquisition and provision of specified training for local government officials on governance issues such as budgeting, service delivery, responsiveness,

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transparency, and accountability. In a post-conflict country with high physical security concerns, USAID requires the services of a construction firm to rebuild infrastructure according to certain specifications to support host country needs.

**[PSC Comments:** These examples correctly demonstrate that very similar services are provided under assistance and acquisition vehicles, all of which ultimately benefit a third party. How the examples treat construction, however, is problematic because it suggests the *difference in environment* should factor into choice of instrument selection. Construction in an *insecure environment* is not a necessary condition for acquisition selection, but by calling it out the example implies it is important. Further, the Assistance example doesn’t clarify how its construction reference reconciles with ADS 304.3.4.2. We suggest USAID strike construction from both examples. Alternatively, both examples could include the same reference to construction and clarify how the Assistance reference squares with ADS 304.3.4.2.]

**Rule of Law --Assistance Example**

USAID’s principal purpose is to provide financial support to selected groups, bar associations, legal aid and other associations that have a role in reinforcing knowledge, skills, independence and accountability of judicial actors, or a role in monitoring the judicial system or judicial processes. This financial assistance may include support to law schools/organizations that train judges/lawyers and/or offer legal aid to the underserved groups.

**Rule of Law -- Acquisition Examples**

USAID’s principal purpose is to acquire and direct Agency-specified services to build the capacity of justice sector institutions, including criminal and civil courts, including efforts to modernize court case management and case tracking systems through the use of information and communication technologies. The acquisition may include services and equipment that advance the establishment and operation of specialized (e.g., anti-corruption) courts.



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***Frequently Asked Questions***

1. What if what I am trying to accomplish has characteristics from two different instruments?

Answer: If you find yourself trying to design an activity and need to incorporate characteristics from both acquisition and assistance instruments, chances are that the activities are inappropriately combined. Activities with different purposes should be implemented under the appropriate instrument as outlined in ADS 304. For example, engaging a firm to upgrade a legislative building and transferring financial assistance to an awardee to support its provision of technical assistance to legislative committees or caucuses should be separated. Bundling two activities, one whose principal purpose focuses on acquisition of services required by the Agency for its activity and the other whose principal purpose focuses on providing financial assistance to the awardee for program area purposes may contradict appropriate instrument selection as outlined in ADS 304. It is important to separate out the types of activities depending on whether USAID is buying something (services or supplies) from the awardee (acquisition) **[Add - to further the USG mission]** or whether USAID’s principal purpose is to support the awardee’s mission, objective, or interventions in a designated program area (assistance).

2. Some scenarios can go either way in terms of type of instrument. Is there anything else that I should consider in these types of gray areas?

Answer: Since each situation is unique, we strongly suggest consulting with program, acquisition and assistance, and legal offices. The DRG Center can also assist Missions to identify and access information, and other consultative resources they may want to access in AID/Washington.

3. Sometimes the operational environment works against meeting required guidelines - “we are a very busy mission and just don’t have the necessary available resources. How do you propose we approach following the guidance given our operational context?”

Answer: Missions must follow Agency policy and applicable laws and regulations as referenced in ADS Chapter 304. A Mission may need to alter its design schedule and/or approach to be consistent with Agency policy and applicable laws and regulations. Separately, the DRG Center provides surge

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support for project design and can assist Missions with program planning, either in-person or through virtual support.

4. I am in the process of designing a longer-term, post-election democracy promotion activity after implementing a more narrow elections assistance activity that was largely focused on support to the host government’s electoral management body using a contract mechanism. Can I plan to simply expand the current contract to broaden its scope to include new services? What factors should be taken into consideration when expanding an existing project to include new activities in the DRG sector?

Answer: You cannot simply expand the current contract to broaden the scope to include new services. You must consider each planned activity on its own merits and pursue implementation through an appropriate acquisition or assistance mechanism based on the principal purpose of the instrument and the expected relationship desired between the USG and the implementing organization.

While this guidance focuses on the planning and design phase of project development for DRG programs, it is equally important to ensure proper management of acquisition and assistance awards. Additional guidance and training for this will be forthcoming on ADS Chapter 304, including future reference documents such as the Amplifying Guidance and revised Selection of Instrument Templates.

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