



AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 701, 702, 704, 705, 706, 715, 719, 725, 731, 742, 750, and 752

RIN 0412-AA88

U.S. Agency for International Development Acquisition

Regulation; Administrative Updates

AGENCY: U.S. Agency for International Development.

ACTION: Direct final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is issuing this direct final rule revising the Agency for International Development Acquisition Regulation (AIDAR) to maintain consistency with Federal and agency regulations, remove obsolete material and internal agency procedures, and make editorial amendments to clarify the regulation.

DATES: This rule is effective **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, without further action, unless significant adverse comments are received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If significant adverse comment(s) are received, USAID will publish a timely withdrawal of those portion(s) of the rule in the **Federal Register**.

ADDRESSES: You may send comments, identified by your name, company name (if any), and the Regulatory Information Number (RIN) 0412-AA88 for this rulemaking via the following method:

- Federal eRulemaking Portal: <https://www.regulations.gov>.

Follow the instructions for sending comments.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. We recommend that you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute. If your comment cannot be submitted using <https://www.regulations.gov>, please email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, 202-916-2622, policymailbox@usaid.gov.

SUPPLEMENTARY INFORMATION:

I. PUBLIC PARTICIPATION.

USAID is publishing this revision as a direct final rule as the changes are conforming and administrative amendments and the agency does not anticipate any significant adverse comments.

This rule will be effective on the date specified in the **DATES** section above without further notice unless significant adverse comment(s) are received by the date specified in the **DATES** section above.

USAID will only address comments that explain why the rule would be inappropriate, ineffective, or unacceptable without a change.

USAID may not consider comments that are insubstantial or outside the scope of the rule.

If significant adverse comments are received on the direct final rule, USAID will publish a timely partial withdrawal in the **Federal Register** informing the public what sections of the rule will not take effect. Any portions of the direct final rule for which no significant adverse comments are received will become final after the designated period.

Additionally, USAID is publishing a separate document in the ``Proposed Rules'' section of this **Federal Register** that will serve as the proposal to approve AIDAR revisions for which significant adverse comments may be received. In this case, USAID will address all public comments in a subsequent final rule based on the proposed rule. USAID will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. BACKGROUND.

This direct final rule is part of the AIDAR rewrite initiative, in which all parts of the regulation were reviewed and updated to: make editorial amendments to clarify the regulation, include previously implemented policy, and delete outdated information and agency internal guidance from the regulation. This rule incorporates updates to the AIDAR parts 701, 702, 704, 705, 706, 715, 719, 725, 731, 742, 750, and 752.

The following changes are implemented by this direct final rule:

- AIDAR 701.303, 701.470, 701.601, 701.602-1, 702.170, 704.2105 [new section], 704.5 [new subpart], 705.102, 705.202, 706.302-70, 715.602, 715.604, 719.271-6, 725.170, 725.403, 731.771, 731.773, 742.770, 750.000, 750.7101, 750.7102, 750.7103, 750.7104, 750.7105, 750.7106-1, 750.7106-2, 750.7106-3, 750.7107, 750.7108, 750.7109-1, 750.7109-3, 750.7110, 752.202-1, 752.222-70, 752.222-71, 752.225-9 [redesignated as 752.225-11], 752.225-70, 752.227-14, 752.231-71, 752.7018, 752.7019, 752.7021, 752.7022, 752.7023, 752.7024, 752.7028, and 752.7032, are revised for clarity, to maintain consistency with Federal and agency regulations, to update references to current agency procedures, to remove outdated information and internal agency guidance, and, where applicable, to correct errors and omissions. Additional background and specific highlights of changes include:

- AIDAR sections 701.601(c) (2), 719.271-6(a) (4), 752.202-1(c) (Alternate 71), 752.7018, 752.7019, 752.7021, 752.7022, 752.7023, and 752.7024 are being removed (and in most instances reserved) as USAID no longer has a separate Participant Training program; therefore, the sections, paragraphs, and clauses referring to it are obsolete.

- Section 889(a) (1) (A) of the John S. McCain National Defense Authorization Act (NDAA) for fiscal year (FY) 2019 prohibits agencies after August 13, 2019, from entering into a contract (or extending or renewing a contract) with an entity that procures or obtains any equipment, system, or service that

uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Section 889(a)(1)(B) of the John S. McCain NDAA for FY 2019 prohibits executive agencies from entering into a contract (or extending or renewing a contract) with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The prohibitions for both section 889(a)(1)(A) and section 889(a)(1)(B) have been implemented for contracts subject to the Federal Acquisition Regulations (FAR) (48 CFR chapter 1) through the provision at 52.204-24, the clause at 52.204-25, and the provision at 52.204-26. As the prohibition in sections 889(a)(1)(A) and (a)(1)(B) of the FY 2019 NDAA cover entities that the U.S. Government contracts with, USAID has made a determination that the requirements of sections 889(a)(1)(A) and (a)(1)(B) do not apply to personal services contracts with individuals awarded under AIDAR appendices D and J. The associated risks are mitigated by providing such individuals with the needed support services, equipment, and supplies. In addition, per the requirements in appendices D and J, personal services contractors are not allowed to subcontract out any work.

AIDAR section 704.2105 is added to allow contracting officers to omit provisions and clauses prescribed in FAR subpart 4.21 from

personal services contracts awarded under AIDAR appendices D and J.

- The new AIDAR subpart 704.5, Electronic Commerce in Contracting, encourages the use of electronic commerce through USAID's eSign Portal located at <https://account.docusign.com>.

- AIDAR sections 705.102, 705.202, and 706.302-70 are updated to reflect the agency's current policies on exceptions to publicizing and competition requirements. In accordance with FAR 5.102(a)(5)(iii), sections 705.102 and 705.202 exempt certain solicitations and awards of personal services contracts and contracts at \$250,000 or less from the publicizing requirements in FAR part 5. Section 706.302-70, Impairment of foreign aid programs, was revised to clarify, among other administrative updates, that authorities in 706.302-7(b)(1) through (4) can be used on a class basis. An Assistant Administrator's determination and findings may cover one or more contract actions or programs within delegated program authority. A determination and findings made by the Administrator may cover all USAID programs, pertain to matters which concern more than one Assistant Administrator, or any Agency contract actions at the Administrator's discretion.

- On January 29, 2020, the United States adopted the Agreement between the United States of America, the United Mexican States (Mexico), and Canada (the United States-Mexico-Canada Agreement), as approved by Congress in the United States-Mexico-Canada Agreement Implementation Act (Government Procurement Agreement applicable only to United States and

Mexico) (Pub. L. 116-113) (19 U.S.C. chapter 29 (sections 4501-4732), USMCA). The USMCA supersedes the North American Free Trade Agreement (NAFTA); the reference to NAFTA in 725.403 is replaced with USMCA.

- AIDAR subpart 731.7 on contracts with nonprofit organizations is revised to conform to the policies in 2 CFR part 200, Office of Management and Budget's (OMB) Regulation, and 2 CFR part 700, USAID's supplement to 2 CFR part 200. On December 26, 2013 (at 78 FR 78590), OMB published new guidance at 2 CFR part 200 entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance)". The OMB guidance, which supersedes OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-ups, was adopted by Federal agencies, including USAID, and became effective on December 26, 2014.

- AIDAR sections 731.771, 750.7101, 750.7103, and 750.7110 are being revised or removed (and reserved) as a result of agency deregulatory efforts. Notably, section 731.771 is no longer necessary as Government-wide policies on bid and proposal costs for awards with nonprofit organizations have been established in 2 CFR part 200.

- AIDAR clause at 752.222-71, Nondiscrimination, is being revised to mirror USAID's policy statement on Equal Employment Opportunity, which can be found on the agency's public website at <https://www.usaid.gov/open/policy-statement/oct-07-2021->

[equal-employment-opportunity](#). Revisions to 752.222-71 encourage contractors to develop and enforce nondiscrimination policies consistent with USAID's approach to workplace nondiscrimination.

III. IMPACT ASSESSMENTS:

(1) Regulatory Planning and Review.

This direct final rule was drafted in accordance with Executive Order (E.O.) 12866, as amended by E.O. 14094, and E.O. 13563. OMB has determined that this rule is not a "significant regulatory action," as defined in section 3(f) of E.O. 12866, as amended, and is therefore not subject to review by OMB.

(2) Congressional Review Act.

This direct final rule is not a major rule under the Congressional Review Act (5 U.S.C. 801 et seq.).

(3) Executive Order No. 13132.

This rule will not have a substantial direct effect on the states, on the relationships between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this direct final rule does not contain policies that have federalism implications.

(4) Regulatory Flexibility Act.

The rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Further, the rule incorporates administrative changes to the AIDAR and does not add any new requirements on USAID contractors, including small businesses.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

(5) Paperwork Reduction Act.

This rule does not establish a new collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 701, 702, 704, 705, 706, 715, 719, 725, 731, 742, 750, and 752

Government procurement.

For the reasons discussed in the preamble, USAID amends 48 CFR chapter 7 as follows:

SUBCHAPTER A—GENERAL

PART 701 — FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for part 701 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; 3 CFR, 1979 Comp., p. 435.

Subpart 701.3 — U.S. Agency for International Development

Acquisition Regulation

2. Amend section 701.303 by revising paragraph (a) and adding a heading for paragraph (c) to read as follows:

701.303 Publication and codification.

(a) *General.* The AIDAR is USAID's Acquisition Regulation supplementing the FAR (48 CFR chapter 1) and is published as

chapter 7 of title 48, Code of Federal Regulations. Changes to the AIDAR shall be published in compliance with FAR part 1.

* * * * *

(c) *Authorities.* * * *

Subpart 701.4 – Deviations from the FAR or AIDAR

3. Revise section 701.470 to read as follows:

701.470 Procedure.

(a) *Deviation from the FAR or AIDAR affecting one contract or transaction.* (1) Deviations that affect only one contract or procurement require prior approval by the head of the contracting activity.

(2) In preparing and submitting deviations, USAID operating units must follow the applicable USAID policy, including mandatory consultations with the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P) and the Office of the General Counsel. Approved deviations must be retained in the contract file.

(b) *Class deviations from the FAR or AIDAR.* Class deviations are those that affect more than one contract or contractor. Deviations involving basic ordering agreements or indefinite-delivery contracts are class deviations as they are considered to involve more than one contract.

(1) Class deviations from the AIDAR will be processed in accordance with the applicable USAID policy. Individual heads of contracting activities have authority to approve class deviations affecting contracts only within the contracting

activity under their management authority. Only the M/OAA Director has authority to approve class deviations that affect more than one contracting activity.

(2) Class deviations from the FAR will be considered jointly by USAID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) pursuant to FAR 1.404. M/OAA/P is responsible for consultations with the C/CAAC. If the head of the contracting activity determines that urgency precludes such consultations, the deviation must include the reason, certified by the head of the contracting activity, for not coordinating with the C/CAAC and must be promptly shared with M/OAA/P. M/OAA/P is responsible for notifying the C/CAAC of the class deviation.

(3) Class deviations from the FAR and the AIDAR will expire two (2) years from the date of approval, unless a shorter period is specified in a deviation or approval is rescinded. Class deviations from the FAR or the AIDAR that are based on statutory requirements or those that are in an active agency or Federal rulemaking process may extend beyond the 2-year period until the rulemaking is completed. Expiration of the deviation or the completion of related rulemaking ends its availability for use in future awards and modifications. Expiration dates must be shown on all class deviations.

(4) Class deviations cannot be extended, except as provided in paragraph (b) (3) of this section. A new deviation to

replace an expiring deviation must be prepared and approved in accordance with applicable Agency policy.

(5) Approved class deviations must be retained by the issuing office and also in each contract file where the deviation is used.

(c) *Deviation request requirements.* All requests for deviations must contain a complete description of the deviation, the effective date of the deviation, the circumstances in which the deviation will be used, a specific reference to the regulation being deviated from, an indication as to whether any identical or similar deviations have been approved in the past, a complete justification of the deviation including any added or decreased cost to the Government, and, as applicable, the name(s) of the contractor(s), and the contract or task order number(s).

(d) *Award terms.* Once the terms and conditions of an award are approved based on a deviation, they remain in effect unless such authority is limited by the terms of the contract or removed by a modification.

Subpart 701.6 - Career Development, Contracting Authority, and Responsibilities

4. Revise section 701.601 to read as follows:

701.601 General.

(a) *M/OAA Director.* (1) Pursuant to the delegations in USAID's Automated Directives System (ADS) Chapter 103, the M/OAA Director is authorized to act as the head of the agency for all

purposes described in the Federal Acquisition Regulation (FAR, 48 CFR chapter 1), except for the authority in FAR 6.302-7, 17.602(a), 19.201(c), 27.306(a), and 30.201-5, or where the "head of the agency" authority is expressly not delegable under the FAR or AIDAR. Further, the M/OAA Director is responsible for implementing the procurement-related aspects of the Foreign Assistance Act, Executive Order 11223, the Office of Federal Procurement Policy Act, and other statutory and Executive Branch procurement policies and requirements applicable to USAID operations, including those authorities and responsibilities delegated to the Senior Procurement Executive as specified in the ADS.

(2) The M/OAA Director has specific authority to:

(i) Select and appoint contracting officers and terminate their appointments in accordance with FAR 1.603; and

(ii) Exercise or delegate the authorities identified in FAR subpart 1.4 with regard to deviations from FAR subpart 1.4.

(b) *Heads of contracting activities except the M/OAA Director.* Except as otherwise prescribed, the head of each contracting activity (as defined in 702.170) is responsible for the procurement of supplies and services within the contracting activity under their management authority. The heads of USAID contracting activities are vested with broad authority to carry out the programs and activities for which they are responsible. This includes authority to execute contracts and establish procurement guidance and standards (including delegations,

assignments of responsibilities, work-flow procedures, and internal reporting requirements) for their programs and activities, subject to Government-wide and USAID requirements and limitations, such as those found in this section and particularly 701.603-70, the USAID policy regarding the direct-hire status of contracting officers.

(c) *Contracting activity procedures.* A contracting activity may establish procurement guidance, standards, strategies, practices, or procedures to implement its programs and activities. Such guidance, standards, strategies, practices, or procedures must be consistent with government-wide or agency-specific regulations and policies, or, if inconsistent, must be processed as a deviation in accordance with 701.470. A contracting activity may also establish procurement guidance, standards, strategies, practices, or procedures for its programs and activities, which are in the best interest of the Government and which are not specifically addressed in the government-wide or agency-specific regulations and policies, nor prohibited by law, Executive order, or other regulation.

(d) *Limitations.* The authority of heads of contracting activities to execute contracts is limited as follows:

(1) *The Assistant to the Administrator for the Bureau of Humanitarian Assistance (AtA/BHA).* (i) Authority to execute and modify contracts for immediate disaster relief purposes, including personal services contracts up to \$500,000 per transaction.

(ii) Authority to execute simplified acquisitions up to \$50,000 for immediate disaster relief purposes, or delegate such authority to qualified individuals in BHA. Such individuals must be selected and appointed in accordance with the requirements in FAR 1.603 and AIDAR 701.603.

(2) *Overseas heads of contracting activities.* (i) Authority to execute contracts and modifications where the total estimated cost of the contract, including any modifications, does not exceed \$1,000,000 (or local currency equivalent) for personal services contracts.

(ii) Authority to execute simplified acquisitions within the threshold defined in FAR 2.101 (or local currency equivalent).

(iii) May delegate the authority for simplified acquisitions up to \$50,000 to qualified individuals within that contracting activity. Such individuals must be selected and appointed in accordance with the requirements in FAR 1.603 and AIDAR 701.603.

5. Revise section 701.602-1 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, contracting officers 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 applicable dispute resolution procedures (in the event that questioned costs are not settled by

negotiated agreement) in accordance with USAID's internal policy. The negotiated settlement or final decision will be final, subject only to a contractor's appeal under the provisions of the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613), or other procedures, as applicable. Internal policy and procedures for resolving audit recommendations are found in ADS series 500 chapters for audits.

PART 702—DEFINITIONS OF WORDS AND TERMS

6. The authority citation for part 702 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; 3 CFR, 1979 Comp., p. 435.

Subpart 702.170 – Definitions

7. Amend section 702.170-1 as follows:

- a. Add a definition for "Assistant Administrator" in alphabetical order; and
- b. Revise the definitions of "Contracting activities" and "Head of the contracting activity".

The addition and revisions read as follows:

702.170-1 Definitions.

* * * * *

Assistant Administrator means the principal officer and advisor in a USAID Bureau who administers programs within delegated authorities and in accordance with policies and standards established by the Administrator. The position title

Assistant Administrator also includes the position Assistant to the Administrator.

* * * * *

Contracting activities also referred to as "procuring activities" within USAID are:

(1) *The USAID/Washington activities.* The contracting activities located in Washington, DC are: The Bureau for Management, Office of Acquisition and Assistance (M/OAA) and the Bureau for Humanitarian Assistance (BHA). Subject to the limitations in 701.601, BHA is responsible for procurements related to programs and activities for its area. M/OAA is responsible for procurements that do not fall within the responsibility of other contracting activities, or that are otherwise assigned to it.

(2) *The overseas field contracting activities.* Each USAID Mission or post overseas is a contracting activity responsible for procurements related to its programs and activities, subject to the limitations in 701.601.

* * * * *

Head of the contracting activity, as used in this chapter:

(1) The heads of USAID contracting activities are listed in this paragraph (1). The limits of their contracting authority are set forth in 701.601.

(i) *USAID/Washington heads of contracting activities.* (A) Director, Bureau for Management, Office of Acquisition and Assistance; and

(B) Assistant to the Administrator, Bureau for Humanitarian Assistance (BHA).

(ii) *Overseas heads of contracting activities.* Each Mission Director or principal USAID officer at post (for example, USAID Representative, USAID Affairs Officer, and similar designations).

(2) Individuals serving in the positions listed in paragraph (1) of this definition in a designated "Acting" capacity may exercise the authority delegated to that position.

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PART 704 – ADMINISTRATIVE AND INFORMATION MATTERS

8. The authority citation for part 704 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; 3 CFR, 1979 Comp., p. 435.

9. Revise the heading of part 704 to read as set forth above.

10. Add subpart 704.5, consisting of section 704.502, to read as follows:

Subpart 704.5 – Electronic Commerce in Contracting

704.502 Policy.

USAID encourages the use of electronic commerce through USAID's eSign Portal located at DocuSign. The agency head has determined that the eSign Portal is capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized

access to or modification of the information. USAID uses Login.gov for secure sign in. USAID will accept electronic signatures in connection with contracts, modifications and any other documentation where digital signatures are authorized under the FAR.

11. Add subpart 704.21, consisting of section 704.2105, to read as follows:

Subpart 704.21 - Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
704.2105 Solicitation provisions and contract clause.

(a)-(c) [Reserved]

(d) *Personal services contracts.* The requirements in paragraphs (a) through (c) of FAR 4.2105 do not apply to solicitations and contracts for personal services with individuals issued in accordance with appendices D and J of this chapter.

SUBCHAPTER B - ACQUISITION PLANNING

PART 705 - PUBLICIZING CONTRACT ACTIONS

12. The authority citation for part 705 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, 3 CFR, 1979 Comp., p. 435; 40 U.S.C. 474.

13. Add subpart 705.1, consisting of section 705.102, to read as follows:

Subpart 705.1 - Dissemination of Information

705.102 Availability of solicitations.

In accordance with FAR 5.102(a)(5)(iii), the Senior Procurement Executive has determined that access through the Governmentwide Point of Entry is not in the Government's interest for solicitations for any contract of \$250,000 or less by an overseas contracting activity issued under the authorities in 706.302-70(b)(2) or in accordance with the requirements in FAR part 13.

Subpart 705.2 - Synopsis of Proposed Contract Actions

14. Revise section 705.202 to read as follows:

705.202 Exceptions.

(a) [Reserved]

(b) *Agency determinations.* The head of the U.S. Agency for International Development has determined after consultation with the Administrator of the Office of Management and Budget's Office of Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable for the following:

(1) Contract actions described in 706.302-70(b)(1) through (3); or

(2) A contract of \$250,000 or less by an overseas contracting activity issued in accordance with the requirements in FAR part 13.

PART 706 - COMPETITION REQUIREMENTS

15. The authority citation for part 706 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, 3 CFR, 1979 Comp., p. 435; 40 U.S.C. 474.

Subpart 706.3 – Other Than Full and Open Competition

16. Revise section 706.302-70 to read as follows:

706.302-70 Impairment of foreign aid programs.

(a) *Authority.* (1) The authority is 40 U.S.C. 113.

(2) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.

(b) *Application.* This authority may be used for:

(1) Personal services performed abroad by an individual under the authorities of section 636(a)(3) of the Foreign Assistance Act of 1961, as amended;

(2) Supplies or services with a total value of \$250,000 or less by an overseas contracting activity;

(3) (i) Supplies or services when the cognizant Assistant Administrator makes a formal written Determination and Findings (D&F) (see FAR subpart 1.7), that compliance with full and open competition procedures to procure the goods or services through one or more contract actions would impair foreign assistance objectives and would be inconsistent with the fulfillment of one or more foreign assistance programs for which the Assistant Administrator is responsible; or

(ii) Supplies or services for countries, regions, or programs for which the Administrator of USAID makes a D&F (see FAR subpart 1.7) that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of foreign assistance programs;

(4) Supplies or services awarded under 715.370-1 or 715.370-2; and

(5) A specific contract for the continued provision of highly-specialized services when an award to another contractor would result in substantial additional costs to the Government or cause unacceptable delays.

(c) *Limitations.* (1) A contract awarded using the authority in paragraph (a) of this section must be supported by a written justification and approval (J&A) meeting the requirements of FAR 6.303 and 6.304, except that a determination made under paragraph (b) (3) of this section will not be subject to the requirement for contracting officer certification or to approvals required in FAR 6.304.

(2) Proposals must be requested from as many potential offerors as is practicable under the circumstances.

(3) When using the authorities in paragraphs (b) (4) and (5) of this section the contracting officer must publicize the advance notice of the proposed contract action as required in FAR 5.201. However, when the authorities at paragraphs (b) (1) through (3) of this section are used, advance notice of proposed

contract action is not required in accordance with AIDAR 705.202.

(4) The authority in paragraph (b) (3) of this section shall be used only when no other authority provided in FAR 6.302 or AIDAR 706.302 is suitable. The specific foreign assistance objective that would be impaired must be identified and explained in a written D&F. Prior consultation with the Agency Competition Advocate (see 706.501) is required before executing the written D&F, and this consultation must be reflected in the D&F. In addition, the contracting activity must prepare a J&A as required in paragraph (c) (1) of this section.

(5) Use of the authority in paragraph (b) (5) of this section for proposed follow-on contracts or modifications to extend contracts for the continued provision of highly-specialized services in excess of one year or over \$250,000 is subject to the approval of the Agency Competition Advocate. For all other extensions and follow-on contracts relying on the authority in paragraph (b) (5), the contracting officer's certification required in FAR 6.303-2(b) (12) will serve as approval.

SUBCHAPTER C - CONTRACTING METHODS AND CONTRACTING TYPES

PART 715 - CONTRACTING BY NEGOTIATION

17. The authority citation for part 715 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; 3 CFR, 1979 Comp., p. 435.

Subpart 715.6 – Unsolicited Proposals

18. Revise section 715.602 to read as follows:

715.602 Policy.

(a) USAID encourages the submission of unsolicited proposals that contribute new and innovative ideas that are consistent with and contribute to the accomplishment of the Agency's objectives. Potential offerors should consider the guidance in FAR 15.6 and in AIDAR 715.6 prior to preparing and submitting a formal unsolicited proposal.

(b) Unsolicited proposals will only be considered when they support USAID strategy. USAID Mission programs must be responsive to the needs of the cooperating country; projects are often designed in collaboration with the cooperating country. These factors can limit both the need for, and USAID's ability to use, unsolicited proposals.

(c) The USAID.gov website contains information on working with USAID and on individual Mission and Agency-wide strategies and objectives. Prospective offerors are also encouraged to review USAID's Business Forecast webpage and consider responding to USAID competitive announcements published on sam.gov and grants.gov.

19. Revise section 715.604 to read as follows:

715.604 Agency points of contact.

(a) USAID's Bureau for Legislative and Public Affairs, Office of Program and Management Operations, manages the receipt and evaluation of unsolicited proposals. Unsolicited proposals may be submitted via: unsolicitedproposals@usaid.gov.

(b) Before preparing a detailed unsolicited proposal or submitting proprietary information, a prospective offeror may make preliminary contact with USAID bureaus, field missions, or other operating units to obtain information sources on USAID's strategies and objectives and other information listed in FAR 15.604 and AIDAR 715.602.

SUBCHAPTER D - SOCIOECONOMIC PROGRAMS

PART 719 - SMALL BUSINESS PROGRAMS

20. The authority citation for part 719 continues to read as follows:

Authority: 42 U.S.C. 7254, 40 U.S.C. 486(c), 42 U.S.C. 2201.

Subpart 719.2 - Policies

719.271-6 [Amended]

21. Amend section 719.271-6 as follows:

- a. In paragraph (a) (3), remove the period at the end of the paragraph and add "; and" in its place; and
- b. Remove and reserve paragraph (a) (4).

PART 725 - FOREIGN ACQUISITION

22. The authority citation for part 725 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; 3 CFR, 1979 Comp., p. 435.

Subpart 725.1 – Buy American Act–Supplies

23. Revise section 725.170 to read as follows:

725.170 Exceptions for Foreign Assistance Act functions.

(a) In addition to the exception stated in FAR 25.103 for purchases of foreign end products for use outside the United States, Executive Order 11223, dated May 12, 1965, provides an exception for assistance functions performed under the authority of the Foreign Assistance Act.

(b) USAID regulation at 22 CFR part 228 contains generally more prescriptive geographic procurement requirements under the Foreign Assistance Act than those under the Buy American Act. As a general rule, the requirements in 22 CFR part 228 will be used in USAID program-funded awards. For operating expense-funded procurements for supplies for use in the United States, USAID applies the Buy American Act requirements.

Subpart 725.4 – Trade Agreements

725.403 [Redesignated as 725.401]

24. Redesignate section 725.403 as section 725.401.

25. Revise newly redesignated section 725.401 to read as follows:

725.401 Exceptions.

FAR subpart 25.4 establishes procedures for purchases of supplies under the Trade Agreements Act of 1979 (including the

World Trade Organization's Government Procurement Agreement) and the USMCA (United States-Mexico-Canada Agreement, as approved by Congress in the United States-Mexico-Canada Agreement Implementation Act (Government Procurement Agreement applicable only to United States and Mexico) (Pub. L. 116-113) (19 U.S.C. chapter 29 (sections 4501-4732))). Consistent with these agreements, USAID operating expense-funded administrative procurements for supplies for use in the United States are subject to the procedures in FAR part 25, unless otherwise excepted in FAR subpart 25.4. USAID program-funded contracts for the purpose of providing foreign assistance are not subject to the procedures set forth in FAR subpart 25.4

SUBCHAPTER E – GENERAL CONTRACTING REQUIREMENTS

PART 731 – CONTRACT COST PRINCIPLES AND PROCEDURES

26. The authority citation for part 731 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 731.7 – Contracts with Nonprofit Organizations

27. Revise section 731.770 to read as follows:

731.770 Cost principles.

(a) The Bureau for Management, Office of Acquisition and Assistance, Cost Audit Support Division, Overhead and Special Cost and Contract Close-Out Branch (M/OAA/CAS/OCC) provides assistance to the M/OAA Director regarding the application of 2

CFR part 200, subpart E. M/OAA/CAS/OCC is responsible for liaising with other cognizant agencies; authorizing exemptions to subpart E coverage for a nonprofit organization pursuant to 2 CFR 200.401(c); and providing advice and assistance in applying the cost principles.

(b) Prior approval, as used in 2 CFR part 200, means securing the awarding agency's advance written permission to incur costs. Where an item of cost requiring prior approval is included in the award budget, approval of the budget constitutes prior approval of that cost, unless otherwise specified. Accordingly, contract budgets must include one of the following statements:

(1) "Inclusion of any cost in the line item budget of this award does not constitute prior approval of cost items pursuant to 2 CFR part 200"; or

(2) "In accordance with 2 CFR part 200, approval is granted to incur costs for (name specific item or items requiring prior written approval) which are included in the budget of this award."

731.771 [Removed and Reserved]

28. Remove and reserve section 731.771.

29. Revise section 731.773 to read as follows:

731.773 Independent research and development costs.

The cost principle at FAR 31.205-18 applies to independent research and development costs.

SUBCHAPTER G — CONTRACT MANAGEMENT

PART 742 – CONTRACT ADMINISTRATION AND AUDIT SERVICES

30. The authority citation for part 742 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; 3 CFR, 1979 Comp., p. 435.

31. The heading for part 742 is revised to read as set forth above.

Subpart 742.7 – Indirect Cost Rates

32. Revise section 742.770 to read as follows:

742.770 Negotiated indirect cost rate agreement.

When USAID is the cognizant Federal agency pursuant to FAR 42.003, USAID may enter into a Negotiated Indirect Cost Rate Agreement with the contractor to establish billing rates and final indirect cost rates in accordance with FAR 42.703. The Negotiated Indirect Cost Rate Agreement is incorporated into the contract pursuant to FAR 42.703-1(b). Application of the Negotiated Indirect Cost Rate Agreement, including any adjustments thereto, will be subject to any monetary or indirect rate ceiling, obligation, limitation of cost provision, and specific cost allowance or disallowance provided for in each contract between the parties.

PART 750 – EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

33. The authority citation for part 750 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; 3 CFR, 1979 Comp., p. 435.

34. The heading for part 750 is revised to read as set forth above.

35. Revise section 750.000 to read as follows:

750.000 Scope of part.

USAID is not among the agencies named in the SAFETY Act or authorized by the President under Public Law 85-804 to take actions under the SAFETY Act.

Subpart 750.71 – Extraordinary Contractual Actions To Protect Foreign Policy Interests of the United States

36. Revise sections 750.7100 through 750.7102 to read as follows:

750.7100 Scope of subpart.

This subpart specifies the standards and the procedures relating to requests for extraordinary contractual actions under Executive Order 11223.

750.7101 Authority.

Under section 633 of the Foreign Assistance Act of 1961, 75 Stat. 454 (22 U.S.C. 2933), as amended; Executive Order 11223, dated May 12, 1965, as amended; and Executive Order 12163, dated September 29, 1979, as amended, the Administrator of the U.S. Agency for International Development has authority to provide extraordinary contractual relief.

750.7102 General policy.

Extra-contractual claims arising from foreign assistance contracts will be processed similarly to claims for extraordinary relief under FAR part 50, and in consideration of the circumstances and authorities granted by the Foreign Assistance Act.

750.7103 [Removed and Reserved]

37. Remove and reserve section 750.7103.

38. Revise sections 750.7104 and 750.7105 to read as follows:

750.7104 Types of actions.

The types of actions that may be taken pursuant to the direction of the approving authority under the Executive Order 11223 are: contractual adjustments such as amendments without consideration, correction of mistakes, and formalization of informal commitments.

750.7105 Approving authority.

All authority to approve actions under this subpart is delegated to the M/OAA Director. The cognizant contracting officer will take appropriate contractual action pursuant to the decision of the M/OAA Director.

39. Amend section 750.7106-1 by revising the first three sentences to read as follows:

750.7106-1 General.

The mere fact that losses occur under a contract is not, by itself, a sufficient basis for the exercise of the authority conferred by Executive Order 11223. Whether, in a particular case, an action will protect the foreign policy interests of the

United States is fact specific. Examples of the types of cases where action may be proper are set forth in 750.7106-2 through 750.7106-4. * * *

40. Amend section 750.7106-2 by revising paragraph (a) to read as follows:

750.7106-2 Amendments without consideration.

(a) Where an actual or threatened loss under a foreign assistance contract, however caused, will impair the productive ability of a contractor whose continued performance of any foreign assistance contract or whose continued operation as a source of supply is found to be essential to protect the foreign policy interests of the United States, the contract may be adjusted to the extent necessary to avoid such impairment to the contractor's productive ability.

* * * * *

41. Revise section 750.7106-3 to read as follows:

750.7106-3 Mistakes.

(a) A contract may be amended or modified to correct or mitigate the effect of a mistake, including in the following situations:

(1) A mistake or ambiguity in the contract that results from the failure to clearly express the agreement as understood by both parties;

(2) A mistake on the part of the contractor which is so obvious that it was or should have been apparent to the contracting officer; and

(3) A mutual mistake as to a material fact.

(b) Amending contracts to correct mistakes with the least possible delay normally will protect the foreign policy interests of the United States by expediting the program and by giving contractors proper assurance that such mistakes will be corrected expeditiously and fairly. An action that can be accomplished by administrative modification or resolved using the procedures in FAR subpart 33.2 should not be resolved using the authority and procedures of this subpart.

42. Revise section 750.7107 to read as follows:

750.7107 Limitations upon exercise of authority.

(a) Executive Order 11223 does not provide authority for:

(1) The award of a cost-plus-a-percentage-of-cost contract;

(2) The payment of profit or fees in excess of applicable limitations; or

(3) The waiver of any requirement to post a bid, payment, performance, or other bond required by law.

(b) (1) Executive Order 11223 does not authorize the issuance of a modification, unless:

(i) With respect to cases falling within Section 4 of Executive Order 11223, the approving authority determines that the action is necessary to protect the foreign policy interests of the United States; and

(ii) No other legal authority authorizes issuance of such modification.

(2) A modification under paragraph (b) (1) of this section must be within the limits of the amounts appropriated and the statutory contract authorization as referenced in FAR 50.102-3.

(c) No contract shall be modified unless the contractor submits a request prior to all obligations (including final payment) under the contract having been discharged.

(d) An informal commitment must not be formalized unless:

(1) The contractor submits a written request for payment within six months after furnishing, or arranging to furnish, supplies or services in reliance upon the commitment;

(2) USAID has received the services satisfactorily performed, or has accepted property furnished in reliance on the commitment;

(3) The USAID employee alleged to have made the informal commitment has affirmatively acknowledged responsibility for making the informal commitment in question; and

(4) USAID has taken appropriate action to prevent recurrence.

43. Revise section 750.7108 to read as follows:

750.7108 Contractual requirements.

Every contract modified pursuant to this subpart shall contain:

(a) A citation of the Act and Executive Order 11223;

(b) A brief statement of the circumstances justifying the action; and

(c) With respect to cases falling within section 4 of Executive Order 11223, a statement that the action is necessary to protect the foreign policy interests of the United States.

44. Revise section 750.7109-1 to read as follows:

750.7109-1 Filing requests.

A contractor seeking an adjustment under the standards set forth in 750.7106 may file a request with the cognizant contracting officer.

45. Revise section 750.7109-3 to read as follows:

750.7109-3 Facts and evidence.

The contracting officer or the approving authority may, where necessary, require the contractor to furnish facts and evidence supporting the request, as described in FAR 50.103-4.

750.7110 through 750.7110-6 [Removed and Reserved]

46. Remove and reserve sections 750.7110 through 750.7110-6.

SUBCHAPTER H – CLAUSES AND FORMS

PART 752 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES

47. The authority citation for part 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; 3 CFR, 1979 Comp., p. 435.

Subpart 752.2 - Texts of Provisions and Clauses

752.202-1 [Amended]

48. Amend section 752.202-1 by removing and reserving paragraph (c).

49. Revise section 752.222-71 to read as follows:

752.222-71 Nondiscrimination.

As prescribed in 722.810(b), insert the following clause in section I of all solicitations and resulting contracts.

Nondiscrimination ([INSERT ABBREVIATED MONTH AND YEAR 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER])

FAR part 22 and the clauses prescribed in that part prohibit contractors performing in or recruiting from the U.S. from engaging in certain discriminatory practices. USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination in its own workplace on the basis of race, color, religion, sex (including pregnancy, sexual orientation, gender identity, or transgender status), national origin, age (40 or older), physical or mental disability, genetic information, religion, marital or parental status, veteran status, membership in an employee organization, political affiliation, or involvement in protected equal employment opportunity (EEO) activity. USAID does not tolerate any type of discrimination (in any form, including harassment) of any employee or applicant for employment on any of the above-described bases.

Contractors are required to comply with the nondiscrimination requirements of the FAR. In addition, the Agency strongly encourages all its contractors (at all tiers) to

develop and enforce nondiscrimination policies consistent with USAID's approach to workplace nondiscrimination as described in this clause, subject to applicable law.

(End of clause)

752.225-9 [Redesignated as 752.225-5]

50. Redesignate section 752.225-9 as section 752.225-5

51. Revise newly redesignated section 752.225-5 to read as follows:

752.225-5 Buy American Act-Trade Agreements Act.

The clauses prescribed by FAR 25.1101 are not generally included in USAID contracts when more stringent source requirements are stated in the contract or when inclusion is not appropriate under FAR 25.403, or AIDAR 725.403. (See Executive Order 11223, dated May 12, 1965.) The clause setting forth USAID's source restrictions is provided in 752.225-70.

752.227-14 [Amended]

52. Amend section 752.227-14 as follows:

- a. In the introductory text, remove "727.409(b)" and add "727.409(a)" in its place; and
- b. Add the text "(End of clause)" at the end of the section.

Subpart 752.70 - Texts of USAID Contract Clauses

752.7018, 752.7019, and 752.7021 through 752.7024 [Removed and Reserved]

53. Remove and reserve sections 752.7018, 752.7019, and 752.7021 through 752.7024.

54. Amend section 752.7028 as follows:

- a. Revise the section heading, clause date and introductory text, and paragraphs (a), (h), and (i) of the clause; and
- b. Add parenthetical text at the end of the section.

The revisions and addition read as follows:

752.7028 Differentials and Allowances.

* * * * *

**Differentials and Allowances ([INSERT ABBREVIATED MONTH AND YEAR
120 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER])**

The differentials and allowances authorized in this clause apply only to U.S. employees. Any reimbursement of differentials or allowances to TCN or CCN employees under this contract is limited to separate and specific authorization(s) for identified differentials or allowances which are granted by the cognizant Assistant Administrator or Mission Director pursuant to 722.170, or by the Mission Director in conjunction with an authorized evacuation as provided in paragraph (i). A copy of such authorization shall be retained and made available as part of the contractor's records which are required to be preserved and made available by the "Examination of Records by the Comptroller General" and "Audit" clauses of this contract.

(a) *Post hardship differential.* Post hardship differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post hardship differential is paid to

USAID direct-hire employees, the contractor will be reimbursed for post hardship differential paid to its employees, not to exceed the rate authorized in the Standardized Regulations (Government Civilians, Foreign Areas) Chapter 500 (except the limitation contained in Section 552, "Ceiling on Payment") and Tables in Chapter 900, as from time to time amended. When post hardship differential is provided to regular employees of the Contractor, it will commence and continue, and be suspended or terminated, as prescribed in the Standardized Regulations Chapter 500. The Contractor will be reimbursed post hardship differential paid to short-term employees, not to exceed such payments made to USAID U.S. citizen direct-hire detailed employees in accordance with the Standardized Regulations Chapter 500, as from time to time amended.

* * * * *

(h) *Separate maintenance allowance.* Separate maintenance allowance is an allowance to assist an employee to meet the additional expenses of maintaining members of family elsewhere than at the employee's foreign post of assignment. The Contractor will be reimbursed for payments made to regular employees for a separate maintenance allowance not to exceed that made to USAID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 260, as from time to time amended.

(i) *Payments during evacuation.* The Standardized Regulations (Government Civilians, Foreign Areas) provide the

authority for efficient, orderly, and equitable procedures for the payment of compensation, post differential, and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons, or because of imminent danger to their lives. If evacuation has been authorized by the Mission Director, the Contractor will be reimbursed for payments made to employees and authorized dependents evacuated from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the Federal Travel Regulations, as from time to time amended. In conjunction with an evacuation authorization, the Mission Director may also specifically authorize payments of identified differentials or allowances for TCN or CCN employees.

* * * * *

(End of clause)

752.7032 [Amended]

55. Amend section 752.7032 as follows:

- a. Remove the word "advanced" and add in its place the word "advance";
- b. Remove the words "or telegram or similar device"; and
- c. Add the text "(End of clause)" at the end of the section.

**752.204-2, 752.204-70, 752.204-72, 752.219-8, 752.222-70,
752.225-70, 752.227-70, 752.228-3, 752.228-7, 752.228-9,
752.228-70, 752.231-71, 752.232-70, 752.236-70, 752.242-70,**

**752.245-71, 752.247-70, 752.252-1, 752.252-2, 752.252-70,
752.7001, 752.7003, 752.7004, 752.7005, 752.7006, 752.7007,
752.7008, 752.7009, 752.7010, 752.7011, 752.7012, 752.7015,
752.7025, 752.7029, and 752.7030 [Amended]**

56. Further amend 48 CFR part 752 by adding the text "(End of clause)" at the end of the following sections:

- a. 752.204-2;
- b. 752.204-70;
- c. 752.204-72;
- d. 752.219-8;
- e. 752.222-70;
- f. 752.225-70;
- g. 752.227-70;
- h. 752.228-3;
- i. 752.228-7;
- j. 752.228-9;
- k. 752.228-70;
- l. 752.231-71;
- m. 752.232-70;
- n. 752.236-70;
- o. 752.242-70;
- p. 752.245-71;
- q. 752.247-70;
- r. 752.252-1;
- s. 752.252-2;
- t. 752.252-70;

u. 752.7001;
v. 752.7003;
w. 752.7004;
x. 752.7005;
y. 752.7006;
z. 752.7007;
aa. 752.7008;
bb. 752.7009;
cc. 752.7010;
dd. 752.7011;
ee. 752.7012;
ff. 752.7015;
gg. 752.7025;
hh. 752.7029; and
ii. 752.7030.

Deborah Broderick,

Acting Chief Acquisition Officer.

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