

**PART 547—TRANSPORTATION****547.303-1 [Amended]**

7. Section 547.303-1 is amended in paragraph (b)(3) by removing "FAR 42.1403-2" and inserting "FAR 42.1403."

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

8. Alternate I of the provision at Section 552.219-74 is revised to read as follows:

**552.219-74 Goals for Subcontracting Plan.**

\* \* \* \* \*

*Alternate I (DEC 1995)*

The Contracting Officer, as prescribed in 519.703(c), shall delete paragraph (b) of the basic provision and redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

Dated: July 19, 1996.

Ida M. Ustad,

*Deputy Associate Administrator for Acquisition Policy.*

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**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY****Agency for International Development**

**48 CFR Parts 701, 702, 706, 709, 710, 711, 713, 715, 716, 717, 719, 722, 724, 725, 726, 732, 733, 736, 737, 752 and Appendix A**

[AIDAR Notice 96-1]

RIN 0412-AA29

**Miscellaneous Amendments to Acquisition Regulations**

**AGENCY:** Agency for International Development (USAID).

**ACTION:** Final rule.

**SUMMARY:** The AID Acquisition Regulation (AIDAR) is being amended to incorporate administrative changes reflecting USAID's new organizational structure; to implement the Federal Acquisition Streamlining Act (FASA); to clarify or simplify certain authorities and procedures currently in the AIDAR; to implement new or revised Agency policies resulting from reengineering and its effect on procurement procedures; and to revise relevant sections to implement USAID's procurement reform initiatives. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** August 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** M/OP/P, Ms. Diane M. Howard, (703) 875-1310.

**SUPPLEMENTARY INFORMATION:** The specific changes being made to the AID Acquisition Regulation (AIDAR) in this amendment are broad in scope, ranging from changes in basic Agency procurement policy and procedures to minor administrative corrections.

**A. USAID Policy Changes**

Two changes are needed to the AIDAR to reflect Agency policy changes.

(1) A new subpart 726.71 "Relocation of U.S. Businesses, Assistance to Export Processing Zones, Internationally Recognized Workers' Rights" is added to implement a statutorily required policy promulgated by USAID on January 3, 1994.

(2) The clause at 752.7012 "Protection of the Individual as a Research Subject" is revised to implement USAID's adoption of the Common Federal Policy for the Protection of Human Subjects, as found in 22 CFR Part 225.

**B. USAID Reengineering**

USAID has been serving as a reengineering laboratory under the National Performance Review (NPR), and as a result has made many changes in its organizational structure as well as its operational procedures in recent years. Consequently, the AIDAR is being amended throughout to reflect changes in office designations and acronyms and to update or delete references to obsolete regulations, functional position terms, and documentation requirements. The USAID Handbook system has been replaced by the Automated Directives System (ADS), and handbook references in the AIDAR are changed to the corresponding ADS Chapter. A functional position term that is no longer appropriate is "project officer"; USAID, as a result of reengineering, will no longer implement its programs through the former project approval and implementation system and therefore the terms "project" and "project officer" will in the future be, respectively, "activity" and "technical officer" or "cognizant technical officer". Obsolete documentation requirements are Project Implementation Orders (for technical services [PIO/Ts], commodities [PIO/Cs], or participant training [PIO/Ps]), and references to these documents are being deleted.

Concurrent with the overall Agency reengineering and in conjunction with Government-wide procurement reform efforts, USAID has also been reengineering its procurement procedures. AIDAR 706.302-70 is being

revised to provide an additional agency exception to full and open competition to allow for follow-on award for the continued provision of highly specialized services when award to another source would result in substantial additional costs to the government or would result in unacceptable delays. This exception is very similar to the exception described in FAR 6.302-1(a)(2)(iii); however, the FAR authority is available only to DOD, NASA, and the Coast Guard and not to civilian agencies such as USAID. Therefore, the Administrator of USAID made a formal written determination in accordance with paragraph (b)(3)(ii) of AIDAR 706.302-70, Impairment of foreign aid programs. Use of the authority is limited as stated in the added wording in this section.

Another revision related to Agency procurement reform initiatives is in the AIDAR's Appendix A, "Respective Roles of Contracting and Other Personnel in the AID Procurement Process," which is revised to allow the contracting officer to reveal the amount of funds the Agency has available for a specific procurement when a performance-based contract is contemplated.

**C. The Federal Acquisition Streamlining Act of 1994 (FASA)**

FASA and the resulting changes to the FAR require corresponding revisions to the AIDAR. The specific changes are as follows:

(1) All references to "small purchases" and the \$25,000 ceiling for small purchases are being revised to "simplified acquisition procedures" and the threshold amounts in FAR 13.101 and 13.103(b).

(2) USAID's implementation of FASA requirements for obtaining past performance information is incorporated into the revised solicitation provision in 752.209-70, which establishes the procedures for obtaining past performance information from the offeror (this information collection has been approved Government-wide by OMB under approval number 9000-0142). The past performance references submitted in response to this provision will be used both in making the responsibility determination required in FAR Subpart 9.1 and to evaluate the offeror's ability to perform the contract based on its past performance, as now required in FAR 15.605. Subpart 709.1 was removed since it is redundant to the FAR.

After reviewing section 715.608, "Proposal evaluation", to determine what, if any, changes would be necessary to implement this component

of FASA, we redesignated this section as 715.604-70 and revised the text. The contracting office's representative is now designated in paragraph (a) as a non-voting member of the evaluation committee, and paragraph (b) "Functions and procedures of AID evaluation committees" is renamed "Responsibilities of AID evaluation committees" and is revised for clarity. No substantive procedural changes are being made at this time.

(3) Section 716.301-3 is deleted since FASA deleted the corresponding requirement in FAR 16.301-3(c) for a determination and findings prior to issuing a cost-reimbursement type contract.

(4) USAID protest procedures in Subpart 733.7 are revised to reflect FASA changes and to redesignate the AIDAR subpart as 733.1, with sections thereunder redesignated to further correspond to FAR Subpart 33.1. AIDAR subpart 733.71 "AID Procedures for Disputes and Appeals" is also redesignated 733.27 and the sections thereunder are redesignated accordingly.

In addition, Agency protest procedures formerly described in section 733.70 and now found in section 733.103-70 are revised in their entirety to condense and clarify them and to designate the Agency Procurement Executive as the decision authority for Agency protests, rather than the Head of the Contracting Activity. This latter change is being made to better ensure consistency and objectivity in the decision process.

(5) AIDAR subpart 737.2 "Advisory and Assistance Services" is deleted, since the implementation of FASA in FAC 90-33 removed approval requirements addressed in this subpart, and any other evaluation and reporting requirements are either no longer necessary or are adequately addressed in the FAR.

(6) AIDAR 752.203-1 "Officials Not to Benefit" is deleted, since the requirement in FAR 3.102-2 it modified was deleted.

#### D. Administrative Changes and Clarifications

Such changes include the following:

(1) The authority of individual heads of contracting activities to approve class deviations in 701.470(b)(1) is clarified.

(2) A new definition for "accessorial costs" is added to section 713.101 to clarify types of costs to be included as part of the base costs under the simplified acquisition threshold.

(3) The sections under Subpart 722.8, "Equal Employment Opportunity," are redesignated to correspond to the FAR;

the subpart is also revised in its entirety in order to remove coverage that is redundant to the FAR and to simplify and clarify the remaining procedures.

(4) Subpart 724.1, "Protection of Individual Privacy," is deleted in its entirety because it is redundant to FAR coverage.

(5) Subpart 725.4, "Trade Agreements," is revised to include the North American Free Trade Agreement and to clarify the applicability of trade agreements to USAID's contracts.

(6) Subpart 732.4 is revised to clarify that local-currency advances to for-profit organizations must be approved by the Head of the Contracting Activity (such advances were previously not addressed).

(7) The clause at 752.7007, "Personnel Compensation," is revised to reflect Agency policy on salary limitations implemented elsewhere in the AIDAR in Notice 95-1, published on March 3, 1995 (60 FR 11911). This clause was inadvertently omitted from that Notice.

(8) The clause at 752.7019, "Participant Training," is revised in paragraph (d)(2) to clarify allowable costs for participants.

(9) The clause at 752.7028, "Differentials and Allowances," is revised to change the term "temporary lodging allowance" to "temporary quarters subsistence allowance" (TQSA) in accordance with the corresponding change in the Standardized Regulations (Government Civilians, Foreign Areas), to provide for Mission Director approved extensions to the period of time when TQSA can be paid, and to clarify that post differential is paid from the date of arrival at post only for regular employees of the contractor (short term employees are still only entitled to post differential beginning with the forty-third day at the post).

The changes being made by this Notice are not considered "significant" under FAR 1.301 or FAR 1.501, and public comments have not been solicited. This Notice will not have an impact on a substantial number of small entities nor does it establish a new collection of information as contemplated by the Regulatory Flexibility Act and the Paperwork Reduction Act. Because of the nature and subject matter of this Notice, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this Notice or any other part of the AIDAR at anytime. Comments or questions may be addressed as specified in the **FOR FURTHER INFORMATION CONTACT** section of the Preamble.

List of Subjects in 48 CFR Parts 701, 702, 706, 709, 710, 711, 713, 715, 716, 717, 719, 722, 724, 725, 726, 732, 733, 736, 737 and 752

#### Government procurement.

For the reasons set out in the Preamble, 48 CFR Chapter 7 is amended as set forth below.

1. The authority citations in Parts 701, 702, 706, 709, 710, 711, 713, 715, 716, 717, 719, 722, 724, 725, 726, 732, 733, 736, 737, 752, and Appendix A continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

### PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

#### 701.105 [Amended]

2. Paragraph (a) of section 701.105 is amended by removing the expiration date "05/31/95" shown for OMB Control Number 0412-0536 and replacing it with "09/30/96".

#### 701.370 [Amended]

3. Section 701.370 is amended by removing the comma after "Executive Order 11223" and by removing "and established AID policies on contracting as set forth in supplement B to AID Handbook 1" from the first sentence.

#### 701.470 [Amended]

4. Section 701.470 is amended by adding the following sentence to the end of paragraph (b)(1):

#### 701.470 Procedure.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* Individual heads of contracting activities have authority to approve class deviations affecting only contracts within their own contracting activities, except that the Director, M/OP, has authority to approve class deviations that affect more than one contracting activity.

\* \* \* \* \*

#### 701.601 [Amended]

5. Section 701.601, paragraph (b) is revised to read as follows:

#### 701.601 General.

\* \* \* \* \*

(b) The authority of heads of contracting activities to execute contracts is limited as follows:

(1) Director, Office of Procurement. Unlimited authority to execute contracts. May issue warrants for simplified acquisitions up to the amount permitted by FAR 13.101 and 13.103(b) to individuals on his or her

staff (subject to termination in accordance with FAR 1.603-4).

(2) Director, Office of U.S. Foreign Disaster Assistance. Authority to execute contracts for disaster relief purposes during the first 72 hours of a disaster in a cumulative total amount not to exceed \$500,000. Authority to execute simplified acquisitions up to the amount permitted by FAR 13.101 and 13.103(b) at any time. May issue warrants for simplified acquisitions up to the amount permitted by FAR 13.101 and 13.103(b) to qualified individuals on his or her staff.

(3) Director, Office of Administrative Services. Authority to execute simplified acquisitions up to the amount permitted by FAR 13.101 and 13.103(b) for supplies and services, except professional non-personal services and personal services. Unlimited authority when ordering against GSA or other established U.S. Government ordering agreements. May issue warrants for simplified acquisitions up to the amount permitted by FAR 13.101 and 13.103(b) to qualified individuals on his or her staff.

(4) Director, Center for Human Capacity Development (G/HCD). Authority to execute simplified acquisitions up to \$10,000. Unlimited authority for procuring participant training based on published catalog prices, using M/OP/E approved forms. May issue warrants for simplified acquisitions up to \$10,000 to qualified individuals on his or her staff.

(5) Overseas heads of contracting activities. Authority to sign contracts where the cumulative amount of the contract, as amended, does not exceed \$250,000 (or local currency equivalent) for personal services contracts or \$100,000 (or local currency equivalent) for all other contracts. May issue warrants for simplified acquisitions up to the amount permitted by FAR 13.101 and 13.103(b) to qualified individuals on his or her staff.

#### **701.603-70 [Amended]**

6. Section 701.603-70 is amended by adding "direct-hire" before "employees" in the last sentence.

### **PART 702—DEFINITIONS OF WORDS AND TERMS**

#### **702.170 [Amended]**

7. Paragraph (a) of section 702.170-3 is amended by removing "Office of International Training" from the first full sentence and inserting "Center for Human Capacity Development (G/HCD)" in its place.

8. Paragraph (a)(1)(iv) of section 702.170-10 is amended by removing

"Office of International Training" and replacing it with "Center for Human Capacity Development (G/HCD)".

### **PART 706—COMPETITION REQUIREMENTS**

#### **706.302-70 [Amended]**

9. In section 706.302-70, a new paragraph (b)(5) is added, a sentence is added to the end of paragraph (c)(1) and a new paragraph (c)(4) is added to read as follows:

#### **706.302-70 Impairment of foreign aid programs.**

\* \* \* \* \*

(b) \* \* \*

(5) An award for the continued provision of highly specialized services when award to another resource would result in substantial additional costs to the government or would result in unacceptable delays.

(c) \* \* \*

(1) \* \* \* While the authority at 706.302-70(b)(5) is for use when the contracting officer determines that the incumbent contractor is the only practicable, potential offeror, the requirement to publicize the intended award, as required in FAR 5.201, still applies.

\* \* \* \* \*

(4) Use of the authority in 706.302-70(b)(5) is subject to the approvals required in FAR 6.304. In addition, for proposed awards in excess of one year or over \$250,000, approval of the Agency Competition Advocate is required.

### **PART 709—CONTRACTOR QUALIFICATIONS**

#### **Subpart 709.1—[Removed]**

10. Subpart 709.1 is removed.

11. Part 710 is redesignated as Part 711, and the heading is revised to read as follows:

### **PART 711—DESCRIBING AGENCY NEEDS**

#### **711.011 [Redesignated and amended]**

12. Newly designated section 711.011 is further redesignated as section 711.002-71 and amended to remove "752.210-70" and replace it with "752.211-70".

#### **711.070 [Redesignated and amended]**

13. Newly designated section 711.070 is further redesignated as section 711.022-70; paragraph (a) is amended by removing "10.002(c)" and replacing it with "11.002(b)"; and paragraph (b)(1) is amended by removing "(by signing a PIO/T or equivalent document)".

14. Part 713 is revised to read as follows:

### **PART 713—SIMPLIFIED ACQUISITION PROCEDURES**

#### **713.000 Scope of part.**

#### **Subpart 713.1—General**

#### **713.101 Definitions.**

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

#### **713.000 Scope of part.**

The simplified acquisition threshold applies to the cost of supplies and services, exclusive of the cost of transportation and other accessorial costs if their destination is outside the United States.

#### **Subpart 713.1—General**

#### **713.101 Definitions.**

*Accessorial costs* means the cost of getting supplies or services to their destination in the cooperating country (and the travel costs of returning personnel to the U.S. or other point of hire). It does not include costs such as allowances or differentials related to maintaining personnel at post which are to be considered as part of the base costs within the simplified acquisition threshold.

### **PART 715—CONTRACTING BY NEGOTIATION**

#### **715.605-70 [Removed]**

15. Section 715.605-70 is removed.

#### **715.608 [Redesignated and revised]**

16. Section 715.608-70 is redesignated as section 715.604-70 and revised; and section 715.604 is added to read as follows:

#### **715.604 Responsibilities.**

#### **715.604-70 Responsibilities of AID evaluation committees.**

(a) *Establishment and composition of AID evaluation committees.* A technical evaluation committee shall be established for each proposed procurement. In each case, the committee shall be composed of a chair representing the cognizant technical office, a representative of the contracting office (who shall be a non-voting member of the committee), and representatives from other concerned offices as appropriate.

(b) *Technical evaluation procedures.* (1) The contracting officer will receive all proposals and provide to the chair a listing and copies of the technical proposals and instructions for conducting the evaluation.

(2) The chair will promptly call a meeting of the committee to evaluate the proposals received. The evaluation shall be based on the evaluation factors set forth in the solicitation document.

(3) The chair shall prepare and provide to the contracting officer written documentation summarizing the results of the evaluation of each proposal, including an assessment of past performance information in accordance with FAR 15.608(a)(2) and section 752.209-70. The documentation shall include narrative justification of the evaluation results and shall reflect the requirements of FAR 15.608(a)(3).

(4) The contracting officer is responsible for reviewing the documentation justifying the evaluation results to determine that it is adequate and complete. The contracting officer shall return a justification determined to be inadequate to the chair for revision.

(5) No member of the AID evaluation committee shall hold discussions with any offeror before or during the AID evaluation committee's proceedings, nor shall any information about the proposals be provided to anyone not on the committee without first obtaining the contracting officer's consent.

## **PART 716—TYPES OF CONTRACTS**

### **716.301-3 [Removed]**

17. Section 716.301-3 is removed.

### **716.501 [Removed]**

18. Section 716.501 is removed.

## **PART 717—SPECIAL CONTRACTING METHODS**

### **717.700 [Amended]**

19. Section 717.700 is amended by revising the last sentence to read as follows:

#### **717.700 General.**

\* \* \* Applicable policies and procedures are set forth in AID Automated Directive System Chapter 312.

## **PART 719—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

### **719.270 [Amended]**

20. Section 719.270 is amended in paragraph (c)(1) by removing "Program/project" and replacing it with "Cognizant technical" and by removing "programs/projects" and replacing it with "activities" and in paragraph (d) by removing "\$25,000" in the second sentence and replacing it with "the simplified acquisition threshold [FAR 13.101 and 13.103(b)]".

### **719.271-2 [Amended]**

21. Section 719.271-2 is amended in paragraph (b)(8) by removing "(PIO/T, PIO/C or other requisitioning document)" and by removing "\$25,000" and replacing it with "the simplified acquisition threshold [FAR 13.101 and 13.103(b)]".

### **718.271-3 [Amended]**

22. Section 719.271-3 is amended in paragraph (g) by removing "PIO/Ts, PIO/Cs, or other requisitioning documents)".

### **719.271-4 [Amended]**

23. Section 719.271-4 is amended in paragraph (c) by replacing "program/project" with "cognizant technical".

24. Section 719.271-5 is amended by revising the heading introductory text, and paragraph (b) to read as follows:

#### **719.271-5 Cognizant technical officers.**

Since the procurement process starts with the establishment of a requirement, the actions of the cognizant technical officers can affect the opportunity of small business to participate equitably; therefore, each cognizant technical officer shall, during the formulation of activities which will require contractual implementation:

\* \* \* \* \*

(b) Provide sufficient procurement lead time in the activity implementation schedule to allow potential small business participation.

### **719.271-6 [Amended]**

25. Section 719.271-6 is amended by removing "(PIO/Ts, PIO/Cs, or other requisitioning documents)", and removing "\$25,000" and replacing it with "the simplified acquisition threshold (FAR 13.101 and 13.103(b))" in the introductory text of paragraph (a); and by removing "(PIO/T, PIO/C, or other requisitioning document, such as an approved Noncapital Project Paper (PROP), which may be substituted for the PIO/T or PIO/C if required by the urgency of the procurement)" in paragraph (b)(1).

## **PART 722—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

### **722.103-70, 722.103-71, 722.103-72 [Redesignated as 722.103-1, 722.103-2, 722.103.4]**

26. Sections 722.103-70, 722.103-71, and 722.103-72 are redesignated as 722.103-1, 722.103-2, and 722.103-4 respectively and section 722.103-3 is added and reserved.

27. Subpart 722.8 is revised to read as follows:

## **Subpart 722.8—Equal Employment Opportunity**

### **722.805-70 Procedures.**

The following procedures apply, as appropriate, for all contracts:

(a) *General.* (1) When all necessary representations and certifications (Reps and Certs) as required by FAR 22.810 are received, the contracting officer must review them to determine that they have been completed and signed as required, and are acceptable. Acceptable Reps and Certs are the first step in the EEO clearance process.

(2) If the Reps and Certs are not deemed acceptable on technical grounds (e.g. incomplete, not signed, etc.) the contracting officer must decide if they can be made acceptable within a reasonable period by corrective action on the part of the offeror, or if the fault is such that it renders the offer nonresponsive. In the first case, necessary corrective action should be taken; in the second case, negotiations with the non-responsive offeror will be terminated. If the Reps and Certs raise questions concerning EEO compliance, and this would be the basis for finding the offeror non-responsive, the matter must be referred to the cognizant regional Department of Labor Office of Federal Contract Compliance Programs (OFCCP) regardless of the estimated value of the contract; only OFCCP may make a determination of non-compliance with EEO requirements.

(b) *Contracts for \$1,000,000 or more.* (1) In addition to the requirement for obtaining acceptable Reps and Certs in paragraph (a) of this section, contracts and modifications with an estimated value of \$1,000,000 or more (including any modification which increases the total estimated value of a contract to \$1,000,000 or more, or any modification which is itself \$1,000,000 or more), must, in accordance with FAR 22.8, have OFCCP verification of EEO compliance before award. The contracting officer shall follow the procedures for obtaining EEO compliance in FAR 22.805(a). In requesting a preaward review from OFCCP, the contracting officer may need to provide the following information in addition to the items listed in FAR 22.805(a)(4):

(i) Name, title, address, and telephone number of a contract person for the prospective contractor;

(ii) A description of the type of organization (university, nonprofit, etc.) and its ownership (private, foreign, state, etc.).

(iii) Names and addresses of organizations joint venture (if any).

(iv) Type of procurement (new contract—RFP or IFB, amendment, etc.) and estimated dollar amount, and term.

(v) Copy of approved Reps and Certs.

(2) If the initial contact with OFCCP is by telephone, the contracting officer and OFCCP should mutually determine what information is to be included in the written verification request. In the event that OFCCP reports that the offeror is not in compliance, negotiations with the offeror shall be terminated.

(c) *Contracts over \$10,000, but less than \$1,000,000.* Contracts and amendments within this range do not require formal verification by OFCCP. The method used to verify compliance is at the discretion of the contracting officer. The contracting officer may rely on the documentation submitted by the offeror (the Reps and Certs—see § 722.805–70(a)), unless he or she is aware of some reason to doubt the documentation submitted. In case of doubt, then an informal check with OFCCP should be made. In the event that evidence of non-compliance is developed, the contracting officer must contact OFCCP for confirmation of EEO status; only OFCCP may determine non-compliance with EEO requirements. If OFCCP confirms non-compliance, negotiations with the offeror or contractor shall be terminated.

(d) *Documentation for the contract file.* (1) Every contract file must contain completed signed Reps and Certs. The file must clearly show that these documents have been reviewed and accepted by the contracting officer. If the Reps and Certs were revised to make them acceptable (see § 722.805–70(a)), the file must show what changes were required and certify that the changes were made.

(2) For contracts or amendments of \$1,000,000 or more, the file must contain:

(i) A record of the initial contact with OFCCP, specifying the name, address, and telephone number of the person contacted, a summary of the information presented, and the advice given by OFCCP;

(ii) A copy of the written follow-up request for EEO compliance verification to OFCCP; and

(iii) A copy of the compliance verification from OFCCP.

(3) For contracts or amendments over \$10,000 but less than \$1,000,000, the file must contain a statement from the contracting officer that the contractor is considered in compliance with EEO requirements, and giving the basis for this statement (see § 722.805–70(c)). This statement may be in a separate memorandum to the file or in the

memorandum of negotiation (see 704.803(a)).

(4) Documentation in the event of non-compliance. In the event that OFCCP determines that a prospective contractor is not in compliance, a copy of OFCCP's written determination, and a summary of resultant action taken (termination of negotiations, notification of offeror and cognizant technical officer, negotiation with next offeror in competitive range, resolicitation, etc.) will be placed in the contract file for any contract which may result, together with other records related to unsuccessful offers, and retained for at least six months following award.

## **PART 724—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

### **724.1—[Removed]**

28. Subpart 724.1 is removed.

## **PART 725—FOREIGN ACQUISITION**

29. Subpart 725.4 is revised to read as follows:

### **Subpart 725.4—Trade Agreements**

#### **§ 725.403 Exceptions.**

FAR 25.4 establishes procedures for purchases under the Trade Agreements Act of 1979 (including GATT's Agreement on Government Procurement) and the North American Free Trade Agreement (NAFTA). Under both such agreements, USAID's contracts for the purpose of providing foreign assistance are not subject to the procedures set forth in FAR 25.4. In contrast, USAID's operating expense-type administrative purchases (i.e., purchases for the direct benefit and use of USAID) are subject to the procedures in FAR 25.4, unless otherwise exempted by one of the exemptions specified in FAR 25.4.

#### **725.701 [Amended]**

30. Section 725.701 is amended by removing "AID Handbook 1, Supplement B, primarily in Chapter 5", replacing it with "Chapter 310 of the AID Automated Directive System (ADS)", and by removing the second sentence.

#### **725.702 [Amended]**

31. Section 725.702 is amended by removing "Attachment A–11, Section III, of Appendix D to AID Handbook 18" in paragraph (b) and replacing it with "the Agency Geographic Code Book".

#### **725.705 [Amended]**

32. Section 725.705 is amended by removing "Chapter 18 of AID Handbook 1, Supplement B" and replacing it with

"Chapter 311 of the AID ADS" in paragraph (a).

#### **725.706 [Amended]**

33. Section 725.706 is amended by revising paragraph (a) to read as follows:

#### **725.706 Geographic source waivers.**

(a) Authority to waive source, origin, nationality, and transportation service requirements is set forth in § 310.5.9 of the ADS. Additional guidance is available in ADS § 310.5.8.

\* \* \* \* \*

## **PART 726—OTHER SOCIOECONOMIC PROGRAMS**

34. Subpart heading 726.70 is added to read as follows:

### **Subpart 726.70—Disadvantaged Enterprises Program**

#### **726.000 [Redesignated as 726.7001 and amended]**

35. § 726.000 is redesignated as section 726.7001, and the heading and first sentence are amended by replacing "part" with "subpart".

#### **726.1 [Removed]**

36. The heading "Subpart 726.1—GENERAL" is removed.

#### **726.101–726.310 [Redesignated]**

37. Sections 726.101 through 726.301 are redesignated as follows:

Old section	New section
726.101 .....	726.7002
726.102 .....	726.7003
726.103 .....	726.7004
726.104 .....	726.7005
726.201 .....	726.7006
726.301 .....	726.7007

37a. Subpart 726.2 is removed.

38. Subpart 726.71 is added to read as follows:

### **Subpart 726.71—Relocation of U.S. Businesses, Assistance to Export Processing Zones, Internationally Recognized Workers' Rights**

Sec.

726.7101 Policy.

726.7102 PD 20 provision.

### **Subpart 726.71—Relocation of U.S. Businesses, Assistance to Export Processing Zones, Internationally Recognized Workers' Rights**

726.7101 Policy.

USAID Policy Determination (PD) 20, "Guidelines to Assure USAID Programs do not Result in the Loss of Jobs in the U.S." implemented statutory prohibitions on expenditure of appropriated funds. The PD contains a

standard provision for inclusion in USAID-funded grants and inter-agency agreements and indicates that when the PD applies to a contract, appropriate provisions covering the subject matter are to be included. When the provisions of PD 20 do apply to a contract, the cognizant technical office shall provide to the contracting officer appropriate language tailored to the specific circumstances for the contract statement of work, or if applicable to the circumstances, the provision included in the PD (see § 726.7102) may be used as a clause in the contract. The provision is not required in subcontracts.

#### **726.7102 PD 20 provision.**

*Relocation of U.S. Businesses, Assistance to Export Processing Zones, Internationally Recognized Workers' Rights (Jan 1994)*

No funds or other support provided hereunder may be used in an activity reasonably likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States.

No funds or other support provided hereunder may be used in an activity the purpose of which is the establishment or development in a foreign country of any export processing zone or designated area where the labor, environmental, tax, tariff, and safety laws of the country would not apply, without the prior approval of USAID.

No funds or other support provided hereunder may be used in an activity which contributes to the violation of internationally recognized rights of workers in the recipient country, including those in any designated zone or area in that country.

### **PART 732—CONTRACT FINANCING**

39. Subpart 732.1 is added to read as follows:

#### **Subpart 732.1—General**

##### **732.111 Contract clauses.**

(a) [Reserved]

(b) AID may obtain short term and (less frequently) long-term indefinite quantity professional services through Agency-specific indefinite quantity contracts that are a combination of contract types. Rather than using the fixed-price payment clauses for indefinite quantity contracts, when these IQCs provide for fixed daily rates (which may include wages, overhead, general and administrative expenses, fringe benefits, and profit) for services and reimbursement of other direct costs (such as travel and transportation) at cost, then the payment clause at 752.232-7 shall be used in the contract.

##### **732.402 [Revised]**

40. Paragraph (e) of section 732.402 is revised to read as follows:

##### **732.402 General.**

\* \* \* \* \*

(e)(1) All U.S. Dollar advances to for-profit organizations require the approval of the Procurement Executive; all such approvals are subject to prior consultation with the AID/W Controller.

(2) All local currency advances to for-profit organizations require the approval of the Head of the Contracting Activity, after consultation with the Mission Controller.

##### **732.406-71 [Amended]**

41. Section 732.406-71 is amended by revising paragraphs (a) and (b) to read as follows:

##### **732.406-71 Circumstances for use of an LOC.**

\* \* \* \* \*

(a) The contracting officer has determined that an advance payment is necessary and appropriate in accordance with this subpart and the guidance provided in FAR 32.4;

(b) AID has, or expects to have, a continuing relationship of at least one year with the organization, and the annual amount required for advance financing will be at least \$50,000; and

\* \* \* \* \*

##### **732.406-72 [Amended].**

42. Section 732.406-72 is amended by replacing "FM/CMP/LC" with "FM/CMP/GIB" in the last sentence of paragraph (a) and adding a new paragraph (b)(6) to read as follows:

##### **732.406-72 Establishing an LOC.**

(a) \* \* \*

(b) \* \* \*

(6) The contractor Federal Tax Identification Number.

\* \* \* \* \*

### **PART 733—PROTESTS, DISPUTES, AND APPEALS**

43. Subpart 733.70 is redesignated Subpart 733.1 and revised to read as follows:

#### **733.1—Protests**

##### **733.101 Definitions.**

(a) "Procurement Executive" is defined in AIDAR 702.170-13.

(b) All "days" referred to in this subpart are deemed to be "calendar days", in accordance with FAR 33.101. In the case of USAID overseas offices with non-Saturday/Sunday weekend schedules, the official post weekend applies in lieu of Saturday and Sunday.

(c) All other terms defined in FAR 33.101 are used herein with the same meaning.

##### **733.103-70 Protests to the agency.**

AID follows the agency protest procedures in FAR 33.103, as supplemented by this section.

##### **733.103-71 Filing of protest.**

(a) Protests must be in writing and addressed to the Contracting Officer for consideration by the Procurement Executive.

(b) A protest shall include, in addition to the information required in FAR 33.103(b)(3), the name of the issuing Mission or office.

(c) Material submitted by a protestor will not be withheld from any interested party outside the government or from any government agency if the Procurement Executive decides to release such material, except to the extent that the withholding of such information is permitted or required by law or regulation.

##### **733.103-72 Responsibilities.**

(a) Procurement Executive. The decision regarding an agency protest shall be made by the Procurement Executive within 30 days from the date a proper protest is filed unless the Procurement Executive determines that a longer period is necessary to resolve the protest, and so notifies the protester in writing. The Procurement Executive shall make his or her decision after personally reviewing and considering all aspects of the case as presented in the protest itself and in any documentation provided by the contracting officer, and after obtaining input and clearance from the Assistant General Counsel for Litigation and Enforcement (GC/LE). The decision shall be in writing and constitutes the final decision of the Agency.

(b) Contracting Officer. The contracting officer may make the determination in FAR 33.103(a)(2) and is responsible for requesting an extension of the time for acceptance of officers as described in FAR 33.103(a)(3).

##### **733.103-73 Protests excluded from consideration.**

(a) *Contract administration.* Disputes between a contractor and AID are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978.

(b) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review

solely by the Small Business Administration.

(c) *Procurement under Section 8(a) of the Small Business Act.* Contracts are let under Section 8(a) of the Small Business Act to the Small Business Administration solely at the discretion of the Contracting Officer, and are not subject to review.

(d) *Protests filed in the General Accounting Office (GAO).* Protests filed with the GAO will not be reviewed.

(e) *Procurements funded by AID to which AID is not a party.* No protest of a procurement funded by AID shall be reviewed unless AID is a party to the acquisition agreement.

(f) *Subcontractor protests.* Subcontractor protests will not be considered.

(g) *Judicial proceedings.* Protests will not be considered when the matter involved is the subject of litigation before a court of competent jurisdiction or when the matter involved has been decided on the merits by a court of competent jurisdiction.

(h) *Determinations of responsibility by the contracting officer.* A determination by the contracting officer that a bidder or offeror is or is not capable of performing a contract will not be reviewed by the Procurement Executive.

(i) *Small Business Certificate of Competency Program.* Any referral made to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act, or any issuance of, or refusal to issue, a certificate of competency under that section will not be reviewed by the Procurement Executive.

### 733.71—[Redesignated]

44. Subpart 733.71 is redesignated as subpart 733.27 and sections 733.7101 and 733.7102 are redesignated as 733.2701 and 733.2702 respectively.

## PART 736—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS

### 736.602–5 [Amended]

45. The heading for 736.602–5 is revised to read as follows:

**736.602–5 Short selection process for procurements not to exceed the simplified acquisition threshold.**

\* \* \* \* \*

## PART 737—SERVICE CONTRACTING

### 737.2—[Removed]

46. Subpart 737.2 is removed.

## PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 752.203–1 [Removed]

47. Section 752.203–1 is removed.

48. Section 752.209–70 is amended by revising the provision date and the text of the provision itself to read as follows:

### 752.209–70 Requirement for past performance references.

\* \* \* \* \*

Requirement for Past Performance References (July 1996)

The offeror shall submit, as part of its proposal, information on recently completed contracts or on-going contracts that are similar to the statement of work in the solicitation performed for federal, state and local governments and for commercial firms. The number of such contracts, as well as the specific details to be provided for each, shall be in accordance with the instructions provided elsewhere in Section L of this solicitation, consistent with the Government-wide past performance information collection requirements in the FAR. The offeror is expected to comply with the instructions in Section L regarding the type and amount of detail to be provided on past performance and the format to be used to submit it. If the offeror does not follow the prescribed format, then care must be taken to ensure that the substance of the requested information is provided. Failure to do so may seriously impede both the technical evaluation of the offeror's proposal and the contracting officer's ability to make a positive responsibility determination.

USAID may contact representatives from the references provided by the offeror to obtain information on the offeror's past performance. The offeror is advised that USAID may obtain past performance information from other than sources identified by the offeror. USAID will use past performance information both for the responsibility determination required in FAR 9.1 and the best value decision in accordance with the instructions in Section L and the evaluation criteria in Section M of this solicitation.

### 752.210–70 [Redesignated]

49. Section 752.210–70 is redesignated as section 752.211–70.

### 752.219–8 [Amended]

50. Section 752.219–8 is amended by removing "\$25,000" and replacing it with "the simplified acquisition threshold in FAR 13.000" in the second paragraph.

### 752.7004 [Amended]

51. Section 752.7004 is amended by removing "Chapters 4 and 5 of AID Handbook 1, Supplement B (Procurement Policies)" and replacing it with "Chapter 310 of AID's Automated Directives System (ADS)" in the last sentence of paragraph (a) of the clause.

### 752.7006 [Amended]

52. Section 752.7006 is amended by adding "U.S." before "Agency for International Development" in the paragraph beginning "To AID:".

### 752.7007 [Amended]

53. Section 752.7007 is amended by revising the clause heading and paragraph (b) of the clause to read as follows:

### 752.7007 Personnel Compensation.

\* \* \* \* \*

Personnel Compensation (July 1996)

(a) \* \* \*

(b) Compensation (i.e., the employee's base annual salary plus overseas recruitment incentive, if any) which exceeds the maximum payable annual or daily rate for an Executive Service level ES–6, as published in the Federal Register, will be reimbursed only with the approval of the Contracting Officer.

### 752.7012 [Revised]

54. Section 752.7012 is revised to read as follows:

### 752.7012 Protection of the Individual as a Research Subject.

This clause is for use in any AID contract which involves research using human subjects.

Protection of the Individual as a Research Subject (August 1995)

(a) Safeguarding the rights and welfare of human subjects in research conducted under a USAID contract is the responsibility of the contractor. USAID has adopted the Common Federal Policy for the Protection of Human Subjects. USAID's Policy is found in Part 225 of Title 22 of the Code of Federal Regulations (the "Policy"). Additional interpretation, procedures, and implementation guidance of the Policy are found in USAID General Notice entitled "Procedures for the Protection of Human Subjects in Research Supported by USAID", issued April 19, 1995, as from time to time amended (a copy of which is attached to this contract). USAID's Cognizant Human Subjects Officer (CHSO) and AID/W has oversight, guidance, and interpretation responsibility for the Policy.

(b) Contractors must comply with the Policy when humans are the subject of research, as defined in 22 CFR 225.102(d), performed as part of the contract, and contractors must provide "assurance", as required by 22 CFR 225.103, that they follow and abide by the procedures in the Policy. See also Section 5 of the April 19, 1995, USAID General Notice which sets forth activities to which the Policy is applicable. The existence of a bona fide, applicable assurance approved by the Department of Health and Human Services (HHS) such as the "multiple project assurance" (MPA) will satisfy this requirement. Alternatively, contractors can provide an acceptable written assurance to USAID as described in 22 CFR 225.103. Such assurances must be determined by the CHSO to be acceptable prior to any applicable research being



initiated or conducted under the contract. In some limited instances outside the U.S., alternative systems for the protection of human subjects may be used provided they are deemed "at least equivalent" to those outlined in Part 225 (see 22 CFR 225.101(h)). Criteria and procedures for making this determination are described in the General Notice cited in the preceding paragraph.

(c) Since the welfare of the research subject is a matter of concern to USAID as well as to the contractor, USAID staff, consultants and advisory groups may independently review and inspect research, and research processes and procedures involving human subjects, and based on such findings, the CHSO may prohibit research which presents unacceptable hazards or otherwise fails to comply with USAID procedures. Informed consent documents must include the stipulation that the subject's records may be subject to such review.

#### 752.7017 [Amended]

55. Section 752.7017 is amended by removing "Chapter 5 of AID Handbook 1, Supplement B" in paragraph (b) and replacing it with "Chapter 310 of the AID Automated Directives System (ADS)".

#### 752.7018 [Amended]

56. Section 752.7018 is amended by removing "Office of International training, AID" in paragraph (b) and replacing it with "Human Capacity Development Center in the Bureau for Global Programs Field Support and Research (G/HCD0), AID/W" and by removing "Office of International Training" in both paragraphs (d) and (d)(1) and replacing it with "Human Capacity Development Center".

57. Section 752.7019 is amended by removing paragraph (g), by revising the reference to "(g)" in the introductory paragraph of the section and in the undesignated paragraph following paragraph (c) of the clause to read "(f)", and by revising the clause date and paragraphs (b), (c), and (d)(2), to read as follows:

#### 752.7019 Participant Training.

Participant Training (July 1996)

(b) Applicable regulations. Proposals for contracts involving training of AID participants, and participant training conducted under an AID contract shall follow the policies established in Chapter 253 of the AID Automated Directive System (ADS)—"Training for Development Impact" except to the extent that specific exceptions to ADS Chapter 253 have been provided in this contract. (Chapter 253 may be obtained by submitting a request to the Human Capacity Development Center (G/HCD), at the address specified in paragraph (c) of this section.)

(c) Reporting requirement. Once each month the Contractor shall submit three

copies of form AID 1381-4, "Participant Data Form" to the Human Capacity Development Center (G/HCD) Bureau for Global Programs Field Support and Research, USAID, Washington, DC 20523-1601.

\* \* \* \* \*

(d) \* \* \*  
(2) Cost of technical preparation and photocopying of papers and dissertations, allowances for required textbooks, the titles of which will be approved by the Contractor.

\* \* \* \* \*

58. Section 752.7028 is amended by revising the date of the clause; removing "Contractor employees" in the third sentence of paragraph (a) and replacing it with "regular employees of the Contractor"; by removing "living quarters allowance" in the second and third sentence of paragraph (b) and replacing it with "temporary quarters subsistence allowance"; and revising paragraph (c) to read as follows:

#### 752.7028 Differential and allowances.

\* \* \* \* \*

Differentials and Allowances (July 1996)

\* \* \* \* \*

(c) *Temporary quarters subsistence allowance.* Temporary quarters subsistence allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and his family for a period not in excess of (i) 90 days after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and (ii) 30 days immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters, unless an extension is authorized in writing by the Mission Director. The Contractor will be reimbursed for payments made to employees and authorized dependents for temporary quarters subsistence allowance, in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 120, as from time to time amended.

\* \* \* \* \*

59. Appendix A to Chapter 7 is amended as follows:

(A) In paragraph 2(a), by removing the fourth sentence and "whether it is to be" in the sixth sentence, and by removing "project" and replacing it with "activity" in the last sentence.

(B) By revising paragraph 2(b) to read as follows:

Appendix A—Respective Roles of Contracting and Other Personnel in the Aid Procurement Process

\* \* \* \* \*

2. Planning, Competition, Negotiation, and Award

\* \* \* \* \*

(b) Contracting personnel act upon requirements which are formulated by the

planning, technical, and research offices of the Agency. Contracting officers obtain the information they need on technical requirements by questions and discussions with the planning, technical, and research offices of the Agency. If a contract is to be tenable, the end result which is desired must be described with completeness and exactitude. The statement of work must be explicit; otherwise the contracting officer cannot assure terms in a contract by which the desired action can be enforced. If the requiring office cannot provide a point of departure in these terms and deliver to the contracting officer a clear-cut description of the purpose and outline the limits of the statement of work, results may be disappointing and the possibility of deferring the activity until these elements can be given more concrete dimensions should be considered. Finally, the requiring office should insure that the statement of work and funding information are delivered to the contracting officer with sufficient lead time to allow for proper preparation and planning of the procurement. Under most circumstances, the specific amount of funds which the Agency has available to support a contract shall not be made known to a prospective contractor; however, when a performance-based contract is planned, the contracting officer may decide that it is necessary to reveal in the announcement (CBD notice) and in the solicitation the Government estimate, or a narrow range of expected costs, in order to obtain goods and services of the highest affordable technical quality, and to ensure that offerors do not propose elaborate programs that cannot be financed by USAID.

\* \* \* \* \*

(C) In paragraph 2(c), replace "scopes" with "statements" in the last sentence.

Dated: May 21, 1996.

Marcus L. Stevenson,  
Procurement Executive.

[FR Doc. 96-18495 Filed 7-25-96; 8:45 am]

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## GENERAL SERVICES ADMINISTRATION

### Board of Contract Appeals

#### 48 CFR Part 6103

RIN 3090-AG05

### Rules of Procedure for Transportation Rate Cases

**AGENCY:** Board of Contract Appeals,  
General Services Administration.

**ACTION:** Interim rule.

**SUMMARY:** This document specifies the rules of procedure of the GSA Board of Contract Appeals applicable to the Board's review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(g)(1). The rules are intended to implement section 211 of