



April 24, 2012

USAID/Ukraine, Moldova and Belarus A&A Notice 12-001

To: USAID/ Ukraine and USAID/Moldova (Staff, Contractors, and Recipients)

From: Karin Kolstrom, Director, Regional Contracts Office 

Subject: Severance Pay and Employment Agreements for Locally Hired Employees

Authority: Office of Management and Budget (OMB) Circular A-122; Federal Acquisition Regulation (FAR) part 31.205-6, Compensation for Personal Services

Purpose:

The purpose of this A&A notice is to provide guidance on the cost allowability of severance pay in Ukraine and Moldova when hiring employees under USAID projects.

Discussion:

USAID projects are typically implemented through acquisition and assistance awards that are issued for periods of five years or less. While projects may be extended beyond five years, at the time of award or extension, performance periods are known and fixed. No USAID projects are ever issued for indefinite periods.

There is a range of mechanisms available under Ukrainian and Moldovan law under which labor may be procured, ranging from the traditional employer/employee relationship to a contractual relationship. The two most common types of employment arrangements are fixed-term labor agreement and indefinite-term labor agreement. An indefinite-term labor agreement is employment for an indefinite period of time; upon termination of employment by the employer, under certain conditions the employee may be entitled to a certain amount of severance pay. A fixed-term labor agreement is an agreement for a fixed period of time, with no expectation of severance pay or other such compensation when the term is concluded; employees working under fixed-term labor agreements may be eligible to receive severance pay only in case of early termination or in other cases mandated by law.

If implementing partners are hiring full-time staff to implement a USAID-funded project, USAID will normally expect that these staff will be hired using fixed term labor agreements, consistent with the fact USAID projects are time-limited and are not expected to be of indefinite or permanent duration. Therefore, severance pay associated with the use of indefinite term labor agreements would not be an allowable cost.

In Moldova, explicit guidance was obtained from the Ministry of Labor clarifying that fixed term labor agreements should be used in Moldova for USAID projects. On August 24, 2011, the Ministry of Labor, Social Protection, and Family issued the following written guidance for USAID projects:

“According to the Article 54 of the Labor Code, an individual employment agreement is concluded, generally, for an undefined period of time (paragraph 1). The individual employment agreement may be concluded for a defined period of time that does not exceed 5 years (paragraph 2), due to performance of a temporary job (Article 55).

Considering the fact that U.S. organizations are implementing activities within a limited period of time, the individual agreements should be concluded for a determined period of time (based on Article 55).”

A copy of the original letter from Moldova’s Ministry of Labor, Social Protection, and Family in Romanian and its unofficial translation is attached.

Guidance:

Employee labor agreements should be issued for terms that are realistic for project needs, and are reasonably expected to conclude as scheduled barring unforeseen circumstances. Severance pay is not an allowable cost except in extenuating circumstances; unanticipated early termination of employment under fixed-term labor agreements shall be handled in accordance with relevant local labor laws and U.S. law as applicable.

Attachments:

1. Ministry of Labor letter, August 24, 2011
2. Translation of August 24 letter

**MINISTERUL
MUNCII, PROTECȚIEI
SOCIALE și FAMILIEI
AL REPUBLICII MOLDOVA**



**МИНИСТЕРСТВО
ТРУДА, СОЦИАЛЬНОЙ
ЗАЩИТЫ и СЕМЬИ
РЕСПУБЛИКИ МОЛDOVA**

MD-2009, Chișinău, str. Vasile Alecsandri, 1
Tel. +373 22 269301; Fax. +373 22 269310
e-mail: secretariat@mmpsf.gov.md;
web: www.mmpsf.gov.md

MD-2009, Кишинэу, ул. Василе Александри, 1
Тел. +373 22 269301; Факс. +373 22 269310
e-mail: secretariat@mmpsi.gov.md;
web: www.mmpsf.gov.md

24-08-11 nr. 01-3345

✓ **USAID MOLDOVA**
(MD2005, mun. Chișinău, str. Bănulescu-Bodoni, 57/1)

Stimate Domnule Director Kent Larson,

Urmare examinării demersului USAID MOLDOVA din 19 august 2011, Ministerul Muncii, Protecției Sociale și Familiei are onoarea a comunica următoarele.

Potrivit Articolului 54 din Codul muncii, contractul individual de muncă se încheie, de regulă, pe durată nedeterminată (alin.1). Contractul individual de muncă poate fi încheiat și pe o durată determinată, ce nu depășește 5 ani (alin.2), în vederea executării unor lucrări cu caracter temporar (Articolul 55).

Ținând cont de faptul că organizațiile din Statele Unite vor implementa activități cu o durată limitată, contractele individuale de muncă urmează a fi încheiate pentru o perioadă determinată (în baza Art.55).

Cu respect,

**Sergiu SAINCIUC,
Viceministru**

Ex: Valentina Ungureanu,
Tel. 26-93-94

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AUG 29 2011

Ministry of Labor, Social Protection and Family

24-08-11 #01-3345

To: USAID Moldova

Dear Mr. Kent Larson,

Following the USAID Moldova request from August 19th, 2011, the Ministry of Labor, Social Protection and Family would like to communicate:

According to the Article 54 of the Labor Code, an individual employment contract is concluded, generally, for an undefined period of time (paragraph 1). The individual employment contract may be concluded for a defined period of time that does not exceed 5 years (paragraph 2), due to performance of a temporary job (Article 55).

Considering the fact that US organizations are implementing activities within limited period of time, the individual contracts should be concluded for a determined period of time (based on Article 55).

Respectfully,

Sergiu Sainciuc,
Vice minister

Ex: Valentina Ungureanu
Tel. 26-93-94