



AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 726, 729, 731, and 752

RIN 0412-AB04

Acquisition Regulation: Foreign Tax Reporting, Conference Planning, and Trade and Investment Activities.

AGENCY: U.S. Agency for International Development.

ACTION: Final rule.

SUMMARY: The United States Agency for International Development (USAID) is amending its Acquisition Regulation (AIDAR) regarding contractor requirements on foreign tax reporting, conference planning, and trade and investment activities. These revisions are intended to bring the AIDAR into compliance with revised Agency policies and procedures and statutory requirements.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kelly Miskowski, USAID M/OAA/P, at 202-916-2752 or policymailbox@usaid.gov for clarification of content or information pertaining to status or publication schedules. All inquiries regarding this rule must cite RIN No. 0412-AB04.

SUPPLEMENTARY INFORMATION:

A. Background:

USAID published a proposed rule in the Federal Register at 87 FR 22843 on April 18, 2022, to amend the AIDAR regarding

contractor requirements on foreign tax reporting, conference planning, and trade and investment activities as outlined in 48 CFR Parts 726, 729, 731, and 752.

B. Discussion and Analysis.

Two respondents submitted public comments in response to the proposed rule. A discussion of the comments is provided as follows:

1. Summary of changes

USAID reviewed the public comments in the development of the final rule; however, no changes were made as a result of the public comments received. Some administrative changes were made to revise the title of subpart 726.71 and to correct the title of § 752.226-70 to read: Trade and Investment Activities and the "Impact on U.S. Jobs" and "Workers' Rights" and to revise capitalization throughout.

2. Analysis of Public Comments

Below are the Agency's responses to comments on the proposed rule.

(i) Foreign Tax Reporting:

A. Comment: One commenter (#1) indicated that some countries require that contractors withhold income tax from vendors in a manner similar to employee income tax withholding. They requested that USAID confirm that this type of withholding is exempt from the foreign tax reporting requirements in section 752.229-71.

Response: USAID cannot confirm on a blanket basis whether the vendor taxes described would be exempt as this is a fact-specific inquiry. The determination needs to be made at the country level by the Department of State based on the specific tax code. We recommend reaching out to your Contracting Officer for country-specific guidance.

B. Comment: Commenter #1 also expressed a concern that there is confusion as to when the cost of VAT or customs taxes may be allowable. They requested that the regulation be revised to be more similar to USAID's Mandatory Standard Provision for Federal assistance awards to include language that indicates that host government taxes (such as VAT) are not allowable where the Contracting Officer provides the necessary means to the contractor to obtain an exemption or refund of the taxes, and the contractor fails to take reasonable steps to obtain this exemption.

Response: The issue of foreign tax allowability is outside the scope of this rule. This rulemaking pertains to foreign tax reporting. Some foreign tax payments may need to be reported, even if allowable. Questions about allowability should be coordinated with your relevant Contracting Officer as this is a fact-specific inquiry and depends on the country of

taxation. For further information, please see USAID's Procurement Executive Bulletin ([PEB](#)) [2017-02](#), "Exemptions and Allowability of Host Government Taxes".

C. Comment: A commenter (#2) requested information on how USAID/Washington will communicate to Mission Directors to renegotiate and revise procedures for exemption of reimbursement of taxes.

Response: Internal agency communications are outside of the scope of this rulemaking. However, USAID will communicate the contents of this rule through existing communications channels with missions.

D. Comment: Commenter #2 also recommended revised language in 752.229-71 to indicate "the mission controller" rather than "point of contact at the Embassy, Mission. . ." to identify where the report must be submitted.

Response: USAID appreciates the recommendation but does not believe a change is necessary. The specifics on where the reporting must be submitted will be included in each solicitation and resulting award.

(ii) Conference Planning and Approvals:

A. Comment: Commenter #2 requested that the text specify that USAID is required to report to Congress on conferences as a main reason for the requirement.

Response: USAID appreciates the recommendation but does not believe a change is necessary.

B. Comment: Commenter #2 also requested clarity on what costs are associated with "costs to ensure the safety of attending government officials."

Response: These terms and definitions come directly from OMB Memo M-12-12 ("Promoting Efficient Spending to Support Agency Operations"), as amended by OMB Memo M-17-08. OMB notes that "Conference expenses include any associated authorized travel and per diem expenses, hire of rooms for official business, audiovisual use, light refreshments, registration fees, ground transportation, and other expenses as defined by the FTR. . . . The FTR provides some examples of direct and indirect conference costs included within conference expenses. See 41 CFR 301-74.2. Conference expenses should be net of any fees or revenue received by the Agency through the conference and should not include costs to ensure the safety of attending governmental officials." (See OMB Memo M-17-08, footnote 2) USAID, in implementing these OMB memos, adopts these terms as defined in the OMB memos and Federal Travel Regulations and considers a wide array of scenarios for "costs to ensure the safety of attending government officials". Although not exhaustive, illustrative examples include: the

additional costs related to selecting a safe location with historically low crime rates and a venue offering protective services such as security guards and restrictive access technology.

C. Comment: Commenter #2 requested amending the definition of USAID employee to include "Foreign Service Limited".

Response: USAID believes that the definition as drafted is inclusive of all USAID employees for purposes of conference planning policy - including staff hired under the Foreign Service Limited appointments.

D. Comment: Commenter #2 also indicated that the exceptions should be reviewed for compliance with any reporting under relevant appropriations.

Response: USAID acknowledges the comment and confirms that this clause has been reviewed internally to comply with relevant appropriations requirements.

E. Comment: Commenter #2 suggested deletion of paragraph (c) (4) of the clause 752.231-72 as these conferences are not funded by USAID.

Response: USAID appreciates the recommendation but does not believe a change is necessary. This section outlines a circumstance when USAID funding is not being used for the venue but is being used for costs associated with USAID employees and/or Personal

Services Contractors attending or light refreshments. Although USAID is partially funding costs associated with the conference, prior approval is not required in this very specific situation to reduce burden on contractors.

F. Comment: Commenter #2 also requested clarity on whether the information outlined in (f)(1)-(6) is needed to request approval of a conference.

Response: The information required to request prior approval of a conference is outlined in section 752.231-72(f)(1) through (7). These items must be submitted.

(iii) Trade and Investment Activities:

A. Comment: Commenter #2 requested definitions for the terms "gray area", "prohibited activity", and "activity" generally.

Response: The Agency makes a determination whether the clause applies or not during the planning phase, in accordance with Agency policy outlined in [Automated Directives System \(ADS\) Chapter 225](#) (used as a reference here). The term "gray area" is not included in the contract clause 752.226-70 and does not need to be defined. For informational purposes, contractors may review definitions and guidance of these terms as outlined in ADS 225. USAID is not establishing any new definition of "activity." Rather, "activity" has the

same meaning as used throughout the AIDAR. More specifically, an activity relates to any effort performed by the contractor within the scope of work.

B. Comment: Commenter #2 requested more clarity on the phrase "authorized by USAID" to ask who would be responsible for authorization. They referred specifically to AIDAR 752.226-70(a) which indicates that "no funds. . . may be used" unless "specifically set forth in this contract or otherwise authorized by USAID in writing".

Response: Contractors should communicate with their Contracting Officer who will issue an approval in accordance with Agency guidance.

C. Regulatory Considerations and Determinations.

Executive Orders 12866, 13563, and 14094.

Executive Order (E.O.) 12866, Regulatory Planning and Review, as amended and reaffirmed by E.O. 13563, "Improving Regulation and Regulatory Review," and E.O. 14094, "Modernizing Regulatory Review," directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined

"nonsignificant" under E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

USAID does not expect this proposed rule to 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. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

E. Paperwork Reduction Act

This rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0412-0619, entitled "AIDAR: Foreign Tax Reporting, Conference Planning, and Trade and Investment Activities".

List of Subjects in 48 CFR Chapter 7 Parts 726, 729, 731, and 752

Government procurement.

For the reasons discussed in the preamble, USAID amends 48 CFR Chapter 7 as set forth below:

1. The authority citation for 48 CFR part 726 continues 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; and 3 CFR 1979 Comp., p. 435.

PART 726-OTHER SOCIOECONOMIC PROGRAMS

Subpart 726.71 – Trade and Investment Activities and the “Impact on U.S. Jobs” and “Workers’ Rights”

2. Revise the heading for subpart 726.71 to read as set forth above.

3. Revise section 726.7101 to read as follows:

726.7101 Trade and Investment Activities and the “Impact on U.S. Jobs” and “Workers’ Rights.”

(a) *Policy.* USAID policy and required procedures in ADS Chapter 225 (Program Principles for Trade and Investment Activities and the “Impact on U.S. Jobs” and “Workers’ Rights”) implement statutory prohibitions on obligation and expenditure of appropriated funds. ADS Chapter 225 requires Agency operating units to analyze a project or activity to ensure compliance with U.S. foreign policy objectives as stated in Section 601 of the Foreign Assistance Act (FAA) of 1961, as amended; the U.S. Government’s trade and development objectives set forth in trade legislation; and related policy documents. If the analysis concludes that the project or activity meets the criteria for what the ADS chapter describes as “gray-area activities” or if the contract statement of work has the potential to evolve into what the chapter defines as a prohibited activity, then the planner must include in the procurement request language appropriately tailored to the specific circumstances for the contract statement of work.

(b) *Special contract requirement.* The contracting officer must insert in Section H of the uniform contract format a clause substantially the same as the clause in 752.226-70 when informed by the requesting operating unit that the statement of work or statement of objectives includes gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, as described in ADS Chapter 225.

§ 726.7102 [Removed]

4. Remove § 726.7102.

PART 729—TAXES

5. The authority citation for 48 CFR part 729 is revised 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; and 3 CFR 1979 Comp., p. 435.

Subpart 729.4—Contract Clauses

6. Revise § 729.402-70 to read as follows:

729.402-70 Foreign contracts.

(a) The annual Department of State, Foreign Operations, and Related Programs Appropriations Act (SFOAA) requires USAID to take certain steps to prevent countries from imposing taxes, including value added tax (VAT) and customs duties, on U.S. foreign assistance, or if imposed, requires the countries to reimburse the assessed taxes or duties. The SFOAA also requires certain reporting to Congress on host country taxation. Because

countries imposing such taxes assess them directly on contractors, USAID requires contractors to report annually on whether taxes have been imposed and, if so, whether the foreign government reimbursed the taxes.

(b) The contracting officer must insert the clause at § 752.229-71, Reporting of Foreign Taxes, in solicitations and resulting contracts when:

(1) A contract is fully or partially funded with funds appropriated under titles III through VI of an SFOAA making appropriations for the Department of State, foreign operations, and related programs, and

(2) The contract is to be performed wholly or partly in a foreign country.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

7. The authority citation for 48 CFR parts 731 and 752 continues 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; and 3 CFR 1979 Comp., p. 435.

Subpart 731.2—Contracts with Commercial Organizations

8. Revise § 731.205-43 to read as follows:

731.205-43 Trade, business, technical and professional activity costs—USAID conference approval requirements.

(a) *Definitions.* As used in this section —

Conference means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that is funded in whole or in part by USAID.

Net conference expense means the total conference expenses excluding: any fees or revenue received by the Agency through the conference, costs to ensure the safety of attending governmental officials, and salary of USAID employees and USAID personal services contractors.

Personal Services Contractor (PSC) means any individual who is awarded a personal services contract in accordance with AIDAR appendix D or J of this chapter.

Temporary duty (TDY) travel means official travel at least fifty (50) miles from both the traveler's home and duty station for a period exceeding twelve (12) hours.

USAID employee means a USAID direct-hire employee or a direct-hire Federal employee from another U.S. government agency detailed to USAID.

(b) *Prior approval.* USAID policy requires contractors to obtain contracting officer approval of the following, unless an exception in paragraph (c) of the clause at 752.231-72 applies:

(1) A conference funded in whole, or in part, by USAID when ten (10) or more USAID employees or personal services contractors are required to travel on temporary duty status to attend the conference; or

(2) A conference funded in whole, or in part, by USAID when the net conference expense funded by USAID is expected to exceed

\$100,000, regardless of the number of USAID employees or USAID personal services contractors who will participate in the conference.

(c) *Allowability of cost.* Costs associated with a conference that meets the criteria above, incurred without USAID prior written approval, are unallowable.

(d) *Solicitation provision and contract clause.* Contracting officers must insert the clause at 752.231-72 in all USAID-funded solicitations and contracts anticipated to include a requirement for a USAID-funded conference.

Subpart 731.3 - Contracts With Educational Institutions

9. Add §731.374 to read as follows:

731.374 Conference approval requirements.

USAID's policies regarding conference approval requirements are set forth in (48 CFR) AIDAR 731.205-43. These policies are also applicable to contracts with educational institutions.

Subpart 731.7 Contracts With Nonprofit Organizations

10. Add §731.775 to read as follows:

731.775 Conference approval requirements.

USAID's policies regarding conference approval requirements are set forth in (48 CFR) AIDAR 731.205-43. These policies are also applicable to contracts with nonprofit organizations.

PART 752 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2 - Text of Provisions and Clauses

11. Add 752.226-70 to read as follows:

752.226-70 Trade and Investment Activities and the "Impact on U.S. Jobs" and "Workers' Rights."

As prescribed in 48 CFR 726.7101(b), insert a clause substantially as follows:

Trade and Investment Activities and the "Impact on U.S. Jobs" and "Workers' Rights" (JUL 2023)

(a) Except as specifically set forth in this contract or otherwise authorized by USAID in writing, no funds or other support provided under this contract may be used for any activity that: provides financial incentives and other assistance for U.S. companies to relocate operations abroad if it is likely to result in the loss of U.S. jobs; contributes to violations of internationally recognized workers' rights defined in 19 U.S.C. 2467(4); or provides financial incentives for entities located outside the United States to relocate or transfer jobs from the United States to other countries or provide financial incentives that would adversely affect the labor force in the United States.

(b) In the event the Contractor is requested to provide services in any of the above areas or requires clarification from USAID as to whether an activity would be consistent with the limitation set forth above, the Contractor must notify the Contracting Officer and provide a detailed description of the expected impact of the proposed activity. The Contractor must not proceed with the activity until advised by USAID in writing that it may do so.

(c) The Contractor must ensure that its employees and subcontractors providing trade and investment support services are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts.

(End of clause)

12. Revise 752.229-71 to read as follows:

752.229-71 Reporting of Foreign Taxes

As prescribed in (48 CFR) AIDAR 729.402-70(b), insert the following clause in applicable solicitations and resulting contracts. The contracting officer must insert the address and point of contact at the Embassy, Mission, or M/CFO/CMP as appropriate under paragraph (d) of this clause.

Reporting of Foreign Taxes (JUL 2023)

(a) *Definitions.* As used in this clause—

Foreign government includes any foreign governmental entity.

Foreign taxes include value-added taxes and customs duties but not individual income taxes assessed to local staff.

Local staff means Cooperating Country National employees.

(b) *Annual report.* (1) The Contractor must submit a report detailing foreign taxes assessed under this contract during the prior U.S. government fiscal year. The report must be submitted annually by April 16.

(2) A report is required even if the Contractor did not pay any foreign taxes during the reporting period. A cumulative

report may be provided if the Contractor is performing more than one award in the foreign country.

(c) *Contents of report.* The report must contain:

(1) Contractor name.

(2) Contact name with phone number and email address.

(3) Contract number(s).

(4) Amount of foreign taxes assessed by each foreign government (listed separately) under this contract during the prior U.S. Government fiscal year.

(i) Taxes assessed on any individual transaction of less than \$500 should not be reported.

(ii) The Contractor must report only foreign taxes assessed by a foreign government receiving U.S. assistance under this contract. The Contractor must not report on foreign taxes assessed by a third-party foreign government.

(5) Any reimbursements of foreign taxes received by the Contractor on the taxes reported in paragraph (c) (4) of this clause received through the date of the report.

(d) *Submission of report.* The Contractor must submit the report to: [*Contracting Officer must insert address and point of contact at the Embassy or Mission in the country in which the contract will be performed, or CFO/CMP for USAID/W-issued contracts, as appropriate*], with a copy to the Contracting Officer's Representative.

(e) *Subcontracts.* The Contractor must include this reporting requirement in all subcontracts issued under this

contract. The Contractor shall collect and incorporate into the Contractor's report all information received from subcontractors pursuant to this clause.

(End of clause)

13. Revise 752.231-72 to read as follows:

752.231-72 Conference planning and required approval

As prescribed in (48 CFR) AIDAR 731.205-43(d), insert the following clause in section H of all USAID-funded solicitations and contracts anticipated to include a requirement for a USAID-funded conference.

Conference Planning and Required Approval (JUL 2023)

(a) *Definitions.* As used in this clause—

Conference means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that is funded in whole or in part by USAID.

Net conference expense means the total conference expenses excluding: any fees or revenue received by the Agency through the conference, costs to ensure the safety of attending governmental officials, and salary of USAID employees and USAID personal services contractors.

Personal Services Contractor (PSC) means any individual who is awarded a personal services contract in accordance with AIDAR appendix D or J of this chapter.

Temporary duty (TDY) travel means official travel at least fifty (50) miles from both the traveler's home and duty station for a period exceeding twelve (12) hours.

USAID employee means a USAID direct-hire employee or a direct-hire Federal employee from another U.S. government agency detailed to USAID.

(b) *Prior approval.* Unless an exception in paragraph (c) applies, the Contractor must obtain prior written approval from the Contracting Officer at least 30 days prior to committing costs, for the following:

(1) A conference funded in whole or in part by USAID when ten (10) or more USAID employees or Personal Services Contractors are required to travel on temporary duty status to attend the conference; or

(2) A conference funded in whole or in part by USAID and attended by USAID employees or USAID Personal Services Contractors, when the net conference expense funded by USAID is expected to exceed \$100,000, regardless of the number of USAID participants.

(c) *Exceptions.* Prior USAID approval is not required for the following:

(1) Co-creation conferences to facilitate the design of programs or procurements.

(2) Events funded and scheduled by the Center for Professional Development within the USAID Office of Human Capital and Talent Management.

(3) A single course presented by an instructor conducted at a U.S. Government training facility (including the Washington Learning Center or other USAID training facilities), a

commercial training facility, or other venue if a U.S.

Government training facility is not available.

(4) Conferences conducted at a U.S. Government facility or other venue not paid directly or indirectly by USAID, when travel of USAID employees or USAID Personal Services Contractors, light refreshments and, if applicable, costs associated with participation of the Contractor's staff are the only direct costs associated with the event.

(d) *Allowability of cost.* Costs associated with a conference that meet the criteria above, incurred without USAID prior written approval, are unallowable.

(e) *Post-award.* Conferences approved at the time of award will be incorporated into the contract. The Contractor must submit subsequent requests for approval of conferences on a case-by-case basis, or requests for multiple conferences may be submitted at one time.

(f) *Documentation.* Requests for approval of a conference that meets the criteria in paragraphs (b) of this clause must include:

(1) A brief summary of the proposed event;

(2) A justification for the conference and alternatives considered, e.g., teleconferencing and video-conferencing;

(3) The estimated budget by line item (e.g., travel and per diem, venue, facilitators, meals, equipment, printing, access fees, ground transportation);

(4) A list of USAID employees or PSCs attending and a justification for each, and the number of other USAID-funded participants (e.g., Contractor personnel);

(5) A cost comparison for at least three potential venues (including a U.S. Government owned or leased facility) and a justification if the lowest cost facility is not selected;

(6) If meals will be provided to local USAID employees or PSCs (a local employee would not be in travel status), a statement on whether the meals are a necessary expense to support the conference objectives; and

(7) A statement signed by an employee of the Contractor with authority to bind the Contractor, confirming that strict fiscal responsibility has been exercised in making decisions regarding conference expenditures, the proposed costs are comprehensive and represent the greatest cost advantage to the U.S. Government, and that the proposed conference representation has been limited to the minimum number necessary to support the conference objectives.

(End of clause)

Mark Walther,

Chief Acquisition Officer.