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ENCAP FACTSHEET

ENVIRONMENTAL COMPLIANCE: LANGUAGE FOR USE IN SOLICITATIONS AND AWARDS (ECL)

ABOUT THE ECL AND THIS FACTSHEET

The ADS Help Document, “Environmental Compliance: Language for Use in Solicitations and Awards” is a combination of step-by-step guidance and boilerplate text to assemble appropriate, ADS-mandated environmental compliance language for all solicitations and awards. This factsheet is an orientation to the ECL, and particularly targets COs, CTOs, and Activity Managers. It is intended both as a training aid and as a succinct stand-alone reference.

BACKGROUND: USAID’S MANDATORY ENVIRONMENTAL PROCEDURES

Section 117 of the Foreign Assistance Act of 1961, as amended, requires that USAID use an Environmental Impact Assessment (EIA) process to evaluate the potential impact of the Agency’s activities on the environment **prior** to implementation, and that USAID “fully take into account” environmental sustainability in designing and carrying out its development programs. This mandate is codified in Federal Regulations (22 CFR 216 or “Reg. 216”) and in USAID’s Automated Directives System (ADS), particularly Parts 201.3.12.2.b and 204.

Compliance with the procedures is mandatory. With limited exceptions for international disaster assistance, they apply to every program, project, activity, and amendment supported with USAID funds or managed by USAID.

In general, the procedures specify an EIA process must be applied to all activities before implementation—including new activities introduced into an existing program or substantive changes to existing activities. The only exceptions are international disaster assistance activities verified as EXEMPT from the procedures.

The output of this EIA process is “Reg. 216 Environmental Documentation,” which takes one of three forms: a Request for Categorical Exclusion, an Initial Environmental Examination (IEE) or an Environmental Assessment (EA).

This documentation must be cleared by the Mission Environmental Officer (MEO) and the Mission Director AND approved by the Bureau Environmental Officer (BEO) PRIOR to any “irreversible commitment” of resources. Most IEEs and all EAs specify environmental mitigation and monitoring measures (IEE and EA “conditions”) that must be implemented and verified over life-of-project (LOP).¹

PROCUREMENT LANGUAGE AND ENVIRONMENTAL COMPLIANCE

USAID oversees and monitors project/activity environmental compliance. Actual implementation of IEE and EA conditions, however, is the responsibility of the prime contractor/grantee (“partner”) responsible for project/activity implementation. *The ADS therefore requires that all IEE and EA conditions (or a*

Why the environmental procedures?

The procedures are USAID’s principal mechanism to ensure environmentally sound design and management (ESDM) of development activities—and thus to prevent significant adverse impacts on critical environmental resources and ecosystems and on the health and livelihoods of beneficiaries or other groups resulting from inadequate attention to environmental issues in design and operation.

In short, the procedures strengthen development outcomes and help safeguard the good name and reputation of the Agency.

To learn more about ESDM, view the presentation *Environment, Development and Environmentally Sound Design and Management* at www.encapafrika.org/tzWorkshop.htm.

¹ For a more detailed discussion of USAID’s Environmental Procedures, see the “USAID Environmental Procedures Briefing for Mission Staff,” available at www.encapafrika.org/meoEntry.htm.

statement that requires compliance with them) are incorporated into procurement instruments (ADS 204.3.4.a.6; 303.3.6.3e).

Beyond this, however, LOP environmental compliance is best assured when solicitation and award instruments also incorporate the elements set out and justified in the table below:

| Environmental compliance elements in solicitation/award instrument | Reason |
|--|--|
| No activity is implemented unless covered by approved Reg. 216 environmental documentation. | Establishes the importance of maintaining full environmental documentation coverage. |
| The partner must verify current and planned activities annually against the scope of the approved Reg. 216 environmental documentation. | Guards against a project “creeping” out of compliance due to the addition or modification of activities outside the scope of the approved Reg. 216 environmental documentation. This usually takes place during the annual work planning process. |
| Where activities demand environmental management expertise, appropriate qualifications and proposed approaches to compliance must be addressed in technical and cost proposals. | Helps ensure that the partner/team selected for the work is capable of implementing the required environmental management activities. Also sends a clear message that environmental management is not an afterthought, but an integral part of the project, and a core qualification. |
| The partner must develop an Environmental Mitigation and Monitoring Plan (EMMP) fully responsive to all IEE/EA conditions, unless (1) the EMMP already exists in the approved Reg. 216 documentation, or (2) will be developed by USAID. | The EMMP translates the general mitigation directives in the IEE or EA into more specific measures, assigns responsibilities for their implementation, and sets out monitoring/reporting measures to verify their implementation and effectiveness. Without an EMMP, systematic & verifiable implementation of IEE/EA conditions is almost impossible. |
| Budgets and work plans integrate the EMMP. | Unless the EMMP is integrated in the budget and work plan, it will not be implemented. |
| PMPs measure EMMP implementation. | As the EMMP is an integral part of project implementation, it should be treated this way in project evaluation and reporting. |

Collectively, incorporating these compliance elements in the solicitation and award (1) ensures that necessary compliance mechanisms are in place, (2) integrates monitoring and reporting on environmental compliance into routine project/activity monitoring and reporting, and (3) clearly communicates and establishes partner responsibility for LOP compliance. The result is *improved compliance, improved project outcomes, and reduced demands on mission staff*—particularly on activity managers and CTOs, who are required to actively manage and monitor compliance with any IEE/EA conditions per ADS 202.3.6 and 303.2.f.

WHY USE THE ECL?

The ECL is a non-mandatory help document. However, its use:

- Results in environmental compliance language that conforms to ADS requirements and best practice, as described in the table above, therefore realizing the compliance, outcomes, and manager workload benefits also noted above.
- Substantially reduces the time required to develop environmental compliance language.
- Improves consistency across the Agency in addressing environmental compliance.

HOW TO USE THE ECL AND WHAT YOU NEED IN HAND

Use of the ECL is self-explanatory:

1. Follow the instructions on page 3 of the document to assemble the compliance language, then
2. Finalize the **[text in brackets and blue highlight]**.

However, both steps require familiarity with the Reg. 216 documentation covering the activities involved in the solicitation/procurement. In some cases, an IEE specific to the procurement is prepared (in which case the compliance language should be assembled at the same time). In other cases, the solicitation/procurement is covered by a strategic- or program-level IEE of broader scope. In this case, the CTO and MEO should identify the IEE determinations and conditions that apply to the procurement. Once this is done, use of the ECL is straightforward.

Regardless, it is the responsibility of the CTO and Activity Manager, working with the CO, to assure that appropriate environmental compliance language is incorporated in solicitation and procurement instruments.



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Environmental Compliance: Language for Use in Solicitations and Awards

An Additional Help for ADS Chapter 204

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HOW TO ASSEMBLE COMPLIANCE LANGUAGE

To assemble the compliance language for a particular solicitation or award, the following table should be used as guidance. Multiple situations can apply to a single procurement; if this is the case, use all indicated language. You may need to revise and/or renumber the language depending on which elements you select and where you place them in the award or solicitation. *[Bracketed text]* in the model language indicates that you must select the appropriate option or provide other input.

| When the situation is that . . . | Use these environmental compliance language paragraphs from the Model Language . . . |
|---|---|
| Approved Regulation 216 documentation ² exists and it contains . . . Categorical Exclusions and Negative Determinations only | 1a through 1c 4a through 4c |
| at least one Negative Determination with conditions | 1a through 1c 2 4a through 4c 5a through 5d 8a through 8d (optional: to be used when project will involve environmental compliance expertise; collaborate with MEO, or BEO for projects originating out of AID/W, for guidance, as needed) |
| at least one Positive Determination | 1a through 1c 3 4a through 4c 5a through 5d 8a through 8d |
| The contractor/recipient will be required to prepare Regulation 216 documentation (an EA or IEE) | 1a through 1c 4a through 4c 5a through 5d 6a through 6c 8a through 8d 2 If there is also an existing IEE that contains a Negative Determination with conditions 3 If there is also an existing IEE that contains a Positive Determination |

² Note: “Approved Regulation 216 documentation” refers to a Request for Categorical Exclusion (RCE), Initial Environmental Examination (IEE), or Environmental Assessment (EA) duly signed by the Bureau Environmental Officer (BEO).

| | |
|--|--|
| <p>The project includes a sub-grant fund</p> | <p>To any of the above language/situations that apply, add: 7a and 7b 8a through 8d (Paragraphs 7 and 8 are optional, based on the nature of the grant fund and potential environmental impacts; coordinate with MEO or BEO for projects originating out of AID/W for guidance, as needed)</p> |
|--|--|

MODEL LANGUAGE

1. Insert paragraphs 1a, 1b, and 1c in all solicitations and resulting awards:

- In RFAs, insert in the Program Description or in the RFA’s instructions regarding Technical Application Format
- In RFPs, insert in the appropriate section, often the “Special Contract Requirements”

- 1a) The Foreign Assistance Act of 1961, as amended, Section 117 requires that the impact of USAID’s activities on the environment be considered and that USAID include environmental sustainability as a central consideration in designing and carrying out its development programs. This mandate is codified in Federal Regulations (22 CFR 216) and in USAID’s Automated Directives System (ADS) Parts 201.5.10g and 204 (<http://www.usaid.gov/policy/ADS/200/>), which, in part, require that the potential environmental impacts of USAID-financed activities are identified prior to a final decision to proceed and that appropriate environmental safeguards are adopted for all activities. *[Offeror/respondent/contractor/recipient]* environmental compliance obligations under these regulations and procedures are specified in the following paragraphs of this *[RFP/RFA/contract/grant/cooperative agreement]*.
- 1b) In addition, the contractor/recipient must comply with host country environmental regulations unless otherwise directed in writing by USAID. In case of conflict between host country and USAID regulations, the latter shall govern .
- 1c) No activity funded under this *[contract/grant/CA]* will be implemented unless an environmental threshold determination, as defined by 22 CFR 216, has been reached for that activity, as documented in a Request for Categorical Exclusion (RCE), Initial Environmental Examination (IEE), or Environmental Assessment (EA) duly signed by the Bureau Environmental Officer (BEO). (Hereinafter, such documents are described as “approved Regulation 216 environmental documentation.”)

2. If the approved Regulation 216 documentation includes any Negative Determinations with conditions, insert 2.

This language stipulates that the activity(ies) must be implemented in compliance with the conditions specified in the Negative Determination.

- 2) An Initial Environmental Examination (IEE) [*insert IEE # and download reference here, if available*] has been approved for *[the Program(s)/Project]* funding this *[RFA/RFP/contract/grant/cooperative agreement (CA)]*. The IEE covers activities expected to be implemented under this *[contract/grant/CA]*. USAID has determined that a **Negative Determination with conditions** applies to one or more of the proposed activities. This indicates that if these activities are implemented subject to the specified conditions, they are expected to have no significant adverse effect on the environment. The *[offeror/applicant/contractor/recipient]* shall be responsible for implementing all IEE conditions pertaining to activities to be funded under this *[solicitation/award]*.

3. If the approved Regulation 216 documentation includes a Positive Determination, insert 3.

This language specifies that an approved Environmental Assessment (EA) must exist prior to implementation of the activity(ies), and that the activity(ies) must be implemented in compliance with the conditions in the approved EA.

3) An Initial Environmental Examination (IEE) has been approved for the [Program or project funding] this [RFA/RFP/contract/agreement] and for activities to be undertaken herein [(insert IEE # and download reference here, if available)]. The IEE contains a **Positive Determination** for the following proposed activities: [(specify)]. This indicates that these activities have the potential for significant adverse effects on the environment. Accordingly, the [contractor/recipient] is required to [comply with the terms of*/prepare and submit**] an Environmental Assessment (EA) addressing the environmental concerns raised by these activities. No activity identified under this Positive Determination can proceed until Scoping as described in §216.3(a)(4) and an EA as described in §216.6 are completed and approved by USAID (Note that the completed Scoping Statement is normally submitted by the MEO to the BEO when the project originates in a Mission. The Statement may be circulated outside the Agency by the BEO with a request for written comments within 30 days and approved by the BEO subsequently. Approval of the Scoping Statement must be provided by the BEO before the EA can be initiated.)

[*]If an EA already exists, and the contractor/recipient will not be required to prepare the EA, but will be required to comply with the terms of an existing EA.

[**]If contractor/recipient must prepare and submit an EA, also insert 6a through 6c.

Note: If the contractor is to prepare an EA, then this should be specified in the RFP/RFA instructions. The final negotiation of the EA will be incorporated into the award. Paragraphs 8a through d will always apply when the approved environmental documentation includes a Positive Determination, whether the contractor/recipient is preparing the EA or simply required to comply with an existing EA.

4. Insert for all solicitations and awards

The language requires that the contractor/recipient must ensure all activities, over the life of the project, are included in the approved Regulation 216 documentation.

- 4a) As part of its initial Work Plan, and all Annual Work Plans thereafter, the [contractor/recipient], in collaboration with the USAID Cognizant Technical Officer and Mission Environmental Officer or Bureau Environmental Officer, as appropriate, shall review all ongoing and planned activities under this [contract/grant/CA] to determine if they are within the scope of the approved Regulation 216 environmental documentation.
- 4b) If the [contractor/recipient] plans any new activities outside the scope of the approved Regulation 216 environmental documentation, it shall prepare an amendment to the documentation for USAID review and approval. No such new activities shall be undertaken prior to receiving written USAID approval of environmental documentation amendments.
- 4c) Any ongoing activities found to be outside the scope of the approved Regulation 216 environmental documentation shall be halted until an amendment to the documentation is submitted and written approval is received from USAID.

5. If the approved Regulation 216 documentation contains one or more Negative Determinations with conditions and/or an EA, insert 5a through 5d. (These paragraphs should also always be used when the contractor/recipient is writing an IEE or EA.)

The language requires the contractor/recipient to integrate mitigation measures and monitoring into project work plans.

- 5 When the approved Regulation 216 documentation is (1) an IEE that contains one or more Negative Determinations with conditions and/or (2) an EA, the [contractor/recipient] shall:
- 5a) Unless the approved Regulation 216 documentation contains a complete environmental mitigation and monitoring plan (EMMP) or a project mitigation and monitoring (M&M) plan, the [contractor/recipient] shall prepare an EMMP or M&M Plan describing how the [contractor/recipient] will, in specific terms, implement all IEE and/or EA conditions that apply to proposed project activities within the scope of the award. The EMMP or M&M Plan shall include monitoring the implementation of the conditions and their effectiveness.
 - 5b) Integrate a completed EMMP or M&M Plan into the initial work plan.
 - 5c) Integrate an EMMP or M&M Plan into subsequent Annual Work Plans, making any necessary adjustments to activity implementation in order to minimize adverse impacts to the environment.

6. For solicitations, if the Proposal Instructions specifies that the [contractor/recipient] will be required to prepare Regulation 216 documentation (IEE or EA) for some or all activities, insert 6a through 6c.

- 6a) Cost and technical proposals must reflect IEE or EA preparation costs and approaches.
- 6b) [Contractor/recipient] will be expected to comply with all conditions specified in the approved IEE and/or EA.
- 6c) If an IEE, as developed by the [contractor/recipient] and approved by USAID, includes a Positive Determination for one or more activities, the contractor/recipient will be required to develop and submit an EA addressing these activities.

Note: In this case, always insert paragraphs 8a through 8d, as well.

7. For solicitations and awards when sub-grants are contemplated, and the IEE gives a Negative Determination with conditions that specifies use of a screening tool for sub-grants, insert 7a and 7b.

- 7a) A provision for sub-grants is included under this award; therefore, the [contractor/recipient] will be required to use an Environmental Review Form (ERF) or Environmental Review (ER) checklist using impact assessment tools to screen grant proposals to ensure the funded proposals will result in no adverse environmental impact, to develop mitigation measures, as necessary, and to specify monitoring and reporting. Use of the ERF or ER checklist is called for when the nature of the grant proposals to be funded is not well enough known to make an informed decision about their potential environmental impacts, yet due to the type and extent of activities to be funded, any adverse impacts are expected to be easily mitigated. Implementation of sub-grant activities cannot go forward until the ERF or ER checklist is completed and approved by USAID. [Contractor/Recipient] is responsible for ensuring that mitigation measures specified by the ERF or ER checklist process are implemented.

7b) The [*contractor/recipient*] will be responsible for periodic reporting to the USAID Cognizant Technical Officer, as specified in the Schedule/Program Description of this solicitation/award.

8. For solicitations ONLY: Insert 8a through 8d when:

- **the approved Regulation 216 documentation is a Positive Determination or an EA; or**
- **when the contractor/recipient will be expected to prepare Regulation 216 documentation; or**
- **when there is a sub-grant fund that requires use of an Environmental Review Form or Environmental Review checklist; and/or**
- **when there is a Negative Determination with conditions that will require environmental compliance expertise to prepare and/or implement an EMMP or M&M Plan, as determined in collaboration with the MEO or BEO for projects originating out of AID/W.**

8a) USAID anticipates that environmental compliance and achieving optimal development outcomes for the proposed activities will require environmental management expertise. Respondents to the [*RFA/RFP*] should therefore include as part of their [*application/proposal*] their approach to achieving **environmental compliance and management**, to include:

8b) The respondent's approach to developing and implementing an [*IEE or EA or environmental review process for a grant fund and/or an EMMP or M&M Plan*].

8c) The respondent's approach to providing necessary environmental management expertise, including examples of past experience of environmental management of similar activities.

8d) The respondent's illustrative budget for implementing the environmental compliance activities. For the purposes of this solicitation, [*offerors/applicants*] should reflect illustrative costs for environmental compliance implementation and monitoring in their cost proposal.