

The image features a large, light gray watermark of the USAID seal in the background. The seal is circular and contains the text "UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT" around the perimeter. In the center of the seal is a shield with a map of the United States, and the word "USAID" is written in a large, bold, sans-serif font across the middle of the shield. There are three stars at the bottom of the seal.

USAID

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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition and Assistance
2006

Issued: April 3,

AAPD 06-03

Updated Contractor Salary Approval Threshold Policy/Procedures

Subject Category: Acquisition Management; Personal Services
Contracts (PSCs)
Type: Policy/Procedure

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are **EFFECTIVE AS OF THE ISSUED DATE** unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends AAPD 04-11

Precedes change to: AIDAR Part(s) 731, 752, and Appendices D and J
 USAID Automated Directives System (ADS) Chapter 302
 Code of Federal Regulations _____
 Other _____
 No change to regulations

Applicable to: Existing awards; Modification required:
 Effective immediately
 No later than _____
 As noted in guidance below
 RFPs/RFAs issued on or after the effective date of this AAPD;
all other Pending Awards, i.e., 8(a), sole source...
 Other or N/A

**New Provision/Clause
Provided Herein:** Yes
 No

Sgd. _____
Michael F. Walsh
Director

PURPOSE: The purpose of this AAPD is to update and clarify the policy and procedures relevant to the threshold at which M/OAA Director approval is required for contract salaries. The effective date of this AAPD is the date of issuance. This update applies to USAID direct contracts for both personal and non-personal service as defined in FAR Part 37, and includes revision to the following:

- ADS 302 policy guidance
- AIDAR language and relevant provisions/clauses (interim revision)
- AIDAR Appendix D
- AIDAR Appendix J

THIS AAPD DOES NOT APPLY TO ASSISTANCE AWARDS (grants and cooperative agreements), including grants under contracts, nor does it apply to procurement under an assistance award.

REQUIRED ACTION: Contracting Officers (COs) must amend Requests for Proposals (RFPs), and as soon as practicable, modify all active contracts and task orders to

1. Remove all reference to the ES-06 salary rate;
2. Replace the AIDAR Clause 752.7007 - "Personnel Compensation" in all cost-reimbursement contracts, with the revised clause contained in Attachment 2; and
3. In direct USAID PSC contracts with U.S. citizens or U.S. resident aliens, replace General Provision 4 - "Workweek and Compensation (Pay Comparability Adjustments), paragraph (b) Compensation (Pay Comparability) Adjustments," with the revised paragraph in Attachment 3.

COs must not re-negotiate salary rates in existing contracts as a result of this AAPD.

BACKGROUND: AAPD 04-11, issued August 31, 2004, revised the Agency policy for the reasons stated in its Background section¹, and set a new standard for establishing the threshold for M/OAA Director approval of contractor salaries. Until AAPD 04-11 was issued, ADS 302, "USAID Direct Contracting", contained Agency policy and procedures regarding the threshold at which contract salaries required M/OAA Director approval and established a rate equivalent to Office of Personnel Management's (OPM's) Executive Service (ES)-6 level as the threshold. The USAID Acquisition Regulation (AIDAR) cost principles and certain clauses also referred to the "ES-6 policy". Since the issuance of AAPD 04-11 there have been a number of questions indicating that an update to and clarification of the policy and its references will help USAID contracting staff to more effectively apply the policy.

GUIDANCE: The standard that USAID uses as the threshold beyond which approval of the Director, M/OAA is required is the equivalent of the OPM maximum rate of pay for agencies without a certified SES performance appraisal system. This threshold will now be referred to as the "USAID contractor salary threshold" or

¹ AAPD 04-11 has been archived in the AAPD Archive.

"USAID CST." Because M/OAA will no longer issue annual AAPDs updating the rate, COs and negotiators can find the applicable OPM rate at <http://www.opm.gov/oca/>). When researching the rate, follow these steps:

1. At the website, click on "Salaries and Wages"
2. Click on "Senior Executive Service"
3. Click on Schedule for "Basic Rates of Pay for Members of the Senior Executive Service"
4. The "USAID CST" will be the amount established for Agencies without a Certified SES Performance Appraisal System.

The following attachments contain policy directives and regulatory changes to reflect the updated policy:

Attachment 1 **REVISION TO ADS 302 POLICY GUIDANCE - ADS 302.5.3 is revised to read - "302.3.6.8 - APPROVAL OF CONTRACTOR SALARIES EXCEEDING THE USAID CONTRACTOR SALARY THRESHOLD (USAID CST)"**

Attachment 2 **REVISIONS TO USAID ACQUISITION REGULATIONS (AIDAR)**

- **AIDAR SUBPART 731.2 - CONTRACTS WITH COMMERCIAL ORGANIZATIONS - 731.205-6 "Compensation for personal services", Paragraph (d) "Salaries and wages"**
- **AIDAR SUBPART 731.3 -- CONTRACTS WITH EDUCATIONAL INSTITUTIONS -- 731.371 "Compensation for personal services", Paragraph (b) "Salaries and wages", Subparagraph (1)**
- **AIDAR Clause 752.7007 "Personnel Compensation"**

Attachment 3 **AIDAR Appendix D: "Direct USAID Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad"**

Attachment 4 **AIDAR Appendix J: "Direct USAID Contracts With a Cooperating Country National and With a Third Country National for Personal Services Abroad"**

This AAPD replaces AAPD 04-11 and serves as updated guidance pending the revision of ADS 302 and the AIDAR to reflect the change in the contractor salary approval threshold and remains in effect until cancelled or superceded.

POINTS OF CONTACT: Direct questions about this AAPD as it relates to acquisitions to Ms. Carol Ketrick, M/OAA/P, at (202) 712-1382 or cketrick@usaid.gov; and for questions related to PSCs to Mr. Tom Henson, M/OAA/P, at (202) 712-5448 or thenson@usaid.gov.

ATTACHMENT 1 - REVISION TO ADS 302 POLICY GUIDANCE

ADS 302.5.3 is renumbered to conform to the pending version of ADS 302 and revised to read as follows:

302.3.6.8 APPROVAL OF CONTRACTOR SALARIES EXCEEDING THE USAID CONTRACTOR SALARY THRESHOLD (USAID CST)

(a) The Director, Office of Acquisition and Assistance (M/OAA) must approve any contractor salary that exceeds the "USAID Contractor Salary Threshold" or "USAID CST," before the contracting officer may authorize payment for such salary under a USAID direct contract. The USAID CST is equivalent to the maximum rate for Federal agencies without a certified SES performance appraisal system, as published by the Office of Personnel Management at: <http://www.opm.gov/oca/>). While the amount of the CST is derived from the SES system, there is no other connection between the USAID contractor salary policy and the Senior Executive Service system.

(b) The salaries for individuals providing personal or non-personal services to USAID contractors are to be compensated at rates determined fair and reasonable in the competitive market by the contracting officer in accordance with applicable FAR and AIDAR cost principles. USAID technical assistance services contracts are typically for senior-level professional services, and rarely require direct labor at the executive level. Costs associated with executive level salaries are typically allocated to the contract through the indirect cost pool, to which this policy does not apply. Overall compensation to individuals providing personal or non-personal professional/consultant services under such contracts are subject to the applicable cost principles in FAR 31.205-6 and FAR 31.205-33, and AIDAR subparts 731.2, 731.3, and 731.7.

(c) Base for hourly rate calculation: Contract rates are to be established on an hourly basis. For estimating purposes, non-personal services contract rates are to be calculated based on 2080 hours/year, the number used by many private sector entities. If a contractor employs methods or calculations using other than 2080 hours/year, the Contracting Officer must annotate this in the negotiation memorandum and contract, particularly if the methodology results in an annualized salary exceeding the USAID CST.

d) This policy applies to types of contracts in which the actual salary of the individual is considered in establishing the price or the fixed labor rate for services.

(e) Approval Procedures: The contracting officer must determine if the proposed salary exceeding the USAID CST is fair and reasonable in accordance with applicable FAR and AIDAR guidance. If the contracting officer determines that the proposed rate is fair and reasonable, the following procedures must be followed to obtain the approval of the M/OAA Director for any contractor personnel salary exceeding the established threshold:

1. The contracting officer must prepare a Memorandum in which the proposed salary exceeding the USAID CST is evaluated as fair and reasonable in accordance with the applicable FAR guidance. The memorandum must include discussion of the following items, at a minimum:

- comparison with the pre-solicitation independent government cost estimate (IGCE)
- comparison of the proposed salary to the individual's salary history for similar work
- the specific basis upon which the proposed rate is considered fair and reasonable in accordance with the applicable FAR cost principles

The contracting officer must address the memorandum through the cognizant technical officer (CTO) for concurrence/non-concurrence, to the Director, M/OAA.

2. The contracting officer must forward the memorandum to the CTO for concurrence/non-concurrence. The CTO must prepare a supplemental memorandum indicating concurrence/non-concurrence, discussing relevant technical issues, such as:

- technical competence of the individual compared to that required for the work
- scope of responsibility
- any inconsistencies with independent government estimates

3. The CTO must forward both the contracting officer's and the CTO's memoranda to the cognizant Assistant Administrator or Mission Director for concurrence. Upon concurrence, the CTO must return the memoranda to the contracting officer who will then forward the memoranda to the Director, M/OAA for decision.

4. After the M/OAA Director renders a decision, the contracting officer must convey that decision in writing to the contractor to facilitate the contractor's compliance with the relevant cost principle in AIDAR 731.

The contracting officer must document actions required in this section in the contract file. (See Mandatory References, AIDAR 731.205-6, 731.371(b), and 731.772). The approval must be placed in the contract file.

(f) An increase in the maximum annual rate for USAID CST will not, by itself, be the basis for salary increases of contractor employees. Revisions to salaries should only be considered in light of changes to the scope of work or in accordance with other contract terms. Salary increases should not be granted without corresponding increases in the quality or quantity of services rendered.

ATTACHMENT 2 - REVISIONS TO USAID ACQUISITION REGULATIONS (AIDAR)

**AIDAR SUBPART 731.2 -- CONTRACTS WITH COMMERCIAL ORGANIZATIONS
(pursuant to class deviation No. OAA-DEV-2006-02c)**

731.205-6 "Compensation for personal services" - paragraph (d) Salaries and wages, is revised as follows:

"(d) Salaries and wages. It is USAID policy that if an employee's base salary plus overseas recruitment incentive, if any (see AIDAR 731.205-70) exceeds the USAID Contractor Salary Threshold (USAID CST), as stated in USAID's Automated Directives System (ADS) Chapter 302 USAID Direct Contracting (available at <http://www.usaid.gov/policy/ads/300/302.pdf>), it will be allowable only if approved in writing by the contracting officer. The contracting officer shall only provide such approval after internal Agency procedures for review/approval of salaries in excess of the USAID CST in ADS 302 have been followed. USAID policies on compensation of third country national or cooperating country national employees are set forth in AIDAR 722.170."

**AIDAR SUBPART 731.3 -- CONTRACTS WITH EDUCATIONAL INSTITUTIONS--
(pursuant to class deviation No. OAA-DEV-2006-02c)**

731.371 "Compensation for personal services", Paragraph (b) "Salaries and wages", Subparagraph (1) is revised to read as follows:

"(b) Salaries and wages.

(1) The policies set forth in AIDAR 731.205-6(b) are also applicable to contracts with a nonprofit organization.

AIDAR Clause 752.7007 "Personnel Compensation" is revised to read as follows:

The following clause shall be used in all USAID cost-reimbursement contracts.

PERSONNEL COMPENSATION (April 2006)
(pursuant to class deviation No. OAA-DEV-2006-02c)

(a) Direct compensation of the Contractor's personnel will be in accordance with the Contractor's established policies, procedures, and practices, and the cost principles applicable to this contract.

(b) Reimbursement of the employee's base annual salary plus overseas recruitment incentive, if any, which exceed the USAID Contractor Salary Threshold (USAID CST) stated in USAID Automated Directives System (ADS) Chapter 302 USAID Direct Contracting, must be approved in writing by the Contracting Officer, as prescribed in 731.205-6(d) or 731.371(b), as applicable.

ATTACHMENT 3 - REVISIONS TO AIDAR - APPENDIX D - DIRECT USAID CONTRACTS WITH U.S. CITIZENS OR U.S. RESIDENT ALIENS FOR PERSONAL SERVICES ABROAD

Section 4. Policy, Paragraph (e) *Determining Salary for Personal Services Contractors*, Subparagraph (3) is revised **(pursuant to class deviation No. OAA-DEV-2006-02c)** to read as follows:

This Appendix applies the "USAID Contractor Salary Threshold (USAID CST)" policy in Automated Directives System (ADS) chapter 302.3.6.8 to salaries for U.S. PSCs. Salaries in excess of the USAID CST, which is equivalent to the maximum rate for Federal agencies without a certified SES performance appraisal system, must be approved by the M/OAA Director in accordance with the approval procedures in ADS 302.3.6.8(e). This approval cannot be re-delegated.

Section 7. Executing a Personal Services Contract, Paragraph (k), Item (7), is revised **(pursuant to class deviation No. OAA-DEV-2006-02c)** to read as follows:

The approval for any salary in excess of the "USAID Contractor Salary Threshold (USAID CST)", which is equivalent to the maximum rate for Federal agencies without a certified SES performance appraisal system, in accordance with approval procedures in ADS 302.3.6.8(e) as required in Section 4. (e) (3);

General Provision 4. WORKWEEK AND COMPENSATION (PAY COMPARABILITY ADJUSTMENTS) (Dec 1985), Paragraph (b) Compensation (Pay Comparability) Adjustments, is revised **(pursuant to class deviation No. OAA-DEV-2006-02c)** to read as follows:

The contractor's compensation shall be adjusted to reflect the pay comparability adjustments, which are granted from time to time to U.S. direct-hire employees by Executive Order for the statutory pay systems. Any adjustments authorized are subject to the availability of funds and shall not exceed that percentage stated in the Executive Order granting the adjustment. Further, the adjusted compensation may not exceed the annual "USAID Contractor Salary Threshold (USAID CST)", which is equivalent to the maximum rate for agencies without a certified SES performance appraisal system (or the equivalent hourly rate).

ATTACHMENT 4 - AIDAR APPENDIX J - DIRECT USAID CONTRACTS WITH A COOPERATING COUNTRY NATIONAL AND WITH A THIRD COUNTRY NATIONAL FOR PERSONAL SERVICES ABROAD

Section 7. Executing a Personal Services Contract, Paragraph (i)(4) is revised (pursuant to class deviation No. OAA-DEV-2006-02c) to read as follows:

The approval for any salary in excess of the USAID Contractor Salary Threshold (USAID CST)", which is equivalent to the maximum rate for agencies without a certified SES performance appraisal system, in accordance with the approval procedures in ADS 302.3.6.8(e);