



Policy

AusAID Contracts Charter: Updated July 2009

Context and background

The aim of the Australian aid program is to assist developing countries reduce poverty and achieve sustainable development, in line with Australia's national interest.¹

Australian aid promotes Australia's fundamental national interests in regional peace, stability and prosperity and is often delivered in high-risk environments.²

The Australian Agency for International Development (AusAID) administers Australia's overseas aid program on behalf of the Government of Australia. In doing so, AusAID enters into contracts with a wide range of suppliers of goods and services.

The above-mentioned factors affect the contracting and delivery of aid activities. More specifically:

- The **quality** of the aid program has direct consequences for developing countries and Australia's national interest. This means that AusAID's focus in its relations with contractors is to promote quality in terms of impact and long-term sustainability, as well as efficiency.
- **Risks** need to be identified, and allocated to the party best placed to manage them. AusAID expects contractors to proactively manage risks within the framework of a constructive relationship with both AusAID and the counterpart government.
- The contracting environment in which aid is delivered is unique. AusAID expects the contractor to deliver the results as contracted. Increasingly, AusAID provides contractors with the scope and flexibility to **manage for results**.
- At the same time, AusAID emphasises that aid delivery is part of a broader development process where **relationships** are crucial (including with counterpart governments and local stakeholders) and skill transfer and capacity building are common and essential features of aid activities. While the AusAID contract is between two parties - the Government of Australia and the contractor - a key measure of success will be the role, views, and ownership by the counterpart government and community stakeholders. In summary, AusAID expects contractors to achieve results, and to do so in ways that significantly involve the counterpart.
- Contractors are **accountable** to AusAID. AusAID is accountable to the Minister for Foreign Affairs and through the Minister to the Parliament of Australia. AusAID is

¹ Australian Aid: Promoting Growth and Stability, AusAID, Canberra, 2006, p.20..

² AusAID Contract Management, Australian National Audit Office, Canberra, Report Number 59, 2001/02.

governed by Commonwealth legislation that focuses on value for money, probity, due process, and accountability. AusAID engages contractors to achieve results on behalf of the Australian Government and to do so in a manner that is consistent with those principles.

Purpose and status of this Charter

AusAID's contracts have been prepared with expert independent legal advice, and in consultation with industry.

The contract sets out mutual obligations and is the formal foundation on which AusAID deals with a contractor. However, successful project management – especially in the unique and challenging environment of development - requires more than a clear legal contract. It requires a professional, constructive relationship between all parties. This Charter therefore articulates the context in which AusAID endeavours to implement contracts. The Charter outlines:

- *AusAID's approach to contracting aid activities*
- *AusAID's expectations of contractors;*
- *What contractors can expect from AusAID; and*
- *How AusAID approaches contract variations, problem solving, dispute resolution, and performance evaluation and feedback.*

This Charter addresses principles and issues that are outside the contractual relationship between AusAID and the Contractor. Therefore this Charter is separate from, and is not intended to affect, the legal rights of either AusAID or the Contractor. AusAID will not treat this Charter as being legally binding on a contractor. AusAID will not be liable upon any claim relating to or concerning this Charter or behaviour consistent or inconsistent with it. This Charter will not affect or diminish the obligations or liabilities of AusAID or a contractor under a contract.

AusAID's approach to contracting aid activities

AusAID's Annual Report outlines the Agency's approach to contracting aid activities. AusAID will continue to improve its contracting framework, in consultation with industry, including:

- Developing a wider choice of contracting approaches, and an emphasis on selecting 'right for activity' contracting strategies; and
- Better aligning contracting and payment structures with intended outputs, outcomes and activities.

AusAID's expectations of contractors

AusAID expects contractors to:

- Implement the activity with professionalism and with a focus on quality, developmental impact and long term sustainability, and with proper regard to AusAID's cross-cutting development policies such as those on gender and environment;
- Maintain productive relationships with the counterpart government and relevant stakeholders of the activity. This includes a genuine focus on transferring skills to counterparts and promoting counterparts' longer term "ownership" throughout the delivery of the activity;
- Focus on achieving results, but in a manner that is always accountable and demonstrates probity, procedural fairness, and value for money;
- Take responsibility for progress of the activity, but consult actively with AusAID and the counterpart on important problems and issues;
- Demonstrate value adding, analytical rigour, and quality assurance in terms of project or activity management. This includes ensuring the quality, clarity, and accuracy of reporting, invoicing, and financial management;
- Promote high standards of personal conduct and behaviour to staff and subcontractors. Lapses in these areas undermine relationships with counterparts, undermine activity effectiveness, and reflect poorly on Australia; and
- Recognise that the aid program delivered by AusAID sits firmly within a broader, integrated whole of government approach and, where necessary, work in partnership with a range of Australian Government agencies to deliver aid initiatives.

It is important to understand that AusAID is contracting, and paying for, highly professional and proficient contractors who should be able to proactively identify and manage problems in activity management. Contractors should not come to AusAID for solutions or additional inputs for every problem. On the other hand, neither should they make decisions that are the proper preserve of Governments, that alter the substance of the activity, or that create "surprises" for AusAID or the counterpart. Best practice is for a contractor to use experience and judgment to identify substantive problems in advance, and then approach AusAID (and where appropriate the counterpart) with well-considered, fully-costed options and recommendations.

What contractors can expect from AusAID

Contractors can expect the following from AusAID:

- AusAID will be professional, business-like, and outcomes-oriented in its dealings with contractors. This is compatible with AusAID's position as a public sector agency

governed by a legislative framework and accountable to the Minister for Foreign Affairs.

- AusAID recognises that contracts involve obligations incumbent on both parties as set out in the contract.
- AusAID encourages contractors to raise project management issues with AusAID. AusAID will respond constructively and promptly where such issues are raised in a timely and well analysed way. If an issue is not resolved in a timely manner, it is appropriate for AusAID or the contractor to elevate the issue to a higher level within their respective organisations.
- AusAID will adhere conscientiously to the Commonwealth Procurement Guidelines, including with respect to principles of probity and ethical and fair dealings with all contractors.
- In terms of personal conduct, AusAID staff will abide by their relevant Codes of Conduct.³
- AusAID will respect Commercial in Confidence information that is supplied to AusAID by contractors, subject to the duties of disclosure that arise from its status as an agency of the Commonwealth Government.
- AusAID will advise contractors within 30 days of receiving a milestone or other payment trigger if it has concerns about the work of a contractor that would delay payment to a contractor.
- AusAID will uphold its reputation for prompt and accurate payment of invoices for work performed and submitted in accordance with the contract.

Contract variations

AusAID will negotiate and seek to formalise contract amendments as expeditiously as possible. AusAID's preferred approach on contract variations or changes to the scope is to:

- Reduce the need for formal amendments for routine changes in the first place (for example by including greater use of unallocated short term advisors in designs, aggregating payment lines to higher level charge codes, use of variation orders etc)
- Use the Annual Plan process as the most efficient means of considering variations in a systematic way.

³ AusAID staff comply with the Australian Public Service Code of Conduct and the AusAID Code of Conduct for Overseas Service; program support staff in-country have equivalent codes and standards of behaviour.

Problem solving and dispute resolution

AusAID is the client and as such is legally entitled to see that the contracted outputs are delivered. AusAID is also bound under the Financial Management and Accountability Act to manage public money in an accountable way.

AusAID will approach problem solving, disagreements and disputes in a professional, constructive and timely manner. AusAID seeks an outcome that is fair and reasonable, accountable, and reflects the merits of the case. Although it will advance its position in negotiations with resolve, AusAID will not favour a contracting culture that focuses on claims and counter claims and will not seek to exploit contractors.

While AusAID does not shy away from arbitration or litigation, it will not use litigation in the first instance (although cases of fraud, corruption, bribery or criminal actions are automatically transferred to the appropriate authorities where court action may then follow). AusAID's contracts commonly call for negotiation and alternative dispute resolution before resorting to binding dispute resolution. When AusAID invokes, or itself is involved in, legal redress, AusAID will vigorously defend the Commonwealth's position, while also adhering to the Commonwealth Government's policy (including 'model litigant' approaches).

Performance Evaluation and Feedback

One important way AusAID promotes quality in the aid program is through its contractor assessment and feedback system. This system provides structured, corporate and documented feedback to contractors about their performance (with the level of detail of feedback being related to the size and nature of total contracts held by the contractor). Information on contractor performance is taken into account by AusAID when awarding future work. Because past performance explicitly and directly affects a contractor's capacity to win future work with AusAID, excellence in delivery is recognised and reinforced. If weaknesses in delivery are identified, then there is also a strong incentive for the contractor to improve delivery.

Principles of the system include:

- Contractors are entitled to be informed by AusAID about their performance. AusAID will bring performance issues and feedback to the contractor's attention directly and in writing. AusAID's performance evaluation system also allows the contractor to provide feedback on AusAID's contract management performance.
- Relevant information on contractor performance will be introduced into Tender Assessment Panels as a specific factor that can influence a contractor's capacity to win future work.
- Such information will be handled in accordance with AusAID's obligations regarding privacy, procedural fairness, and respect for commercial-in-confidence material.
- Contractors are entitled to see their contractor performance file which is held by the Agreements, Safeguards and Partner Performance Section.

- AusAID, in renewing a contract or in awarding a new contract, may take into account any information recorded on a contractor performance file, and any documented and relevant views held by staff within AusAID, or by independent referees, as to the past performance of a contractor.
- However AusAID will not, as a reason for not awarding a contract, take into account a specific item of information or opinion not contained in a tender that reflects adversely on a contractor's performance or reputation without first giving the contractor an opportunity to comment on that information or opinion.
- AusAID does not and will not maintain a 'blacklist' of poor performers.

Summary and Conclusion

High quality in the delivery of Australia's aid program is of vital importance. It is in the nature of international development that complex challenges need to be addressed, often in difficult operating environments. AusAID's contracts set out clearly the rights and obligations of the contractor and AusAID. Nothing in this Charter abrogates or diminishes those rights and obligations.

There are key parties to the development process, including the counterpart government, direct beneficiaries and other stakeholders, who are not signatories to an AusAID contract. Successful development requires good communication and cooperation between all parties. It involves productive relations, realistic expectations about behaviour, and constructive problem solving. These issues cannot always be specified in a contract.

This Charter sets out principles, practices and expectations that should help to ensure that the implementation of aid activities is conducted in a professional and business-like way, leading to high quality impact and sustainable development.

Australian Agency for International Development (AusAID)
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