PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

Source: 49 FR 13236, Apr. 3, 1984, unless otherwise noted.

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Parent topic: SUBCHAPTER A—GENERAL

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.
752.219-8	0412-0520
752.245-70	0412-0520
752.245-71(c)(2)	0412-0520
752.247-70(c)	0412-0520
752.7001	0412-0520
752.7002(j)	0412-0520
752.7003	0412-0520
752.7004	0412-0520
752.7032	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) *General.* 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. Changes to the AIDAR shall be published in compliance with 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) *Authorities.* 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 that affect only one contract or procurement require prior approval by the head of the contracting activity.

(2) In preparing and submitting deviations for approval, USAID operating units must follow the applicable USAID policies in the ADS 300 series, including mandatory written consultations with the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P) and the Office of the General Counsel. For deviations related to AIDAR appendices D and J, Director of M/OAA clearance is required in lieu of M/OAA/P consultations, as outlined in appendices D and J. The CO must retain all approved deviations in the contract file.

(b) *Class deviations from the FAR or AIDAR.* Class deviations are those that affect more than one contract or contractor. Deviations involving basic ordering agreements or indefinite-delivery contracts are class deviations as they are considered to involve more than one contract.

(1) Class deviations from the AIDAR will be processed in the same manner as prescribed in paragraph (a)(2) of this section.

(2) Class deviations from the FAR will be considered jointly by USAID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) pursuant to FAR 1.404. M/OAA/P is responsible for consultations with the C/CAAC. If the head of the contracting activity determines that urgency precludes such consultations, the deviation must include the reason, certified by the head of the contracting activity, for not coordinating with the C/CAAC and must be promptly shared with M/OAA/P. M/OAA/P is responsible for notifying the C/CAAC of the class deviation.

(3) Individual heads of contracting activities have authority to approve class deviations affecting contracts only within the contracting activity under their management authority. Only the M/OAA Director has authority to approve class deviations that affect more than one contracting activity.

(4) Class deviations from the FAR and the AIDAR will expire two (2) years from the date of approval, unless a shorter period is specified in a deviation or approval is rescinded. Class deviations from the FAR or the AIDAR that are based on statutory requirements or those that are in an active agency or Federal rulemaking process may extend beyond the 2-year period until the rulemaking is completed. Expiration of the deviation or the completion of related rulemaking ends its availability for use in future awards and modifications. Expiration dates must be shown on all class deviations.

(5) Class deviations cannot be extended, except as provided in paragraph (b)(3) of this section. A new deviation to replace an expiring deviation must be prepared and approved in accordance with

applicable Agency policy.

(6) Approved class deviations must be retained by the issuing office and also in each contract file where the deviation is used.

(c) *Deviation request requirements.* All requests for deviations must 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, and, as applicable, the name(s) of the contractor(s), and the contract or task order number(s).

(d) *Award terms.* Once the terms and conditions of an award are approved based on a deviation, they remain in effect unless such authority is limited by the terms of the contract or removed by a modification.

Subpart 701.6—Career Development, Contracting Authority, and Responsibilities

701.601 General.

(a) *M/OAA Director.*

(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 FAR 6.302-7, 17.602(a), 19.201(c), 27.306(a), 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 the ADS.

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

(i) Select and appoint contracting officers and terminate their appointments in accordance with FAR 1.603; and

(ii) Exercise or delegate the authorities identified in FAR subpart 1.4 with regard to deviations from FAR subpart 1.4.

(b) *Heads of contracting activities except the M/OAA Director.* Except as otherwise prescribed, the head of each contracting activity (as defined in 702.170) is responsible for the procurement of supplies and services within the contracting activity under their management authority. The heads of USAID contracting activities are vested with broad authority to carry out the programs and activities for which they are responsible. This includes authority to execute contracts and establish procurement guidance and standards (including delegations, assignments of responsibilities, work-flow procedures, and internal reporting requirements) for their programs and activities, subject to Government-wide and USAID requirements and limitations, such as those found in this section and

particularly 701.603-70, the USAID policy regarding the direct-hire status of contracting officers.

(c) *Contracting activity procedures.* A contracting activity may establish procurement guidance, standards, strategies, practices, or procedures to implement its programs and activities. Such guidance, standards, strategies, practices, or procedures must be consistent with government-wide or agency-specific regulations and policies, or, if inconsistent, must be processed as a deviation in accordance with 701.470. A contracting activity may also establish procurement guidance, standards, strategies, practices, or procedures for its programs and activities, which are in the best interest of the Government and which are not specifically addressed in the government-wide or agency-specific regulations and policies, nor prohibited by law, Executive order, or other regulation.

(d) *Limitations.* The authority of heads of contracting activities to execute contracts is limited as follows:

(1) *The Assistant to the Administrator for the Bureau of Humanitarian Assistance (AtA/BHA).*

(i) Authority to execute and modify contracts for immediate disaster relief purposes, including personal services contracts up to $500,000 per transaction.

(ii) Authority to execute simplified acquisitions up to $50,000 for immediate disaster relief purposes, or delegate such authority to qualified individuals in BHA. Such individuals must be selected and appointed in accordance with the requirements in FAR 1.603 and AIDAR 701.603.

(2) *Overseas heads of contracting activities.*

(i) Authority to execute contracts and modifications where the total estimated cost of the contract, including any modifications, does not exceed $1,000,000 (or local currency equivalent) for personal services contracts.

(ii) Authority to execute simplified acquisitions within the threshold defined in FAR 2.101 (or local currency equivalent).

(iii) May delegate the authority for simplified acquisitions up to $50,000 to qualified individuals within that contracting activity. Such individuals must be selected and appointed in accordance with the requirements in FAR 1.603 and AIDAR 701.603.

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

With the exception of termination settlements subject to part 749, 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. 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. Internal policy and procedures for resolving audit recommendations are found in ADS series 500 chapters for audits.

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.