

President's Emergency Plan for AIDS Relief (PEPFAR) Program

PEPFAR Agreements

Special terms and conditions concerning prostitution and sex trafficking apply to all grants awarded under the U.S. President's Emergency Plan for AIDs Relief (PEPFAR) program. These are:

- a. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.
- b. The following definitions apply for purposes of this provision:
 - "Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.
 - "Prostitution" means procuring or providing any commercial sex act and the "practice of prostitution" has the same meaning.
 - "Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.
- c. The Grantee must insert this provision, which is a standard provision, in all subawards or subcontracts.
- d. This provision includes express terms and conditions of the award and any violation of it is grounds for unilateral termination of the award by NIH prior to the end of its term.

PEPFAR Agreements Between the U.S. Government and Foreign Non-Governmental Organizations (NGOs)

Additional requirements regarding the opposition to prostitution and sex trafficking apply to grants awarded under PEPFAR and issued to foreign Non-Governmental Organizations (NGOs). The terms and conditions for such agreements with foreign NGOs are:

- a. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.
- b. (1) Except as provided in (b)(2) and (b)(3), by accepting this award or any subaward, a non-governmental organization or public international organization awardee/subawardee agrees that it is opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children. Any enforcement of this clause is subject to *Alliance for Open Society International v. USAID*, 05 Civ. 8209 (S.D.N.Y., orders

filed on June 29, 2006 and August 8, 2008) (orders granting preliminary injunction) for the term of the Orders.

The lists of members of GHC and InterAction can be found at:

http://transition.usaid.gov/business/business_opportunities/cib/pdf/GlobalHealthMemberlist.pdf.

- (2) The following organizations are exempt from (b)(1): the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency.
- (3) Contractors and subcontractors are exempt from (b)(1) if the contract or subcontract is for commercial items and services as defined in FAR 2.101, such as pharmaceuticals, medical supplies, logistics support, data management, and freight forwarding.
- (4) Notwithstanding section (b)(3), not exempt from (b)(1) are recipients, subrecipients, contractors, and subcontractors that implement HIV/AIDS programs under this assistance award, any subaward, or procurement contract or subcontract by:
 - (i) Providing supplies or services directly to the final populations receiving such supplies or services in host countries;
 - (ii) Providing technical assistance and training directly to host country individuals or entities on the provision of supplies or services to the final populations receiving such supplies and services; or
 - (iii) Providing the types of services listed in FAR 37.203(b)(1)-(6) that involve giving advice about substantive policies of a recipient, giving advice regarding the activities referenced in (i) and (ii), or making decisions or functioning in a recipient's chain of command (e.g., providing managerial or supervisory services approving financial transactions, personnel actions).

c. The following definitions apply for purposes of this provision:

- "Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.
- "Prostitution" means procuring or providing any commercial sex act and the "practice of prostitution" has the same meaning.
- "Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

d. The recipient shall insert this provision, which is a standard provision, in all subawards, procurement contracts or subcontracts.

e. This provision includes express terms and conditions of the award and any violation of it shall be grounds for unilateral termination of the award by NIH prior to the end of its term.