

Subpart 701.4—Deviations from the FAR or AIDAR

701.402 Policy.

It is the policy of USAID that deviation from the mandatory requirements of the FAR and AIDAR shall be kept at a minimum and be granted only if it is essential to effect necessary procurement and when special and exceptional circumstances make such deviation clearly in the best interest of the Government.

701.470 Procedure.

(a) Deviation from the FAR or AIDAR affecting one contract or transaction.

(1) Deviations which affect only one contract or procurement will be made only after prior approval by the head of the contracting activity. Deviation requests containing the information listed in paragraph (c) of this section shall be submitted sufficiently in advance of the effective date of such deviation to allow adequate time for consideration and evaluation by the head of the contracting activity.

(2) Requests for such deviations may be initiated by the responsible USAID contracting officer who shall obtain clearance and approvals as may be required by the head of the contracting activity. Prior to submission of the deviation request to the head of the contracting activity for approval, the contracting officer shall obtain written comments from the Office of Procurement, Policy Division (M/OP/P), hereinafter referred to as "M/OP/P". The M/OP/P shall normally be allowed 10 working days prior to the submission of the deviation request to the head of the contracting activity to review the request and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with the M/OP/P for a shorter review period. In addition to a copy of the deviation request, the M/OP/P shall be furnished any background or historical data which will contribute to a more complete understanding of the deviation. The comments of the M/OP/P shall be made a part of the deviation request file which is forwarded to the head of the contracting activity.

(3) Coordination with the Office of General Counsel, as appropriate, should also be effected prior to approval of a deviation by the head of the contracting activity.

(b) Class deviations from the FAR or AIDAR: Class deviations are those which affect more than one contract or contractor.

(1) Class deviations from the AIDAR will be processed in the same manner as prescribed in paragraph (a) of this section. Individual heads of contracting activities have authority to approve class deviations affecting only contracts within their own contracting activities, except that the Director, M/OP, has authority to approve class deviations that affect more than one contracting activity.

(2) Class deviations from the FAR shall be considered jointly by USAID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) (FAR 1.404) unless, in the judgement of the head of the contracting activity, after due consideration of the objective of uniformity, circumstances preclude such consultation. The head of the contracting activity shall certify on the face of the deviation the reason for not coordinating with the C/CAAC. In such cases, the M/OP/P, shall be responsible for notifying the C/CAAC of the class deviation.

(3) Class deviations from the FAR shall be processed as follows:

(i) The request shall be processed in the same manner as paragraph (a) of this section, except that the M/OP/P, shall be allowed 15 working days prior to the submission of the deviation request to the head of the contracting activity to effect the necessary coordination with the C/CAAC and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with the M/OP/P for a shorter review and coordination period. The comments of the C/CAAC and the M/OP/P shall be made a part of the deviation request file which is forwarded to the head of the contracting activity.

(ii) The request shall be processed in the same manner as paragraph (a) of this section if the request is not being jointly considered by USAID and the C/CAAC.