

# **PART 701 - FEDERAL ACQUISITION REGULATION SYSTEM**

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## **Subpart 701.1 - Purpose, Authority, Issuance**

### **701.106 OMB approval under the Paperwork Reduction Act.**

(a) The following information collection and record keeping requirements established by USAID have been approved by OMB and assigned an OMB control number as specified below:

**(48 CFR) AIDAR segment      OMB control No.**

<u>752.219-8</u>	0412-0520
<u>752.245-70</u>	0412-0520
<u>752.245-71(c)(2)</u>	0412-0520
<u>752.247-70(c)</u>	0412-0520
<u>752.7001</u>	0412-0520
<u>752.7002(j)</u>	0412-0520
<u>752.7003</u>	0412-0520
<u>752.7004</u>	0412-0520
<u>752.7032</u>	0412-0520

(b) The information requested by the AIDAR sections listed in paragraph (a) is necessary to allow USAID to prudently administer public funds. It lets USAID make reasonable assessments of contractor capabilities and responsibility of costs. Information is required in order for a contractor and/or its employee to obtain a benefit-usually taking the form of payment under a Government contract.

(c) Public reporting burden for these collections of information is estimated as shown in paragraph (a) of this section. The estimated burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

## **Subpart 701.3 - U.S. Agency for International Development Acquisition Regulation**

Source: 64 FR 42040, Aug. 3, 1999, unless otherwise noted.

### **701.301 Policy.**

(a) *Responsibility.* Subject to the direction of the Administrator, the Director, Bureau for Management, Office of Acquisition and Assistance (“M/OAA Director) is responsible for:

- (1) Developing and maintaining necessary uniform procurement policies, procedures, and standards;
- (2) Providing assistance to the contracting activities as appropriate;
- (3) Keeping the Administrator and Executive Staff fully informed on procurement matters which should be brought to their attention; and
- (4) All agency head duties and authorities stated in (48 CFR) FAR subpart 1.3, in accordance with (48 CFR) AIDAR 701.601. These responsibilities include but are not limited to developing, issuing, and maintaining the USAID Acquisition Regulation (“AIDAR”, 48 CFR chapter 7), USAID's supplement to the Federal Acquisition Regulation (48 CFR chapter 1), in coordination with the Office of the General Counsel and such other offices as may be appropriate.

(b) *Applicability.*

- (1) Unless a deviation is specifically authorized in accordance with subpart 701.4, or unless otherwise provided, the FAR and AIDAR apply to all contracts (regardless of currency of payment, or whether funds are appropriated or non-appropriated) to which USAID is a direct party.
- (2) At Missions where joint administrative services are arranged, procuring offices may apply the Department of State Acquisition Regulation (48 CFR chapter 6) for all administrative and technical support contracts except in defined areas. The Bureau for Management, Office of Management Services (M/MS) will furnish the defined areas and administrative guidelines for procurement to the overseas Missions. Administrative and local support services include the procurement accountability, maintenance and disposal of all office and residential equipment and furnishings, vehicles and expendable supplies purchased with administrative and/or technical support funds, either dollars or local currency.

### **701.303 Publication and codification.**

(a) The AIDAR is USAID's Acquisition Regulation supplementing the FAR (48 CFR chapter 1) and is published as chapter 7 of title 48, Code of Federal Regulations. AIDAR Circulars shall be used to promulgate changes to the AIDAR and shall be published in compliance with (48 CFR) FAR part 1.

(b) *Appendices.* Significant procurement policies and procedures that do not correspond to or conveniently fit into the FAR system described in FAR subpart 1.1 and 1.303 may be published as Appendices to the AIDAR. Appendices follow the main text of the AIDAR in a section entitled “Appendices to Chapter 7” and contain a table of contents and the individual appendices identified by letter and subject title (e.g., “Appendix D - Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad”).

(c) Only the M/OAA Director has the authority to issue internal Agency guidance applicable to all Agency contracts. The heads of the various Agency contracting activities (see Subparts 701.6 and 702.170) may issue operating instructions and procedures consistent with the FAR, AIDAR, and other Agency regulations, policies, and procedures for application within their organizations. One copy of each such issuance must be forwarded to the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P). Insofar as possible, such material must be numerically keyed to the AIDAR.

## **Subpart 701.4 - Deviations from the FAR or AIDAR**

### **701.402 Policy.**

It is USAID policy to approve deviations from the mandatory requirements of the FAR and AIDAR only if it is essential to effect necessary procurement actions 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 must 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 must obtain written comments from the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), hereinafter referred to as "M/OAA/P". M/OAA/P will 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 M/OAA/P for a shorter review period. In addition to a copy of the deviation request, M/OAA/P must be furnished any background or historical data that will contribute to a more complete understanding of the deviation. The comments of M/OAA/P must 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 the 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/OAA, has authority to approve class deviations that affect more than one contracting activity.

(2) Class deviations from the FAR will be considered jointly by USAID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) (FAR 1.404) unless, in the judgment 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 must certify on the face of the deviation the reason for not coordinating with the C/CAAC. In such cases, M/OAA/P will 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 must be processed in the same manner as paragraph (a) of this section, except that M/OAA/P will 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 M/OAA/P for a shorter review and coordination period. The comments of C/CAAC and M/OAA/P must be forwarded to the head of the contracting activity along with the deviation request and made a part of the deviation request file.

(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.

(4) Deviations involving basic agreements or other master type contracts are considered to involve more than one contract.

(5) Unless the approval is sooner rescinded, class deviations shall expire 2 years from the date of approval provided that deviation authority shall continue to apply to contracts or task orders which are active at the time the class deviation expires. Authority to continue the use of such deviation beyond 2 years may be requested in accordance with the procedures prescribed in paragraph (a) of this section.

(6) Expiration dates shall be shown on all class deviations.

(c) Requests for deviation shall contain a complete description of the deviation, the effective date of the deviation, the circumstances in which the deviation will be used, a specific reference to the regulation being deviated from, an indication as to whether any identical or similar deviations have been approved in the past, a complete justification of the deviation including any added or decreased cost to the Government, the name of the contractor, and the contract or task order number.

(d) *Register of deviations.* Separate registers must be maintained by the procuring activities of the deviations granted from the FAR and AIDAR. Each deviation must be recorded in its appropriate register and be assigned a control number as follows: For USAID Washington deviations the symbol of the procuring activity, or for overseas mission deviations the relevant geographic code; the abbreviation "DEV"; the fiscal year; the type of deviation (from the FAR or AIDAR); the serial number [issued in consecutive order during each fiscal year] assigned to the particular deviation; and the suffix "c" if it is a class deviation (*e.g.*, M/OAA-DEV-FAR-14-1, M/OAA-DEV-FAR-14-2c, 123-DEV-AIDAR-14-1). The control number must be embodied in the document authorizing the deviation and must be cited in all references to the deviation.

(e) *Central record of deviations.* Copies of approved deviations shall be furnished promptly to the M/OAA/P, who shall be responsible for maintaining a central record of all deviations that are granted.

(f) *Semiannual report of class deviations.*

(1) USAID contracting officers must submit a semiannual report to M/OAA/P of all contract actions effected under class deviations to the FAR and AIDAR, which have been approved pursuant to paragraph (b) of this section.

(2) The report shall contain the applicable deviation control number, the contractor's name, contract number and task order number (if appropriate).

(3) The report shall cover the 6-month periods ending June 30 and December 31, respectively, and shall be submitted within 20 working days after the end of the reporting period.

## **Subpart 701.6 - Career Development, Contracting Authority, and Responsibilities**

### **701.601 General.**

(a)

(1) Pursuant to the delegations in USAID's Automated Directives System (ADS) Chapter 103, the M/OAA Director is authorized to act as the head of the agency for all purposes described in the Federal Acquisition Regulation (FAR, 48 CFR chapter 1), except for the authority in (48 CFR) FAR 6.302-7(a)(2), 6.302-7(c)(1), 17.602(a), 19.201(c), 27.306(a), 27.306(b), and 30.201-5, or where the "head of the agency" authority is expressly not delegable under the FAR or AIDAR. Further, the M/OAA Director is responsible for implementing the procurement related aspects of the Foreign Assistance Act, Executive Order 11223, the Office of Federal Procurement Policy Act, and other statutory and Executive Branch procurement policies and requirements applicable to USAID operations, including those authorities and responsibilities delegated to the Senior Procurement Executive as specified in USAID's internal delegations found in the ADS.

(2) The M/OAA Director has specific authority to:

(i) Select and appoint contracting officers and terminate their appointments in accordance with section 1.603 of the Federal Acquisition Regulation; and

(ii) Exercise in person or by delegation the authorities stated in subpart 1.4 of the Federal Acquisition Regulation with regard to deviations from that regulation.

(b) Except as otherwise prescribed, the head of each contracting activity (as defined in 702.170) is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his or her activity. The heads of USAID contracting activities are vested with broad authority to carry out the programs and activities for which they are responsible. This authority includes authority to execute contracts and the establishment of procurement policies, procedures, and standards appropriate for their programs and activities, subject to Government-wide and USAID requirements and restrictions, such as those found at (48 CFR) AIDAR 701.601 and particularly 701.603-70, the USAID policy regarding the direct-hire status of contracting officers.

(c) The authority of heads of contracting activities to execute contracts is limited as follows:

(1) *Director, the Bureau of Democracy, Conflict and Humanitarian Assistance, the Office of U.S. Foreign Disaster Assistance (DCHA/OFDA).* Authority to execute contracts for disaster relief purposes during the first 72 hours of a disaster in a cumulative total amount not to exceed \$500,000. Authority to execute simplified acquisitions up to \$50,000 at any time. May issue warrants for simplified acquisitions up to \$50,000 to qualified individuals on his or her staff.

(2) *Director, Bureau for Economic Growth, Education and Environment, Office of Education (E3/ED).* Authority to execute simplified acquisitions up to \$10,000. Unlimited authority for procuring participant training based on published catalog prices. May issue warrants for simplified

acquisitions up to \$10,000 to qualified individuals on his or her staff.

(3) *Overseas heads of contracting activities.* Authority to sign contracts where the cumulative amount of the contract, as amended, does not exceed \$1,000,000 (or local currency equivalent) for personal services contracts; or the simplified acquisition threshold as defined in (48 CFR) FAR 2.101 (or local currency equivalent) for all other contracts. May issue warrants for simplified acquisitions up to \$50,000 to qualified individuals on his or her staff.

### **701.602-1 Authority of contracting officers in resolving audit recommendations.**

With the exception of termination settlements subject to part 749 of this chapter, Termination of Contracts, contracting officers have the authority to negotiate and enter into settlements with contractors for costs questioned under audit reports, or to issue a contracting officer's final decision pursuant to applicable dispute resolution procedures (in the event that questioned costs are not settled by negotiated agreement) in accordance with USAID's internal policy found in ADS Chapter 591. The negotiated settlement or final decision will be final, subject only to a contractor's appeal under the provisions of the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613), or other procedures as applicable. Policies and procedures for resolving audit recommendations are in accordance with USAID's internal policies found in ADS Chapters 591 and 592.

### **701.602-3 Ratification of unauthorized commitments.**

(a) [Reserved]

(b) *Policy.*

(1) [Reserved]

(2) In order to maintain management oversight and controls on unauthorized commitments, authority to ratify unauthorized commitments within USAID is reserved to the M/OAA Director.

### **701.603 Selection, appointment, and termination of appointment of contracting officers.**

#### **701.603-70 Designation of contracting officers.**

A contracting officer represents the U.S. Government through the exercise of his/her delegated authority to negotiate, sign, and administer contracts on behalf of the U.S. Government. The contracting officer's duties are sensitive, specialized, and responsible. To ensure proper accountability, and to preclude possible security, conflict of interest, or jurisdiction problems, USAID contracting officers must be U.S. citizen direct-hire employees of the U.S. Government. However, Director, Bureau for Management, Office of Acquisition and Assistance (M/OAA Director) may also designate a U.S. Personal Services Contractor (USPSC) or a Cooperating Country National Personal Services Contractor (CCNPSC) as a contracting officer with a specific level of warrant authority. To qualify for a designation as a contracting officer, an individual must meet the requirements in FAR subpart 1.6 and the Agency's applicable warrant program.

## **Subpart 701.7 - Determinations and Findings**

### **701.704 Content.**

There is no USAID-prescribed format or form for determinations and findings (D&Fs). D&Fs are to contain the information specified in (48 CFR) FAR 1.704 and any information which may be required by the (48 CFR) FAR or AIDAR section under which the D&F is issued.

### **701.707 Signatory authority.**

Unless otherwise specified in the FAR or AIDAR section under which the D&F is issued, the contracting officer is the signing official.