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Research Triangle Institute respectfully submits the following comment on the subject proposed rule.

We believe that post differential and danger pay allowances should be calculated and paid for work performed including hours in excess of 40 hours per week if a contractor has been authorized an extended work week in the contract. We maintain that such payments are consistent with the spirit of the regulations to provide additional compensation for work performed in hardship posts and "for service ... where there exist conditions of civil insurrection, civil war, terrorism or war-time conditions"; further, we believe that these payments are reasonable, allowable and allocable.

AIDAR 752.7028 (a) states that post differential "*will be reimbursable hereunder for employees in respect to amounts earned during the time such employees **actually** spend overseas on work under this contract.*" It is clear that the clause provides that if the contract authorizes an extended work week in excess of 40 hours and work is actually performed during those hours, the employee would be eligible for post differential payment and the cost associated would be allowable and reimbursable. Further, the limits in this AIDAR clause relate to the **percentage** that shall be paid ("*shall not exceed the percentage of salary as is provided such USAID employees in accordance with the Standardized Regulations*"), not on the hours actually worked.

For contracts that provide for extended work-weeks, contractors establish a basic workweek in accordance with the contract provisions and compensate the project staff accordingly. FAR 31.205-6 provides that "*compensation for personal services **must be for work performed.***" It also provides that "*compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice.*" Contractors cannot bill USAID for any extended work-week days unless employees are actually compensated for those extra days. Further, the USAID contracts providing for extended work-weeks specify that this additional pay must not be "premium pay" (often called time and a half overtime). This provision comports with most contractors' classification of their technical advisory employees as exempt from overtime. Staff (whether employees and independent contractors) receive their established daily rates for each day worked within the work-week authorized by USAID and this becomes their basic compensation.

DCAA contends that basic compensation is defined as a 40-hour work week, based on their interpretation of the DSSR regulations. Contractors contend that those DSSR regulations are intended for

Government civilian employees but do not reflect commercial compensation practices and certainly need not apply in total to contractors. There cannot be a one-to-one correlation in applying Government Regulations to commercial firms and this is supported by the AIDAR and the FAR that acknowledge that the reasonableness of compensation is based on the contractor's personnel practices {AIDAR 752.7007 FAR 31.205(a)(6)}.

The AIDAR section on Allowances cited above removes the ceiling on post differential pay as recognition of the difference between contractors and federal employees. DCAA's contention relative to the 40-hour work week is not supported by our contracts, which state that that our work week shall not be less than 40 hours and often is more than 40. Contracting Officers may specifically authorize a six-day (or seven-day) workweek as the standard work week, including in Iraq. Assuming an eight-hour workday, the effective workweek increases from 40 to 48 or 56 hours. When our employees work in excess of 40 hours **and an extended work week has been authorized by USAID**, they are rightfully compensated for that work.

The definition of basic compensation found in Section 040k (3) of the DSSR also supports our position. The citation states that basic compensation does not include:

- overtime pay
- night pay differential
- hazard differential
- extra pay for work on holidays
- post differential
- allowances

Since pay for the extended work week is not overtime pay, holiday pay or any of the other categories listed, such payments must be treated as part of basic compensation. This practice is not only reasonable but is also consistent with the DSSR. Sections 500 and 650 of the DSSR state that the allowances are to be "**paid for all hours for which basic compensation is paid**". Under contracts with extended workweeks but do not authorize overtime or premium pay, we pay our employees for the sixth day (or 7th day) but only at their basic compensation rates. When the effective work week is increased from 40 to up to 56 hours and basic compensation (i.e., non-overtime rate) is received for the additional hours of work during any given week, the intent of the guideline in DSSR can reasonably be construed to include all hours in the effective work week of up to 56 hours.

Therefore, we continue to maintain that applying allowances on that portion of basic compensation is consistent with the provisions in AIDAR and DSSR cited earlier. Further support for our position is found when we examine the nature of the Iraq contracts. These contracts are level of effort, term contracts. Our responsibility is to provide the level of effort, and we contend that under these contracts, an authorized workweek is not relevant. Under an LOE term contract, the 6th and 7th workdays are, in effect, the 1st and 2nd workdays of the following work week but only delivered earlier. The Government would have had to pay post differential and danger pay on these days (1st and 2nd) if they retained contractors on a 5-day workweek. In practice, when a 48- or 56-hour workweek is authorized, the incremental 8 hours

are exactly the same hours which would have earned post differential and danger pay had they remained under a 5-day workweek.

The Contractors' long practice of paying these differentials on extended workweek pay has never been questioned before the assignments began in Iraq. Indeed, Contractors' accepted budgets for the Iraq work included the costs for this practice.