

## Agency for International Development

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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.

SOURCE: 49 FR 13246, Apr. 3, 1984, unless otherwise noted.

### Subpart 722.1—Basic Labor Policies

**722.103 Overtime.**

**722.103-1 Definitions.**

*Compensatory time off* means leave equal to overtime worked, which, unless otherwise authorized in a contract or approved by a contracting officer, must be taken not later than the end of the calendar month following that in which the overtime is worked.

**722.103-2 Policy.**

(a) Most contracts covered by this regulation call for the performance of professional or technical services overseas on a cost-reimbursement basis. The compensation for employees performing such services is normally fixed on a monthly or annual basis, and the contracts usually state minimum work week hours. It is not expected that these employees will receive additional pay, overtime or shift premiums, or compensatory time off.

(b) When the contracting officer determines it is in the best interests of the Government, specific provision may be made in contracts to permit such benefits for non-technical and non-professional employees serving overseas, subject to approvals to be required in the contract.

[49 FR 13246, Apr. 3, 1984. Redesignated at 61 FR 39092, July 26, 1996]

**722.103-3 [Reserved]**

**722.103-4 Approvals.**

The contracting officer may make the determinations referred to in FAR 22.103-4.

[49 FR 13246, Apr. 3, 1984. Redesignated at 61 FR 39092, July 26, 1996]

**722.170 Employment of third country nationals (TCN's) and cooperating country nationals (CCN's).**

(a) *General.* It is USAID policy that cooperating country nationals (CCN's) and third country nationals (TCN's), who are hired abroad for work in a cooperating country under USAID-direct contracts, generally be extended the same benefits, and be subject to the same restrictions as TCN's and CCN's employed as direct hires by the USAID Mission. Exceptions to this policy may be granted either by the Mission Director or the Assistant Administrator having program responsibility for the project. (TCN's and CCN's who are hired to work in the United States shall be extended benefits and subject to restrictions on the same basis as U.S. citizens who work in the United States.)

(b) *Compensation.* Compensation, including merit or promotion increases paid to TCN's and CCN's may not, without the approval of the Mission Director or the Assistant Administrator having program responsibility for the project, exceed the prevailing compensation paid to personnel performing comparable work in the cooperating country as determined by the USAID Mission. Unless otherwise authorized by the Mission Director or the Assistant Administrator having program responsibility for the project, the compensation of such TCN and CCN employees shall be paid in the currency of the cooperating country.

(c) *Allowances and differentials.* TCN's and CCN's, hired abroad for work in a cooperating country, are not eligible for allowances or differentials under USAID-direct contracts, unless authorized by the Mission Director or the Assistant Administrator having program responsibility for the project.

(d) *Country and security clearances.* The contractor shall insure that the necessary clearances, including security clearances, if required, have been obtained for TCN and CCN employees in accordance with any such requirements set forth in the contract or required by the USAID Mission, prior to the TCN or CCN starting work under the contract.

(e) *Physical fitness.* Contractors are required to insure that prospective TCN and CCN employees are examined prior to employment to determine whether the prospective employee meets the minimum physical requirements of the position and is free from any contagious disease.

(f) *Workweek, holidays, and leave.* The workweek, holidays, and leave for TCN and CCN employees shall be the same as for all other employees of the contractor, under the terms of the contract; however, TCN and CCN employees are not eligible for home leave or military leave unless authorized by the Mission Director or the Assistant Administrator having program responsibility for the project.

(g) *Travel and transportation for TCN's and CCN's.* Travel and transportation shall be provided TCN and CCN employees on the same basis as for all other employees of the contractor, under the terms of the contract.

(h) *Household effects and motor vehicles.* USAID will not provide household effects to TCN and CCN employees; such employees may ship their household effects and motor vehicles to their place of employment on the same basis as for all other employees of the contractor, under the terms of the contract unless they are residents of the cooperating country.

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

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

(a) The procedures in this section apply, as appropriate, for all contracts excluding construction, which shall be handled in accordance with (48 CFR) FAR 22.804-2. Contracting officers are responsible for ensuring that the requirements of (48 CFR) FAR 22.8 and related clauses are met before awarding any contracts or consenting to sub-

contracts subject to these requirements.

(b) *Representations and Certifications.* The first step in ensuring compliance with these requirements is to obtain all necessary representations and certifications (Reps and Certs) required by FAR 22.810. The contracting officer must review the Reps and Certs to determine whether they have been completed and signed as required, and are acceptable.

(1) If any of these Reps and Certs are incomplete or unsigned, the contracting officer must request that the offeror(s) complete and sign them, as necessary, unless the initial evaluation of the offeror's proposal results in the contracting officer's concluding that the offeror would not, in any event, be within a competitive range determined in accordance with (48 CFR) FAR 15.306(c), or would not be selected if award is to be made without discussions. A request as described in this paragraph (b)(1) constitutes either a clarification per (48 CFR) FAR 15.306(a) ("resolving minor or clerical errors", paragraph (a)(2)), or a communication before establishment of competitive range per (48 CFR) FAR 15.306(b), not a discussion per (48 CFR) FAR 15.306(d).

(2) If completed and signed Reps and Certs raise questions concerning the offeror's compliance with EEO requirements, or if the contracting officer has information from any other source which calls into question the offeror's eligibility for award based on this section and (48 CFR) FAR 22.8, the contracting officer must refer the matter to the cognizant regional Department of Labor Office of Federal Contract Compliance Programs (OFCCP) regardless of the estimated value of the contract; only OFCCP may make a determination of non-compliance with EEO requirements.

(c) OFCCP's National Preaward Registry. If the Reps and Certs are complete, signed, and deemed acceptable, and the contracting officer has no reason to doubt their accuracy, the contracting officer must then consult the OFCCP's National Preaward Registry at the internet website in 48 CFR 22.805(a)(4) (i) to see if the offeror is listed.