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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: March 10, 2005

AAPD 05-02

Clarification of Policy for Personal Services Contracts with Anticipated Contract Performance Periods Exceeding Five (5) Years

Subject Category: Personal Services Contracts
Type: Policy

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 CIB/AAPD No:

Applicable to:

- Existing awards; Modification required
- 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, IQC
- Other or N/A **USPSC SOWs developed on or after the effective date of this AAPD**

Precedes change to:

- AIDAR Part(s) Appendices D and J
- USAID Automated Directives System (ADS) Chapter
- Code of Federal Regulations
- Other
- No change to regulations

New Provision/Clause Provided Herein: If checked, scheduled update to Prodoc:

/sign/

Michael F. Walsh

PURPOSE: The purpose of this AAPD is to clarify the procedures for USAID personal services contracts that are anticipated to have a period of performance exceeding five years in length.

BACKGROUND: The Federal Acquisition Regulations (FAR) Part 17 indicates that no service or supply contract should be longer than five years in length, which includes all options and extensions. The Agency for International Development Acquisition Regulations (AIDAR), Appendices D and J, while not stating specifically how long personal services contracts can run, alludes to a five year limitation in Section 4 of each Appendix, in referring to funding limitations. Various Contract Information Bulletins (CIBs)¹ and the Appendices themselves, contain class justifications and M/OAA policy guidance which allows for extensions and renewals with the same person for the same services at the same Mission, without specifying any limits on the contract length, or how long a specific contract can run or be extended. This lack of specificity has led to a variance of approaches regarding how long a personal services contract is allowed to run before a new contract is required to be issued.

USAID's Office of the Inspector General issued a report dated September 16, 2004², with a recommendation that, pending revisions to PSC regulations already in process, the Office of Acquisition and Assistance (M/OAA) issue interim guidance to require 1) personal services contracts (including extensions/renewals) to be limited to five years and 2) PSCs to be re-competed if major changes have been made in the associated position description-even if such changes occur prior to the fifth year of the contract. M/OAA concurred with the findings and recommendations of the report, and this AAPD serves as the interim guidance recommended above until the AIDAR can be changed through the appropriate and required processes. Also, the appropriate Class Justifications will be updated to reflect this interim guidance.

GUIDANCE:

A. Five Year Limitation: All personal services contracts governed by either AIDAR Appendix D or AIDAR Appendix J-- which includes associated and applicable CIBs and AAPDs--must not be written for a period of performance longer than five years in length. This five year limitation includes any and all extensions of the same contract for the same services, with the same person in the same Mission. At the completion of the five years, the contract must be closed out, and a new contract may be written with the same person for the same services at the same Mission without advertising or re-competing, as specified in the appropriate Class Justifications. At any time, the Contracting Officer has the option/discretion of re-competing a position under a personal services contract, when in the Contracting Officer's judgment the needs of the Agency would be best served by re-competition. Approval of a position for personal services

¹ Such as CIBs 97-16, 97-17, 01-07, and 01-09.

² *Audit of USAID Missions' Management of U.S. Personal Services Contractors*, <http://www.usaid.gov/public/fy04rpts/9-000-04-006-p.pdf>.

contracting and funding of personal services contracts must be in compliance with the appropriate Agency guidance and Financial Management guidance and regulations, respectively.

B. Changes to PSC terms and conditions: A personal services contract cannot be changed or modified during contract performance when the result would mean, for example, major changes to the position description, position classification, and/or major changes in salary (This does not include such increases as cost of living adjustments, salary increases based on annual evaluations, or other similar type increases). Under such circumstances, the position must be reclassified and recompeted in accordance with Agency regulations and policy, to ensure that the "new" position is appropriately approved and competition is maximized as necessary and appropriate. If the new position is not going to be competed, the Contracting Officer must complete a Justification for Other than Full and Open Competition (JOFOC) in accordance with the FAR and AIDAR.

Contract statutes and regulations, particularly for personal services contracts, do not allow for such things as "accretion of duties" or "other duties as assigned." The intent of this guidance is to ensure that all PSCs have position descriptions that reflect the work being done by the contractors, and the classification and salary is commensurate with those position descriptions.

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