

**§ 69.152 End user common line for price cap local exchange carriers.**

\* \* \* \* \*

(b) Except as provided in paragraphs (d) through (i) of this section, the maximum single line rate or charge shall be computed:

(1) By dividing one-twelfth of the projected annual revenue requirement for the End User Common Line element by the projected average number of local exchange service subscriber lines in use during such annual period, only so long as a per-minute carrier common line charge is assessed or the maximum PICC assessed on primary residential lines, plus the maximum end user common line charge for primary residential lines, does not recover the full amount of its per-line common line price cap revenues; (and/or)

(2) by dividing one-twelfth of the projected annual revenues permitted for the common line basket under the Commission's price cap rules, as set forth in Part 61 of this chapter, by the projected average number of local exchange service subscriber lines in use during such annual period, if no per-minute carrier common line charge is assessed and the maximum PICC assessed on primary residential lines, plus the maximum end user common line charge for primary residential lines, recovers the full amount of its per-line common line price cap revenues.

\* \* \* \* \*

6. Section 69.307(c) is added to read as follows:

**§ 69.307 General support facilities.**

\* \* \* \* \*

(c) All other General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Local Switching, Information, Transport, and Special Access elements on the basis of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities, combined.

7. Section 69.502(c) is revised to read as follows:

**§ 69.502 Base factor allocation.**

\* \* \* \* \*

(c) The portion of per-line support that carriers receive pursuant to § 54.303.

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

**48 CFR Parts 701, 702, 703, 704, 705, 706, 708, 709, 711, 715, 716, 717, 719, 722, 724, 725, 726, 728, 731, 732, 733, 734, 736, 749, 750, 752, 753, and Appendices A, C, G, and H to Chapter 7**

[AIDAR Notice 97-1]

RIN 0412-AA30

**Miscellaneous Amendments to Acquisition Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** The USAID Acquisition Regulation (AIDAR) is being amended to implement the Agency's new regulation on Source, Origin, and Nationality; to reflect the omission of authority for the Agency's Disadvantaged Enterprises Program in the 1996 and 1997 Appropriations Acts; to remove certification requirements not approved by the Head of the Agency in accordance with the Federal Acquisition Reform Act of 1996 (now known as the Clinger-Cohen Act of 1996); and to incorporate numerous administrative changes which correct mistakes, clarify or simplify policies or procedures currently in the AIDAR, and bring the AIDAR into compliance with Agency policies. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** August 28, 1997.

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

**SUPPLEMENTARY INFORMATION:** The specific changes being made to the USAID Acquisition Regulation (AIDAR) in this amendment are broad in scope, ranging from correcting typographical errors published over the past several years to implementing statutory requirements such as the loss of the Agency's Disadvantaged Enterprises Program (DEP) and removing unnecessary certification requirements.

**A. Source, Origin, and Nationality**

USAID published its final rule on Source, Origin, and Nationality, 22 CFR Part 228, on October 15, 1996 (61 FR 53615, corrected at 61 FR 54849 and 55361, and 62 FR 314). The AIDAR implements this regulation by revising section 702.170-15 and several sections in subpart 725.70, removing the clauses

at 752.7004 (this number is used for a new clause as described in amendment 63) and 752.7017, and by adding clauses 752.255-70 and 752.225-71.

**B. Disadvantaged Enterprises Program (DEP)**

For years, USAID was required by law to ensure that at least 10% of its funds for development assistance or for assistance for famine recovery and development in Africa went to small disadvantaged business enterprises; however, not until FY 1990 did Congress provide the Agency with statutory authority to limit full and open competition solely for the purpose of meeting this set-aside requirement. AIDAR 706.302-71 was amended to implement the statutory authority. Statutory authority continued to be provided each year after that until FY 1996, when Congress did not provide the Agency with the statutory authority or impose the 10% "set-aside" requirement. Since the FY 1997 Appropriations Act did not include the authority, either, and indications are that the authority is not expected to be reinstated, we are amending the AIDAR to restrict the use of the authority in 706.302-71 to use other than full and open competition to award contracts to eligible disadvantaged business concerns (as defined in 726.7002) only to contracts funded from those fiscal years for which the statutory authority was provided. Subparts 706.302-71 and 726.70, and sections 705.207, 706.302-5, 726.7001, 726.7003, and 726.7007 are amended accordingly.

**C. Contractor Certification Requirements**

Section 4301 of the Clinger-Cohen Act required the removal of contractor and offeror certification requirements that are not: (1) Specifically imposed by statute, or (2) justified by the Senior Procurement Executive and approved by the Agency Head. On October 10, 1996, the USAID Administrator approved the retention of the AIDAR certifications found at sections 715.413-2 (which is also amended to remove paragraph (c) since the Procurement Integrity Certification requirement was removed from the FAR), 752.7001, and 752.7016(c)(3) (other certifications required in AIDAR Appendices D and J are addressed in a separate Final Rule). The certifications in 752.226-2(c)(3) and 752.7004(b)(5) are removed as described in B and A above, respectively (for the latter, the entire clause is removed and a new clause without certification requirements is added at 752.225-70). Section 752.7033(a) is amended to remove the physician's certification and

replace it with a "statement of medical opinion".

#### D. Administrative Changes

(1) The most pervasive administrative change to the AIDAR at this time is the conversion of the Agency's acronym from "AID" to "USAID" and the Agency's name from "Agency for International Development" to "U.S. Agency for International Development". The first seven amendments and Amendment 13 below are solely to effect this change, which is also part of several other amendments.

(2) In an effort to be comprehensive in implementing the simplified acquisitions procedures of the Federal Acquisition Streamlining Act of 1994 (FASA), when we amended the AIDAR on July 26, 1996 (AIDAR Notice 96-1, 61 FR 39089), we included both FAR 13.101 and 13.103(b) in several references to the simplified acquisition threshold. FAC 90-40 (61 FR 39185, published on the same day as the aforementioned AIDAR amendment) amended the FAR to delete "interim FACNET certification" (previously required in FAR 13.103(b)) and to allow all agencies to use \$100,000 as the simplified acquisition threshold until December 31, 1999, after which time those agencies who have not certified full FACNET capability will be reduced to the \$50,000 threshold, in accordance with the Clinger-Cohen Act of 1996. This FAC also moved the definition of "simplified acquisition threshold" to FAR 2.101 from section 13.101 (thereby rendering our AIDAR amendment inaccurate). To be consistent with the FAR, which doesn't include references to either section after most mentions of the simplified acquisition threshold, we are removing references to sections 13.101 and 13.103(b) when using the terms "simplified acquisitions" or "the simplified acquisition threshold" in the AIDAR.

(3) Prior to AIDAR Notice 96-1, the heads of the various Agency contracting activities had authority to redelegate small purchase contracting authority to persons on his or her staff; reflecting the conversion from "small purchases" to "simplified acquisitions", AIDAR Notice 96-1 increased the amount of contracting authority the HCAs can redelegate to the simplified acquisition threshold. However, in view of the change in the simplified acquisition threshold resulting from the Clinger-Cohen Act and the fact that few of the Agency HCAs have exercised this particular authority, we determined that limiting to \$50,000 the level of contracting authority that they may redelegate would be an equitable

balance between empowering the contracting activities and keeping prudent controls over the Agency's contracting authority; section 701.601 is amended accordingly.

(4) Because of a reorganization within the Agency, the Office of Administrative Services (M/AS) is no longer a contracting activity, nor is its Director the Metric Executive. Sections 702.170-3, 702.170-10, and 711.022-70 are amended to reflect this change.

(5) Sections 704.404 and 752.204-2 are amended to replace the term "Limited Official Use" with "Sensitive But Unclassified" in accordance with the State Department's revised policy found in Volume 12 of the Foreign Affairs Manual, Chapter 540.

(6) Section 705.002 is amended to state USAID policy to include all Commerce Business Daily notices and solicitations on the internet.

(7) Section 706.302-70 was amended in AIDAR Notice 96-1 to add a new Agency exception to full and open competition for follow-on awards; however, the actual wording was ambiguous as to whether the Agency Competition Advocate's approval was required concurrent with the approvals in FAR 6.304 or was the sole approval required for the new exception. The AIDAR is hereby amended to clarify that the use of this follow-on authority is subject only to the Agency Competition Advocate's approval if the action is over \$250,000 or for more than one year, and to the contracting officer's certification for all other cases.

(8) Subpart 709.4 is amended to remove the Policy statement in 709.402, since it is redundant to other regulations (the FAR and 22 CFR Part 208) on debarment and suspension of organizations under government procurement and non-procurement programs; however, we are adding a new section 709.403 to define the Agency's debarring and suspending official as the Procurement Executive.

(9) Section 715.613-71 is being amended to clarify procedures to be followed prior to processing a contract using the collaborative assistance method for activities authorized under Title XII of the Foreign Assistance Act of 1961.

(10) Section 752.209-70, entitled "Requirement for Past Performance References", is removed since it is redundant to FAR Subpart 9.1 and Agency procedures described elsewhere and is not needed in this Regulation.

(11) Several clause prescriptions in Subpart 752.70 are amended to clarify that these clauses are not to be used for commercial item contracts; the specific sections are 752.245-70, 752.245-71,

752.7008, 752.7070, 752.7015, and 752.7029. Other clauses being amended to clarify their prescriptions are 752.7001, which is being divided into two separate clauses because of the difference in the applicability of paragraphs (a) and (b) (the latter paragraph is now designated as section 752.7004), and section 752.7027, which is only to be used with services contracts.

(12) Over the past few years, the Agency has instituted a new system of internal directives, regulations and procedures to replace the old "Handbook" system. Since the new system (the Automated Directives System or ADS), when completed, will be a comprehensive reference source for all Agency policies and procedures, we are looking carefully at policies and procedures located in the AIDAR to determine if they should continue to be located in this published regulation or if they should instead be located only in the ADS. Consequently, we are removing several Appendices to the AIDAR and will be incorporating them in the near future into the ADS system, with reference to the appropriate ADS chapter in the AIDAR as needed. Specifically, Appendix A ("Respective Roles of Contracting and Other Personnel in the USAID Procurement Process"), Appendix C ("Logistics Support Overseas to USAID-Direct Contractors"), Appendix G ("Approval Procedures for Contractor Salaries"), and Appendix H ("Response to audit Recommendations") are removed and reserved. A new section 701.602-1 is added to state the authority of contracting officers to negotiate and enter into settlements with contractors for costs questioned under audit reports, or to issue a contracting officer's final decision, and to refer to the appropriate ADS Chapters for policies and procedures for resolving audit recommendations. References to these appendices are revised elsewhere in the AIDAR, and section 701.376-3 is revised to more accurately describe the purpose of the remaining appendices to Chapter 7.

(13) Other administrative changes amend the expiration date of the OMB Control Number for all the information collections listed in 701.105; add a new section 703.104-11 to clarify to whom the contracting officer shall forward information and documentation on possible procurement integrity violations; remove Subpart 703.4 ("Contingent Fees") to be consistent with the revisions to FAR 3.404 resulting from FAC 90-40; remove section 704.803 because it is internal procedural guidance better handled

outside published regulations; remove Part 708 because there is no longer an excess property handbook in the Agency; amend sections 731.205–6, 731.371, and 752.7007 to clarify the contracting officer's responsibility in approving salaries over the ES–6 threshold; revise 750.711 to update the procedures for processing cases of Extraordinary Contractual Relief; amend sections 752.228–7 and 752.7003 to update reference to the appropriate audit clause in the FAR; and to update the office acronym in section 753.107.

(14) Numerous errors and omissions were identified in Chapter 7 as published and are corrected in this rule, specifically in sections 701.373, 709.503, 711.022–70 (now redesignated as 711.002–70), 715.613–71, 719.271–3, 726.7005, 726.7006, 732.401, 733.270–2, 750.7101, 750.7109–3, 752.200, 752.219–8, 752.225–9, 752.226–1, 752.226–2, 752.226–3, 752.7027, and 752.7033.

The changes being made by this rule are not considered "significant" under FAR 1.301 or FAR 1.501, and public comments have not been solicited. This rule 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 rule, 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 rule 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, 703, 704, 705, 706, 708, 709, 711, 715, 716, 717, 719, 722, 724, 725, 726, 728, 731, 732, 733, 734, 736, 749, 750, 752, and 753**

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, 703, 704, 705, 706, 708, 709, 711, 715, 716, 717, 719, 722, 724, 725, 726, 728, 731, 732, 733, 734, 736, 749, 750, 752, and 753 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.

## CHAPTER 7—[AMENDED]

2. Chapter 7 is amended by revising the acronym "AID" wherever it appears to read "USAID"

3. Chapter 7 is amended by revising the possessive acronym "AID's" wherever it appears to read "USAID's".

4. Chapter 7 is amended by adding "U.S." in front of "Agency for International Development" wherever it appears.

5. Chapter 7 is amended by revising "AID/Washington" wherever it appears in the following sections to read "USAID/Washington": 719.270, 719.271–6, 719.271–2, 752.7002.

6. Chapter 7 is amended by revising "AID-direct" wherever it appears in each of the following sections to read "USAID-direct": 711.002–71, 728.309, 752.7002, 722.170, 728.313, 752.7003, 728.307–2, 752.211–70.

7. Chapter 7 is amended by revising "AID-financed" wherever it appears in each of the following sections to read "USAID-financed": 725.703, 752.7004, 728.305–70, 752.7009.

## PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

### 701.105 [Amended]

8. The chart in paragraph (a) of section 701.105 is amended by revising the date "09/30/96" wherever it appears to read "06/30/97".

### 701.373 [Amended]

9. Paragraph (b) of section 701.373 is amended by revising "69" wherever it appears to read "53".

### 701.376–3 [Revised]

10. Section 701.376–3 is revised to read as follows:

#### 701.376–3 Appendices

Significant procurement policies and procedures which do not correspond to or conveniently fit into the FAR system (described in FAR 1.1 and this subpart) may be published as Appendices to the AIDAR. Appendices follow the main text of the AIDAR in a section entitled "Appendices to Chapter 7" and contain the individual appendices identified by letter and subject title (e.g., "Appendix D—Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad").

### 701.601 [Amended]

11. Section 701.601 is amended in paragraph (a) by revising the parenthetical phrase "(see 701.376–4)" at the end of the paragraph to read "such as those found at 701.376–4 and particularly 701.603–70, the USAID policy regarding the direct-hire status of

contracting officers"; and in paragraph (b) by removing the phrase "the amount permitted by FAR 13.101 and 13.103(b)" wherever it appears and inserting in its place "\$50,000", by removing paragraph (b)(3), and by redesignating paragraphs (b)(4) and (5) as (b)(3) and (4), respectively.

12. A new Section 701.602–1 is added to read as follows:

#### 701.602–1 Authority of contracting officers in resolving audit recommendations.

With the exception of termination settlements subject to part 749, Termination of Contracts, contracting officers shall have the authority to negotiate and enter into settlements with contractors for costs questioned under audit reports, or to issue a contracting officer's final decision pursuant to the disputes clause (in the event that questioned costs are not settled by negotiated agreement) in accordance with ADS Chapter 591.5.20. The negotiated settlement or final decision shall be final, subject only to a contractor's appeal, either under the provisions of the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), or to the courts. Policies and procedures for resolving audit recommendations are in accordance with ADS Chapters 591 and 592.

### 701.704 [Amended]

13. Section 701.704 is amended by adding "US" to the beginning of "AID-prescribed".

## PART 702—DEFINITIONS OF WORDS AND TERMS

### 702.170–3 [Amended]

14. Paragraph (a) of section 702.170–3 is amended by removing "Office of Administrative Services" in the first sentence.

### 702.170–10 [Amended]

15. Paragraph (a)(1) of section 702.170–10 is amended by revising "AID/Washington" to read "USAID/Washington", by removing paragraph (a)(1)(ii) and by redesignating paragraphs (a)(1)(iii) and (a)(1)(iv) as (a)(1)(ii) and (a)(1)(iii), respectively.

### 702.170–15 [Amended]

16. Section 702.170–15 is amended by revising "a Free World Country (i.e., Geographic Code 935)" to read "a country included in Geographic Code 935 (see 22 CFR 228.3)".

16–A. A new subsection 702.170–17 is added reading as follows: 702.170–17 Automated Directives System. *Automated Directives System* ("ADS") means USAID's system of internal directives, regulations, and procedures.

References to "ADS" throughout this chapter 7 are references to the Automated Directives System. Procurement-related sections of this system are accessible to the general public at internet address: [http://www.info.usaid.gov/ftp\\_data/pub/handbooks/index.html](http://www.info.usaid.gov/ftp_data/pub/handbooks/index.html). The entire ADS is available on the Directives Resource Compact Disk (DR-CD), which may be purchased from the Agency at cost by submitting a completed DR-CD order form. To request a fax copy of the DR-CD order form, send an e-mail with your fax number to DRC@USAID.GOV.

### PART 703—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

17. A new section 703.104-11 is added to read as follows:

#### 703.104-11 Processing violations or possible violations.

The individual to whom the contracting officer should forward information and documentation as required in FAR 3.104-10 is the contracting officer's supervisor.

#### 703.4 [Removed]

18. Subpart 703.4 is removed.

### PART 704—ADMINISTRATION MATTERS

#### 704.404 [Amended]

19. Section 704.404 is amended by revising "Limited Official Use" to read "Sensitive But Unclassified".

#### 704.803 [Removed]

20. Section 704.803 is removed and Subpart 704.8 is reserved (the subpart heading is retained).

### PART 705—PUBLICIZING CONTRACT ACTIONS

#### 705.002 [Amended]

21. Section 705.002 is amended by designating the existing text as paragraph (a) and by adding the following paragraph (b):

#### 705.002 Policy.

\* \* \* \* \*

(b) USAID policy is to include all Commerce Business Daily Notices and solicitations on the Internet.

#### 705.207 [Amended]

22. Section 705.207 is amended in paragraph (a) by revising "made available for development assistance or for assistance for famine recovery and development in Africa" to read "referred to in section 706.302-71(a)", and by removing "726.104" in the last

sentence of the section and inserting in its place "726.7005".

### PART 706—COMPETITIVE REQUIREMENTS

#### 706.302-5 [Amended]

23. Section 706.302-5 is amended by adding "Certain" to the beginning of the first sentence.

#### 706.302-70 [Revised]

24. Paragraph (c)(4) of section 706.302-70 is revised to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(4) Use of the authority in 706.302-70(b)(5) for proposed follow-on amendments in excess of one year or over \$250,000 is subject to the approval of the Agency Competition Advocate. For all other follow-on amendments using this authority, the contracting officer's certification required in FAR 6.303-2(a)(12) will serve as approval.

#### 706.302-71 [Amended]

25. Section 706.302-71 is amended by removing "(2)" after "in paragraph (a)" in paragraph (b)(1) and by revising paragraph (a) to read as follows:

#### 706.302-71 Small disadvantaged businesses.

(a) *Authority.* (1) Citations: Sec. 579, Pub. L. 101-167 (Fiscal year (FY) 1990), Sec. 567, Pub. L. 101-513 (FY 1991), Sec. 567, Pub. L. 102-145 (FY 1992), Sec. 562, Pub. L. 102-391 (FY 1993), Sec. 558, Pub. L. 103-87 (FY 1994), and Sec. 555, Pub. L. 103-306 (FY 1995).

(2) Except to the extent otherwise determined by the Administrator, not less than ten percent of amounts made available through the appropriations cited in paragraph (a)(1) of this section for development assistance and for assistance for famine recovery and development in Africa shall be used only for activities of disadvantaged enterprises (as defined in 726.7002). In order to achieve this goal, USAID is authorized in the cited statutes to use other than full and open competition to award contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses as defined in 726.7002), historically black colleges and universities, colleges and universities having a student body of which more than 40 percent of the students are Hispanic Americans, and private voluntary organizations which are controlled by individuals who are socially and economically

disadvantaged, as the terms are defined in 726.7002.

\* \* \* \* \*

### PART 708—REQUIRED SOURCES OF SUPPLIES AND SERVICES

#### PART 708—[REMOVED]

26. Part 708 is removed.

### PART 708—CONTRACTOR QUALIFICATIONS

#### 709.402 [Removed]

27. Section 709.402 is removed.

28. A new section 709.403 is added to read as follows:

#### 709.403 Definitions.

*Debarring official* in USAID is the Procurement Executive.

*Suspending official* in USAID is the Procurement Executive.

#### 709.503 [Amended]

29. The first sentence of section 709.503 is amended by revising "(AIDR 702.170-13(c)(4))" to read "(48 CFR AIDAR 702.170-13(c)(4))".

### PART 711—DESCRIBING AGENCY NEEDS

#### 711.022-70 [Redesignated and amended]

30. Section 711.022-70 is amended by redesignating it as 711.002-70; by revising "(M/AS)" in paragraph (b)(1) to read "(as designated in ADS chapter 323)"; and by removing "(M/AS)" from paragraph (b)(3).

### PART 715—CONTRACTING BY NEGOTIATION

#### 715.415 [Amended]

31. Section 715.413-22 amended by removing paragraph (c) introductory left; by removing paragraph (2) at the end of the section; and by revising paragraph (b) to read as follows:

#### 715.413-2 Alternate II

\* \* \* \* \*

(b) Prior to releasing proposals outside the Government for evaluation, the contracting officer shall obtain a signed and dated copy of a certification and agreement from each NGE and EAC substantially as follows:

\* \* \* \* \*

#### 715.613-71 [Amended]

32. Section 715.613-71 is amended by removing paragraphs (d) and (e), by redesignating paragraph (f) as paragraph (d), by revising "(b)(1)" in newly-designated (d)(3)(i) to read "(c)", by revising "request for expression of interest" and "project" in the second sentence of newly-designated (d)(4) to

read "REI" and "activity", respectively, and by revising paragraphs (a), (b), and (c) to read as follows:

**715.613-71 Title XII selection procedure—collaborative assistance.**

(a) *General.* (48 CFR) AIDAR 706.302-70(b)(4) provides authority for other than full and open competition when selecting Title XII institutions to perform Title XII activities.

(b) *Scope of subsection.* This subsection prescribes policies and procedures for the selection of institutions eligible under Title XII of the Foreign Assistance Act of 1961, as amended, to perform activities authorized under Title XII, where USAID has determined, in accordance with paragraph (c) of this subsection, that use of the collaborative assistance contracting system is appropriate. See AIDAR Appendix F (of this chapter)—Use of Collaborative Assistance Method for Title XII Activities for a more complete definition and discussion of the collaborative assistance method.

(c) *Determinations.* The following findings and determinations must be made prior to initiating any contract actions under the collaborative assistance method:

(1) The cognizant technical office makes a preliminary finding that:

(i) An activity is authorized by Title XII; and

(ii) Should be classed as collaborative assistance because a continuing collaborative relationship between USAID, the host country, and the contractor is required from design through completion of the activity, and USAID, host country, and contractor participation in a continuing review and evaluation of the activity is essential for its proper execution.

(2) Based upon this preliminary finding, the cognizant technical office shall establish an evaluation panel consisting of a representative of the contracting officer, and any other representatives considered appropriate by the chairman to review the proposed activity for its appropriateness under the collaborative assistance method.

(3) If supported by the panel's findings, the chairman will make a formal, written determination that the collaborative assistance method is the appropriate contracting method for the Title XII activity in question.

\* \* \* \* \*

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

**719.270 [Amended]**

33. Section 719.270 is amended by removing "[FAR 13.101 and 13.103(b)]"

from paragraph (d) and by removing paragraph (k).

**719.271-2 [Amended]**

34. Paragraph (b)(8) of section 719.271-2 is amended by removing "[FAR 13.101 and 13.103(b)]".

**719.271-3 [Amended]**

35. Paragraph (j) of section 719.271-3 is amended by adding "to" between the third comma and "SDB".

**719.271-6 [Amended]**

36. Paragraph (a) introductory text of section 719.271-6 is amended by removing "(FAR 13.101 and 13.103(b))" and "and AIDAR Appendix F" is removed from paragraph (a)(3).

**PART 722—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION**

**722.805-70 [Amended]**

37. At the end of paragraph (d)(3) in section 722.805-70, remove "(see 704.803(a))".

**PART 725—FOREIGN ACQUISITION**

**725.701 [Amended]**

38. Section 725.701 is revised to read as follows:

**725.701 General**

USAID's source, origin and nationality requirements for program-funded contracts and subcontracts are established in 22 CFR part 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID. These policies as they apply to subcontracts and purchases under USAID program-funded contracts have been incorporated into the contract clauses referenced in 725.704 and 725.705 of this subpart.

**725.704 [Revised]**

39. Section 725.704 is revised to read as follows:

**725.704 Source, origin and nationality requirements—Contract clause.**

The clause in 752.225-70 is required in all USAID program-funded solicitations and in all program-funded contracts under which the contractor may procure goods or services.

**725.705 [Revised]**

40. Section 725.705 is revised to read as follows:

**725.705 Local procurement—contract clause.**

Local procurement may be undertaken in accordance with the provisions of 22 CFR 228.40. All contracts involving performance

overseas shall contain the clause in 752.225-71.

**725.706 [Amended]**

41. Section 725.706 paragraph (a) is revised to read as follows:

**725.706 Geographic source waivers.**

(a) Authority to waive source, origin, nationality, and transportation services requirements is set forth in Chapters 103 and 310 of the ADS

\* \* \* \* \*

**PART 726—OTHER SOCIOECONOMIC PROGRAMS**

**726.7001 [Amended]**

42. Section 726.7001 is amended by revising the second "the" in the first sentence to read "certain", and by adding "(see section 706.302-71(a))" between "acts" and "concerning" in the same sentence.

**726.7003 [Amended]**

43. Section 726.7003 is amended by revising "for development assistance and for famine recovery and development in Africa" in the introductory paragraph to read "from the appropriations cited in section 706.302-71(a)(1)", and in paragraph (c) by revising "subpart 726.3" to read "section 726.7007".

**726.7005 [Amended]**

44. Section 726.7005 is amended by revising "726.301" in the first sentence to read "726.7007" and by revising "726.301(b)" in the last sentence to read "726.7007".

**726.7006 [Amended]**

45. Section 726.7006 is amended by revising "726.101" in the first sentence of paragraph (a) to read "726.7002".

**726.7007 [Amended]**

46. In section 726.7007, paragraph (a) is amended by revising "726.101" to read "726.7002" and by revising "for development assistance or for assistance for famine recovery and development in Africa" to read "from the appropriations cited in section 706.302-71(a)(1)"; paragraph (b) is amended by revising "726.104" to read "716.7005".

**PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES**

**731.205-6 [Amended]**

47. Section 731.205-6 is amended by revising the parenthetical sentence in paragraph (d) to read "The Contracting Officer shall only provide such approval after internal Agency procedures for review/approval of salaries in excess of the ES-6 rate have been followed."

**731.371 [Amended]**

48. Paragraph (b)(1) of section 731.371 is amended by removing the second sentence and inserting in its place "The Contracting Officer shall only provide such approval after internal Agency procedures for review/approval of salaries in excess of the ES-6 rate have been followed."

**PART 732—CONTRACT FINANCING****732.401 [Amended]**

49. Paragraph (a) of section 732.401 is amended by revising "May 12, 1955" to read "May 12, 1965".

**PART 733—PROTESTS, DISPUTES AND APPEALS****733.270-2 [Amended]**

50. Section 733.270-2 is amended by removing the "s" at the end of the word "furnishings" in the second sentence of paragraph (e).

**PART 750—EXTRAORDINARY CONTRACTUAL ACTIONS****750.7101 [Amended]**

51. Paragraph (a) of section 750.7101 is amended by capitalizing "agency" in "International Development Cooperation agency Delegation of Authority" in the middle of the first sentence.

**750.7109-3 [Amended]**

52. Section 750.7109-3 is amended by revising "dscribed" to read "described".

**750.7110 [Amended]**

53. Section 750.7110 and subsections 750.7110-1 through 750.7110-5 are revised as follows:

**750.7110 Processing cases.****750.7110-1 Investigation.**

The Evaluation Division of the Office of Procurement (M/OP/E) shall be responsible for assuring that the case prepared by the cognizant contracting officer makes a thorough investigation of all facts and issues relevant to each situation. Facts and evidence shall be obtained from contractor and Government personnel and shall include signed statements of material facts within the knowledge of the individuals where documentary evidence is lacking and audits where considered necessary to establish financial or cost related facts. The investigation shall establish the facts essential to meet the standards for deciding the particular case and shall address the limitations upon exercise of the Procurement Executive's authority to approve the request.

**750.7110-2 Office of General Counsel coordination.**

Prior to the submission of a case to the Procurement Executive recommending extraordinary contractual relief, the claim shall be fully developed by the cognizant contracting officer and concurrences or comments shall be obtained from the Office of General Counsel for the proposed relief to be granted. Such concurrences or comments shall be incorporated in or accompany the action memorandum submitted for consideration to the Procurement Executive in accordance with 750.7110-3.

**750.7110-3 Submission of cases to the Procurement Executive.**

Cases to be submitted for consideration by the Procurement Executive shall be prepared and forwarded by the cognizant contracting officer through M/OP/E to the Procurement Executive by means of an action memorandum. M/OP/E will review the action memorandum for accuracy and completeness. The action memorandum shall provide for approval or disapproval by the Procurement Executive of the disposition recommended by the contracting officer. The action memorandum shall address:

- (a) The nature of the case;
- (b) The basis for authority to act under section 750.7101;
- (c) The findings of fact essential to the case (see 750.7109-3) arranged chronologically with cross references to supporting enclosures;
- (d) The conclusions drawn from applying the standards for deciding cases, as set forth in 750.7106, to the findings of fact;
- (e) Compliance with the limitations upon exercise of authority, as set forth in section 750.7107 (for informal commitments, include statements addressing each of the limitations in paragraph (d) of 750.7107);
- (f) Concurrences or comments obtained from the Office of General Counsel;
- (g) Verification of funds availability and the contracting officer's determination of cost/price reasonableness when the disposition recommended requires payment to a contractor;
- (h) The disposition recommended and, if contractual action is recommended with respect to cases falling within Section 4 of the Executive Order, the opinion of the contracting officer that such action is necessary to protect the foreign policy interest of the United States; and

(i) The action memorandum shall enclose all evidentiary materials, including the reports and comments of all cognizant Government or other officials, and a copy of the contractor's request. The action memorandum should provide the following information related to the contractor's request, as applicable:

- (1) Date of request;
- (2) Date request received by USAID;
- (3) Contract number;
- (4) Contractor's name and address;
- (5) Name, address, and phone number of contractor's representative;
- (6) Name, office symbol, and phone number of cognizant contracting officer;
- (7) Amount of request.

**750.7110-4 Processing by Procurement Executive.**

When the action memorandum has been determined to be as accurate and complete as possible and has been prepared in accordance with this subpart, M/OP/E will forward the action memorandum to the Procurement Executive. The Procurement Executive will sign and date the action memorandum indicating approval or disapproval of the disposition recommended by the contracting officer.

**750.7110-5 Contract files.**

The fully executed action memorandum indicating approval/disapproval and a copy of the contractual document implementing any approval contractual action shall be placed in the contract file.

**PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****752.200 [Amended]**

54. The first sentence of section 752.200 is corrected by adding an "s" to the end of "contract".

**752.204-2 [Amended]**

55. Section 752.204-2 is amended by revising "Volume 5, Foreign Affairs Manual, Chapter 900" to read "Volume 12, Foreign Affairs Manual, Chapter 540", and by revising "Limited Official use" wherever it appears to read "Sensitive But Unclassified".

**752.209-70 [Removed]**

56. Section 752.209-70 is removed.

**752.219-8 [Amended]**

57. Section 752.219-8 is amended by revising "FAR 19.7008(a)" in the second sentence to read "FAR 19.708(a)", by removing "in FAR 13.000" in the introductory text of the clause after "simplified acquisition threshold", and by removing the quotation mark at the end of the section.

**752.225-9 [Amended]**

58. Section 752.225-9 is amended by revising "subpart" at the end of the first sentence to read "chapter", and by revising "752.7004" to read "752.225-70" in the last sentence.

59. New section 752.225-70 is added as follows:

**752.225-70 Source, origin and nationality requirements.**

The following clause is required as prescribed in 725.704.

Source, Origin and Nationality Requirements (May 1997)

(a) Except as may be specifically approved by the Contracting Officer, all commodities (e.g., equipment, materials, vehicles, supplies) and services (including commodity transportation services) which will be financed under this contract with U.S. dollars shall be procured in accordance with the requirements in 22 CFR part 228, "Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID." The authorized source for procurement is Geographic Code 000 unless otherwise specified in the schedule of this contract. Guidance on eligibility of specific goods or services may be obtained from the Contracting Officer.

(b) Ineligible goods and services. The Contractor shall not procure any of the following goods or services under this contract:

- (1) Military equipment,
- (2) Surveillance equipment,
- (3) Commodities and services for support of police and other law enforcement activities,
- (4) Abortion equipment and services,
- (5) Luxury goods and gambling equipment,

or

(6) Weather modification equipment.  
(c) Restricted goods. The Contractor shall not procure any of the following goods or services without the prior written approval of the Contracting Officer:

- (1) Agricultural commodities,
- (2) Motor vehicles,
- (3) Pharmaceuticals and contraceptive items,
- (4) Pesticides,
- (5) Fertilizer,
- (6) Used equipment, or
- (7) U.S. government-owned excess property.

If USAID determines that the Contractor has procured any of these specific restricted goods under this contract without the prior written authorization of the Contracting Officer, and has received payment for such purposes, the Contractor agrees to refund to USAID the entire amount of the purchase.

60. New Section 752.225-71 is added to read as follows:

**752.225-71 Local procurement.**

For use in any USAID contract involving performance overseas.

Local Procurement (May 1997)

(a) Local procurement involves the use of appropriated funds to finance the

procurement of goods and services supplied by local businesses, dealers or producers, with payment normally being in the currency of the cooperating country.

(b) All locally-financed procurements must be covered by source/origin and nationality waivers as set forth in subpart F of 22 CFR part 238 except as provided for in 22 CFR 228.40, Local procurement.

**752.226-1 [Amended]**

61. Section 752.226-1 is amended by revising "726.201" in the introductory paragraph to read "726.7006(a)".

**752.226-2 [Amended]**

62. Section 752.226-2 is amended by revising "726.301" in the introductory paragraph to read "726.7007", by revising the date of the clause "(April 1991)" to read "(April 1997)", and by removing the second sentence of paragraph (c)(3).

**752.226-3 [Amended]**

63. Section 752.226-3 is amended by revising "726.302" in the introductory paragraph to read "726.7008".

**752.228-7 [Amended]**

64. Section 752.228-7 is amended by revising the last sentence to read as follows:

**752.228-7 Insurance—liability to third persons.**

\* \* \* \* \*

( ) *Insurance on private automobiles.*  
\* \* \* Copies of such insurance policies shall be preserved and made available as part of the Contractor's records which are required to be preserved and made available by the "Audit and Records—Negotiation" clause of this contract.

**752.245-70 [Amended]**

65. Section 752.245-70 is amended by adding, except for those for commercial items, between "contracts" and "must" in the introductory paragraph, by revising "AID-Contractor" to read "USAID-Contractor" in item B.2.b. in the form entitled "Annual Report of Government Property in Contractor's Custody", and by revising "or" to read "for" in the second attestation in the paragraph entitled "Property Inventory Verifications".

**752.245-71 [Amended]**

66. The introductory text of section 752.245-71 is revised to read as follows:

**752.245-71 Title to and care of property.**

The following clause shall be included in all non-commercial contracts when the contractor will acquire property under the contract for use overseas and the property will be titled to the Cooperating Country.

\* \* \* \* \*

**752.7001 [Revised]**

67. Section 752.7001 is revised to read as follows:

**752.7001 Biographical data.**

The following clause is to be included in all USAID cost reimbursement contracts.

Biographical Data (May 1997)

The Contractor agrees to furnish to the Contracting Officer and AID Form 1420-17, "Contractor Employee Biographical Data Sheet", biographical information on the following individuals to be employed in the performance of the contract: (1) All individuals to be sent outside of the United States, or (2) any employees designated as "key personnel". Biographical data in the form usually maintained by the Contractor on the other individuals employed under the contract shall be available for review by USAID at the Contractor's headquarters. A supply of AID Form 1420-17 will be provided with this contract. The Contractor may reproduce additional copies as necessary.

**752.7004 [Revised]**

68. Section 752.7004 is revised to read as follows.

**752.7004 Emergency locator information.**

The following clause is required to be included in all contracts requiring travel overseas.

Emergency Locator Information (May 1997)

The Contractor agrees to provide the following information to the Mission Administrative Officer on or before the arrival in the host country of every contract employee or dependent:

(1) The individual's full name, home address, and telephone number.

(2) The name and number of the contract, and whether the individual is an employee or dependent.

(3) The contractor's name, home office address, and telephone number, including any after-hours emergency number(s), and the name of the contractor's home office staff member having administrative responsibility for the contract.

(4) The name, address, and telephone number(s) of each individual's next of kin.

(5) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

**752.7007 [Amended]**

69. Section 752.7007 is amended by adding ", as prescribed in 731.205-6(d) or 731.371(b), as applicable" after "Contracting Officer" in paragraph (b).

**752.7008 [Amended]**

70. The introductory paragraph in section 752.7008 is amended by adding "non-commercial" before the word "contracts".

**752.7010 [Amended]**

71. The introductory paragraph in section 752.7010 is amended by adding



“non-commercial” before the word “contracts”.

#### 752.7015 [Amended]

72. Section 752.7015 is amended by revising the introductory paragraph, the clause heading, paragraph (a)(2), and paragraph (a)(4) of the clause to read as follows:

#### 752.7015 Use of pouch facilities.

For use in all USAID non-commercial contracts exceeding the simplified acquisition threshold and involving performance overseas.

Use of Pouch Facilities (April 1996)

(a) \* \* \*

(2) U.S. citizen employees of U.S. contractors are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see paragraph (a)(3) of this clause).

\* \* \* \* \*

(4) Official mail as authorized by paragraph (a)(1) of this clause should be addressed as follows: Individual or Organization name, followed by the symbol “C”, city Name of Post, U.S. Agency for International Development, Washington, DC 20523-0001.

\* \* \* \* \*

#### 752.7017 [Removed]

73. Section 752.7017 is removed and reserved.

#### 752.7027 [Amended]

74. Section 752.7027 is amended by adding “services” before the word “contracts” in the first sentence of the introductory paragraph and by revising “or” to read “of” in the heading of paragraph (c) of the clause.

#### 752.7029 [Amended]

75. Section 752.7029 is amended by adding “non-commercial” before the word “contracts” in the introductory paragraph.

#### 752.7033 [Amended]

76. Section 752.7033 is amended by revising “, and assigned Control No. 0412-0356” in the second sentence of paragraph (b) to read “(see 701.105(a))”, and by revising the clause heading and paragraph (a) to read as follows:

#### 752.7033 Physical Fitness.

\* \* \* \* \*

Physical Fitness (May 1997)

\* \* \* \* \*

(a) *Assignments of less than 60 days in the Cooperating Country.* The contractor shall require employees being assigned to the Cooperating Country for less than 60 days to be examined by a licensed doctor of medicine. The contractor shall require the doctor to provide to the contractor a written statement that in his/her medical opinion, the employee is physically qualified to engage in the type of activity for which he/

she is employed and the employee is physically able to reside in the country to which he/she is assigned. Under a cost reimbursement contract, if the contractor has no written statement of medical opinion on file prior to the departure for the Cooperating Country of any employee and such employee is unable to perform the type of activity for which he/she is employed or cannot complete his/her tour of duty because of any physical disability (other than physical disability arising from an accident while employed under this contract), the contractor shall be responsible for returning the disabled employee to his/her point of hire and providing a replacement at no additional cost to the Government. In addition, in the case of a cost reimbursement contract, the contractor shall not be entitled to reimbursement for any additional costs attributable to delays or other circumstances caused by the employee's inability to complete his/her tour of duty.

\* \* \* \* \*

### PART 753—FORMS

#### 753.107 [Amended]

77. Section 753.107 is amended by revising “M/AS/PP/PP” to read “M/AS/ISS”.

78. Chapter 7 is amended by removing Appendices A, C, G, and H and reserving each.

Dated: May 13, 1997.

Marcus L. Stevenson,  
Procurement Executive.

[FR Doc. 97-18603 Filed 7-28-97; 8:45 am]

BILLING CODE 6116-01-M

### DEPARTMENT OF DEFENSE

#### 48 CFR Parts 204, 215, 216, 232, 239, and 252

[DFARS Case 95-D708]

#### Defense Federal Acquisition Regulations Supplement; Truth in Negotiations and Related Changes

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to amendments to the Federal Acquisition Regulation (FAR) pertaining to cost or pricing data requirements.

**EFFECTIVE DATE:** July 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703) 602-1031.

### SUPPLEMENTARY INFORMATION:

#### A. Background

A proposed rule was published in the **Federal Register** on October 23, 1995 (60 FR 54326). The rule proposed amendments to the DFARS to conform to FAR amendments that implemented requirements of the Federal Acquisition Streamlining Act of 1994 (FASA) (Public Law 103-355) pertaining to the submission of cost or pricing data by offerors and contractors. The rule also proposed to remove DFARS language pertaining to work measurement systems, as Section 2201(b) of FASA repealed 10 U.S.C. 2406, the primary statute covering work measurement systems.

Additional changes in the final rule include—

- Removal of the proposed language at DFARS 215.804-1(b)(1)(B)(3) to conform to FAR standards for adequate price competition.
- Amendments to DFARS 216.203-4-70 and the clauses at 252.216-7000 and 252.216-7001 to remove obsolete FAR references.
- Amendments to DFARS Part 239 and removal of the clauses at 252.239-7009 and 252.239-7010 to eliminate special cost or pricing data and audit requirements for telecommunications services.
- Retention of the clause at DFARS 252.215-7000, as the clause is considered to be a useful supplementation of the clauses at FAR 52.215-23, 52.215-24, and 52.215-25.

Public comments were received from four respondents. All comments were considered in the development of the final rule.

#### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because the rule primarily consists of conforming DFARS amendments to reflect existing FAR requirements for submission of cost or pricing data, and because most prime contracts, as well as subcontracts, with small businesses do not require the submission of cost or pricing data.

#### C. Paperwork Reduction Act

This rule does not add any new information collection requirements that require approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* However, it is estimated that elimination of the clause at 252.239-7009 will reduce annual paperwork burden requirements by