



Amendment 0008 for the NOFO # MCC-16-RFA-0002

NOFO Name: “MCC-PEPFAR Tanzania Data Collaborative (Co-Lab) Project”

**Subject: Phase II, Application Pre-Submittal Conference, January 11th, 2016,
Responses to Questions and Process Clarifications**

The purpose of this Amendment 0008 is to re-iterate, document and complement the responses provided to the questions by participants during the Phase II Application Pre-Submittal Conference, which took place in Dar Es Salaam and over teleconference on January 11th, 2016.

Questions and answers:

1. Q: How can formalized partnerships be non-exclusive?

A: Partnerships are not required to be exclusive per the terms of the NOFO. Moreover the prime applicants are encouraged to form partnerships with subpartners that will enhance their application with the skills and expertise needed to be fully responsive to the scope of the work to be performed. The relationship between partners and the Applicants will depend on the mechanisms used to formalize their respective agreements. MCC will accept Support letters, however it is in the best interest of the prime partners to form and sign a partnership teaming agreement that specifies roles and responsibilities of each partner. Response #17 provides several common recommendations about teaming agreements format. After the award is made these partnership teaming agreements will be used as a basis for the subawards.

2. Q: What constitutes a formalized relationship? How does this work in the application?

A: The NOFO requires that the relationship between the Applicant and partners to be formalized (letters of support or teaming agreement) per the terms of the Consortium Plan in the NOFO, referenced in Section D, Page 7, Item #4: Final Consortium Plan before submitting an application. Also, see response to the question #1 above.

3. Q: Liability – on Page 63 there is a mention of joint liability. It is confusing whether partners are wholly liable to one another or whether it refers to just the activity.

A: The last line is deleted: “thereto to be held jointly and severely liable for the acts or omissions of the other.”



4. Q: Documentation and formalization of partnerships – is there any other form of documentation (letter of support, for example) that is allowable?

A: Please reference responses for questions #1 and 2.

5. Q: Evidence of Responsibility – Section 4 – What kind of documents is MCC expecting to receive?

A: MCC expects to see the documents that support evidence of responsibility of the prime applicant to the Agreement Officer. The documents may include but are not limited to: short summary about an organization (when and by whom was founded, primary focus of activities, number of full time personnel. Etc.) financial audits (including A-133 or similar audits, audits conducted by federal agencies (USAID, etc.); signed certifications, assurances and representations (by the prime); past performance information (not limited to 3 instances) with the contract information; Personnel manual, Operational and Financial Manuals including internal controls, travel policies, etc. Subpartners are subject to terms of the 2 CFR §200.331 Requirements for pass-through entities. Per Section D page 7, subpartners should provide at least two past performances for the last five years for work similar in nature.

6. Q: Does Section 4 (see above) apply for each organization or just prime?

A: Requirements in this section apply to the prime Applicants per 2 CFR §200.205 Federal awarding agency review of risk posed by applicants. Subpartners are subject to terms of the 2 CFR §200.331 Requirements for pass-through entities.

7. Q: Is the entire audit report requested or just the findings and recommendations?

A: Applicants may submit the findings and recommendations, or the entire report. If the Applicant submit only the findings and recommendations, MCC may request to see the entire report based on information received.

8. Q: If an organization has more than 3 ongoing projects– must the past performance reference list all of them?

A: Past Performance requires only 3 project references, however the applicant may provide additional examples at their discretion so long as they comply with the page limitation. In selecting projects to include, the lead applicant (and partners) should provide examples of work that is most relevant to the role they will be undertaking in the work outlined by this NOFO.



9. Q: Are there any specific accounting companies recommended for audit?

A: No, but the audit companies need to be recognizable in the region or internationally and certified by a CPA. Please see additional guidance below.

Recipient-contracted audits must be conducted in accordance with Chapters 3, 4, and 5 of U.S. *Government Auditing Standards* ("Yellow Book"; hereafter referred to as U.S. *Government Auditing Standards*) issued by the Comptroller General of the United States and generally accepted auditing standards adopted by the American Institute of Certified Public Accountants (AICPA), which have been incorporated into U.S. *Government Auditing Standards* by reference. MCC is aware that some independent auditors contracted by foreign recipients initially may not fully comply with these *Guidelines* because of a lack of technical knowledge and experience in using U.S. *Government Auditing Standards*. MCC will assess and consider this lack of institutional capability when accepting or rejecting reports. MCC may allow exceptions to compliance with U.S. *Government Auditing Standards* and these *Guidelines* provided that: (a) audit reports are determined to be reliable, and (b) any deviations from U.S. *Government Auditing Standards*, such as noncompliance with internal and external quality control review programs and continuing education requirements, are clearly stated in the report as scope limitations (see paragraph 5.1.b.1 and Chapter 7 of these *Guidelines*).

A financial audit of the **recipient's general purpose financial statements** on an organization-wide basis must be submitted to MCC. The audit must be performed in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants (AICPA), auditing standards that have been prescribed by the laws of the country or adopted by an association of public accountants in the country, or auditing standards promulgated by the International Organization of Supreme Audit Institutions or International Auditing Practices Committee of the International Federation of Accountants. The objective of this audit is to express an opinion on whether those statements present fairly, in all material respects, the recipient's financial position at year-end, and the results of its operations and cash flows for the year then ended, in conformity with generally accepted accounting principles.

10. Q: Concerning cost-sharing, is the 5% applicable to the total budget or each partner's budget?

A: The minimum cost-share is required against the entire budget, and does not need to be equally shared among the prime Applicant and partners contributions. For example, the Applicant might contribute 3% of the total budget, with partners contributing 1% each (or a similar approach). The cost-share requirement will apply to the length of the award, so the Applicant will be responsible for ensuring the 5% is met through it or its partners during the period of performance. 2 CFR 200.306 provides specific guidance on cost share requirement as detailed below:

§200.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be



explicitly described in the notice of funding opportunity. See also §§200.414 Indirect (F&A) costs, 200.203 Notices of funding opportunities, and Appendix I to Part 200—Full Text of Notice of Funding Opportunity.

(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

- (1) Are verifiable from the non-Federal entity's records;
- (2) Are not included as contributions for any other Federal award;
- (3) Are necessary and reasonable for accomplishment of project or program objectives;
- (4) Are allowable under Subpart E—Cost Principles of this part;
- (5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
- (6) Are provided for in the approved budget when required by the Federal awarding agency; and
- (7) Conform to other provisions of this part, as applicable.

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in Subpart E—Cost Principles. If a Federal awarding agency authorizes the non-Federal entity to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraphs (d)(1) or (2) of this section.

(1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in (1) above at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally negotiated indirect cost rate or, a rate in accordance with §200.414 Indirect (F&A) costs, paragraph (d), provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.

(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.

(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges. See also §200.420 Considerations for selected items of cost.

(i) The value of donated property must be determined in accordance with the usual accounting policies of the non-Federal entity, with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR part 24.

(2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.

(k) For IHEs, see also OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

11. Q: Concerning space, should rental cost appear in the budget?

A: The Applicant should carry the proposed figure for office rental and/or refurbishment in its budget. However, the Applicant is also encouraged to suggest alternative locations, either through other procurement or provided as in-kind contribution. Please see further clarification below.

12. Q: If the space has not been identified, how can the applicant propose a cost or location?

A: The location has yet to be finalized - and the decision will have to be made in coordination with the MCC-PEPFAR Partnership team, grantee and partners, steering committee, and Government of Tanzania. It is the intent of the program that the space be centrally located in Dar es Salaam, and easy to access by target users (civil society, government representatives, private sector, and other individuals) – and enabling greater interaction among these categories of stakeholders.



The location should include sufficient space to fulfill the requirements listed in the NOFO, with adequate space for anticipated expansion and to accommodate the applicant's vision for the Tanzania Data Collaborative. It must allow for easy access, provide for sufficient parking so as to allow outside visitors comfortable access, and enable ready access to services such as electricity, Internet, and water.

The applicant should provide options and ideas for what spaces / locations might fulfil this objective and, if applicable, provide an estimate of the cost associated. It is not recommended that applications be heavily dependent on a particular location.

13. Q: Are institutional fees allowable?

A: By institutional fees we understood this to refer to "indirect costs." Please refer to the terms of the NOFO regarding NICRA and indirect costs. In case an organization does not have an established NICRA, all proposed costs in the budget need to be presented as direct costs.

14. Q: If there is no NICRA, 10% is acceptable?

A: Any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b, may elect to charge a **de minimis rate of 10% of modified total direct costs (MTDC)** which may be used indefinitely. According to 2 CFR 414 f):

§200.414 Indirect (F&A) costs.

(a) *Facilities and Administration Classification.* For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the "Administration" category; for institutions of higher education, they are included in the "Facilities" category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) paragraph C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs

of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See also §200.306 Cost sharing or matching.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under §200.203 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in §200.331 Requirements for pass-through entities, paragraph (a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III-VII and Appendix IX as follows:

(1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200—Hospital Cost Principles.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in §200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.



Also please see reference to 2 CFR 200.68 MTDC:

§200.68 Modified Total Direct Cost (MTDC).

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). *MTDC* excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

15. Q: Expected timeframe for the results of the technical review and earliest start for activities?

A: The MCC-PEPFAR Team will work quickly to review proposals and make an award. However, the start date for activities will depend on the timing of the technical evaluation panel – and more importantly the completeness, quality and compliance of the submitted applications with the requirements of this NOFO; the review of supplemental materials provided with the application; determination of responsibility of the applicant conducted by the Agreement Officer; risk assessment; the time to issue an award; and other factors. For all these reasons, we request that applicants submit proposals that are as complete and responsive as possible.

16. Q: Is the shortest time between announcement of winner and the award date is likely 4 weeks?

A: That is in within the range of what is expected, however there exists uncertainty as to the exact timing depending on the completeness of the application.

17. General facts about teaming agreements.

What is a teaming agreement?

General Definition - - an agreements between companies to pool resources to obtain and perform a government contract (grant or cooperative agreement).

Types of teaming agreements:

1. prime contractor (partner) /subcontractor (subpartner)
2. joint venture or partnership

Teaming agreement terms

- Statement of Work
- Proposal Preparation
- Exclusivity

- What Happens if Prime Contract Awarded

Subcontract terms

- Pricing
- Subcontract Terms and Conditions
- Flowdown Clauses
- Duration
- Subcontract Terms (maybe)
- Duration

Subcontractor negotiation strategies

- Negotiate Up Front
- Negotiate Favorable Subcontract Terms as Part of the
- Teaming Agreement
- A Potential Subcontractor Loses Negotiating Leverage
- Once Prime Contract Awarded
- Bring Something Unique to the Table
- Negotiate With the Decision Maker

Two requirements for binding agreements to award a subcontract

1. subcontract award required if team lead awarded prime contract

2. essential terms and conditions

- Description of work to be performed
- price or a means of determining price delivery
- quantity or a means of determining quantity
- all type work ordered by the Government

The Teaming Agreement

The Teaming Agreement is a commonly used marketing tool whereby a prime contractor (grantee) and subcontractor (subgrantee) agree to combine resources to bid (apply) on a major government system procurement. Typically, this agreement includes the actual bid of the subcontractor as an exhibit. The prime then may submit that bid as an exhibit to its own bid for the government work. In most cases, the prime is bound to use the subcontractor for the work once the bid is accepted, and the parties will follow the teaming agreement closely when finalizing the subcontract between the parties.

Important issues to consider in such teaming agreement include:

Benefits

Why enter into a teaming arrangement? A competent, smaller business may obtain access to government business that would otherwise be denied to it by teaming with the larger prime in bidding for government work. The prime contractor, on the other hand, can achieve greater control over its costs and more certainty through a pre-bid teaming agreement a potential subcontractor.

Disclosure Required

A teaming agreement is not considered a ‘government’ contract, but a private one between two or more parties and is governed by local laws in country, contract law and/or the Uniform Commercial Code, as applicable. No government acquisition regulations (“FARs” or “DFARs”) must be referenced in the agreement—those are usually negotiated and included within the subcontract.

A caveat: Regardless of any teaming disclosure, the government will hold the prime contractor fully responsible for performance under the prime contract. It may often prove helpful for the subcontractor to include this requirement as an obligation in the teaming agreement, as well as in the bid. It can also prove advantageous to the subcontractor to have a copy of the teaming agreement itself divulged within the bid to the government.

Like a Letter of Intent or a Letter of Support?

Like a letter of intent a teaming agreement serves as a temporary bridge to a final contract. That is, the successful teaming agreement will always be superseded by a fully negotiated subcontract after the government accepts the prime contractor’s bid. Unlike a letter of intent, however: (i) the final contract is with a third party—the government; (ii) all provisions necessary to govern the legal relationship between the parties must be included—brevity is not recommended; and (iii) a teaming agreement is always binding on both parties.

Drafting Considerations

The following are some important business provisions to be addressed in any teaming agreement:

- Exclusivity. May either party retain a right to change its mind and do business with another prime or subcontractor once the government has chosen the winning bidder?
- Should the agreement oblige the prime to award a subcontract to the subcontractor, *or* may the subcontractor merely rely on the implied covenant that the parties must negotiate in good faith—case law supports the proposition that an agreement to negotiate in good faith does *not* require that a final agreement actually be achieved but only that the parties work to reach an agreement “actively and in good faith?”
- To what extent should the parties’ confidentiality and data rights be protected?
- When and how shall termination occur?
- Ought the subcontractor to be allowed to participate in negotiations with the government customer concerning the contribution of the subcontractor to the teaming?
- Lastly, should the prime agree in advance to compensate the subcontractor if the government disapproves the subcontract for any reason?

Inevitably, of course, there will be many other business and legal considerations that need to be considered and accounted for in the teaming agreement. Each individual situation is different and may require expert business and legal assistance to ensure that your company’s business objectives will be met and its legal rights fully protected.



Drafting a Teaming Agreement

It is common for contractors to join together to compete for government contracts under teaming agreements. Teaming arrangements allow companies to compete for government contracts that they might not be able to obtain and perform individually. While teaming may provide for great benefits to you company, it is imperative that your teaming agreement is drafted properly.

Actual teaming agreements should be drawn individually for the specific situation, circumstances and relationship of the parties. Companies assume full responsibility for all due diligence required for entering into a teaming arrangement. Companies are highly recommended to consult with an attorney in such matters.

End of Amendment